





Minneapolis Products Liability SuperCourse – 2021 Edition

Agenda

9:00a – 9:10a		Opening Remarks and Welcome
9:10a – 9:30a		<p>Personal Jurisdiction for Product Manufacturers after <u>Ford Motor Co. v. Montana</u></p> <p><i>Rachel Lary – Lightfoot Franklin & White</i></p> <p>With the prevalence of retail e-commerce sites such as Ebay, Etsy and Amazon, any manufacturer can compete in the global market without stepping foot outside their home state, and consequently may be subject to personal jurisdiction in almost any state. Recently, the Supreme Court issued an opinion involving two product liability cases against Ford Motor Company in which Ford challenged personal jurisdiction. The Court rejected Ford's argument that a manufacturer's actions in the forum state must be causally related to the plaintiff's claim to exercise specific jurisdiction. This session addresses the Court's attempt to clarify the limits of personal jurisdiction against a product manufacturer, discusses how much of a connection is required between the defendant's conduct in the forum state and the plaintiff's claim, and touches upon the relevancy of the Supreme Court's framework for analyzing personal jurisdiction against corporations.</p>
9:30a – 9:50a		<p>The Role of the Human Factors Expert in Catastrophic Personal Injury Products Liability Lawsuits</p> <p><i>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>
9:50a – 10:50a		<p>Panel Discussion: COVID-19 Impacts and Innovations for Manufacturing Companies</p> <p><i>Moderator: Stephanie Laws - Maslon</i></p> <p>From supply chain disruptions to new market opportunities, there is no doubt that the COVID-19 pandemic created unforeseen challenges and spurred innovation for many companies. This panel showcases the positive and negative impacts that Covid-19 had on manufacturing companies, from the perspective of in-house counsel, and discusses how these businesses should adapt to move forward.</p> <p>Panelists: <i>Carly Stephani – Principal Litigation Counsel, Medtronic</i> <i>Haley Schaffer – VP and Assoc. General Counsel, 3M</i> <i>Mariah Jacobsen – Corporate Counsel, Northern Tool & Equipment</i></p>
10:50a – 11:20a		Refreshment Break

11:20a – 11:40a		<p>You're on Candid Camera: Using Video Evidence in Products Liability Trials <i>Dan Rodman – Snell & Wilmer</i></p> <p>Video cameras have become ubiquitous in our daily lives, at times incidentally capturing the accidents, crashes and injuries that are the subject of tort litigation. This session addresses how to identify and obtain such evidence, deal with the pitfalls and complications with authentication, create foundation of usage, and contend with privacy and consent issues. It also offers best practices for introducing, or in some cases excluding, this influential video evidence at trial.</p>
11:40a – 12:00p		<p>Are Your Warnings and Instructions Adequate to Withstand Defective Marketing Suits? <i>Roger McCleary – Parsons McEntire McCleary</i></p> <p>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.</p>
12:00p – 12:20p		<p>The Dangers of Imposing Consumer Arbitration Agreements with Class Action Waivers <i>Juan Ramirez – Wheeler Trigg O'Donnell</i></p> <p>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.</p>
12:20p – 1:00p		<p>Panel Discussion: Defense Strategies for Dealing with the Immune Employer Moderator: <i>Eric Lindberg – Corr Cronin</i></p> <p>Imagine that an employee was gravely injured while using a piece of heavy equipment and received workers' compensation benefits. Thereafter, the employee filed a products liability lawsuit against the manufacturer of the equipment. According to some states' workers' compensation laws, the employer is deemed immune from any fault regardless of its role in use or training after the equipment left the supplier. This session discusses the issues of such a case and how to strategically defend a manufacturing company when an employer cannot be held responsible.</p> <p>Panelists: <i>Blake Marks-Dias – Corr Cronin</i> <i>Name Name – Firm/Company</i> <i>Name Name – Firm/Company</i> <i>Name Name – Firm/Company</i></p>
1:00p – 1:10p	Transfer to Break-Outs and Gather Lunch	
1:10p – 2:00p	Working-Lunch Break-Out Sessions	



Track A: Protecting the Privilege in Investigations for Consultants and Employees as Trial Experts

Moderator: Bill Hubbard – Thompson Hine

The line may become blurred for consultants and technical employees once they are asked to be trial experts. Each role may have differing work product and privilege protections, and it could get even more murky when those individuals wear multiple hats. This session offers best practices for protecting those privileges, including instances when in-house lawyers direct the investigations.



