

## And The Defense Wins



**Edward G. Guedes**

DRI member **Edward G. Guedes**, head of the appellate practice group at **Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.** in Coral Gables, Florida, represented Kentucky-based CMI, Inc., the manufacturer of the Intoxilyzer brand breath-alcohol testing instruments used throughout the United States. DUI criminal defendants had been attempting to obtain access to CMI's intellectual property associated with the Intoxilyzer by serving subpoenas on the company's registered agent in Florida, and without complying with existing interstate compacts for obtaining the participation of witnesses in criminal proceedings.

On petition for writ of certiorari before Florida's Fifth District Court of Appeal, Mr. Guedes succeeded in obtaining a reversal of the lower appellate court's decision that allowed for service of the subpoena on the registered agent. The Fifth District concluded, for the first time in Florida, that the purpose of a registered agent was to permit service of process in cases where the out-of-state company was a party, but not where the company was a witness, thus affirming the prevailing rule in other jurisdictions that a court's subpoena power could not extend beyond a state's boundaries. The court further concluded that DUI defendants would be required to comply with the interstate compact, thus allowing for the participation and approval of the courts in Kentucky before CMI could be compelled to produce any information. *CMI, Inc. v. Ulloa*, \_\_\_ So. 3d \_\_\_, 2011 WL 4102296 (Fla. 5th DCA Sept. 11, 2011)