

# Litigation Management: Bottled at its Peak

April 17-18, 2015

## AGENDA and COURSE DESCRIPTION

Friday, April 17, 2015

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

8:10a – 8:30a                    **LION-TRAINING DURING CLOSING ARGUMENT**

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

Every jury can be divided into Lions and Lambs, and the Lions eat the Lambs. Too many closing arguments are wasted trying to persuade Lambs instead of teaching the Lions to be persuasive. Trial attorney Jerry Glas will discuss proven methods of Lion-training, including the controversial topics of raising and responding to prejudice and compromise.

8:30a - 8:50a                    **MITIGATING DAMAGES: A FRAMEWORK FOR LIMITING FUTURE MEDICAL CARE LOSSES BASED ON THE AFFORDABLE CARE ACT**

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

Plaintiffs are entitled to recover for future medical costs reasonably certain to occur. However, they also have a duty to mitigate their damages. The Affordable Care Act establishes limitations on future health care costs for all Americans dramatically reducing the out-of-pocket expenses associated with health care costs. Litigants have begun to challenge evidence of future medical damages in light of the Affordable Care Act. Jon will present the framework for challenging such damages in personal injury litigation.

8:50a - 9:10a                    **OCCAM'S RAZOR: SIMPLICITY AS AN EFFECTIVE TRIAL TOOL**

*Emily Harris -- Corr Cronin (Seattle, WA)*

Making complex cases or scientific evidence simple for the trier of fact is essential to winning cases. Occam's razor – the simple explanation is usually the right one – can be an effective tool for developing trial themes, creating memorable expert testimony, undercutting opposing experts, opening and closing statements and, most importantly, focusing the trier of fact on what's important. Trial attorney Emily Harris explores the use of simplicity as an effective trial tool.

9:10a - 9:50a

**PANEL: IT'S SO HARD TO SAY GOODBYE - ENFORCING RESTRICTIVE COVENANTS AGAINST FORMER EMPLOYEES**

*Moderator: Miguel Alexander Pozo -- Lowenstein Sandler (Roseland, NJ)*

Employees are changing positions like numbers in a Fifteen Puzzle and, when they go, they take with them trade secrets, customer lists and other sensitive, valuable and proprietary information. What's an employer to do? Written restrictive covenants are the usual knee-jerk response. But courts look for inequality of bargaining power and excessive scope and sometimes refuse to enforce. Our panel will discuss enforceable restrictive covenants, including standalone agreements separate from provisions within employment agreements, as well as considerations of reasonableness of temporal and geographic scope, adequate consideration, and appropriate remedies.

9:50a - 10:20a

Refreshment and Coffee Break

10:20a - 10:40a

**HOW LITIGATION SKILLS TRANSLATE TO QUASI-LEGAL PROCEEDINGS: A BEHIND THE SCENES LOOK AT HEADLINE GRABBING NCAA COMPLIANCE ISSUES**

*William King -- Lightfoot Franklin & White (Birmingham, AL)*

In addition to federal, state and municipal authorities, some companies must deal with industry organizations having governance, regulatory and rules compliance authority. And there, procedures can be very different. Taking the NCAA as an example, William King will provide a glimpse into the high-powered world of college athletics where the NCAA infraction resolution process has little in common with civil litigation but where universal traits that make good litigators are equally applicable. You'll hear about high-profile 11th hour eligibility matters, protracted investigations of an entire athletics department, and developing public relations strategy in the face of bad news.

10:40a - 11:00a

**USING THE COMPUTER FRAUD AND ABUSE ACT TO PROTECT YOUR SECRETS**

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

Inspired by the movie "WarGames" Capitol Hill kicked off an anti-hacker campaign by criminalizing what were once only civil wrongs and has resulted in a new brand of civil litigation. 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.

11:00a - 11:20a

**BEST PRACTICES FOR THE SETTLEMENT OF CLASS ACTIONS  
WHEN YOU HAVE PARALLEL U.S. AND CANADA PROCEEDINGS**

*James Sullivan -- Blake Cassels & Graydon (Canada)*

Increase the prospects of settlement approval using a recent example of a class action settlement that received a mixed reception in the U.S. and Canada. The following specific issues will be covered: The legal and factual reasons why the 7th Circuit rejected the settlement, the legal principles applied by Canadian courts on settlement approval motions, the reasons why the Ontario court approved a comparable settlement when the US court would not, and guidance to defendants and their counsel on steps that can be taken during settlement negotiations to increase the prospects of approval.

