





In-House and Outside Counsel: In Sync and In Person

CLE Agenda

F 9:00a – 9:05a		Opening Remarks by The Trial Network Chair
F 9:05a – 9:10a		Welcome from the Seminar Chairs
F 9:10a – 9:30a		A Fish Out of Water? Trial Lawyers and Mediation Advocacy Skills <i>Tony Rospert – Thompson Hine</i> Some legal critics suggest that the skills required to effectively mediate are incompatible to those necessary to achieve success as a trial lawyer. This session challenges that hypothesis and demonstrates that the characteristics and proficiencies that make successful trial lawyers also make effective advocates in mediation, and that in-house counsel would be well-served by using trial lawyers in mediations.
F 9:30a – 9:50a		Taking Back Control in Virtual Mediations <i>Denia Aiyegbusi – Deutsch Kerrigan</i> The pandemic created countless opportunities to utilize virtual mediations, and many believe there will be a hybrid of both in-person and virtual mediations going forward. While saving time and resources, the virtual scenario has also enhanced the ability for mediators to manipulate these proceedings. This session shares strategies for taking charge of a virtual mediation, including learning how to control the conversation in the other Zoom break-out rooms and when (and how) to isolate the mediator.
F 9:50a – 10:30a		Panel Discussion: The Art of Jury Selection – A Murder Trial Revisited <i>Moderator: Steve Schleicher – Maslon</i> Steve Schleicher and Jury Consultant Christina Marinakis, joined forces to carefully select the jury that ultimately resulted in a guilty verdict in the trial of former Minneapolis Police Officer, Derek Chauvin, for the murder of George Floyd. This panel discusses voir dire strategy and the selection process orchestrated for this historic case. The session also shares lessons learned for selecting juries, choosing and using expert witnesses, and trial preparation that are equally applicable to civil practice. Panelist: Christina Marinakis – Litigation Insights
F 10:30a – 11:00a		Refreshment Break
F 11:00a – 11:20a		Personal Jurisdiction – Product Liability and Confirmation of Arbitration Award <i>Bob Fulton – Hill Ward Henderson</i> In March, the U.S. Supreme Court in <i>Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.</i> affirmed a lower court's decision that the specific products, in this case vehicles, involved in the cause of action do not need to have been designed, manufactured or sold within the forum state in order for a state court to exercise jurisdiction. This session discusses the importance of this decision in product liability disputes and offers jurisdictional considerations involving confirmation of arbitration awards.

F 11:20a – 11:40a



Are Your Warnings and Instructions Adequate to Withstand Defective Marketing Suits?

Roger McCleary – Parsons McEntire McCleary

Many products liability cases involve defective marketing allegations. In these assertions, anyone involved in the manufacture, assembly, and distribution of goods can be held liable, and millions in damages may result if a jury is led to believe that your company's warnings and instructions are inadequate. This session reviews marketing duties, informative case law, and strategies for a successful defense of products liability marketing defect claims.

F 11:40a – 12:00p



Virtual Trials and Arbitrations: The New Normal?

Katheleen Ehrhart – Freeborn & Peters

The "New Normal" was a constant phrase we heard throughout the last year and a half. Now that courthouses and offices have reopened, many speculate that some virtual trials and arbitrations may be here to stay. This session showcases the differences between virtual proceedings and in-person proceedings and how best to manage those variances. Additionally, it considers the future of remote proceedings and whether there are certain types of proceedings that specifically benefit from using a virtual platform.

F 12:00p – 12:10p

Transfer to Break-Out Sessions and Gather Lunch

F 12:10p – 1:00p

Working-Lunch Break-Out Sessions



Track A: Paving the Way Towards an Early Victory and Keeping It

Moderator: Jessie Zeigler – Bass Berry & Sims

Dispositive motions and tactical, yet cost effective, discovery can help pave the way towards an early victory. Equally important is making sure you have tied your case up with a bow at the trial court for any further appeal. This session shares these early victory strategies that work for both mass litigation and one-off cases and offers considerations for whether any appeal would be interlocutory or final, and why it matters.



