

American Conference Institute's 12th Annual Advanced Forum on

ASBESTOS

Claims & Litigation

January 26–27, 2012 | Union League | Philadelphia, PA

Hear from and network with:

Paul Slater

General Electric Company

Russell Gregg

Liberty Mutual Insurance Company

Joseph J. O'Hara, Jr.

Owens-Illinois, Inc.

Christopher J. Signorello

Henkel of America, Inc.

Brian McDonough

Fireman's Fund Insurance Company

Kipp T. Exline, JD

Nationwide Indemnity

Kevin Shanowski, Esq.

Chubb & Son, a division of Federal Insurance Company

Mary Beth McCarthy

Lehigh Hanson, Inc.

James F. Dorion

Marsh Risk

Michael Blair

General Reinsurance Corporation

Daniel G. Brehm

Resolute Management Mid-Atlantic Division

Michael S. Owen

RiverStone Claims Management, LLC

Gerry R. Coryell

Louisiana Insurance Guaranty Association

Michelle Leslie Stegmann

Resolute Management, Inc.

Tony Nocito

ABCOV® Conversion Systems, LLC

Harold H. Kim

U.S. Chamber Institute for Legal Reform

Gain key strategies and updates from top in-house counsel, claims managers, experienced outside counsel, renowned jurists, and medical professionals on:

- Bankruptcy filings, confirmations & estimations and the **Transparency Between Bankruptcy Trusts and Tort Litigation**
- **Asbestos Medicine:** The evolution of the medical issues and how the changes affect emerging causation law and *Daubert/Frey challenges*—“**Every Fiber,**” **Low Dose, Encapsulation, Mesothelioma, Lung Cancer** and beyond
- The new hot defendants: The latest on liabilities for **premises owners and contractors** and the growth of **bystander and take home exposure claims**
- **The Navy Cases:** bolstering your case from discovery through trial
- **MDL Update** and **MDL 875** lessons learned
- Navigating your way through the new developments in **Medicare:** the impact of reporting requirements on asbestos litigation
- **Settlement approaches** and strategies on **countering value inflation due to decreasing viable defendants**
- **Developing and herding qualified expert witnesses** and then **maximizing the deposition** once you do

Featuring unparalleled medical insights from:



Bruce W. Case, M.D., M.Sc., Dipl. Occup. Hygiene, FRCP(C)
McGill University



Arthur L. Frank, MD, Ph.D.
Drexel University



Robert W. Morgan, M.D., S.M. HYG, FACPM, FACE
Epidoc LLC

View from the Bench — Hear from:



Hon. John R. Padova
U.S. Dist. Ct., E.D. Pa.



Hon. M. Faith Angell
U.S. Dist. Ct., E.D. Pa.



Hon. Martin Shulman
Sup. Ct., State of New York



Hon. Sandra Mazer Moss
Philadelphia Ct., C.P.



Hon. Mark Davidson
11th Civ. D. Ct., Harris Co., Texas

Hon. Victor DiNubile
Philadelphia Ct., C.P.



Hon. Helen E. Freedman
Sup. Ct., State of New York

Don't Forget to Also Register for One of the Interactive Asbestos State/Regional Hotbed Workshops:

A California **B** Illinois **C** East Coast

(A, B, and C concurrent on Jan. 27 – 3 p.m. – 5 p.m.)



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ACI's 12th Annual Asbestos conference is an unparalleled opportunity to get up to speed with the new claimants, targets, jurisdictional hot spots, and science while networking with leading in-house counsel, claims handlers and administrators, and risk managers.

The defense of asbestos claims and litigation continues to evolve as million dollar verdicts are holding steady around the nation. In just the last 6 months alone, million dollar outcomes have shaken the industry: retired plumber wins \$41M in California asbestos case, NJ top court shoots down \$7M asbestos appeal, \$25M suit over reinsurance coverage tied to asbestos litigation....and many more.

With excessive verdicts and other developments reaching across the nation, insurers have shifted their approach to managing asbestos claims especially in light of shrinking legal budgets and evolving roles in claims management. Now more than ever, premise owners and contractors are being held liable for asbestos exposure. Asbestos exposure reaches to not only the worker on site but to secondary exposure, bystander exposure and take-home exposure claims. Furthermore, solvent manufacturers are no longer the sole defendant to sue. Now plaintiffs are filing suit against mom and pop type suppliers, distributors and retailers directly impacting strategy of cases from start to finish as well as the management and defense of these asbestos claims.

