

# Litigation Management: Coasting Beyond the Chaos

October 27-28, 2017

## AGENDA and COURSE DESCRIPTION

### Friday, October 27, 2017

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

9:10a - 9:30a                    **THE TEN-MINUTE VOIR DIRE**

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

It's time for a new voir dire playbook. Trial attorney Jerry Glas shares his tricks for separating lions and lambs, establishing a theme, and discovering bias.

9:30a - 9:50a                    **FAST & FURIOUS: GEARING UP FOR TRO'S AND PRELIMINARY INJUNCTIONS**

*Paige Mills -- Bass Berry & Sims (Nashville, TN)*

When a client needs a TRO or an injunction or is served with a motion for one, time is of the essence and the success or failure of the ultimate case hangs in the balance. Paige Mills will give you practical tips for quickly and efficiently proving (or disproving) that the moving party has a "substantial likelihood of success on the merits" and that there is a danger of "immediate and irreparable harm." She will discuss practical guidelines for meeting these challenges and the time crunch they present, as well as a roadmap to avoid the most common pitfalls.

9:50a - 10:50a                    **PANEL: WHAT KEEPS IN-HOUSE COUNSEL UP AT NIGHT AND WHAT CAN OUTSIDE COUNSEL DO ABOUT IT?**

*Moderator: David Suchar -- Maslon (Minneapolis, MN)*

This panel discussion with experienced in house counsel will explore the most daunting issues facing companies and their gatekeepers, including issues related to compliance, investigations, litigation management, risk management and cost avoidance. Participants will be able to explore concerns, solutions that have worked in practice and the protocol for providing the best client service.

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

11:20a - 11:40a                    **DANGEROUS LIAISONS: ETHICAL IMPLICATIONS INHERENT TO FRIENDING YOUR ADVERSARY**

*Kerri Wright -- Porzio Bromberg & Newman (Morristown, NJ)*

Be connected. Be discovered. Be on Facebook. But be careful not to violate the rules of ethics while doing so. Social media is now a mainstream source of discovery in litigation and gone are the days where email alone would get the job done. Every litigator must know how to collect social media during discovery while remaining within the boundaries of the rules of ethics. Trial lawyer Kerri Wright will explore the various ethical considerations for social media in the discovery phase of litigation.

11:40a - 12:00p

**TAKING THE BULL BY THE HORNS: DEVELOP COMPELLING, STRATEGIC AND CREDIBLE THEMES THROUGH DISCOVERY RESPONSES**

*Kevin Clark -- Lightfoot Franklin & White (Birmingham, AL)*

Never miss an opportunity to advance the theory of your case. None of us were inspired to go to law school by dreams of crafting objections, answering interrogatories, or reviewing thousands of pages of company records for responsive documents. But the seeds of success start with those initial actions. Helping our clients use these otherwise mundane tools to set the stage for success is some of the best value we can offer. Trial lawyer Kevin Clark will discuss how to strategically leverage the procedural rules and case law governing discovery and good old-fashioned "common sense" to promote your client's themes and simultaneously limit the scope of the plaintiff's fishing expeditions without losing your influence with the court.

12:00p - 12:20p

**WHAT EVERY COMPANY NEEDS TO KNOW WHEN SELLING PRODUCTS IN CALIFORNIA: NAVIGATING THE ROUGH WATERS OF CALIFORNIA PRODUCTS REGULATIONS**

*Sandra Edwards -- Farella Braun + Martel (San Francisco, CA)*

You want to sell your products in the 5th largest economy in the world, so how do you ensure they don't run afoul of some uniquely California issues? This program will focus on aspects of the newly-revised Proposition 65 and TSCA regulations to help you identify potential traps, as well as some of the California-specific product liability claims and strategies used by consumers and their lawyers against manufacturers and suppliers of products in this market.

12:20p - 12:40p

**MAKING A FEDERAL CASE OF IT: HOW TO USE THE NEW FEDERAL TRADE SECRETS ACT TO PROTECT YOUR COMPANY'S I.P.**

*Steve Fogg -- Corr Cronin (Seattle, WA)*

Just over a year ago, Congress federalized trade secrets law when it passed the Defend Trade Secrets Act of 2016. Veteran IP trial lawyer Steve Fogg explains how to use this new federal law – and trade secret claims in general – to protect your company, particularly when a company employee leaves for a job with a competitor. Fogg will also explain how trade secrets claims touch upon and in many cases surpass relief traditionally sought with non-compete clauses.

