

# FGWL in Motion



- **Harold J. Friedman, Partner**, recently presented *Surviving The Lion's Den: Trial Techniques in the Face of Adverse Public Sentiment* at the Defense Research Institute (DRI) Fire & Casualty Seminar in Chicago, IL. Harold, who is a member of the International Academy of Trial Attorneys and former Board member of DRI, was recently named to *LawDragon's* list of outstanding trial attorneys.
- **Martha C. Gaythwaite, Partner**, has been named the Maine State Bar Association's Environmental Committee Chair, effective January 1, 2007. She is a featured presenter at the Defense Research Institute (DRI) Product Liability Conference to be held in New Orleans, LA, in February 2007 and will be a key speaker at the Maine State Bar Association's annual *Legal Year in Review* on November 16, 2006. Her topic will be developments and emerging trends in tort and products liability law.
- **Laurence H. Leavitt, Partner**, is Co-Chair of the Fire & Casualty Specialized Litigation Group of the Defense Research Institute (DRI) Product Liability Committee and recently chaired the DRI Fire & Casualty Seminar in Chicago, IL. He also serves as the State Law Editor for Maine, New Hampshire and Vermont for the Trucking Industry Defense Association (TIDA).
- **Blair A. Jones, Partner**, is a Vice Chair of the Commercial Transportation Litigation Committee of the Tort, Trial and Insurance Practice Section of the ABA, and has been named as the Chair Elect Designee for that committee. Blair will be a featured speaker on expert witness testimony at the National Business Institute seminar *How to Get Evidence and Expert Testimony Admitted Into Court* on December 13, 2006, in Portland, ME. Blair will also be speaking at the ABA's Transportation Mega Conference in March 2007, on a panel regarding technology issues in trucking litigation. Blair recently co-authored an article, *Strict Liability Cases: Subsequent Remedial Measures and Spoliation*, with associate Brett R. Leland. The article will be published in the Defense Research Institute (DRI) publication, *For the Defense* in December 2006.
- **Karen Frink Wolf, Partner**, is Chairperson of the Federal Practice Section of the Maine State Bar Association (MSBA). Recently, Karen was a speaker at the MSBA Annual Meeting for the program *The Art of Written Advocacy*. She also spoke at the Maine Osteopathic Annual Conference on the topic of *Defensible Documentation* and to the residents and faculty of the Maine Dartmouth Residency Program on medical-legal risk management issues for the practicing physician. Karen is a featured speaker at the MSBA *The Future of Employment and Labor Law... Is Here* program on November 29, 2006.
- **Heidi A. Bean, Partner**, spoke on medical-legal risk management issues before the residents and faculty of the Maine Dartmouth Residency Program at MaineGeneral Medical Center in Augusta, ME.
- **Jonathan M. Dunitz, Associate**, is a featured panelist for the National Business Institute's *Insurance Law Update: Understanding Current Coverage Trends* seminar to be held on February 28, 2007, where he will address current trends in Directors and Officers liability coverage. Jonathan is the First Circuit Editor for *The Business Suit*, the Defense Research Institute's (DRI) Commercial Litigation Committee's e-newsletter.
- **Mark V. Kenny, Associate**, was a presenter at the Maine Dartmouth Residency Program's seminar on medical-legal risk management issues for the practicing physician. He was also a contributor to the Trucking Industry Defense Association (TIDA) Maine State Law Summary, which is posted at the TIDA web site, [www.tida.org](http://www.tida.org).
- **Brett R. Leland, Associate**, recently co-authored an article with partner Blair A. Jones. The article, *Strict Liability Cases: Subsequent Remedial Measures and Spoliation*, will appear in the December 2006 publication of the Defense Research Institute's (DRI) *For the Defense*.



## Spotlight on FGWL's Rapid Response Team

Whether the firm's rapid response team is called to a residential house fire in Clifton, Virginia; to an 18-building industrial fire at a textile mill in Lisbon Falls, Maine; or to the Station nightclub fire in West Warwick, Rhode Island, where 100 people tragically lost their lives, our property attorneys are at the scene involved in the forensic investigation of fires and explosions and providing counsel to our clients on a wide range of loss adjustment issues. In the past month we have responded to the following fire scenes:

### Electrical Fire:

An attic-based electrical fire destroys a British imports retail store in a busy shopping district.

