

Litigation: Management or Mayhem? You Choose

October 24-25, 2014

AGENDA and COURSE DESCRIPTION

Friday, October 24, 2014

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

8:10a – 8:30a **AVOID BEING GM'ED: KEEPING YOUR HEAD IN A POST-GM WORLD**

Jack Sharman - Lightfoot Franklin & White (Birmingham, AL)

GM's independent outside investigator studying the company's ignition-switch problems sharply criticized GM's in-house lawyers, and a Senate committee did the same to GM's general counsel. And they're not alone. GM may have grabbed the headlines, but in-house counsel at GlaxoSmithKline, WalMart and Siemens also have been criticized. Why and where did those lawyers go wrong? Could you just as easily be in the hot-seat for the ways that you protect your company? With white-collar and internal-investigation experience, Jack Sharman highlights what you need to know in today's post-GM world.

8:30a - 8:50a **WHEN LOSSES EXCEED POLICY LIMITS: WHAT'S A CLIENT TO DO?**

Forman Perry Watkins Krutz & Tardy (Jackson, MS)

Too many claims and not enough policy limits? Trial lawyer Walter Boone shares his experience representing clients facing claims that exceed coverage limits, singly or jointly, that compete for limited insurance policy resources of defense and indemnity coverage.

8:50a - 9:10a **WINNING JURY TRIALS: LESSONS FROM HOLLYWOOD**

Jeff Hines and George Mahaffey - Goodell DeVries (Baltimore, MD)

Screen-writer and trial lawyer George Mahaffey teams up with trial lawyer Jeff Hines to show in-house counsel how Hollywood gets audiences to absorb information, and how lawyers can use the same techniques at trial. Rhythm and beats in information flow are used to produce "tent-pole" or "four-quadrant" movies and can be applied to trials. Jurors increasingly watch trials and react as they would watching a movie, with their attention rising and falling depending on how the information flows. Trial lawyers can also use Hollywood's technique of creating "sticky ideas", simple but profound, that resonate by using concrete words and memorable images.

9:10a - 9:50a

PANEL: ALTERNATIVE FEE ARRANGEMENTS - TO PAY OR NOT TO PAY, THAT IS THE QUESTION

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

With increasing budget pressure on clients and their in-house counsel, alternative fee arrangements, including fixed-fee arrangements, unitary fees and all-you-can-eat plans are getting attention. Our panel will discuss their experiences with alternative fee arrangements, what's working, the problems they've experienced, and reasons that it has taken so long for AFAs to get traction.

9:50a - 10:20a

Refreshment and Coffee Break

10:20a - 10:40a

CONDUCTING EFFECTIVE INTERNAL INVESTIGATIONS

Mark Morrison - Blake Cassels & Graydon (Canada)

Allegations of corruption or other criminal conduct, poorly investigated and responded to, can wind up as front page news, tank stock prices, decimate sales, and result in long-term losses. Practice pointers for handling effective internal investigations.

10:40a - 11:00a

USING SURVEILLANCE MATERIALS IN DISCOVERY: HOW, WHEN AND WHY

Kate Stimeling - Schiff Hardin (San Francisco, CA)

Trial lawyer Kate Stimeling demonstrates how best to use video surveillance materials in litigation while meeting legal requirements for disclosure and production of surveillance videos. When do the risks of surveillance outweigh the benefits? How best to use surveillance materials at deposition, mediation and trial. Can your surveillance videos be discovered? Watch real life examples; hear best practices.

11:00a - 11:20a

WRITE SMART: HELPING EMPLOYEES AVOID CREATING THE DOCUMENT FROM HELL

Cooper Ashley - aslon Edelman Borman & Brand (Minneapolis, MN)

Any employee can create a smoking gun document. We've all seen them. When authors create documents without considering inevitable production to litigation adversaries, avoidable harm can be done. Trial lawyer Cooper Ashley reviews some of the worst documents imaginable and provides a roadmap to bullet-proofing your client by causing employees to always keep litigation front-of-mind.

11:20p - 12:00p

PANEL: ARBITRATION - WHAT WORKS, WHAT DOESN'T, AND WHAT SOME TRIAL LAWYERS JUST DON'T GET

Moderator: Scott Marrs - Beirne Maynard & Parsons (Houston, TX)

A nuts and bolts discussion with Arbitrators and advocates - geared to give counsel and client alike new perspectives about what does and does not work in arbitration – and why. Should you treat discovery the same as you do in a matter filed in court? Should you notice up those depositions? Your client wants to know if a Motion for Summary Judgment will get traction – will it? The other side seeks attorney's fees - should you amend your claim to seek attorney's fees also? Should you call that expert witness (or oppose theirs)? Should you ask for (or oppose) that continuance? This panel will share their informed opinions of what is effective in arbitration, and why some trial lawyers just don't get the fact that what works in the trial context may not work in arbitration.

