

# Litigation Management in a NEW YORK Minute – 2014 Edition

August 8, 2014

## AGENDA and COURSE DESCRIPTION

9:00a – 9:10a                    Opening Remarks and Welcome

9:10a – 9:30a                    **TRADE SECRET AUDITS: PROTECTING AND VALUING YOUR COMPANY'S SECRET KNOW-HOW**

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

In trade secret litigation the first issues addressed are the identity of plaintiff's trade secrets and the adequacy of measures used to maintain secrecy. Then the battle turns to valuation. Trial lawyer David Harris will demonstrate effective methods to prove trade secrets and their value in litigation and business transactions.

9:30a - 9:50a                    **SPOILING SPOILIATION**

*Jessie Zeigler - Bass Berry & Sims (Nashville, TN)*

There's no time like the present to begin collecting, preserving and testing evidence, even prior to litigation. Trial lawyer Jessie Zeigler will outline how to do that, what not to do, and even how to destructively test evidence without impairing your ability to use and produce that evidence at trial. And she will discuss the related use of consulting and testifying experts without impairing work product privilege.

9:50a - 10:10a                    **MISTAKES IN PREPARING AND PRESENTING CORPORATE DESIGNEES**

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

Who tells the story and how it's told is as important as the story itself. Trial lawyer John Sandberg distills his experience from hundreds of corporate designee depositions and gives us the best and worst he's heard and seen, complete with videos.

10:10a - 10:30a                    **GETTING VALUE FROM YOUR MOCK TRIAL**

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

Mock trials done right can measure case strengths and weaknesses. But how are presentations best structured? Where do you find representative mock jurors? What evidence do they see? How do you use the information you get? Trial lawyer Joe Krasovec, with more than 30 mock trials under his belt, addresses these questions and more.

10:30a - 10:50a

**COVER YOUR ASSETS – DRAFTING EFFECTIVE PROTECTIVE ORDERS**

*Nicole Narotzky - Maslon Edelman Borman & Brand (Minneapolis, MN)*

When threats loom, an effective protective order could be the difference between keeping and losing valuable company intellectual property, confidential financial information and trade secrets. Lawsuits are leaky sieves for such valuable information. Reliance on standard boilerplate protective umbrella orders that have always worked may be dangerous. Agreement among the parties and the likelihood of approval by the courts balancing the need to protect information with the public's right to access to the courts are critical. Sealing documents, "attorneys' eyes only" designations, inadvertent disclosures and clawback requests are part of the process. FRCP 26(c) and companion State rules set forth the basic framework.

10:50a - 11:20a

Refreshment and Coffee Break

11:20a - 11:40a

**BUDGETING FOR LITIGATION: A STATE-OF-THE-ART APPROACH**

*Brian Lamb - Thompson Hine (Cleveland, OH)*

Thompson Hine's proprietary software application assists lawyers by creating and managing litigation budgets. Developed by the firm's trial lawyers, including speaker Brian Lamb, together with the firm's information technology staff, this web-based application generates detailed budgets, reports and resource charts to be shared with the client during the life of the matter, providing transparency and predictability. Data collected over time helps the firm predict future litigation costs.

11:40a - 12:00p

**STUFF HAPPENS – HOW WOULD YOU HANDLE HAVING THE RUG PULLED OUT FROM UNDER YOU?**

*Derek Whitefield - Dykema (Los Angeles, CA)*

Making the best of a bad situation is often not good enough. Ideally you can convert a seeming catastrophe to a windfall for your side by conditioning yourself to immediately ask one transformative question: "What's great about this situation?" Trial lawyer Derek Whitefield speaks from experience about real-life examples of situations that looked like debacles when they occurred, but were turned around to gain an advantage in the litigation.

12:00p - 12:20p

**MANAGING THE FIRST 90 DAYS IN A BET-THE-COMPANY CASE**

*Larry Polk - Sutherland Asbill & Brennan (Atlanta, GA)*

The fallout from a regulatory investigation, lawsuit, or adverse publicity could threaten the existence of a company if not properly managed. Actions taken during the first 90 days of this process are often crucial to a successful ultimate resolution. Securities litigator Larry Polk will discuss the steps to take immediately after a crisis erupts, including communications with the press, document retention, shaping the message to employees, preserving the attorney-client privilege, dealing with regulators, and preparing for the onslaught of private litigation.

12:20p - 12:40p

**TOP 10 SURPRISING THINGS YOU DIDN'T KNOW ABOUT LITIGATION IN CANADA**

*Jill Lawrie and James Sullivan - Blake Cassels & Graydon (Canada)*

Barristers Jill Lawrie and Jim Sullivan will surprise you with a discussion of some unusual aspects of Canadian litigation that you probably would not have guessed would be so. Do you know how to obtain discovery from a Canada witness? Can it be used in U.S. Courts? Is there a Daubert standard in Canada? What about choice of venue? Are there unique customs? Juries? Contingent fees? Are attorneys' fees recoverable? What about parallel proceedings?

12:40p - 1:10p

**PRIVACY AND DATA PROTECTION – COMMON SENSE SOLUTIONS TO NEW THREATS**

*Joe Ortego - Nixon Peabody (New York, NY)*

In-house counsel's role in protecting personally identifiable information; compliance with laws and policies; balancing the benefit to consumers of maintaining big data with the risk of loss and misuse; fair information practice principles; consumer privacy bill of rights, and more.

1:00p - 2:00p

**WORKING-LUNCH BREAK-OUT SESSIONS ON LITIGATION MANAGEMENT**

2:00p – 2:20p

**RECENT AND PROPOSED AMENDMENTS TO THE FRCP**

*Tony Lathrop - Frost Brown Todd (Indianapolis, IN)*

What's changed? The rules governing discovery, and spoliation sanctions, and Rule 45 which streamlined the use of subpoenas. What's changing? Discovery and spoliation sanctions relating to digital information.

2:20p -2:40p

**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.

2:40p -3:00p

**ETHICS: NAVIGATING THE TRIPARTITE RELATIONSHIP -  
INSURED, INSURER AND OUTSIDE COUNSEL**

*Lee Hollis - Lightfoot Franklin & White (Birmingham, AL)*

Who's the client?; may work product be shared?; is there a privilege and how far does it extend?; impact of reservation of rights; when damages exceed coverage; when defense costs consume limits; defending multiple parties; when defense counsel's work creates a coverage issue; when punitive damages are claimed; when the insurer constrains discovery to limit defense expense. Trial lawyer Lee Hollis dives in to clarify those thorny issues.

3:00p -3:20p

**ETHICS: SOCIAL MEDIA IN LITIGATION – AN ETHICAL  
MINEFIELD**

*Duris Holmes - Deutsch Kerrigan & Stiles (New Orleans, LA)*

Don't make any of these mistakes. Trial lawyer Duris Holmes will discuss the ethical considerations of friending and other virtual contacts with judges, jurors, witnesses, adversary clients and counsel, peppered with examples of mistakes made and to be avoided.

3:20p -3:40p

**ETHICS: SPEAK UP OR STAY QUIET**

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

Lawyer's responsibilities under States' professional codes of conduct are beginning to conflict head-on with the modern concept of corporate ethics and compliance. When can/must an in-house lawyer report information concerning conduct, product defects, or other issues that affect the company? Ethical and legal constraints requiring counsel to keep workplace and product defect investigations, as well as settlements confidential but report information to management can be tricky. The General Motors ignition switch investigation shows that violation of those rules can have big consequences. Nikki Nesbitt will discuss applicable rules and guidance from the Model Rules on in-house counsel's obligations to speak up or stay quiet.

3:40p – 3:45p

Closing Remarks