In addition, the evolution of science and medicine have forced practitioners to take a sophisticated medical approach to retaining the right expert witness, reviewing the exposure evidence and evaluating current medical theories to support or defend an asbestos exposure claim. The traditional asbestos exposure allegation has all but nearly dissolved and now theories such as the "every fiber v. the every exposure" have taken hold as the prevailing scientific theories on threshold levels and exposures.

Only one conference will make sense of it all, getting you up to speed with all the new claimants, targets, jurisdictional hot spots, and science: ACI's 12th Annual Forum on ASBESTOS CLAIMS & LITIGATION. The event will provide industry-leading strategies associated with each and every asbestos-related disease and, now in its 12th installment, it's known around the industry as the **essential forum that shapes the future of litigation and coverage strategies for outside counsel and in-house counsel, claims handlers and administrators, and risk managers.** This year's **revamped faculty** of distinguished in-house professionals and outside counsel, as well as renowned jurists, will provide even the most seasoned asbestos law professionals with clarity and certainty with respect to today's most crucial issues.

Don't Forget to Also Register for One of the Interactive Asbestos State/Regional Hotbed Workshops:

A California **B** Illinois **C** East Coast
(A, B, and C concurrent on Jan. 27 – 3 p.m. – 5 p.m.)

Register today to ensure your place by calling 888-224-2480, faxing your registration form to 877-927-1563 or registering online at www.AmericanConference.com/Asbestos

ABOUT THE VENUE:



The Union League, which occupies an entire city block in the center of Philadelphia's commercial and cultural district, is a shining jewel of history in a city defined by such treasure. Founded in 1862 as a patriotic society to support the policies of President Abraham Lincoln, The Union League has hosted U.S. presidents, heads of state, industrialists, entertainers and visiting dignitaries from around the globe. The classic French Renaissance-styled League House, with its brick and brownstone façade and dramatic twin circular staircases leading to the main entrance, is listed in the National Historic Register, and dates back to 1865, when the Broad Street building was completed. Adorning the walls and hallways is the League's distinguished art collection, artifacts imbued with the heritage and culture of its membership. The collection is a rich, historical chronicle of Philadelphia's unique imprint upon the American landscape from the nineteenth century to today.

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7:30 Continental Breakfast and Registration

8:00 Co-Chairs' Welcoming Remarks



Scott F. Griffith
Partner
Rawle & Henderson, LLP



Edward M. Slaughter
Partner
Hawkins Parnell Thackston & Young LLP

8:05 In-House Corporate and Insurer Panel on Financial & Legal Decisions, Managing Claims, Lowering Defense Costs, and Settlement Negotiations

Panel 1 8:05-9:05	Panel 2 9:05-10:05
<p><i>Paul Slater</i> Senior Counsel General Electric Company</p> <p><i>Russell Gregg</i> Counsel Liberty Mutual Insurance Company</p> <p><i>James F. Dorion</i> Managing Director Marsh Risk</p> <p><i>Michael Blair</i> Vice President, Environmental Claims General Reinsurance Corporation</p> <p><i>Daniel G. Brehm</i> Senior Vice President - Chief Claim Officer Resolute Management Mid-Atlantic Division</p> <p><i>Michael S. Owen</i> Manager, Claims RiverStone Claims Management, LLC</p> <p><i>Kevin Shanoski, Esq.</i> Eastern Territory Environmental Claim Manager Environmental Claims Chubb & Son, a division of Federal Insurance Company</p> <p><i>Mary Beth McCarthy</i> Senior Litigation Counsel Lehigh Hanson, Inc.</p> <p><u>Panel 1 Moderator:</u></p> <p> <i>Michael L. Fox</i> Partner Sedgwick LLP</p>	<p><i>Brian McDonough</i> Claims Specialist Asbestos Unit/Historical Claims Department AZRS—Resolution Services Fireman's Fund Insurance Company</p> <p><i>Christopher J. Signorello</i> Assistant General Counsel, Litigation Henkel of America, Inc.</p> <p><i>Harold H. Kim</i> Senior Vice President U.S. Chamber Institute for Legal Reform</p> <p><i>Kipp T. Exline, JD</i> NWI Reinsurance Claim Reinsurance Management Services Nationwide Indemnity</p> <p><i>Gerry R. Coryell</i> Environmental Claims Examiner Louisiana Insurance Guaranty Association</p> <p><i>Michelle Leslie Stegmann</i> Assistant Vice President Resolute Management, Inc.</p> <p><i>Tony Nocito</i> Managing Member ABCOV® Conversion Systems, LLC</p> <p><u>Panel 2 Moderator:</u></p> <p> <i>Barry N. Mesher</i> Shareholder Lane Powell PC</p>