Saturday, October 25, 2014

8:00a – 8:10a

Welcome Back Remarks from the Seminar Co-Chairs

8:10a – 8:30a

VOLUNTARY DISCLOSURE TO THE GOVERNMENT: AVOIDING UNINTENDED CONSEQUENCES

Brett Johnson - Snell & Wilmer (Phoenix, AZ)

Voluntary disclosures to the government are common to a wide variety of matters, including healthcare, FCPA, export controls and other compliance areas. Trial lawyer Brett Johnson gives you a roadmap to investigation and disclosure to avoid compliance violations, as well as best practices to maximize benefits and mitigate risks of disclosure.

8:30a - 8:50a

PERSUASION IN THE COURTROOM: WHAT TO EXPECT FROM YOUR TRIAL LAWYER

Hugh Gottschalk - Wheeler Trigg O'Donnell (Denver, CO)

When cases go to trial, in-house counsel must get the very best from their trial lawyers. Hugh Gottschalk shares 35 years' worth of courtroom experience as he demonstrates fundamental principles of courtroom persuasion. Critical elements of persuasion technique transcend case types, and are common to all trials. Learn what they are and how to make sure your trial lawyer is using them.

8:50a - 9:10a

TAKING THE AIR OUT OF THE WHISTLE IN WHISTLEBLOWER LITIGATION

Kevin Baumgardner - Corr Cronin (Seattle, WA)

It's almost mandatory now that every piece of legislation provide whistleblower protection. And those provisions stack the deck against the employer and manufacturer. Starting with the U.S. Constitution and proceeding to Civil Rights, Consumer Product Safety, Sarbanes-Oxley, SEC auditing, Credit Unions, Clean Air, CERCLA, Safe Drinking Water, Nuclear Energy, Airline Safety, Public Transportation, Workplaces, Contractors, Labor Rights, if you're doing business in any field, there's a law to protect whistleblowers. Kevin Baumgardner has devoted the last decade of his practice to this area and will demonstrate how you can minimize your exposure and handle the bad publicity.

9:10a - 9:50a

PANEL: EMERGENCY PREPAREDNESS FOR IN-HOUSE COUNSEL

Moderator: Steve Williger - Thompson Hine (Cleveland, OH)

Preparation for your company's inevitable coming crisis will speak volumes about you and your company. Do you have a grip on the realities and risks of your company's economic, legal and business environment? Or are you unprepared with no plan whatsoever to deal with a crisis? Hear how some companies have prepared to respond to a crisis and what you should be doing to protect your company. Arm-chair Monday-morning quarterbacking will begin almost immediately after a crisis occurs, and you owe it to your company and its constituent groups to be as prepared as possible. Our panel will offer suggestions to help you to better weather the next approaching storm.

9:50a - 10:20a

Refreshment and Coffee Break

10:20a - 10:40a

TAKING IT TO THE FEDS - GOING ON THE OFFENSE IN GOVERNMENT INVESTIGATIONS AND PROSECUTIONS

Chris Oprison - Akerman (Miami, FL)

Trial Lawyer Chris Oprison, former Associate Counsel to President George W. Bush handling government investigations, and former USMC Prosecutor, offers guidance for situations when the government goes off the rails. When a finger is pointed back at them, government agencies are often found wanting in document preservation and other areas, as we have seen with the IRS' alleged preferential attention to conservative political organizations. Chris offers tips for clients faced with investigation or prosecution, and shares examples of government failure to preserve documents resulting in sanctions and dispositive rulings, ultimately changing a client's situation substantially.

10:40a - 11:00a

WHY THE TELEPHONE CONSUMER PROTECTION ACT IS RELEVANT TO EVERY COMPANY

Chris Burnside - Frost Brown Todd (Louisville, KY)

Enacted 20 years ago to protect consumers from unwanted robo-calls, the TCPA's statutory damages and strict liability has made it the darling of the Class Action Plaintiff's Bar. Chris Burnside will discuss what every company needs to know about seemingly innocent communications with customers in this risky litigation environment. It might not be as simple as you think: An existing business relationship with your customer might not insulate your company from statutory liability.

11:00a - 11:05a

Closing Remarks before Break-Out Sessions

11:05a - 12:05p

BREAK-OUT SESSIONS ON LITIGATION MANAGEMENT