

# Litigation Management: Tribulations and Trials

April 25-26, 2014

## AGENDA and COURSE DESCRIPTION

Friday, April 25, 2014

8:00a – 8:10a                    Opening Remarks and Welcome

8:10a – 8:30a                    **WHEN CRIMINAL AND CIVIL CASES COLLIDE: A SURVIVAL GUIDE**

*Jerry Glas - Deutsch Kerrigan & Stiles (New Orleans, LA)*

Every day employees are charged with DWI, fraud, and other crimes - even manslaughter - that also result in civil litigation. Former prosecutor Jerry Glas (now a New Orleans-based defense trial lawyer) will discuss the management of civil lawsuits in the face of parallel criminal prosecutions. He will relate how one client's aggressive approach resulted in the acquittal of a customer indicted for manslaughter, followed by summary judgment for the client, as well as a recent defense verdict for customers of the client's products. He will also describe the emotional roller coaster that peaked as a 22 year-old police officer – clad in a bullet-proof vest – stood and waited to hear the jury's verdict in a manslaughter charge based on use of a client's product.

8:30a - 8:50a                    **NO LONGER JUST "HE SAID, SHE SAID"**

*Tianna Hill Raby - Forman Perry Watkins Krutz & Tardy (Jackson, MS)*

“Sexting” and “textual harassment” in the workplace are on the rise and expanding the basis for employee and, in some cases third party, claims against employers. Smartphones provide newer, faster, and sometimes more impulsive ways for employees to send offensive comments, photos, and videos which can serve as the basis for sexual harassment and other claims. Tianna Hill-Raby will discuss these claims in the digital era and provide suggestions for workplace policies and to mitigate potential liability.

8:50a - 9:10a                    **YOU HAVE THE RIGHT TO REMAIN SILENT - SOMETIMES**

*David Spector - Akerman (West Palm Beach, FL)*

Raise it once and you'll have to raise it every time or you will have waived it. With its origins in the Star Chamber, the privilege against self-incrimination applies in civil as well as criminal proceedings. But be careful, as an adverse inference may be drawn against those asserting the privilege.

9:10a – 9:50a

**PANEL: EVIDENCE TESTING FOLLOWING A CLIENT'S CRISIS**

*Moderator: Jessalyn Zeigler - Bass Berry & Sims (Nashville, TN)*

A fire occurs, killing a family of four at an apartment complex; an explosion at a plant sends several employees to the emergency room; a contract employee is killed while doing repair work at a manufacturing plant. This panel will explore the how to's and do not's of evidence preservation, collection and testing, including retaining consulting and/or testifying experts and preserving work product privilege as much as possible along the way.

9:50a - 10:20a

Refreshment and Coffee Break

10:20a - 10:40a

**DISCOVERY OF FACTS BEHIND VIDEO SETTLEMENT DOCUMENTARIES**

*Heather Wilson - Frost Brown Todd (Indianapolis, IN)*

With increasing frequency, plaintiffs' attorneys are using settlement "documentary" videos before and during mediation in catastrophic cases. Utilizing the format of a tabloid television news program, these "documentaries" address problematic liability and damages issues in a light that is often unreasonably favorable to the injured party. They accomplish this by combining demonstrative re-creations, medical imagery, day-in-the-life footage, and heavily edited videotaped interviews of key third-party witnesses, experts and physicians.

10:40a - 11:00a

**E-DISCOVERY LESSONS FROM THE BATTLEFIELD**

*Mike Williams - Wheeler Trigg O'Donnell (Denver, CO)*

Over the past 15 years, litigants increasingly have played the "gotcha" discovery game to gain an advantage in trials. With technology moving ahead ever faster than the legal rules, spoliation risks and corporate spending on e-discovery will grow. Trial lawyer Mike Williams, along with DISH Network's General Counsel, Stanton Dodge, will discuss practical tips for minimizing discovery distractions and refocusing on the merits of your case in a world dominated by cloud-based computing, employees who bring their own devices to work, and increasingly complex and interactive business applications.

11:00a - 11:20a

**CONSUMER FRAUD CLASS ACTION TRIALS: CALLING PLAINTIFF COUNSEL'S BLUFF**

*Linda Woolf and Rick Barnes - Goodell DeVries Leech & Dann (Baltimore, MD)*

As plaintiffs continue to push the boundaries of consumer class action theories, defendants have developed a powerful weapon in response: the trial. Historically, consumer class action plaintiffs' end game has been certification followed by a settlement that puts large fees in plaintiff's counsel's pockets with little to no benefit to the theoretical absent class members. But many plaintiffs have lost sight of the need to build a class action that presents a meritorious triable case, banking instead on risk-averse defendants' unwillingness to try class representatives' claims. In this new paradigm, defendants should reconsider taking the class representatives to trial.

