

Litigation Management: In-House Counsel Finding Sanctuary

October 28-29, 2016

AGENDA and COURSE DESCRIPTION

Friday, October 28, 2016

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

9:10a - 9:30a **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.

9:30a - 9:50a **ARE TRIAL LAWYERS FUNGIBLE?**

John Fitzpatrick -- Wheeler Trigg O'Donnell (Denver, CO)

Situation: Your adversary makes unreasonably high demands and refuses to settle a catastrophic injury, high exposure case thereby putting your company and your career on the line as she marches to verdict in a judicial hellhole. Are you really selecting trial counsel when you merely accept the next one up in the queue at your regular law firm? Is that wannabe trial lawyer “motion-practice litigator” they’ve given you, the one who hasn’t been to verdict in a decade, going to miraculously develop trial chops? Are you getting the protection you need from a pro whose been through firestorms before? Trial lawyer John Fitzpatrick delivers a hair-raising presentation you’ll never hear elsewhere.

9:50a - 10:10a **WHOSE LAW IS IT ANYWAY?**

David Suchar -- Maslon (Minneapolis, MN)

A primer on choice of law arguments and why they matter in your dispute. This discussion will touch upon practice tips and topical updates on litigating choice of law clauses in contracts and in the absence of contractual provisions. How do choice of law principles differ as between various areas of litigation practice including products liability, construction and insurance coverage cases? How can you prepare early on in the case to address these issues head on.

10:10a - 10:50a **PANEL: WHISTLEBLOWERS – WHAT IN-HOUSE COUNSEL NEED TO KNOW**

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

Federal whistleblowers report lawbreaking and taxpayer rip-offs—often at great personal and professional risk. Does the law protect them sufficiently from retaliation? How does blowing the whistle on waste, fraud, and abuse in the government work? What is the balance between disclosure and the government’s legitimate need for confidentiality? What distinctions should we draw between reporting wrongdoing to employers, to Congress, to reporters, and online? Is WikiLeaks fundamentally different from what’s come before?

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

11:20a - 11:40a **TAKING THE AIR OUT OF THE WHISTLE IN WHISTLEBLOWER LITIGATION**

Kevin Baumgardner -- Corr Cronin (Seattle, WA)

Trial lawyer Kevin Baumgardner, who has successfully handled over a dozen “whistleblower” litigations, describes what it takes to win the battle of impressions and unmask the actual motivations of the plaintiffs—carpe diem, and carpe lingua.

11:40a - 12:00p **AFTER THE WORST HAPPENS: THE PUNITIVE DAMAGES AWARD ON APPEAL**

Amy Sorenson -- Snell & Wilmer (Salt Lake City, UT)

Punitive damages – quasi-criminal punishment without the protection of criminal procedure rules -- pose a danger of arbitrarily depriving defendants of property without due process. Trial lawyer Amy Sorenson discusses bases for overturning punitive awards, including how one \$25.5 million punitive damages award was reversed on appeal as unconstitutional and unsupported by the evidence.

12:00p - 12:20p **TCPA AND FCRA - FIVE THINGS YOU NEED ON YOUR COMPLIANCE CHECKLIST**

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

New technologies and privacy laws do not always play well together. And more industries, especially health care, find themselves making consumer credit, payment, and collections decisions. Trial lawyer David Esquivel offers five must-have items for your financial services checklist to help avoid costly litigation and regulatory risk.

12:20p - 12:40p **SETTLEMENT MEANS IT'S OVER – RIGHT?**

Chris King -- Lightfoot Franklin & White (Birmingham, AL)

Plaintiffs are finding new ways to retain settlement proceeds and sue for more by alleging misrepresentation or suppression of material information in connection with settlements, especially where court approval is involved. Trial attorney Chris King will offer lessons learned from defending second bites at the apple suits to help defendants achieve bullet-proof settlements.