Track B: Back to Work - Business and Healthcare in a Post COVID World

Moderator: Henry Willett – Christian & Barton




While COVID-19 hopefully will soon be in our rearview mirror, it has made an indelible impact on employers and healthcare services, including where business gets done and healthcare services are received. This panel addresses best employer business practices including vaccination tracking considerations; when and how to bring employees back to the workplace safely; development of remote, hybrid and workplace policies; and how to address ADA accommodations. Additionally, it discusses the future of telehealth for physical and mental health services, increased demand for certain services, and how to be prepared for another crisis.






Track C: The Dangers of Imposing Consumer Arbitration Agreements with Class Action Waivers

Moderator: Juan Ramirez – Wheeler Trigg O'Donnell

Many company contracts with consumers include both consumer arbitration agreements and class action waivers to preemptively defend against class actions. Innovative plaintiffs' firms, however, have introduced a new and potentially more dangerous tactic – mass arbitration demands by thousands, or even tens of thousands, of individual customers. This presentation reveals this emerging threat to businesses, addresses the pros and cons of enforcing arbitration agreements to defeat class actions, and identifies potential risk mitigation strategies.

		Track D: Selecting the Right Mediator for Your Case <i>Moderator: Ashley Webber – Swift Currie McGhee & Hiers</i> Not all mediators are created equal. There are differing personalities and styles; diverse backgrounds, experience and skills; cost differentials; and reputations to consider based on all parties and facts involved in the matter. This session offers best practices for selection and most effective use of the right mediator by varying types of cases, venues, damages claimed, and opposing attorneys.
S 9:00a – 9:10a		Welcome Back from the Seminar Co-Chairs
S 9:10a – 9:30a		Classing-Up Your Class Action Act <i>Greg Marshall – Snell & Wilmer</i> The Supreme Court has left an indelible impression on defendants this term by gutting Telephone Consumer Protection Act class actions, walking back defense-friendly personal jurisdiction law, and diving back into the muddy waters of Article III standing. This session reviews the most recent significant decisions affecting class action litigation and what they mean for defendants.
S 9:30a – 9:50a		ETHICS: Be the Light - The Importance of Storytelling and Human Connection in Trial Advocacy <i>Ashby Pate – Lightfoot Franklin & White</i> The significance of the human connection in the courtroom cannot be discounted. From engaging opening arguments and artful storytelling to the final and appealing closing remarks, how a lawyer connects with the court and jury can facilitate a client's better chance for success. This presentation takes a deep dive into the significance of storytelling in jury trials, the importance of getting close to the problems lawyers are called upon to solve, and the lawyer's ethical duty to establish human connection in his or her approach to trial advocacy.
S 9:50a – 10:30a		ETHICS Panel Discussion: Employment and Ethical Considerations for Lawyers on Social Media <i>Moderator: Ashley Hardesty Odell – Bowles Rice</i> There are nearly four billion people using social media worldwide which is equal to 58% of the world's eligible population. When these platforms are used safely and correctly, it can build good will and positive reputations. When misused, it can backfire and exploit individuals, companies and associated businesses. In particular, law firms and legal departments could suffer both employment and ethical implications associated with the mismanagement of social media. This presentation dives into some potential situations and shares best practices for policies on use of these platforms by employees, supervising counsel, clients of law firms and law departments. Panelist: <i>Aaron Boone – Bowles Rice</i>
S 10:30a – 11:00a		Refreshment Break

