

The BROWARD BARRISTER

DECEMBER, 1976

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Executive Offices, 733 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

GENERAL MEETING, THURSDAY, DECEMBER, 16, 1976 — 12:00 NOON

Lunch: \$5:00

SHERATON HOTEL

303 North Atlantic Boulevard (ATA), Fort Lauderdale, Florida

Program: by Mr. Joseph Robbie
Managing General Partner of the Miami Dolphins

All members may invite their respective secretaries to attend this meeting. It is the Holiday Season and a time to honor and express gratitude to these faithful people.

HAPPY HOLIDAYS!!!

PLEASE USE ENCLOSED CARD FOR RESERVATION.

BROWARD COUNTY TRIAL LAWYERS ASSOCIATION MEETING

Wednesday, January 5, 1977

5:00 p.m. Case Evaluation Committee

6:00 p.m. Workshop: Problem Solving
Clinic.

(Bring your own cases and
questions)

6:30 p.m. Cash Bar

7:00 p.m. Dinner — \$10.00

THE SHERATON HOTEL

303 N. Atlantic Blvd. (ATA)
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Speaker: Larry Stewart

“Basics of Cross-examination”
— Part II

RSVP before December 31, 1976

Please send reservation with check to:

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OPERATION: UPDATE/TRANSITION

Sponsors: BCBA, BCTLA and Nova
Law School

Wednesday, December 15, 1976

4:30 P.M.

“Appellate Rules”: Larry Klein

“Civil Rules of Procedure”:
Robert C. Scott

Room 250, Broward County
Courthouse

Wednesday, January 19, 1977

“Trial of Products Liability and
Warranty Cases”

(Speaker to be announced)

(\$1.00 printing donation requested)

CHARITIES

Last year the Public Relations Committee made an appeal to the members attending the December meeting for a contribution to help purchase food baskets for needy families. The response was overwhelming, and ten (10) families received food baskets. The Bar staff purchased food on their own time and members of the Young Lawyers Section made the deliveries. One attorney contributed oranges and grapefruit for the families.

A request is being made again this year. If each member of the Association made a one-dollar (\$1.00) contribution, baskets could be presented to fifty (50) families. All one needs is to see the look of gratitude on the faces of the recipients and one knows the meaning of sharing.

Send your donation to:

Broward County Bar Association
735 N.E. Third Avenue
Fort Lauderdale, Florida 33304

Contributions can be made at the door.

CORPORATION, BUSINESS, AND BANKING LAW SECTION

The Corporation, Business, and Banking Law Section will present a seminar on January 21, 1977 at Nova University Auditorium, the Mailman Building, 3301 College Avenue, Fort Lauderdale, Florida. The seminar will be from 8:30 a.m. — 12:30 p.m. and will cover the following

topics:

1. Choosing the Form of Business Organization.
2. Forming and Maintaining a Corporation.
3. Securities Law Consideration in Forming and Maintaining a Corporation.
4. Workshop and Discussion of Forms.

There is a registration fee of ten dol-

lars (\$10.00) for BCBA members, thirty-five dollars (\$35.00) for attorneys who are not members of the Association, and five dollars (\$5.00) for Nova Law students. Outlines are being submitted to The Florida Bar for credit hours.

Registration fees should be sent to:

Broward County Bar Association
735 N.E. Third Avenue
Fort Lauderdale, Florida 33304

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733 N.E. Third Avenue
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"Bar Admissions Reach Record High — No Drop In Sight"

Bar admissions reached a record high for the sixth consecutive year in 1975, the National Conference of Bar Examiners reported. The admissions boosted the total number of lawyers in the United States to more than 400,000 which is also a record high. Of the 1975 admissions, 34,144 were by passing a bar examination, and 786 were by receiving a diploma. It was also reported that an additional 12,000 persons failed to pass a state bar examination. California led the number of admittees with 4,905. New York was second with 3,413 and Florida was third with 1,933.

Based on preliminary figures it appears that another record year will be seen in 1976.

*BETTER ABSTRACTS

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Estate Planning Under The Tax Reform Act of 1976

Nova University Law School and the Broward County Bar Association will present a six-hour seminar on "Estate Planning Under the Reform Tax Act of 1976" in Fort Lauderdale on January 5, 1977, at the Bahia Mar Yachting Center.

The topic is particularly significant in that the Tax Reform Act of 1976 not only changed many areas of the Income Tax but so amended the estate and gift tax laws that virtually every estate plan needs to be reexamined. The new law eliminates the stepped-up basis for inherited property and thus will mean higher taxes.

These topics and others will be on the program designed for the practitioner who has a working familiarity with the estate and gift tax.

