



Litigation Management in a NEW YORK Minute – 2009 Ed.

August 7, 2009

The City Bar Building  
42 West 44th Street  
New York, NY

First Name:

Last Name:

This course has been approved by the New York State CLE Board

for a total of 6 credit hours of CLE:

Ethics and Professionalism: 1 CLE credit hour

Skills: 3 CLE credit hours

Areas of Professional Practice: 2 CLE credit hours

This course is also approved in California, Illinois and Georgia.  
Other states are pending.

Position/Title:

Company:

Business

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Fax:

Email:

Company

Address1:

Company

Address2:

City:

State:

Zip:

Friday, August 7 – Opening Statements



9:00a – 9:05a  
NETWORK CHAIR  
Warren Platt -- Snell & Wilmer (Orange County, CA)



9:05a – 9:10a  
SEMINAR Co-CHAIRS  
Scott O'Connell -- Nixon Peabody (Boston, MA)

Tony White-- Thompson Hine (Columbus, OH)

CLE INFORMATION

Please enter below the State(s) that you are admitted to and your ID Number(s)

State1: ID:

State2: ID:

State3: ID:

State4: ID:

Session I



9:10a – 9:30a  
HAS 'CAFA' MADE A GOOD-TASTING BREW?  
Mark Miller -- Wildman Harrold (Chicago, IL)  
The Class Action Fairness Act ("CAFA") went into effect more than four years ago. Has it had the desired effect? We'll look at the resulting trends in class action litigation, plaintiffs' evolving pleading strategies, and the new tactics defendants are using to successfully "de-CAFA-nate" the class action industry, with a special focus on consumer class actions.



9:30a – 9:50a  
HOW TO WIN OR LOSE YOUR CASE DURING THE OPENING STATEMENT  
Marshall Grossman -- Bingham McCutchen (Santa Monica, CA)  
Trial lawyer Marshall Grossman will discuss the differences between opening statements that provide a path to victory and those that foretell disaster. He is fresh off a \$600 million dollar settlement during the trial of *Grupo Televisa v. Univision* in Los Angeles federal court.

9:50a – 10:10a  
COST VS. VALUE: BEYOND BUDGETS, TOWARD TRUST  
Jack Sharman -- Lightfoot Franklin & White

Seminar Agenda

- FRI AUG 7 7:30a Continental Breakfast and Program Registration
- FRI AUG 7 9:00a Opening Statements
- FRI AUG 7 9:10a CLE Session I
- FRI AUG 7 10:50a Coffee and Refreshment Break
- FRI AUG 7 11:20p CLE Session II
- FRI AUG 7 1:00p CLE Session III – Working-Lunch Break-Out Sessions
- FRI AUG 7 2:00p CLE Session IV
- FRI AUG 7 2:40p CLE Session V – Ethics
- FRI AUG 7 3:40p Closing Statements



(Birmingham, AL)

Unchecked and non-policy-based billing practices can impair or destroy attorney-client relationships. Pressure to produce revenue can bump up against professional conduct and excellence in client service. There may be better surrogates for value than hours billed. Increasing pressure to control costs is forcing law departments and their outside counsel to reassess business models. Jack Sharman offers concrete suggestions for in-house lawyers to maximize value while fostering relationships of trust with outside counsel producing exceptional results.

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10:10a – 10:30a

THE USE OF DEPOSITIONS AS A SWORD AND A SHIELD IN 21ST-CENTURY TRIAL PREPARATION

Kevin Baumgardner -- Corr Cronin Michelson Baumgardner & Preece (Seattle, WA)

Perhaps the most critical pre-trial events in defending against bad faith claims and punitive damages are depositions of the defendant. Such testimony often forms the sole basis for a bad faith and punitive damages claim. Accordingly, the necessity of adequate preparation for such depositions, both by the attorney and the witnesses, is crucial to the defense. Just as significantly, in the age of the videotaped plaintiff's deposition the defense has a powerful weapon that can fatally undermine a claim long before a jury is empaneled --but again only if sufficient preparation takes place early in the case. Trial lawyer Kevin Baumgardner describes how the execution of effective deposition strategies can lay the groundwork for successful outcomes at trial.



10:30a – 10:50a

CONTROLLING HINDSIGHT BIAS IN JURY TRIALS

Tom Allen -- Weinberg, Wheeler, Hudgins, Gunn & Dial (Atlanta, GA)

Trial lawyer Tom Allen talks about the cognitive dysfunction known as hindsight bias and how it can be used in litigation to impeach witnesses, especially experts, and bar the admission of some types of evidence. In doing so, he will use as an example an approach he took in a serious criminal case, including photographs that the plaintiff attempted to use as evidence of notice.

Refreshment and Coffee Break



## Session II



11:20a – 11:40a

### **MANAGING THE ASSAULT ON TASER**

David Neave -- Blake Cassels & Graydon  
(Canada)

The death of Robert Dziekanski at the Vancouver Airport in October 2007 continues to attract world wide attention. This incident resulted in an unprecedented attack on the safety of TASER devices despite extensive peer-reviewed human medical research showing the devices are safe. Doug Klint, Vice President and General Counsel of TASER International, Inc., and David Neave of Blakes Vancouver will discuss the manner in which the company is dealing with the assault on TASER.