S 11:00a – 11:20a		<p>Understanding Implicit Bias to Improve and Protect Your Workplace <i>Nikki Nesbitt – Goodell DeVries Leech & Dann</i></p> <p>Actions of explicit bias and discrimination are usually easy to spot and often simple to address. Employee complaints stemming from supervisors' and co-workers' alleged implicit bias are more challenging to manage as the underlying actions are often unintentional and can arise from subconscious attitudes of the accused. This session showcases modern examples of workplace disputes arising from implicit bias and what can be done to manage complaints that arise from them. It also shares current company trends for training employees to acknowledge, prevent and address their own biases.</p>
S 11:20a – 12:00p		<p>Panel Discussion: More than Lip Service - A Client-Driven Diversity Program Giving Law Firm Attorneys the Inside Track <i>Moderator: Emily Harris – Corr Cronin</i></p> <p>Historically, the traditional law firm structure has been prone to inherent institutional bias, unwittingly creating barriers for diverse attorneys to be elevated to leadership roles within firms and with clients. Lumen Technologies witnessed the impact this had on its own legal representation, including having judges call out legal teams for their lack of diversity, and therefore launched its own innovative program to give diverse attorneys a pathway to power in firms and the courtroom. This panel includes three Trial Network firms that have committed to championing Lumen's diversity program. Participants discuss the development of this program, its real-world applications, and its potential to be a model for other companies and law firms.</p> <p>Panelists: Ryan McManis – Lumen/CenturyLink Katie Reilly – Wheeler Trigg O'Donnell Bill Codinha – Nixon Peabody</p>
S 12:00p – 12:05p		Closing Remarks by The Trial Network Chair
S 12:05p – 12:10p		Transfer to Break-Out Sessions and Gather Lunch
S 12:10p – 1:00p		Working-Lunch Break-Out Sessions
		<p>Track A: The Role of the Human Factors Expert in Catastrophic Personal Injury Products Liability Lawsuits <i>Moderator: Eric Probst – Porzio Bromberg & Newman</i></p> <p>You have likely seen warnings on many of the manufactured products you buy. Human factors specialists are responsible for creating these warnings to alert users to potential dangers associated with the use of the product. Often, an individual's fatigue, inattention, distraction, impairment, and failure to perceive and react become significant aspects of product liability personal injury lawsuits. For example, these could impact a driver's behavior on highways or an employee's conduct in the workplace. This session discusses how human factors experts can be valuable defense team members and provide technical insight on how a plaintiff's behavior could have contributed to the injury sustained.</p>



Track B: Lessons from the Pandemic and Product Liability Litigation

Moderator: Steve Finley - Gibbons

COVID-19 has left an indelible mark on our perceptions, experiences, knowledge, and mindsets. Terms such as personal protective equipment (“PPE”) and exposure limits have long been common in product liability cases; however, they are even more familiar now to the average judge and jury due to our shared encounters through this last year and a half. This session examines how the pandemic may impact the defense of product liability cases, considers the role of new sources of proof available through contact tracing, and explores how our new, although now decreased, habits of PPE and social distancing may affect juror perceptions.

Discussion Leaders:

Stephanie Laws – Maslon

Brett Johnson – Snell & Wilmer



Track C: Transitioning from Words to Action: Practical Steps for Moving Your Firm’s Diversity, Equity, and Inclusion Efforts in the Right Direction

Moderator: Amy Bice Larson – Bush Seyferth

Many legal management teams recognize that diversity, equity, and inclusion matters to the health of their firms, companies and client relationships; however, transitioning from thoughts and ideas to measurable results can be an arduous road to travel. This presentation discusses some immediate and practical steps to progress in the right direction while staying focused on the goal, including implicit bias training and the creation of value statements.

Discussion Leaders:

Ben DachePELLi – Hill Ward Henderson

Melissa Muro LaMere -- Maslon



Track D: BYOD, not BYOB -- E-Discovery in the Workplace

Moderator: Joshua Metcalf – Forman Watkins & Krutz

Many companies permit their employees to use personal cell phones and other devices for work purposes. This is known as “BYOD” or “bring your own device” and allows for convenience to employees and lower technology costs to employers. However, when questions are raised in litigation about information that may be contained in an employee’s personal device, inquiries emerge regarding the collection and preservation of that data. Courts struggle to balance the parties’ need for information, the employee’s right to privacy, and the expense of recovering and preserving such data. This session explores recent court decisions regarding BYOD discovery and provides guidance on navigating this complicated area of the law.