Corporate Non-Insurer

- Shrinking legal budgets and doing more with less
- Increasing involvement of carriers and the impact on litigation
- Budget limitations on settlement opportunities
- Alleviating rising transactions costs
- Factoring in national and local valuation discrepancies and national management of cases
- Transitioning claims representatives, clients and associates from claims administration/settlement mode to actual litigation of serious cases

Insurer

- Addressing the increasing use of outside billing vendors/auditors who refuse to pay for reasonable activities by attorney/paralegals
- Is the products/non-products distinction driving how claims are made in underlying litigation and how are they presented to insurers?
- Getting carriers and plaintiff's counsel to agree to language
- Dealing with multiple clients/carriers with varying guidelines
- When an "injury" occurs for purposes of coverage
- Trigger - which theory of policy trigger is appropriate
- Section 524g and elimination of contribution rights among insurers

10:05 Morning Coffee Break



American Conference Institute:

The leading networking and information resource for counsel and senior executives.

Each year more than 21,000 in-house counsel, attorneys in private practice and other senior executives participate in ACI events – and the numbers keep growing.

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ACI's highly trained team of attorney-producers are dedicated, full-time, to developing the content and scope of our conferences based on comprehensive research with you and others facing similar challenges. We speak your language, ensuring that our programs provide strategic, cutting edge guidance on practical issues.

Unparalleled Learning and Networking

ACI understands that gaining perspectives from – and building relationships with – your fellow delegates during the breaks can be just as valuable as the structured conference sessions. ACI strives to make both the formal and informal aspects of your conference as productive as possible.

10:10 **What the “Year in Asbestos Litigation” Means for You, Your Client and Your Company**



Joseph J. O'Hara, Jr.
Vice President
Associate General Counsel
& Secretary
Owens-Illinois, Inc.



Carol G. Snider
Senior Partner
Damon Morey LLP



Anne D. Harman
Partner
Dinsmore & Shohl LLP



Ingrid K. Campagne
Partner
Walsworth Franklin Bevins
& McCall, LLP



Benedict M. Lenhart
Partner
Covington & Burling LLP

This session will offer an in-depth examination of recent and emerging trends in asbestos claims and litigation. It will explore recent developments impacting plaintiffs, defendants, insurers and counsel, recent cases of importance and what this will mean in terms of strategizing for the year ahead. With ample time for questions, this session will set the tone for an interactive and insightful two days.

- Suppliers, distributors, retailers, mom and pop type businesses: as the universe of solvent manufacturers continues to shrink, who are the parties that plaintiff are looking for?
- Congressional hearing on the 524 trusts and the trust issues
- What are the “hot” jurisdictions this year?
- What are the national filings trends?
- What are the verdict trends?
- Update on 2011 punitive awards
- Key insurance coverage decisions in 2011 and their impact on coverage for asbestos claims
- Countering plaintiff strategies to maximize compensatory and punitive damages
- Where are defendants doing with docket management? causation rulings? legislative efforts?
- Latest jurisprudence/extremities on “joint and several liability”

11:15 **View From the Plaintiffs’ Bar on Litigating Asbestos Claims**



Benjamin P. Shein
Lead Attorney
Shein Law Center, Ltd.



Vincent L. Greene IV
Member
Motley Rice LLC



Joseph W. Belluck
Founding Partner
Belluck & Fox, L.L.P.

