

# “Lakeside Litigation SuperCourse” Ritz-Carlton Reynolds, Lake Oconee

## AGENDA

FRIDAY, APRIL 28, 2023

- 9:00a Opening Statement by The Trial Network Chair
- 9:05a Welcome by the Seminar Co-Chairs
- 9:10a **Crushin’ Concussions: Defending Against Frivolous Brain Injury Claims**  
*Jerry Glas – Deutsch Kerrigan*  
Traumatic brain injuries occur every 15 seconds, and billboards now claim, “Whiplash is brain injury.” Jerry Glas, Chair of Louisiana member Deutsch Kerrigan’s Civil Litigation Department, shares how his team triages and defends against claims that a mild concussion caused permanent brain damage. His approach will leave your head spinning.
- 9:30a **Blurred Lines: Product Liability or Public Nuisance?**  
*Mark Clark – Parsons McEntire McCleary*  
There is a disturbing new trend in mass torts: plaintiffs are alleging public nuisance causes of actions instead of, or in addition to, traditional product liability claims. Whether claims are centered on pharmaceuticals, climate change, polyfluoroalkyl substances (“PFAS”), pollution, or other product-related harms, plaintiffs are attempting to sow confusion among jurors and blur the lines between nuisance and product liability law when they cannot prove traditional product liability elements. Mark Clark of Texas member Parsons McEntire McCleary discusses the rise of this troubling trend and the courts’ response, and considers implications for future litigation.
- 9:50a **Panel Discussion: 21st Century MDLs – The New Wild West**  
*Rick Barnes – Goodell DeVries Leech & Dann*  
The MDL process gives the plaintiffs’ bar the opportunity to come out with discovery guns blazing, pushing for intensive e-discovery, corporate designee depositions, and more, all while deferring scrutiny of individual plaintiffs’ evidence on product identification or causation. But there are new sheriffs in town – some judges are using a mix of old and new tactics to lasso MDL abuses. Are these tactics strong enough to restore order to the new Wild West? Saddle up as Rick Barnes from Maryland’s Goodell DeVries and his posse of in-house counsel address hot topics and strategies for taming the MDL process.  
  
Panel: Sean Gugerty, Name, Name, Name
- 10:30a Refreshment Break
- 11:00a **Spot the Risk, Reap the Reward: Top 10 Antitrust Risks to Avoid in 2023**  
*Katie Reilly – Wheeler Trigg O’Donnell*  
With the increase in private lawsuits and scrutiny by government regulators, companies of all shapes, sizes, and industries need to be vigilant in guarding against antitrust risks. In this presentation, trial lawyer Katie Reilly from Colorado member Wheeler Trigg O’Donnell outlines the antitrust risks that pose the biggest threats to in-house counsel and their companies through a discussion of recent cases and Federal Trade Commission and Department of Justice actions.

11:20a

**Out with the Old, In with the New: The Rise of RWI in Corporate Mergers and Acquisitions**

*Tony Rospert – Thompson Hine*

The transactional insurance market has grown tremendously over the last five years. In fact, an estimated 85% of all M&A deals in North America now use some form of insurance – most often Representations and Warranties Insurance (“RWI”) – instead of a traditional escrow arrangement. Tony Rospert from Ohio member Thompson Hine gives an overview of RWI, its benefits, its maturing market, and shares best practices for insureds navigating the RWI claims process.

11:40a

**Never Off the Grid: How to Find and Use Electronic Location Data in Litigation**

*Todd Williams – Corr Cronin*

Electronic devices and systems that record location data are part of our everyday lives, and establishing the location of an individual at a specific point in time can make or break a case. Todd Williams from Washington member Corr Cronin discusses what location data is being captured on everyday devices, how to find it, relevant laws, and how location data can be used effectively in litigation.

12:00p

**Break-Out A: Banning Non-Competes in a Post-COVID Workplace**

*Mary Clift Abdalla – Forman Watkins & Krutz*

Nearly every aspect of the workplace has changed as we settle into our post-pandemic new normal. Drafting, executing, and enforcing non-compete clauses are no exception. In this interactive session, Mary Clift Abdalla of Mississippi member Forman Watkins leads a discussion of issues related to geographical limitations on non-competes and the government’s interest in protecting worker mobility. The session also examines legal ramifications at the intersection of these issues, with a specific focus on the FTC’s plan to ban employers from using non-compete agreements with employees.