11:20p - 11:40p

**PRESENTING COMPLEX SCIENTIFIC EVIDENCE TO JURIES: YOU  
DON'T HAVE TO BE A ROCKET SCIENTIST**

*David Schultz -- Maslon (Minneapolis, MN)*

Don't worry whether the jury will understand the science. The jury has to trust your expert who understands the science. Use of common sense in persuading juries.

11:40p - 12:00p

**THE LIMITS OF THE LITIGATION PRIVILEGE: CLAIMS AGAINST  
LAWYERS, LAW FIRMS, AND IN-HOUSE COUNSEL**

*Jeff Hines -- Goodell DeVries Leech & Dann (Baltimore, MD)*

When are lawyers personally liable for what they write or say during litigation? Not often, because the litigation privilege generally shields attorneys from civil suits based on their allegedly false statements. But the privilege is not absolute. Trial lawyer Jeff Hines will highlight best practices for keeping the privilege intact.

Saturday, October 25, 2014

8:00a - 8:10a

Welcome Back Remarks from the Seminar Co-Chairs

8:10a - 8:30a

**DEALING WITH CPSC COMPLIANCE AND INVESTIGATION ISSUES**

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

Responding quickly and decisively to CPSC investigations should be an important part of your company's protocol. The CPSC imposes strict reporting requirements on companies whose consumer products allegedly malfunction or cause injury. It's a regulatory minefield and trial lawyer Joe Krasovec has strategies and best practices for you to stay out of trouble.

8:30a - 8:50a

**COMMERCIAL TIME BOMBS: AVOIDING AND DEFUSING**

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

Is all business good business? Learn how your company's salespersons, managers and engineers could be unwittingly planting stealth time-bombs: giving potential adversaries ammunition capable of impacting your company's financial condition.

8:50a - 9:10a

**AVOIDING DISCOVERY SANCTIONS: KEEPING YOUR COMPANY OUT OF THE CROSSHAIRS**

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

Sanctions come in many distasteful varieties, from stays and struck pleadings to defaults, dismissals and attorneys fees. Creative plaintiff attorneys have shifted their focus from pursuit of damages to pursuit of sanctions for discovery faux pas. Trial lawyer Joshua Metcalf presents an overview of applicable law and gives practice tips to stay out of trouble.

9:10a - 9:50a

**PANEL: CORPORATE COUNSEL IN THE LINE OF FIRE**

*Moderator: Joel Hoxie -- Snell & Wilmer (Phoenix, AZ)*

Data breaches, decisions to withhold product defect and case settlement information (GM), failure to disclose corporate wrong-doing (GM), questionable protection from whistleblower statutes, firings for discovery abuse (Eaton), etc. In-house counsel increasingly are finding themselves in the cross-hairs. Our panel will discuss trends in government prosecutions of corporate counsel, tensions between their roles as counsel to a company and meeting government's gatekeeper expectations.

9:50a - 10:20a

Refreshment and Coffee Break

10:20a - 10:40a

**IN RE GARLOCK: GAMECHANGER OR ABERRATION IN THE ASBESTOS BANKRUPTCY INDUSTRY**

*Mark Nebrig -- Moore & Van Allen (Charlotte, NC)*

Trial counsel for the parent equity holder in what some have viewed as a landmark decision in asbestos bankruptcy trust funding and transparency will provide an overview of the case and the Court's January 2013 opinion.

10:40a - 11:00a

**LITIGATING UNDER THE FAIR CREDIT REPORTING ACT**

*David Esquivel -- Bass Berry & Sims (Nashville, TN)*

Every company dealing with consumer financial data will have to comply with the FCRA. We are seeing increased government investigations and enforcement actions and an uptick in plaintiff class actions under the FCRA's generous remedial provisions. Trial lawyer David Esquivel reviews the FCRA and its litigation landscape.

11:00a - 11:05a

Closing Remarks before Break-Out Sessions

11:05a - 12:05p

**BREAK-OUT SESSIONS ON LITIGATION MANAGEMENT**