- Pursuing non-traditional defendants
- Innovative discovery techniques
- How federal and state reforms will impact plaintiff’s attorneys
- Why are certain cases moving to trial? Identifying the factors that determine which case go to verdict
- The migration of claims: where they are going and why?
- An analysis of notable verdicts
- What are the most commonly paid claims?
- What is the future of non-malignant claims?
- Changing demographics: the increase in very old and very young mesotheliomas

12:10 **Networking Luncheon for Speakers and Delegates**

1:10 **Bankruptcy Filings, Confirmations & Estimations and the Transparency Between Bankruptcy Trusts and Tort Litigation**



Gary Svirsky
Partner
O’Melveny & Myers LLP



Scott F. Griffith
Partner
Rawle & Henderson, LLP



Alice Sacks Johnston
Partner
Obermayer Rebmann Maxwell
& Hippel LLP



Kirk T. Hartley
Founder/Partner
LSP Group LLC



Robert M. Horkovich
Shareholder
Anderson Kill & Olick, P.C.

Bankruptcy Trusts

- Transparency issues
- The impact on the tort system of the bankruptcy trusts – payments, documents, timing, setoffs, etc.
- Intersection of bankruptcy trusts and civil litigation
- Bankruptcy Trust Claim Disclosures – Continued battle of defendants to obtain information concerning claims submitted to Asbestos Trusts
 - o the various approaches by jurisdiction
 - o the nature of the information which must be disclosed
 - o when the information must be disclosed
 - o challenges by the plaintiff’s bar as to use of such information once obtained
- Transparency between bankruptcy trusts and tort litigation
 - o should materials submitted by (or on behalf of) claimants to trusts be available in discovery in tort litigation against co-defendants?
 - o What about transparency among bankrupt entities, i.e., can or should a debtor in one case obtain materials submitted to other bankruptcy trusts as part of determining potential liability?
- Proving up shares of bankrupts
- Access to bankruptcy trust related materials in underlying tort cases
- The non-transparency of the submissions to the bankruptcy trusts by plaintiffs & how that prejudices defendants
- Asbestos trust impacts on claiming, and discovery of information held by trusts
- Are the rates of filings with the trusts greater than the rates of filings with companies before their bankruptcies? Why?
- Dealing with “set-off” and recovery
- Remote, fleeting defendants and the failure of the litigation to allocate liability to bankrupt defendants – do any courts permit the use of the trust applications as proof of exposure at trial?
- Offset issues with further bankruptcies
- Determining if/what funds the plaintiff received from bankruptcy trusts
- Ability to locate, confirm, and obtain documents regarding plaintiff’s claims against bankrupt asbestos trusts
- Updated information on payments to non-malignant claimants v. cancer claimants; current claimants v. future claimants

Timing and Strategy Concerns with Claims

- How are claims being processed?
- New Filings, Confirmations & Estimations
- Issue of bankruptcy filings and the claims asserted in the claim forms as it relates to fault of non-parties if allowed by a specific state
- If a person is claiming exposure to a product from those bankrupt companies, how can you use those forms to better your defenses?
- As plaintiff attorneys delay the filing of those forms, what discovery mechanisms can you use to get those answers without the need of filing the forms?
- Discoverability of Bankruptcy Proof of Claim Forms and supporting documents; general delay in filing of POCs until after civil suit is resolved
- How insurance claims are affected by the underlying cases and what that means for resolving these claims
- Determining plaintiff’s full claimed asbestos exposure through discovery of prior claims made
- Analyzing the courts’ denial and limit of requests for claimant information

Recent Case Law and Verdict Form Issues

- What is the impact of the Third Circuit’s decision giving insurance companies standing in asbestos bankruptcies in Global Industrial Technologies
- Will third parties continue to seek Trust claim information in light of the decisions limiting their access?
- How to get the bankrupt parties on the verdict sheet
- Evidence necessary to include non-parties at fault on the jury verdict form

2:30 **Afternoon Break**

2:40 **“Every Fiber,” Low Dose, Encapsulation, Mesothelioma, Lung Cancer and Beyond: The Evolution of Asbestos Medicine and How the Changes Affect Emerging Causation Law and Daubert/Frey Challenges**



Bruce W. Case, M.D., M.Sc., Dipl. Occup. Hygiene, FRCP(C)
Associate Professor, Department of Pathology and Associate Member, Combined Departments of Epidemiology Biostatistics and Occupational Health and School of Environment McGill University



Robert W. Morgan, M.D., S.M. HYG, FACPM, FACE
Principal Scientist
Occupational and Environmental Health and Epidemiology
Epidoc LLC



