

Litigation Management in a NEW YORK Minute – 2016 Edition

August 5, 2016

AGENDA and COURSE DESCRIPTION

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

9:10a – 9:30a **LITIGATION HOLDS AND THE PRESERVATION OF EVIDENCE**

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

The ever-shifting discovery landscape creates pitfalls for unwary litigants making preservation decisions involving reasonableness and proportionality. Trial lawyer Jon Barton will discuss decision-making, policies and practice in the “keep or hold, destroy or preserve” world of document retention, preservation and production.

9:30a - 9:50a **AVOIDING FORUM SHOPPING BY PLAINTIFF COUNSEL**

Joshua Metcalf -- Forman Watkins & Krutz (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 personam 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.

9:50a - 10:10a **DEALING WITH COLLUSION AND FRAUD IN PROPERTY LOSS LITIGATION**

Mike O'Donnell -- Wheeler Trigg O'Donnell (Denver, CO)

Property appraisal fraud in support of property loss claims has become commonplace, leading to inflated awards caused by complicit appraisers and unwittingly aided by some courts. Trial lawyer Mike O'Donnell will discuss his firm's success in vacating a \$10 million appraisal for failure to disclose cozy relationships between property owners' counsel and an appraiser, and efforts to impose sanctions.

10:10a - 10:30a **PATENT INFRINGEMENT CLAIMS: WHAT ALL IN-HOUSE COUNSEL NEED TO KNOW**

Terry Newby -- Maslon (Minneapolis, MN)

The Supreme Court's 2014 *Alice* decision is being used to invalidate patents that were once enforceable. Trial lawyer Terry Newby explains why this is happening and when in-house counsel can use *Alice* as a defense to patent infringement claims.

10:30a - 10:50a

I.P. LITIGATION – WINNING THEMES TO MAXIMIZE JUROR COMPREHENSION

Bill Cronin -- Corr Cronin (Seattle, WA)

In-house counsel recognize the large risks posed by IP cases require the narrative and thematic approaches of traditional defense trial lawyers coupled with sufficient technical support to assure presentation accuracy. Traditional trial lawyers see cases through the eyes of the jury. With IP cases and verdicts exploding, a winning combination requires contributions from both sides of the brain. Trial lawyer Bill Cronin explains how to look through the science to find and then tell a winning story, using traditional trial techniques, including demonstrative evidence, themes, and compelling animations.

10:50a - 11:20a

Refreshment and Coffee Break

11:20a - 11:40a

PREEMPTION – WHEN IT CAN BE IMPLIED

Rick Barnes -- Goodell DeVries Leech & Dann (Baltimore, MD)

Federal regulations may bar state actions even without express preemption as courts become more receptive to implied preemption defenses, especially where compliance with a state law would require federal government permission. Trial lawyer Rick Barnes will discuss courts' increasing willingness to recognize "impossibility preemption" as a complete bar to state law claims and how that can impact litigation going forward.

11:40a - 12:00p

MAKING SURE THAT SETTLEMENTS STICK

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

A settlement is final, right? Not always. Plaintiffs are finding new ways to retain settlement proceeds and sue for more by alleging misrepresentation or suppression of material information, especially where court approval is involved and plaintiffs argue that the court was misled. Trial attorney Lee Hollis shows you how to sweat the details to achieve bullet-proof settlements that avoid two bites at the apple.

12:00p - 12:20p

RESPONDING TO GOVERNMENT INVESTIGATIONS

Lisa Rivera -- Bass Berry & Sims (Nashville, TN)

The Department of Justice as well as many State Attorney General Offices have been recently vocal about their renewed focus on corporate misconduct and individual accountability for corporate wrongdoing. This discussion will include tips for responding to government enforcement and navigating issues raised by corporate internal investigations.

12:20p - 12:40p

CYBERTHREATS: PREPARING FOR THE INEVITABLE

James Melendres -- Snell & Wilmer (Phoenix, AZ)

There are two types of companies: those that have been hacked and those that don't yet know they have been hacked. In addition to defending their networks from ever-present cyberthreats, companies face formidable related legal challenges. Trial lawyer James Melendres, a former DOJ attorney representative to the National Cyber Investigative Joint Task Force, discusses steps companies should take to comply with cybersecurity-related regulatory requirements, investigate and mitigate an attack, and prepare to defend inevitable post-attack litigation.

12:40p - 1:00p

SOCIAL LICENSE FOR SIGNIFICANT PROJECTS

Roy Millen -- Blake Cassels & Graydon (Canada)

Major resource development projects such as energy facilities, shipping terminals, pipelines, forestry operations and mines can represent significant economic opportunities. They also raise concerns among local, environmental and indigenous groups about potential project impacts. "Social license" has become an increasingly important consideration from both legal and business perspectives. Trial lawyer Roy Millen will survey recent legal developments, and discuss personal experience as project counsel.

1:00p - 2:00p

WORKING-LUNCH BREAK-OUT SESSIONS ON LITIGATION MANAGEMENT

2:00p - 2:20p

MANAGING INVESTIGATIONS AND DISCOVERY IN MULTIJURISDICTIONAL MATTERS

Neil Bloomfield -- Moore & Van Allen (Charlotte, NC)

Companies must be aware of data privacy requirements in their jurisdictions that restrict how they can collect, review and produce documents. Trial lawyer Neil Bloomfield will discuss differing preservation regimes, customs and practices affecting communications, and privilege protections for in-house counsel.

2:20p - 2:40p

FORENSIC IMAGING: IN-HOUSE COUNSEL'S NEXT NIGHTMARE

Scott Etish -- Gibbons (Philadelphia, PA)

The search for the "smoking gun" has expanded to mobile devices and other electronically stored information. Trial lawyer Scott Etish will discuss successful discovery of adversaries' electronic devices.

2:40p - 3:00p

ETHICS: BUSINESS ETHICS VS. LEGAL ETHICS

Larry Rochefort -- Akerman (West Palm Beach, FL)

Arch business rivals and even mere competitors often want exclusivity of representation and don't want their attorneys working for the competition, without regard to whether the engagements are related. They just don't want to see their attorneys working for the competition, especially on the other side of a meaningful business issue. Trial lawyer Larry Rochefort will explore the differences between ethical and business conflicts, and discuss options for dealing with business conflicts when they arise.

3:00p - 3:20p

ETHICS: SHUT YOUR MOUTH - WHEN SILENCE IS GOLDEN AND ETHICAL

Judy Burnthorn -- Deutsch Kerrigan & Stiles (New Orleans, LA)

The Tremeloes sang "Silence is Golden" but sometimes your attorney may have to keep silent. Trial lawyer Judy Burnthorn will explain why ethical rules such as Rule of Professional Conduct 1.6 may be sealing your lawyers' lips.

3:20p -3:40p

**ETHICS: ETHICAL CONSIDERATIONS FOR LITIGATORS AND
TRIAL ATTORNEYS**

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

Walking a thin gray line between zealous advocacy and punishable misconduct can, at times, present challenges for in-house and outside counsel. Trial lawyer Joe Ortego gives us some examples of walking the line and learning from the conduct of others.

3:40p – 3:45p

Closing Remarks