

Litigation Management in a NEW YORK Minute – 2015 Edition

August 7, 2015

AGENDA and COURSE DESCRIPTION

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

9:10a – 9:30a

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.

9:30a - 9:50a

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.

9:50a - 10:10a

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.

10:10a - 10:30a

"WE'VE BEEN HACKED!" - THE HACKERS, THE HACKED, AND WHO'S RESPONSIBLE

Anthony Todaro -- Corr Cronin (Seattle, WA)

A look at who the hackers are, what the hacked can do about it, and how the law treats the hackers, the hacked, and the victims of hacking. A look at the expansion of federal laws, including the Computer Fraud and Abuse Act, giving more tools to corporate victims of hacking and the parallel expansion of rules and laws holding those corporate victims responsible for data breaches.

10:30a - 10:50a **POST M&A CLAIMS: WHEN IS A DONE DEAL NOT REALLY DONE?**
David Sager -- Lowenstein Sandler (Roseland, NJ)

Trial lawyer David Sager discusses the changing landscape of post-closing purchase price adjustments, tax claims, breaches for undisclosed liabilities and financial statement misrepresentations, and breaches of representations and warranties, clawbacks for fraud, breach of fiduciary duty, contract and more.

10:50a - 11:20a Refreshment and Coffee Break

11:20a - 11:40a **DON'T PUT THE CART BEFORE THE HORSE: WHY ARE EARLY CASE ASSESSMENTS CRITICAL?**
Tony Rospert -- Thompson Hine (Cleveland, OH)

Developing an early case assessment is the starting point for consistent, disciplined and comprehensive project management of litigation. An early case assessment sets out the project's goals and outlines enough of the facts, and law to evaluate the matter, to develop a litigation strategy, and to formulate a settlement plan if appropriate. Put simply: What are you and the client trying to accomplish? If early case assessments are done right, they can help clients achieve their goals and maximize efficiency and transparency.

11:40a - 12:00p **RETAKE THE HIGH GROUND: HOW A CULTURE OF SAFETY CAN DEBUNK ALLEGATIONS OF PROFITS OVER SAFETY**
Jamie Hood -- Hood Law Firm (Charleston, SC)

Public opinion about the motivation of corporations and their officers are at an all time low making the trite theme of profits over safety resonate with today's jurors. As these corporations and the trial counsel confront these realities, a new approach is warranted. A culture of safety within a corporation provides an effective weapon to humanize the company, rebut the cynicism and take back the high ground in today's trials.

12:00p - 12:20p **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.

12:20p - 12:40p

PROTECTING EXPERT COMMUNICATIONS

Catherine Ahlin-Halvorsen -- Maslon (Minneapolis, MN)

Sometimes your best expert is your own employee. Protecting communications with your expert can be critical. But whether in-house or outside, consulting or testifying, written draft opinions, your expert's notes of meetings with counsel, emails and correspondence explaining the theory of your case, can be used to undermine your positions if discovered by your adversary. Trial lawyer Catherine Ahlin will discuss the rules governing expert discovery and show how best to protect those communications and work product from disclosure.

12:40p - 1:00p

FIFTY SHADES OF ARBITRATION – GETTING YOUR MOJO BACK

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

Hot and bothered about Arbitration? Want a change? Arbitrator and trial lawyer Scott Marrs discusses why arbitration has lost respect, and how you can rekindle your mojo to harness the power of arbitration to obtain a successful award.

1:00p - 2:00p

WORKING-LUNCH BREAK-OUT SESSIONS ON LITIGATION MANAGEMENT

2:00p – 2:20p

ELECTRONIC COMMUNICATIONS AND DISCOVERY IN THE 21ST CENTURY

Mark Hauck -- Dykema (Detroit, MI)

Profound changes have occurred over the past two decades in the manner in which we communicate. E-mail, social media, texting, and Twitter did not exist when many of us became lawyers. Today these forms of electronic communication have significantly displaced traditional correspondence, telephone calls and even face-to-face meetings as the primary means through which information is exchanged. This sea change requires lawyers to educate their clients about the risks that these new forms of communication pose while also forcing litigators to understand and exploit new technologies that allow us to mine this electronic data for our clients' benefit.

2:20p -2:40p

CYBER-LIABILITY – AN INSURABLE RISK THAT MUST BE PART OF YOUR RISK MANAGEMENT PLAN

Linda Woolf -- Goodell DeVries Leech & Dann (Baltimore, MD)

Every organization that uses technology faces cyber risk. Customer records, account numbers and passwords, credit card data, private health information, business financial information, trade secrets, authentication credentials and employee records are all at risk. Evaluating your cyber exposure and covering your assets with cyber liability insurance is a critical part of your risk management plan.

2:40p -3:00p

ETHICS: CORPORATE COUNSEL IN THE LINE OF FIRE

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), and personal liability for failing to live up to the regulators' vision of them as gatekeepers, etc. In-house counsel increasingly are finding themselves in the cross-hairs. Trial lawyer Joel Hoxie will discuss trends in government prosecutions of corporate counsel, tensions between in-house counsel's role as counsel to a company and their duty to meet government expectations.

3:00p -3:20p

ETHICS: RULE 3.2 – WHEN IS STRATEGIC DELIBERATENESS DILATORY LITIGATION?

Beau Cole -- Forman Watkins Krutz & Tardy (Jackson, MS)

The Model Rules require counsel to make reasonable efforts to expedite litigation. Balancing strategic deliberateness and speedy resolution, trial counsel and in-house counsel must determine the appropriate route. Trial lawyer Beau Cole examines the connection between the "reasonableness" requirement of ABA Model Rule 3.2, Rule 26 and what delays just won't be verified.

3:20p -3:40p

ETHICS: ETHICAL ISSUES IN INTERNAL INVESTIGATIONS

Habib Nasrullah -- Wheeler Trigg O'Donnell (Denver, CO)

Multiple ethical issues emerge throughout internal investigations that must be considered by in-house and outside counsel. These include who is the client; whether in-house counsel or outside counsel should conduct the investigation; joint representations; disclosures in employee interviews; and whether to self report to the Government. The presentation is geared to ethical issues faced by in-house and outside counsel as they navigate through the investigationU.

3:40p – 3:45p

Closing Remarks