Track B: Total Recall: Navigating the “Phantom Defect” Claim

Moderator: Bill McDonald – Bush Seyferth

When consumer product recalls happen, related lawsuits are filed. In some vehicle product recall cases, however, while the recall condition did not actually cause the accident/injuries, the “phantom defect” still comes into play in the lawsuit. This presentation discusses this scenario and best practices in creating strategies to effectively disprove that the recall was at issue and offers strategies for dealing with plaintiff’s res ipsa theories that introduce evidence of defendant negligence.



Track C: Dismantling Experts in Product Liability Cases

Moderator: Ray Lewis – Deutsch Kerrigan

In product liability cases, a jury’s verdict is almost always dictated by the expert witnesses produced at trial. As a result, the establishment of expert witness testimony should be built not only on their qualifications, credentials and experiences, but also on a solid argument that differentiates their expert from yours. This track offers tips for giving juries easily understood anchors related to expert testimony, including how to command and nail-down definitions from lay and expert witnesses and build aspects of your plan of attack on same; how to identify every assumption made by an expert and commit them to that assumption; and how to use cross-examination of their expert to set up the key points for the direct examination of your expert.



Track D: Lessons from the Pandemic for 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. 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 habits of PPE and social distancing may affect juror perceptions.

2:00p – 2:10p

Return to General Session / Cell Phone Break

2:10p – 2:30p



Emerging Developments in E-Cigarette Class Action Litigation

Andrew Ryan – Sandberg Phoenix

E-Cigarettes have been embroiled in class action litigations due to alleged declining health resulting from use, its highly addictive nature, as well as manufacturing defects that may cause personal injury. The session provides background on the e-cigarette industry including scientific developments, associated health issues and its fluid regulatory environment. It continues with a discussion on current e-cigarette class action litigation, the individuals and governments initiating the litigation, liability theories, relief sought, defenses, and strategies to mitigate exposure.

2:30p – 2:50p



Avoiding the Shock – Strategies for Minimizing the Risks in Battery Technology

Bob Fulton – Hill Ward Henderson

While manufacturing companies are striving to be more eco-friendly by utilizing more green energy sources, lithium batteries have been the alleged culprit behind exploding consumer products such as laptops, smartphones, e-cigarettes, power tools and other items. This session shares the best practices to minimize risk for product manufacturers, distributors and retailers and limit potential exposure for claims brought by owners/users as well as first responders.

2:50p – 3:10p



ETHICS: Options for Addressing Unfair Judicial Rulings within the Ethics Rules

Jessie Zeigler – Bass Berry & Sims

When companies are faced with litigation and are simultaneously villainized in the media, there may be times when the application of the rule of law in the court room doesn't seem to apply. While there are options for dealing with unfair rulings, the ethics rules of the state/forum must be carefully considered, and the pros and cons of the options weighed. This session addresses how to properly assess and deal with unfair judicial rulings, including considerations to change the venue and/or recuse the judge, while making sure your actions do not negatively affect your client or reputation.

3:10p – 3:50p



ETHICS Panel Discussion: When is a Fish Fry Too Much Home Cooking? The Ethics of Jury Influence

Moderator: Mary Cliff Abdalla – Forman Watkins & Krutz

The Mississippi Supreme Court recently reversed a \$10MM verdict against Hyundai in a personal injury case because of improper jury tainting by plaintiffs' counsel. In weeks and months before the jury trials, plaintiffs' counsel hired a well-known local preacher to travel to small towns to hold tent revivals, fish fries and other community-minded events which attracted potential jurors. Thereafter, he would attend trial with plaintiffs' counsel daily. Although there was no "direct contact" with jurors by plaintiffs' counsel, the majority of the court found the evidence sufficient to show the jury was tainted by "appearance of improper, outside influences." This panel discusses the lessons from this case, reviews the ethical rules relating to outside influences on juries, showcases court decisions addressing jury influence and tampering, and offers practical guidance on how to avoid ethical pitfalls in this area.

Panelists:

Name Name – Firm/Company

Name Name – Firm/Company

Name Name – Firm/Company

Name Name – Firm/Company

3:50p – 4:00p

Closing Remarks