12:40p - 1:00p

**STUCK BETWEEN A ROCK AND A HARD PLACE: RESPONDING TO A RULE 45 NON-PARTY SUBPOENA**

*Scott Etish -- Gibbons (Philadelphia, PA)*

Rule 45 subpoenas in which the requesting party seeks extensive information from a non-party, including ESI, can place non-parties in an extremely uncomfortable position. While compliance with Rule 45 subpoenas may force a non-party to incur exorbitant expenses, recently amended Rule 45 includes protections for non-parties that all attorneys should be aware. Trial lawyer Scott Etish will address how to utilize Rule 45 to comply with and object to third-party subpoenas in a cost-effective manner and provide practical advice on seeking to shift costs, including attorneys' fees, onto the other party.

Saturday, October 28, 2017

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

9:10a – 9:30a **TRIAL READY: HANDLING HIGH-VOLUME, LOW-EXPOSURE CASES COST-EFFECTIVELY**

*Greg Marshall -- Snell & Wilmer (Phoenix, AZ)*

When high-volume, limited-exposure litigation consumes a disparate share of company resources, you can be faced with the conundrum of settling meritless litigation out of pragmatism, thereby encouraging more of the same, or defending litigation even when your legal spend exceeds exposure, not to mention the resulting drain on company resources. Snell & Wilmer's Greg Marshall will describe the "trial-in-a-box" program he recently developed for client to solve this problem, providing a powerful tool for outside defense counsel to efficiently defend lawsuits as if they were "bet the company" cases, while utilizing limited company resources.

9:30a - 9:50a **OFFENSIVE TRADEMARKS - WHAT THE #@\$%!**

*Jennifer Fitzgerald -- Freeborn & Peters (Chicago, IL)*

Recently the US Supreme Court ruled that the law forbidding official trademark registration of "offensive trademarks" is an unconstitutional limitation on free speech. Trial lawyer Jennifer Fitzgerald will provide an update on this case and provide insight into the impact it is likely to have on cases like the NFL's Washington Redskins as well as the impact it will have of trademark registration generally.

9:50a - 10:50a **PANEL: EFFECTIVE LEGAL PROJECT MANAGEMENT**

*Moderator: Tony Rospert -- Thompson Hine (Cleveland, OH)*

In-house counsel are seeking new ways to manage expenses, improve predictability of cost, improve litigation outcomes and improve the perceived value of the legal department. Legal Project Management (LPM) offers an innovative approach to meet these objectives. In this session, we will focus on project management objectives, an overview of the LPM process, and discuss the six key components of LPM to cost effectively and efficiently handle litigation matters.

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

11:20a - 11:40a **CLASS ACTIONS: SUCCESSFULLY NAVIGATING THIS COMPLEX AND HIGH-RISK LANDSCAPE**

*Stephanie Douglas -- Bush Seyferth & Paige (Troy, MI)*

More than half of all companies will find themselves in the cross-hairs of a class action. But there is an arsenal of strategies available to defendants to avoid certification and minimize risk. Trial lawyer Stephanie Douglas guides you to navigate the complex landscape of class actions using trends in litigation, updates from the Supreme Court, and stories from the trenches.

11:40a - 12:00p

**BURSTING THE BUBBLE - SUCCESSFUL STRATEGIES FOR  
CHALLENGING INFLATED MEDICAL EXPENSES**

*Terry Brantley -- Swift Currie (Atlanta, GA)*

Oftentimes plaintiffs use medical expenses to provide a floor, or perhaps a multiplier, for the requested compensatory damages award. This strategy, coupled with the large disparity between the amount billed and the amount paid for medical expenses, makes it critically important to understand the application of the collateral source rule and, thereby, minimize the amounts recoverable as medical expenses. Trial lawyer Terry Brantley will address how different jurisdictions handle the billed versus paid debate, and identify emerging legal defenses in “billed” states.

12:00p – 12:10p

Closing Remarks before Break-Out Sessions

12:10p – 1:10p

**BREAK-OUT SESSIONS ON LITIGATION MANAGEMENT**