11:40a – 12:00p

### **INTERNAL INVESTIGATIONS DONE RIGHT – THE NUTS AND BOLTS OF WHO AND HOW TO CONDUCT THEM**

David Schultz -- Maslon, Edelman, Borman & Brand (Minneapolis, MN)

Companies face increasing scrutiny from regulators, prosecutors and shareholders. Headlines peel out one allegation of corporate wrongdoing after another. Investigations are demanded. Basic but critical questions regarding internal investigations – how to know when an investigation is necessary; who should conduct it; and how should they do it? Is separate counsel is necessary for employees, officers and directors? Should a written report be prepared? Protecting attorney client and other privileges.



12:00p – 12:20p

### **THE FOREIGN CORRUPT PRACTICES ACT: WHAT NEEDS TO BE KNOWN NOW**

Brant Phillips -- Bass Berry & Sims (Nashville, TN)

Since December 2008, the U.S. government has assessed more than \$1.3 billion in financial consequences against U.S. and foreign companies under the once little enforced FCPA (including \$800 million against Siemens AG). Additionally, many executives have pleaded guilty to felony FCPA charges; some individuals are facing as many as 35 years in prison. The FCPA includes record-keeping requirements, and it limits the types of business development activities that can be lawfully engaged in when dealing with non-US government and political party officials, including employees of state-owned enterprises. Learn more about what companies and individuals that do business

internationally can do to reduce their liability exposure under this far-reaching criminal statute.



12:20p – 1:00p

PANEL DISCUSSION: E-DISCOVERY  
CHALLENGES FACING IN-HOUSE COUNSEL  
Moderator: Roger McCleary -- Beirne,  
Maynard & Parsons (Houston, TX)

A recent survey indicates that only one in ten in-house counsel believes his/her company is ready for electronic discovery requests, while most note that their companies are unprepared. This panel will look at the new rules and talk about their own experiences.

*With Discussion By:*

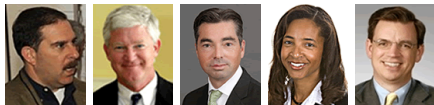
**Jim Villa** -- Vice President & Chief Counsel  
Litigation, AOL

**Rob Hunter** -- General Counsel, Altec  
Industries

**Jonathan Barton** -- Sandberg, Phoenix &  
von Gontard (St. Louis, MO)

**Krystal Bowen** -- Bingham McCutchen (San  
Francisco, CA)

**Jonathan Redgrave** -- Nixon Peabody  
(Washington, DC)



### Session III – Working-Lunch Break-Outs



1:00p – 2:00p

SESSION A:  
E-DISCOVERY – WHAT OTHER IN-HOUSE  
COUNSEL ARE DOING

Moderator:

Mark Yacano – LeClairRyan (Richmond, VA)

Room: CLE ROOM

*Discussion Group Leaders:*

**Joe Valentine** – Wheeler Trigg O'Donnell  
(Denver, CO)

**Sam Santo** – Lowenstein Sandler (Roseland,  
NJ)

**Jim Villa** -- Vice President & Chief Counsel  
Litigation, AOL

**Rob Hunter** -- General Counsel, Altec  
Industries

**Chris O'Neill** -- Associate General Counsel,  
IBM

**Victoria Redgrave** -- Vice President,  
Practice Development & General Counsel,  
TCDI

**Matthew Boyle** -- Sr. Vice President and  
General Counsel, Dassault Falcon Jet



1:00p – 2:00p

SESSION B:  
CLASS ACTION AND MDL LITIGATION

Moderators:

Linda Woolf – Goodell DeVries Leech & Dann  
(Baltimore, MD)

Susan Artinian – Dykema (Detroit, MI)



Room: Evarts

*Discussion Group Leaders:*

**Scott O'Connell** – Nixon Peabody (Boston, MA)

**David Neave** – Blake, Cassels & Graydon (Canada)

**Cooper Ashley** – Maslon Edelman Borman & Brand (Minneapolis, MN)

**Marie Russo** – Litigation Counsel / MasterCard International



1:00p – 2:00p

SESSION C:

LITIGATION MANAGEMENT

Moderator:

**Bobby Hood, Jr.** – Hood Law Firm (Charleston, SC)

Room: Tweed

*Discussion Group Leaders:*

**Ben Levy** – Associate General Counsel / Maersk, Inc.

**Mike Fried** – Claim Dir., Prof. Risk Claims (E&O, D&O) / ACE USA

**Joel Hoxie** – Snell & Wilmer (Phoenix, AZ)

**Nikki Nesbitt** – Goodell DeVries Leech & Dann (Baltimore, MD)



1:00p – 2:00p

SESSION D:

CATASTROPHIC INJURY CASES

Moderator:

**Carol Michel** – Weinberg, Wheeler, Hudgins, Gunn & Dial (Atlanta, GA)

Room: Carter

*Discussion Group Leaders:*

**Bobby Hood, Sr.** – Hood Law Firm (Charleston, SC)

**Ed Murphy** – Beirne, Maynard & Parsons (Houston, TX)

**Hal Morlan** – Akerman Senterfitt (Orlando, FL)

**Mary Anne Mellow** – Sandberg Phoenix & von Gontard (St. Louis, MO)



1:00p – 2:00p

SESSION E:

CHANGING CRIMINAL EXPOSURE OF CORPORATIONS

Moderator:

**Doug Grover** – Thompson Hine

Room: Davis

Discussion of changes in law enforcement with the new administration, including changes in enforcement relating to environmental (clean air, clean water, emission caps), product liability and workplace safety, foods and drugs, taxation and immigration law.