The program will include:

- I. An Introduction to the Amendments to the Estate Planning Statutes Brought About by the Tax Reform Act of 1976.
- II. The Unified Tax Concept and its Effect on Estate Planning
 - a. Estate and Gift Tax Rate
 - b. Tax Credits
 - c. Transfers and Gifts in Contemplation
- III. The Carryover Basis
 - a. "Fresh Start" Determinations
 - b. Estate Planning Considerations
- IV. Marital and Other Family Transfers
 - a. Marital Deduction
 - b. Joint Ownership
 - c. Gifts
- V. Restrictions on Generation-Skipping Trusts
- VI. The Family Farm and Closely Held Business Real Estate
 - a. Valuation

- b. Liquidity
- c. Extended Payment of Tax

VII. Impact of New Law on Will and Trust Drafting and Estate Administration.

- a. Marital Deduction
- b. Accumulation Trusts — Income Tax
- c. Transfers with Retained Voting Control
- d. Section 303 Stock Redemptions
- e. Disclaimers
- f. Exclusion for Qualified Plans
- g. New Orphans Exclusion
- h. Extension of Time for Payment

VIII. A Sample Plan

Principal speakers will be Richard S. Lehman and Ronald M. Barron, both of Miami.

Lehman is a partner in the Miami law firm of Layne, Brill, Barron and Lehman. A former clerk to Judge Fay of the United States Tax Court, he was also an attorney in the Interpretative Division of the Office of Chief Counsel, Internal Revenue Service. He is a frequent author and speaker on matters of international taxation and estate and gift taxation.

Barron is a partner in the Miami law firm of Layne, Brill, Barron, and Lehman. Formerly an assistant branch chief in the Interpretative Division of the Office of Chief Counsel, Internal Revenue Service, Barron is currently adjunct professor of tax law, Nova University Center for the Study of Law.

A registration fee of \$50.00 includes registration, luncheon, and materials. Early registration is suggested as the seating capacity is limited to 120. Registration should be made with:

Mr. Al Powers, Assistant Dean
Nova Law Center
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COURT DECISIONS

by Henry J. Prominski

The doctrine of *res ipsa loquitur* was stretched by the Fourth District Court of Appeal in the case of **Goodyear Tire and Rubber Company vs. Hughes Supply, Inc.** 336 So2nd 1221. Here Goodyear sold a tire to the Appellee and installed same on his left front tractor trailer rig. After 9,500 miles it blew out while being driven. Expert testimony showed that there were no punctures nor any evidence that the tire had worn in such a manner as to be used in an under inflated condition and the blow out was caused by a defect in the manufacturing.

Goodyear's expert testified to the contrary that there was a nail hole, that the edges were worn, were subject to excessive heat and that there was damage from operation at a low tire pressure. One of the points on appeal was the contention that a Florida Standard Jury Instruction on *res ipsa loquitur* was improper. The Fourth District Court, in reviewing, reiterated that the doctrine of *res ipsa loquitur* is but a rule of evidence which establishes a permissible inference which may be, but need not be drawn, by the jury and reiterated also conditions for applying the doctrine: (1) That the instrumentality must be in exclusive control of the Defendant; (2) injury was not as a result of any voluntary action or contribution upon the Plaintiff and (3) the accident would not have occurred if the Defendant had used due care.

Goodyear's position was that the tire had left the custody of the Defendant for

a period of 30 days and had been driven 9,500 miles and the doctrine of *res ipsa loquitur* is inapplicable. The court ruled, however, that *res ipsa*, as a rule of evidence, applies in those factual situations wherein the evidence reflects the occasion would not have occurred in the absence of negligence and there is some evidence warranting a reasonable inference that the Defendant is responsible and all other elements of the rule considering its exceptions are met. There does not appear to be an explanation of how in this factual situation "all other elements of the rule" had been met in regard to the exclusive possession and control, except if one reads that the Defendant presented evidence of due care, this third element of the *res ipsa loquitur* requirement is a qualification for the first element of exclusive possession and control. In any event, the Fourth District Court found no reversible error in applying *res ipsa loquitur* in the instant case.

Judge Walden respectively dissented for the specific reason that the tire was not within the exclusive control of the Defendant at the time of the blow out, therefore the test of the application of *res ipsa* had not been met. He further analogized that the majority rational would be applicable if the tire was 10 years old and had been driven 79,500 miles, so long as the Plaintiff testified that he was not negligent in the use of the product.

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Broward County Bar Association Trial Lawyers Section

One of the new Sections of the Broward County Bar Association is the Trial Lawyers Section.

An initial meeting of the Executive Council was held on September 2nd and a set of By-Laws was adopted and passed on to the Broward County Bar Association for approval.

Three divisions have been created. Jim Dawson has been appointed chairman of the Civil Law Division, Nancy Hoffman for the Appellate Division and Bill Bassett for the Workmen's Compensation Division. It is hoped that with the creation of these divisions the trial lawyer will have a voice on the local level and that this will allow for suggestions for the improvement of these specializations.

One of the functions of this Section will be to aid in the Continuing Legal Education program at the local level with the preparation and the presentation of seminars.