**Break-Out B: Best Practices for Using Mock Trial and Jury Consultants**

*Brian Kern – Hood Law Firm*

Mock trial exercises offer attorneys insight into how prospective jurors may perceive a case, enabling the trial team to test and hone their trial strategy to tap into the jury’s emotions and values. Engaging a mock jury consultant can maximize invaluable insights about case strengths, weaknesses, and the impact and perception of key evidence. Brian Kern of South Carolina’s Hood Law Firm leads a collaborative discussion on best practices, common mistakes, and misconceptions about using jury consultants to help conduct mock trials and jury selection.

Discussion Leaders: Paige Mills, Christina Marinakis

**Break-Out C: Avoiding the Pitfalls and Liabilities of Cyber-Fraud**

*Gabby Wohl – Bowles Rice*

The DOJ rolled out its Civil Cyber-Fraud Initiative last year, aimed at utilizing the False Claims Act to pursue cybersecurity-related fraud by government contractors and grant recipients. This new initiative seeks to impose penalties on companies that fail to implement cybersecurity measures, misrepresent compliance with cybersecurity requirements, or do not timely disclose cybersecurity breaches. This interactive break-out led by trial lawyer Gabby Wohl from West Virginia member Bowles Rice provides an overview of the new initiative and recent resulting settlements, and shares tips for developing a cyber incident response plan to mitigate False Claims Act liability.

**Break-Out D: The Rise – and Risks – of Artificial Intelligence in the Hiring Process**

*Lauren Fisher White – Christian & Barton*

With record-low unemployment rates, finding a new hire sometimes seems like searching for a “needle in a haystack.” Employers have used artificial intelligence to screen resumes for decades, but recent technology developments have enabled

companies to do more: use data compiled from current candidates to find others who could be a good fit, predict the compensation required to get a candidate to accept an offer, and even interview candidates in AI chats. Trial lawyer Lauren Fisher White of Virginia member Christian & Barton leads this break-out discussion on using AI in the hiring process and potential liability traps.

SATURDAY, APRIL 29, 2023

- 9:00a Welcome Back by Seminar Co-Chairs
- 9:10a **Entering the Matrix: Redefining “Products” in a Virtual World**  
*Steve Finley – Gibbons*  
Product liability claims have long centered around physical products. As technology advances, social media and software play an ever-expanding role in our lives and the economy, new product liability claims have emerged targeting the latest platforms and programs. These claims raise a fundamental question for product liability law: what is a product? Steve Finley of Pennsylvania member Gibbons addresses emerging product liability claims and how companies can prepare a successful defense.
- 9:30a **Exploring Trends in the Discovery of Personnel Information**  
*Kevin Clark – Lightfoot Franklin & White*  
The landscape regarding the protection of personal information has evolved dramatically in recent years. Twenty years ago, it was common for litigants to request and produce personnel files and other personal information in civil litigation under only a protective order. However, heightened sensitivity and new requirements under federal and state statutes have made attorneys more reluctant to produce personnel files and other personally identifiable information (“PII”). Kevin Clark of Alabama member Lightfoot discusses the new trends and tactics for navigating the use of PII in litigation and strategies for defending clients in this new landscape.
- 9:50a **Panel: From the Trenches – Preparing and Presenting Corporate Designees for Depositions**  
*Ronda Harvey – Bowles Rice*  
As national counsel to The Kroger Company in its ongoing nationwide multidistrict opioid litigation, the Network’s West Virginia firm, Bowles Rice, has prepared numerous 30(b) witnesses for depositions. In this panel discussion, Ronda Harvey and her trial team discuss lessons learned and highlight the need to engage all parties in the process by sharing the stage with two corporate designee witnesses from Kroger, who will share their experiences. Counsel and witnesses also discuss their tested, effective strategies when preparing for and defending corporate designee depositions.  
  