*Discussion Group Leaders:*

**Edward O'Callaghan** – Nixon Peabody (New



York, NY)

1:00p – 2:00p

SESSION F:

LITIGATION MANAGEMENT

Moderator:

Warren Platt – Snell & Wilmer (Orange County, CA)

Room: Choate

*Discussion Group Leaders:*

**Richard Rudolf** – Vice President, General Counsel / Sulzer US Holding

**Jamie Hood** – Hood Law Firm (Charleston, SC)

**Steve Fogg** – Corr Cronin Michelson Baumgardner & Preece (Seattle, WA)

**Overton Thompson** – Bass, Berry & Sims (Nashville, TN)

**Deborah Catalano** – Akerman Senterfitt (Orlando, FL)



1:00p – 2:00p

SESSION G:

INSURANCE COVERAGE – GETTING TO COVERAGE

Moderator:

Aidan McCormack – Nixon Peabody (New York, NY)

Room: Cromwell

*Discussion Group Leaders:*

**Greg Takehara** – Vice President, Claims / Affinity Insurance

**Steve Andrews** – Chief Administrative Officer, General Counsel and Secretary / Insight

**Raymond Cashman** – Supervisor / Chubb Group

**Lillian Morvay** – Assistant Vice President / Catlin

**Tony Lathrop** – Moore & Van Allen (Charlotte, NC)



1:00p – 2:00p

SESSION H:

LITIGATION MANAGEMENT

Moderator:

Miguel Pozo – Lowenstein Sandler (Roseland, NJ)

Room: Hughes

*Discussion Group Leaders:*

**Lance McPherson** – Vice President and Senior Counsel / MTV

**Joseph Aronds** – Asst. Vice President and Asst. General Counsel / Hartz Mountain Industries

**Jim Miller** – Akerman Senterfitt (Miami, FL)

Session IV

2:00p – 2:20p

SHOULD TRADEMARK LAW BE DIFFERENT FOR THE INTERNET?



Tony Handal -- Thompson Hine  
Trademark law used to be well-established and then along came the Internet and suddenly decades of good law is being challenged. With the growth of Internet activity has come increased abuse of trademarks, as well as the use of trademarks as domain names. New legal issues are surfacing from a surge of branding and a tsunami of disputed trademark uses on the Internet. In-house counsel need a corporate policy to protect compliant uses and a policy for policing abuses by competitors and others who would dilute valuable marks.



2:20p -2:40p  
INFORMATION IS POWER  
Phillip Sykes -- Forman, Perry, Watkins, Krutz & Tardy (Jackson, MS)  
Trial lawyer Phillip Sykes harnesses 21st-century technology to develop proprietary databases used by clients to dismiss lawsuits, leverage favorable settlements, and disqualify suspect jurors.

#### Session V – One Hour of Ethics



2:40p -3:00p  
ETHICS: NEW YORK'S MOVE TO THE ABA MODEL CODE  
Joseph Ortego -- Nixon Peabody (New York, NY)  
New York has become the 48th state to adopt the ABA Model Rules of Professional Conduct, replacing an antiquated and confusing system involving canons, considerations, and disciplinary rules. Trial Lawyer Joe Ortego will discuss the changes and how they impact our day-to-day operations as attorneys. While the playing field of professional conduct has now been leveled, the ABA has ensured that the war for billable work will now occur on a global battlefield. Last year, the ABA issued its Formal Opinion which green-lights the outsourcing of legal work to offshore companies. How did we get here? What is the anticipated impact?



3:00p -3:40p  
ETHICS PANEL: ETHICAL CHALLENGES FACING CORPORATE COUNSEL  
Moderated By: Joel Hoxie-- Snell & Wilmer (Phoenix, AZ)  
One national legal commentator called the job of in-house attorney "the most ethically-challenging position in the legal profession". Fair or not, prosecutors and regulators view in-house counsel as gatekeepers and are increasingly seeking to hold corporate counsel personally accountable for corporate misconduct. In this post-Enron, Sarbanes-Oxley "zero tolerance" regulatory environment, corporate counsel who fail to

pay attention to corporate compliance do so  
at their peril.

*With Discussion By:*

**Steve Andrews** -- General Counsel / Insight  
Enterprises

**David Harris** -- Lowenstein Sandler  
(Roseland, NJ)

**Tony Lathrop** -- Moore & Van Allen  
(Charlotte, NC)



#### Closing Statements



3:40p - 3:45p  
network chair

Warren Platt -- Snell & Wilmer (Orange County, CA)