

## Jedi Mind Tricks in the Fourth Circuit

MONDAY, JUNE 20, 2011

*By Kirsten E. Small*

Remember Obi-Wan Kenobi waving his hand at some baddie in the first Star Wars movie saying, "There is no droid"? Of course, there still was a droid, but the important thing was that the bad guy *believed* that there was no droid.

The Fourth Circuit employs its own Jedi-like powers in [Grant Thornton, LLP v. FDIC](#), issued Friday. A truism of appellate litigation practice is that an appellate court is concerned not just about the case in front of it, but also about the rule that its decision will establish for future cases. In *Grant Thornton*, the Court affirmed a district court order finding an accounting firm liable for professional negligence, a ruling that has the potential of opening a few floodgates. So, the Court uses [Force persuasion](#): it waves its hand (*i.e.*, issues an unpublished opinion) and tells us there is no rule: The result is "driven by [the] unique facts" of the case, and "it should be well understood we do not announce any new rule of auditor liability and none should be implied."

So the question is, will potential litigants wander off in a haze muttering "there is no rule," or will they sneer back, a la Jabba the Hutt, "Your Jedi mind tricks will not work on me, court"?