Arthur L. Frank, MD, Ph.D.
Professor and Chair
Department of Environmental and Occupational Health,
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James N. Sinunu
Partner
Sinunu Bruni LLP



Edward M. Slaughter
Partner
Hawkins Parnell Thackston & Young LLP



Todd E. Schwartz
Partner
Lewis Brisbois Bisgaard & Smith LLP

“Every Fiber,” Single Fiber Theory, and Low Dose

- Every fiber v. Every Exposure: Prevailing scientific theories on threshold levels and exposure
- The “every fiber above background is a substantial contributing factor” theory espoused by plaintiff experts
- The “every fiber counts” expert testimony
- *Daubert* challenges to the “Every Fiber Above Background Theory”
- Courts decisions on Plaintiffs’ expert witness opinion on every exposure contributes testimony
- The disappearance of traditional asbestos exposure allegations, its confluence with the way mesothelioma claims are captured, and the impact on the “one fiber” theory of causation
- How the court deals with (or charges the jury) de minimus exposures and defending against minimal exposure cases
- The Low Dose Epidemiologic Studies – causation and substantial factor
- Low dose exposures: assess the likelihood that a meso plaintiff with a few weeks of work at a plant will prevail at trial or on appeal
- Low dose products with amphibole fibers: defending against co-defendants asserting chrysotile defense
- Whether the status of chrysotile vs. (asbestiform) amphibole differ with disease state; for example, mesothelioma as opposed to lung cancer or asbestosis

Encapsulation

- The encapsulation defense: when “low exposure” is “high liability”
- CIH on Encapsulated Products
- What does “encapsulated” really mean and why it matters

Mesothelioma Cases and Misdiagnosis

- Countering the plaintiffs’ counsel focus on these “serious” cases
- Trends and developments in handling mesothelioma cases
- Mesothelioma: Extending Life Expectancy After Diagnosis
- Discovery of the meso gene and what it might mean in the litigation process

Lung Cancer

- Increase in malignancies and increasing demands to pay meso amounts for lung cancers
- What the latest medical research tells us about asbestos as a causative agent of lung cancer
- Nonmalignant disease diagnostic criteria and its consideration in the lung cancer

Other Cancers and Other Causes

- Other cancers and causality and litigation strategies for proving up other asbestos exposure and limiting your client’s liability at trial
- Cardiovascular effects of asbestos exposure

4:15

A Focus on the New Hot Defendants: The Latest on Liabilities for Premises Owners and Contractors and the Growth of Bystander and Take Home Exposure Claims



Mark A. Behrens
Partner
Shook, Hardy & Bacon L.L.P.



Joseph J. Wetler
Partner
Goldberg Segalla LLP



Jeremy D. Huie
Partner
Bassi, Edlin, Huie & Blum LLP



Christopher T. Chocheles
Member
Sher Garner Cahill Richter Klein & Hilbert, L.L.C.

Premises and Contractors

- The increasing emphasis on premises defendants
- Premises liability for onsite contractors
- Rectifying split in the court decisions on liabilities for premises owners and contractors
- Lack of duty to warn for premises owners to non-employees
- How to prepare an effective defense to these claims
- Discovery issues – where does the evidence come from?
- Liability issues – when does exposure at a premises become “significant?”

Bystander and Take Home

- Are secondary exposure claims an increasing source of the mesothelioma in the US?
- From where are the secondary exposure claims emanating?
- The growth of bystander and take-home exposure cases
- Development of science and court rulings on bystander and take home claims
- The duty issue in alleged take-home exposure cases/ secondary/ household exposure issues – and how far the duty extends
- Take-home exposure cases against premises owners
- Emphasis on electrical equipment and component defendants in electrician cases. The types of defendants continue to evolve
 - o bystander exposures (e.g., an electrician claiming exposure to joint compound when drywall workers were allegedly in the electrician’s work zone)
- Obtaining information regarding alternate exposure without hurting joint defendants

5:25

Navigating Your Way Through the New Developments in Medicare: The Impact of Medicare Reporting Rules on Asbestos Litigation