12:40p - 1:00p **BEST PRACTICES FOR INTERNAL INVESTIGATIONS**

John Romeo -- Gibbons (Philadelphia, PA)

In-house counsel are the first line of defense for workplace complaints, and a well-run investigation can put your company on the right track from the start. Under the backdrop of recent NFL investigations including the Ray Rice investigation and "deflategate," Trial lawyer John Romeo will discuss best practices for avoiding common mistakes that can often make matters worse.

Saturday, October 29, 2016

9:00a – 9:10a Welcome Back Remarks from the Seminar Co-Chairs

9:10a – 9:30a

RATHER UNUSUAL QUESTIONS FOR YOUR EXPERT DURING TRIAL PREP

Ray Lewis -- Deutsch Kerrigan (New Orleans, LA)

Jurors are suspicious of lawyers and their hand-picked experts. It is time to rethink our approach to direct examination or it will continue to be the most predictable, boring, and ignored part of a jury trial. Trial lawyer Ray Lewis proposes a different approach to direct examination that all in-house counsel should embrace before their counsel's next "dance" with an expert.

9:30a-9:50a

SOCIAL MEDIA AND ITS EFFECT ON JURY TRIALS

Christine Welstead -- Akerman (Miami, FL)

The use of social media by jurors and by attorneys during voir dire, and the resulting actual and potential impact on jury trials. Trial lawyer Christine Welstead discusses the depth of information now available to attorneys concerning potential and sitting jurors; the increasingly strenuous instructions to the jury seeking to prohibit their use of social media to investigate and comment on pending cases; sanctions that have been imposed on juries; proposed pledges and other ways to combat juror misuse of social media.

9:50a-10:10a

BULLET-PROOF EMPLOYEE HANDBOOKS

Vito Gagliardi -- Porzio Bromberg & Newman (Morristown, NJ)

Your employee handbook has a new editor - The National Labor Relations Board - whether your employees are unionized or not. In recent decisions, the NLRB has ruled that many common provisions of employee handbooks are unlawful. Trial lawyer Vito Gagliardi will highlight common defective provisions and suggest revisions before your company is nailed by the NLRB.

10:10a - 10:50a

PANEL: SETTING RESERVES FOR CLAIMS AND LITIGATION

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

Balancing the impact of loss reserves on reported financial performance with FASB and SEC compliance and your own assessment of likelihood of success, not to mention the message you might be sending to plaintiff counsel - nothing you learned in law school. Our panel of trial lawyers and in-house counsel will outline the nuts and bolts of setting reserves and managing the disclosure of risks.

10:50a - 11:20a

Refreshment and Coffee Break

11:20a - 11:40a

CROSS-BORDER LITIGATION: BUILDING YOUR CASE AND ENFORCING YOUR U.S. JUDGMENT IN CANADA

Sean Boyle -- Blake Cassels & Graydon (Canada)

In commercial litigation today, the parties and facts increasingly cross the U.S.- Canada border. However, this added complexity shouldn't hinder your client from building their case or enforcing their judgment. Canadian courts frequently assist in collecting evidence for foreign proceedings and addressing potential restrictions on derivative use. Once a U.S. judgment is given, Canadian legislation and the common law generally allow for its enforcement in Canada. Consequently, it is important to incorporate these concepts into your litigation strategy as early as possible when Canadian evidence or assets are at stake.

11:40a - 12:00p

**LITIGATING COMPLEX BUSINESS DISPUTES IN SPECIALIZED
BUSINESS COURTS**

Jonathan Watkins -- Moore & Van Allen (Charlotte, NC)

Dozens of states have launched specialized business courts in the mold of the Delaware Court of Chancery and with the goal of addressing those very concerns. Trial lawyer Jon Watkins will discuss the advantages and characteristics of several prominent business courts, important recent rulings of some high-profile business courts, and how to maximize the chances to have future cases heard in business court.

12:00p – 12:05p

Closing Remarks before Break-Out Sessions

12:05p – 1:05p

BREAK-OUT SESSIONS ON LITIGATION MANAGEMENT