

Litigation Management: In-House Counsel Facing The Future

October 23-24, 2015

AGENDA and COURSE DESCRIPTION

Friday, October 23, 2015

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

8:10a - 8:30a **INDIVIDUAL ACCOUNTABILITY FOR CORPORATE WRONGDOING**

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

"For whom the bell tolls, it tolls for thee." The USDOJ recently announced that it intends to "fully leverage its resources to identify culpable individuals at all levels in corporate cases." Trial lawyer Lewis Wiener, formerly with DOJ, will discuss events leading up to the DOJ's pronouncement and the implications for individuals caught in the tangled web of alleged corporate wrongdoing.

8:30a - 8:50a

DISCOVERY OF SOCIAL MEDIA

Bill Hubbard -- Thompson Hine (Cleveland, OH)

Social networking profiles, smart phones, and wearable devices can provide a wealth of information about parties, witnesses, and even potential jurors, including data on an individual's age, occupation, hometown, education, relationships, interests, activities, health, as well as political, economic and cultural views feelings. Trial lawyer Bill Hubbard will explain some of the best practices for deploying social media discovery and laying the groundwork for its admission at trial.

8:50a - 9:10a

AVOIDING FORUM SHOPPING – DAIMLER CHRYSLER V. BAUMAN AND PROGENY

Joshua Metcalf -- Forman Watkins Krutz & Tardy (Jackson, MS)

Defendants face forum-shopping plaintiffs stretching to establish sufficient contacts to justify their choice of venue. SCOTUS set forth protections against abuse in Daimler Chrysler v. Bauman. In-house counsel need to be alert to those minimum requirements for in personal jurisdiction. Trial lawyer Joshua Metcalf will discuss Daimler and its progeny, and he'll take a close look at which connections to the forum state are sufficiently tenuous to cause courts to bounce the case.

9:10a - 9:50a

PANEL: BEYOND THE NUMBERS - INCLUSION AS THE TOUCHSTONE FOR SUCCESSFUL DIVERSITY INITIATIVES

Moderator: Stacie Hartman -- Schiff Hardin (Chicago, IL)

It is well-accepted that increasing diversity is not only the right thing to do, it also enhances a business' operations and profitability. But merely increasing the numbers of diverse colleagues is not enough to sustain a more diverse workplace long-term. We will discuss how inclusion of diverse colleagues at every level and in all aspects of a team is the necessary element of a successful diversity initiative.

9:50a - 10:20a

Refreshment and Coffee Break

10:20a - 10:40a

CYBERTHREATS: WHAT IN-HOUSE COUNSEL SHOULD BE DOING

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

In-house counsel are best-suited to guide their companies through the cybersecurity minefield, from data security policy formation, employee training, compliance and risk auditing and assessment, through data breach and crisis management. Trial lawyer Joe Ortego discusses the move from reactive to increasingly proactive roles for in-house counsel and provides a 10-point agenda covering all bases..

10:40a - 11:00a

POST M&A FRAUD CLAIMS: WHEN IS A DONE DEAL NOT REALLY DONE?

David Sager -- Lowenstein Sandler (Roseland, NJ)

Trial lawyer David Sager discusses litigating post-closing claims for fraud arising out of stock and asset transactions and how trial lawyers can team with deal attorneys at the drafting stage to improve a client's chances of avoiding misrepresentation and omission claims.

11:00a - 11:20a

TOP 5 LESSONS LEARNED AS PLAINTIFF IN COMMERCIAL LITIGATION

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

Corporate defense counsel don't routinely prosecute claims. But defending and prosecuting commercial claims are two sides of the same knife. Direct liability claims as well as claims for contribution and indemnity are also part of defense counsel's responsibility. Plaintiff counsel are uniquely positioned to observe the mistakes, errors, omissions and faux pas made by others defending their clients. Trial lawyer Jessie Zeigler discusses the top 5 mistakes defense counsel make, seen first-hand while acting as corporate plaintiff counsel.