Philip R. Matthews
Partner
Duane Morris LLP

- Navigating the waters created with Medicare reporting requirements
- How the Medicare Secondary Payer Act impacts the litigation and how to address federal requirements
- Compliance with Section 111 Medicare Secondary Payer reporting and reimbursement obligations
- How to deal with the new Medicare law and releases. It seems everyone has a different opinion on the subject
- Medicare issues: where do we stand now in addressing Medicare issues from the settlement to bankruptcy trusts?
- Finalizing settlements – disputes over when the money should be released and who should be responsible if asbestos-related medical expenses are incurred in the future
- Medicare related release language issues
- Developments in litigation and courts such as *Stricker*

6:00

Day 1 Adjourns

Media Partner:



Day Two – Friday, January 27, 2012

7:30 Continental Breakfast

8:00 **View From the Bench: Federal and State Judges Speak Out on Current Litigation Trends, Successful Plaintiff Claims and Defense Strategies**



The Honorable John R. Padova
United States District Court
Eastern District of Pennsylvania



The Honorable M. Faith Angell
United States District Court
Eastern District of Pennsylvania

The Honorable Victor DiNubile
Philadelphia Court of Common Pleas



The Honorable Helen E. Freedman
New York Supreme Court
Appellate Division, First Department



The Honorable Martin Shulman
New York Supreme Court, Appellate Term
First Judicial Department, 1st & 12th Judicial Districts



The Honorable Mark Davidson
Asbestos Multidistrict Litigation Court
Harris County Civil Courthouse, Houston, Texas



The Honorable Sandra Mazer Moss
First Judicial District of Philadelphia, Pennsylvania
Coordinating Judge of the Complex Litigation Center

Moderator



Craig T. Liljestrand
Partner
Hinshaw & Culbertson LLP

Renowned federal and state jurists will provide attendees with highly sought after insight on current litigation trends and what the future holds. Points for discussion include:

- Granting/dismissing motions to dismiss and motions for summary judgement
- What claims have proved successful and what strategies work best in the courtroom
- Resolving legitimate claims quickly
- Prioritizing cases
- Settlement solution
- MDL: Observations and advice

9:30 Morning Coffee Break

9:40 **The Navy Cases: Bolstering Your Case from Discovery Through Trial**



Craig R. Waksler
Partner
McGivney & Kluger, P.C.



Edward R. Hugo
Principal Member
Brydon Hugo & Parker



Donald R. Kinsley
Director
Maron Marvel Bradley & Anderson, P.A.

- Where are the maritime cases currently being tried? What law applies, manifestation or exposure as place of injury? choice of law issues?
- Ship and shipyard exposure: the expanding pool of sites, claimants and defendants
- The navy exposure case. Evaluating the liability of the empty chair, the navy itself and the bankrupt insulation companies
 - o Theories of liability regarding external insulation
 - o Focus on the exterior insulation liability theory for equipment manufacturers
 - o Frequency of mesothelioma diagnoses in decades after reformulation of insulation products without asbestos

- o Comparative fault – assigning fault to bankrupt insulation companies
- The latest on the application of the government contractor and/or extension of the CA *Taylor* and WA *Simonetta* and *Braaten* decisions excusing equipment manufacturers from liability for external insulation applied by the US Navy or others
- Application of case law like *Taylor* in California for equipment suppliers
- Federal enclave and federal officer removal
- Warning, Duty to Warn Regarding Component Parts, and Third-party duty to warn (e.g., liability of pump and valve makers for failure to warn about asbestos insulation or replacement gaskets and packing made and installed by others)
- Sophisticated User and Learned Intermediary –Who knew more than the Navy?
- Information you need to know about the top naval plaintiff and defense experts
- Component part liability and design defect claims in light of Delaware Judge Ableman's opinion in the recent *Davis* case: refuting plaintiffs' counsel theory that the use of asbestos-containing replacement parts was foreseeable or that the manufacturer's product originally incorporated asbestos parts
- The status of component part liability in other jurisdictions
- How will Judge Robreno apply maritime law in deciding MSJs in "Navy" cases in the MDL?
 - o Combating reluctance of most high volume courts to fully consider MSJs
- Use of Naval and Ship records to prove and defend your case
- Use of Naval experts during the product identification phase of discovery