### Fry-O-Lator Ventilation Fire:

An Arby's restaurant is substantially damaged when a grease fire commences in the duct work of the Fry-O-Lator's ventilation system, exacerbated when the system's fire suppression unit fails to activate.

### Propane Fireplace Insert:

An oceanside home is destroyed by the alleged failure of a propane-fueled direct vent fireplace hearth.

## Featured Case Study: VICTORY AT PLYMOUTH ROCK

This fall the FGWL team successfully defended our client, an industrial machine manufacturer, against product liability claims arising from a tragic work place accident in Plymouth, Massachusetts.

The product at issue was a Final Proofer Machine that was part of the bakery production line at the local Pizzeria UNO factory. The Plaintiff, a 48-year old mother of five, had her arm severed by the machine's chain gear. Although the Plaintiff claims that she pulled the emergency stop button, the machine continued to run until the Plaintiff's arm was completely amputated. Surgeons were able to reattach the Plaintiff's arm. Unfortunately, after nine surgeries and years of therapy, the Plaintiff's arm remains painful and of limited utility.

At the time of the accident, a fixed barrier guard that was designed to cover the chain gear had been temporarily removed. At trial, the Plaintiff claimed that the machine should have been equipped with an interlock that would have shut the machine down if the guard was removed. Over objection, the Court allowed the jury to hear that the Plaintiff's employer had installed an interlock on the machine after the accident. The Plaintiff also claimed that the product manufacturer had negligently failed to provide an operable emergency stop system.

Our key challenge at trial was to convince jurors to put aside their understandable feelings of sympathy and to apply their

common sense to the relatively straightforward technical issues and causation questions presented by this case.

The jury ultimately rejected the Plaintiff's claims, finding that the machine had not been in a defective and unreasonably dangerous condition when it left the manufacturer's control. The 13 jurors also concluded that our client had not acted negligently with respect to the emergency stop system.

The parties had participated in two failed mediation sessions. The Plaintiff's multi-million dollar demand remained unchanged throughout trial.

*Resende v. C.H. Babb & Co., Inc.*, Superior Court, County of Plymouth, Commonwealth of Massachusetts, Docket No. PLCV2002-00687-B.

## Featured Case Study: JUNK SCIENCE EXPOSED

Our trial team was able to neutralize the Plaintiffs' experts in a case arising from a catastrophic explosion involving several wrongful death claims and more than twenty seriously injured Plaintiffs.

The Plaintiffs had claimed that our client, Getty Petroleum Marketing, Inc., was responsible for the tragedy. According to the creative theory of the Plaintiffs' experts, the explosion was caused by gasoline spilled during a delivery at a Getty station over a quarter mile away. The gasoline allegedly made its way into a storm culvert that passed directly under a portion of the building that exploded. Plaintiffs' experts theorized that the gasoline became trapped underneath the building because the flow of water was restricted by debris in the storm culvert. As the gasoline accumulated, explosive vapors seeped into the building directly above the culvert. Plaintiffs claimed that the vapors exploded when the fumes reached a ceiling mounted heating device containing a pilot light.

In trying to prove this theory, the Plaintiffs relied on a series of witnesses, including hydrologists, chemists, physicists, statisticians and cause and origin experts. The Plaintiffs' experts were subject to aggressive cross examination at trial and their junk science theories were exposed. The Court expressed serious concerns about the admissibility of some of the expert opinions and, in some instances, severely restricted the expert testimony pursuant to defense motions.

After six weeks of trial the Court warned the Plaintiffs that a Directed Verdict was a distinct possibility. A day before their case was to close, the Plaintiffs panicked and agreed to accept a settlement that was extremely favorable for the defense. In speaking with the jurors after the case, they indicated that they disbelieved the MIT and Stanford experts because their sophisticated theories were not fact-based and defied common sense.

*Snowberger, et. al. v. Getty Petroleum Marketing, Inc.*, Superior Court, Complex Litigation Docket at Waterbury, CT, Docket No. UWY-CV-01-0167144S(X06).