Panelists: Ashley Hardesty Odell, Levi Brehm (Kroger), Jaime McDermott (Kroger)
- 10:30a Refreshment Break
- 11:00a **Mitigating “Forever” Liability When Faced with “Forever” Chemicals Claims**  
*David Harless – Christian & Barton*  
Polyfluoroalkyl substances (“PFAS”) are a group of synthetic chemicals that have been used in various industries and in many applications. Described as “forever” chemicals because they accumulate in the human body and the environment, PFAS may survive up to 1,000 years. Some studies have linked PFAS to certain cancers, thyroid disease, ulcerative colitis, high cholesterol, and pregnancy-induced hypertension and preeclampsia. Trial lawyer David Harless of Virginia member firm Christian & Barton

discusses the ramifications of PFAS in tort and property claims, how the plaintiffs' bar is approaching these cases, and strategies for mounting a successful defense to avoid "forever" liability due to these chemicals.

11:20a

**Navigating Turbulent Waters: A Conversation with Global Public Affairs Executive Danny Martí**

*Greg Marshall – Snell & Wilmer*

The gales of political disruption, economic turmoil, and technology advances continue to make for turbulent waters, both in the U.S. and around our increasingly interconnected globe. Former White House Intellectual Property Czar and global public affairs executive Danny Martí joins Network attorney Greg Marshall from Arizona and Utah member Snell & Wilmer to lend his insight into navigating emerging political and technological trends and avoiding the shoals of the resulting regulatory and enforcement landscape. The conversation charts a course through a range of technologies, including the metaverse, NFTs, AI, and data privacy and security, and explores their implications for U.S. and international litigation.

11:40a

**Well, That's Settled! ... (Or is it?)**

*Moheeb Murray – Bush Seyferth*

What can you do to ensure an iron-clad settlement agreement in the personal injury and commercial litigation contexts? Trial lawyer Moheeb Murray from Michigan member Bush Seyferth addresses what constitutes an enforceable settlement agreement, how to avoid common pitfalls and stumbling blocks in negotiating and drafting them, the necessity of hearings to approve them, and when a party can "undo" them.

12:00p

**Break-Out A: Who's Zooming Whom?**

*Diane Averell – Porzio Bromberg & Newman*

Some argue that remote mediations are here to stay, but tried-and-true negotiation techniques do not necessarily translate to the virtual context. It is essential for in-house lawyers and their outside advisors to reevaluate traditional playbooks and develop a new game plan that leverages new and not-so-new skills. Diane Averell of New Jersey member Porzio Bromberg & Newman shares her insights and techniques to succeed in remote proceedings.

**Break-Out B: Compelling Arbitration Under the New York Convention**

*Wes Gilchrist – Lightfoot Franklin & White*

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") is an international treaty that governs the enforcement of arbitration agreements and awards involving international commerce. Chapter 2 of the Federal Arbitration Act implements the New York Convention in federal courts. Join Wes Gilchrist from Alabama member Lightfoot as he draws from his experience representing GE in a high stakes case that made its way to the Supreme Court, to explain and explore how to navigate overseas arbitration.

**Break-Out C: The Good, the Bad, and the Ugly: Trial Tips from Inside the Chambers**

*Jessica Salisbury-Copper – Thompson Hine*

There's nothing quite like learning by observing others, and judicial clerks have countless opportunities to witness greatness and big mistakes in the courtroom. Ohio member Thompson Hine's Jessica Salisbury-Copper is joined by former clerks who share first-hand accounts of the good, the bad, and the just-plain-ugly trial tactics they saw while clerking in federal and state courts. The lessons you learn from their stories could make or break your case.

**Break-Out D: "Battle of the Forms": Tips to Avoid Disputes in UCC Sales Contracts**

*Tina Wills – Freeborn & Peters*

“Battle of the forms” disputes arise when buyers and sellers fail to resolve conflicting order form terms before proceeding with a transaction. Trial lawyer Tina Wills from Illinois member Freeborn & Peters examines strategies for mitigating and navigating these disputes, including legal considerations under the UCC, commonly disputed contract terms, and practical tools to prevent future disputes.