11:20p - 11:40p

TIME SEGMENT-BASED PRE-LITIGATION PREPAREDNESS TO MINIMIZE RISK, MAXIMIZE RESULTS

Kevin Zielke -- Dykema (Detroit, MI)

It's going to rain, so you have an umbrella. You're going to be sued, so where's your litigation umbrella? Trial lawyer Kevin Zielke separates pre-litigation time into discrete segments and presents a checklist of critical preparedness strategies for each segment. Get your litigation umbrella ready before it's needed.

11:40p - 12:00p

ONE GOOD COMPANY WITNESS IS WORTH 1,000 OUTSIDE EXPERTS

Tom Cullen -- Goodell DeVries Leech & Dann (Baltimore, MD)

Jurors form impressions of defendant companies and their defenses largely on the impressions made by company witnesses. But defense efforts usually focus instead on outside experts, taking whomever the company identifies as a witness more or less for granted. Trial lawyer Tom Cullen will demonstrate to in-house counsel how to dramatically improve their company story and trial results by identifying suitable in-house experts and developing and preserving their institutional expertise.

Saturday, October 24, 2015

8:00a - 8:10a

Welcome Back Remarks from the Seminar Co-Chairs

8:10a - 8:30a

WHAT'S TRENDING IN CLASS ACTION LITIGATION

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

A recent global survey of corporate counsel revealed that the increasing number of class actions filed is considered to be the most important litigation trend currently facing companies. Over the last several years, companies and plaintiffs alike have been pushing to clarify the boundaries of class action litigation. This session will explore the development of class action law and the resulting impact on business clients, including recent U.S. Supreme Court decisions, key issues currently under consideration by the High Court, and evolving Congressional and Advisory Committee proposals to revise federal class action procedure.

8:30a - 8:50a

PREVENTING AND MANAGING POTENTIAL LIABILITY FROM THE ACTIONS OF SALES REPRESENTATIVES

Nicole Narotzky -- Maslon (Minneapolis, MN)

A sales force can expose your company to liability. Trial lawyer Nicole Narotzky will discuss recent claims against manufacturers arising from actions of their sales representatives. Proper sales force training can help to avoid mistakes that give rise to claims.

8:50a - 9:10a

WINNING THE BIG CASE

Sawnie McEntire -- Beirne Maynard & Parsons (Dallas, TX)

This presentation will address effective strategies for winning jury verdicts in cases with big damages, important issues or well-known lawyers on the other side. The presentation will identify practical suggestions from the school of hard knocks and other real world experiences.

9:10a - 9:50a

PANEL: TRIALS - RETAKING HIGH GROUND

Moderator: Mark Cloutre -- Wheeler Trigg O'Donnell (Denver, CO)

This panel, led by trial lawyer Mark Cloutre, will discuss the initial question of whether to arbitrate or take a matter to trial, and the factors and decision-points involved in this analysis. The panelists will then analyze whether to take a case through arbitration or trial or whether to settle, by discussing the factors involved in this process as well as engaging in a lively discussion relating to a hypothetical on the issue.

9:50a - 10:20a

Refreshment and Coffee Break

10:20a - 10:40a

**NEW FRONTIERS: THE CLAMPDOWN ON PATENT
INFRINGEMENT LITIGATION AND ITS EFFECTS ON
CORPORATE LITIGATION**

Andy Halaby -- Snell & Wilmer (Phoenix, AZ)

Prompted by concerns over “patent troll” activity, each federal government branch has mounted a vigorous, sustained, and effective assault on patent litigation over the past three years. Andy Halaby will comment on the changes and resultant erosion of corporate wealth, as well as implications for securities and other litigation.

10:40a - 11:00a

**3-D PRINTING: NEW OPPORTUNITIES AND NEW RISKS TO
MANUFACTURERS**

Brian Stansbury -- Akerman (Washington, DC)

3D printing of products and components is moving from the manufacturers to those who repair and maintain, and even to end-users. Beyond obvious IP and counterfeiting issues, the technology is opening up new risks to manufacturers, including product liability, and insurance coverage. Trial lawyer Brian Stansbury will discuss trends and risks arising with this technology of which in-house counsel should be aware in the face of inventory, shipping time and cost savings, and supply chain management advantages.

11:00a – 11:05a

Closing Remarks before Break-Out Sessions

11:05a – 12:05p

BREAK-OUT SESSIONS ON LITIGATION MANAGEMENT