11:20a - 12:00p

**PANEL: DATA PRIVACY - IS YOUR COMPANY PREPARED?**

*Moderator: Jennifer Dioguardi - Snell & Wilmer (Phoenix, AZ)*

When it comes to a data breach, the question is not “if” you will become a target, the question is “when”. Operational preplanning and readiness can control costs, improve customer loyalty, mitigate legal expenses and preserve your brand and reputation. Our panel will cover the current privacy and data security climate, breach preplanning and readiness, building and activating all aspects of your internal and external response team including the roles and responsibilities of forensic IT, customer service, human resources legal and senior management. Being prepared to deliver a quick and accurate response to a breach incident is the best tool to mitigate any type of risk.

Saturday, April 26, 2014

8:00a – 8:10a

Day 2 Opening Remarks and Welcome

8:10a -8:30a

**WINNING YOUR CASE BEFORE TRIAL**

*Roger McCleary - Beirne Maynard & Parsons (Houston, TX)*

Great trial lawyers do not rely on pulling a rabbit from the proverbial hat at trial. Preparation is the keystone of victory! Turn the opposition’s expert into the opposition’s worst nightmare – and your road to a successful result.

8:30a -8:50a

**NAVIGATING THE DANGEROUS WATERS OF INTERNATIONAL BUSINESS**

*Wynn Shuford - Lightfoot Franklin & White (Birmingham, AL)*

Cultural impediments to effective communication are often unknown and misunderstood by Americans, even in the absence of actual language barriers. Ours is a “low context culture” where the primary purpose of communication is the exchange of information. For us, the content of a communication is more important than the context. Not so in more “high context” cultures, where the purpose of communication is more subtle - the establishment of relationships. Failure to appreciate those differences can cause serious problems in international business relationships.

8:50a – 9:10a

**CROSS-EXAMINING THE IMPECCABLE EXPERT**

*Dan Stephenson - Dykema (Los Angeles, CA)*

Making bad experts look that way is easy. Making good experts look bad is what's difficult. But it is possible to neutralize good adverse experts and even to convert them to score points for your side, but doing so takes experience, sincerity, knowledge of the expert's area, and a lot of work. Trial lawyer Dan Stephenson will discuss how to make the best of a good adverse expert.

9:10a -9:50a

**PANEL: BRUCE SPRINGSTEEN ON EXPERT WITNESS TESTIMONY**

*Moderator: Lewis Wiener - Sutherland Asbill & Brennan (Washington, DC)*

You can't start a fire without a spark, this gun's for hire, even if we're just dancing in the dark. Experts should provide independent, impartial, unbiased opinion evidence to aid juries in understanding complex facts. Our panel will discuss selection and preparation of expert witnesses (including real life examples of do's and don'ts), successful communication and presentation techniques for experts during testimony, and tips for practitioners regarding effective use of experts and pitfalls to avoid.

9:50a - 10:20a

Refreshment and Coffee Break

10:20a -10:40a

**MAKING A 'MOCK'ERY OF YOUR CASE: THE PROS AND CONS OF MOCK TRIALS**

*Joe Krasovec - Schiff Hardin (Chicago, IL)*

Mock trying your case can be a very useful tool in assessing its strengths and weaknesses, if done right. How are the presentations structured? Where do you get your pool of mock jurors? What evidence do you put in front of them? How do you use the information you get from them to help your case? Trial lawyer Joe Krasovec, who has participated in over 30 mock trials, shares his thoughts on how to get the most out of this sometimes expensive and time consuming method of case assessment.

10:40a -11:00a

**SIXTY DAYS TO TRIAL**

*Steve Fogg - Corr Cronin (Seattle, WA)*

The two months that precede trial can be a flurry of activity: dispositive motions, last-minute discovery, mediations, mock jury exercises, witness preparation. Getting it all done efficiently and effectively is a challenge, especially if you're an in-house lawyer managing the expense and the result. Veteran trial lawyer Steve Fogg walks you through those crucial two months, offering real-world tips and advice.

11:00a -11:10a

Closing Remarks Before Break-Out Sessions.

11:10a -12:10p

**LITIGATION MANAGEMENT BREAK-OUT SESSIONS**