You are invited to participate in the work of these divisions. Please contact the chairmen directly to offer your assistance.

Frank E. Maloney, Jr.

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Highlights of Board of Governors Meeting November 11-13, 1976

The Board of Governors took the following actions at its recent meeting in Tallahassee:

1. **Legislation.** The Board of Governors approved amendments to the Integration Rule and By-laws to enlarge the attorney-client relationship under which claims may be paid to defrauded clients by the Clients Security Fund. The Fund

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now covers losses due to the attorney-client relationship alone. The enlarged concept would also include losses due to a fiduciary relationship, whether strictly in an attorney-client sense or in some similar relationship, such as a Trustee, Guardian, Executor, or the like. Another amendment provides for the payment of attorney fee claims for clients who have deposited funds as a retainer for work to be done where a lawyer fails to produce the work which was paid for. Claims in this category will be limited to \$500. Further amendments confirm the concept that Client Security Fund payments will be net to the clients, and will not permit the payment of attorney's fees to attorneys who represent clients in claims against the Fund.

The Board approved a new statement of legislative policy, procedure, and authorized employment of an outside legislative counsel.

The legislative policy reaffirms that The Florida Bar may involve itself in legislation significant to the legal profession, the judiciary, the administration of justice, or the fundamental legal rights of the public. A newly organized legislative committee will direct the Bar's actions in many respects in this area. Sections of The Florida Bar have been given almost independence in their activities regarding legislation which are not in conflict with legislative programs that have been adopted by The Florida Bar. Procedures have been approved whereby each Section shall ascertain a lack of conflict before engaging in a legislative program. Committees of the Bar are more restricted in their legislative programs to the legislation committee for approval before taking action.

The Bar adopted certain principles regarding legislation in line with its previous actions in this area, favoring increased judicial manpower, increased judicial compensation, and funding. The Board continued to recommend the abolition of municipal courts, and that County Judges be members of The Florida Bar. The Board, again, disfavored spe-

cialized appellate courts and Senate confirmation of judicial appointments. The Board favored adequate law school funding and a legal rights and responsibilities education program in the public schools.

The Board also approved the contract for our outside legislative counsel, Mr. Richard McFarlane, who is presently an assistant director of The Florida Bar in charge of legislation and legal affairs. Mr. McFarlane will be working full-time for The Florida Bar as an independent lawyer-lobbyist during the legislative session in conjunction with a full-time staff counsel, Mr. William Wiley, and such other professionals as the Bar requires to achieve an effective legislative program in the forthcoming year.

2. Malpractice Insurance. The Board heard a report from the Bar's insurance consultants, Poe and Associates, from St. Petersburg, to the effect that because of the loss of the re-insurance carrier, a substantial increase in our errors and omissions policy will take place during the year starting with 1977. The problems are occasioned by additional claims and costs of settling claims.

The insurance carrier is changing its coverage from an "occurrence" liability to a "claims made" approach to insurance. The average cost of a \$300/600,000 insurance will increase from \$385 to \$532 for the next year. Lawyers should immediately review their insurance contracts to be sure that they are up-to-date and that they have coverage for "prior acts" in the event they are presently under "claims made" form of insurance coverage.

2. Reapportionment. The issue of reapportionment of the Board of Governors was deferred to the January meeting. Your representatives, Bill Leonard and Don Norman, spoke against the proposed committee report which would suggest maintaining the existing structure.

4. Environmental Law. The Board ap-

proved a new Section of The Florida Bar dealing with environmental law.

5. Admission to The Bar. The Board deferred to the January meeting a recommendation to the Board of Bar Examiners that a six-month waiting period be added to the requirements for admission to practice law, during which time the applicant can be thoroughly investigated as to character and fitness as an attorney.

Don Norman, Board Member
17th Judicial Circuit

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WELCOME, NEW MEMBERS

ROBERT S. ASHHEIM, a native of Brooklyn, N.Y., received his undergraduate degree from Queens College and his law degree from Saint John's University. He is associated with Lewis R. Druss, Fort Lauderdale.

RONALD H. BRIMMEL, a native of Detroit, Michigan, received his undergraduate degree from Ferris State College and his law degree from Cumberland. He is associated with Maurice Graham, Fort Lauderdale.

PHILIP A. DIGATI, a native of Brooklyn, N.Y., received his undergraduate degree from Saint John's University and his law degree from Brooklyn Law School. He practices alone in Fort Lauderdale.

LOUIS R. DRUSS, a native of Hackensack, New Jersey, received his undergraduate degree from S.U.N.Y. at Buffalo and his law degree from Washington College of Law. He is associated with Druss and Aschheim, Fort Lauderdale.

LEVI ENGLAND, a native of Warsaw, Indiana, received his undergraduate degree from the University of South Florida and his law degree from the University of Florida. He practices alone in Hollywood, Florida.


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