10:40 **MDL Update and MDL 875 Lessons Learned**



Dean A. Olson
Partner
Morris, Polich & Purdy LLP



Michael W. Drumke
Partner
Hepler Broom LLC

- Handling and working through the Federal MDL docket
- Recent Rulings in the MDL
- The first cases have been remanded back to the district courts from the MDL for trial proceedings. This is new ground. – How, where and when will the cases be tried?; under Federal or State law?; What will happen with the punitive damages allegations that have been severed and remain in the MDL?
- MDL and how to apply the place of exposure as the place of injury factor
- Application of Restatement § 145 – Conflict of Laws to determining the applicable law in toxic tort situations, with particular emphasis on the Place of Injury factor and the various states that apply the place of exposure compared with place of where the injury manifests itself
- Analysis of important rulings in MDL 875, lessons learned and their application to current and future litigation
 - o what will be the impact on forum-shopping within the federal court system and with respect to federal vs. state courts
 - o remand of cases for trial
 - o the current discovery and settlement process
 - o Timeline for resolution and new cases transferred
- Future of MDL cases

11:40 **Forum Non Conveniens: Best Defense Strategy Practice When Seeking a Different Forum**



Dawn Dezii
Partner
Margolis Edelstein



Geoffrey M. Davis
Partner
K&L Gates LLP

- How to counter plaintiffs having no connection to the jurisdiction where their cases are filed
- Forum challenges in magnet jurisdictions
- Combating Plaintiff forum-shopping
- Best forum non conveniens motion practice
- Forum non conveniens and the concentration of mesothelioma filings in receptive jurisdictions
- Filing of cases in non-convenient forums because of issues with the law of the resident state
- How the court deals with FNC motions

12:25 Networking Luncheon for Speakers and Delegates

1:25 **Settlement Approaches and Strategies on Countering Value Inflation Due to Decreasing Viable Defendants**



Arnold L. Natali, Jr.
Partner
McCarter & English LLP



John J. Hainkel III
Partner
Fritel L.L.C.

Plaintiffs' counsel has near perfect information regarding national settlement value. In addition, many of the national firms and the firms associated with each other share this information on trial and settlement data. As a result, plaintiffs have a much better idea of both the amount and range that a particular defendant will pay to resolve a matter and are willing to pay which potentially drives up settlement values in states that are typically defendant friendly. This session will help you to:

- Understand the settlement drivers; master the factors driving settlement and the new focus
- Negotiate reasonable settlements with plaintiffs lawyers both on a per case and group basis
- Know which cases to settle and which cases to take to the jury
- Understand how the mix of cases and range of settlements have changed over the last 10 years
- Interface with local, national, and in-house counsel
- Manage expectations on valuations and defense costs
- Examine Judicial Intervention and settlements

2:10 **Developing and Herding Qualified Expert Witnesses and then Maximizing the Deposition Once You Do**



Edward A. Smallwood
Partner
Swartz Campbell LLC



Mark A. Wisniewski
Principal
Kitch Drutchas Wagner
Valitutti & Sherbrook

- Development of expert witnesses: medical experts, state of the art experts, industrial hygiene
- Factoring in aging expert witness rosters, fading memory of aging experts and confusing responses given by experts on good cross by plaintiff's attorney; factoring in the impact on settlements; what to do when the deposition goes bad
- Dilemma: using the experienced experts v. the rookie expert; pros and cons of using both
 - o Determining whether to put a cooperate witness on the stand who is retired or older
- Herding qualified experts for depositions; answering the question of the cost of experts today and the cost to get experts up to speed on years of literature
- Whether to give an expert unfettered access to corporate records; Whether it is better to limit access given the need to theoretically produce anything that is reviewed
- The value of paying an expert to develop a corporate history rather than just looking at case/product/site-specific document
 - o Whether to have an expert to review the company's history of safety/knowledge or limit that and use a corporate rep to speak to those items
- Locating and developing experts such as construction sequence
- After developing and herding the experts, how do you prepare your witness and create a record at deposition: cross-examine and challenge the witnesses; assessing the risks of 30(b)6; strategic maneuvers via 30(b)6 depositions and impact on settlements

2:55 **Conference Ends – Registration for Workshops A/B/C**

POST-CONFERENCE CONCURRENT ASBESTOS STATE/REGIONAL HOTBEDS WORKSHOPS: A DEEP DIVE INTO HOW CALIFORNIA, ILLINOIS, AND THE EAST COAST ARE TREATING CLAIMS

JANUARY 27, 2012 (CHOOSE A, B, or C)

3 p.m.–5 p.m.

A

CALIFORNIA



Edward R. Hugo
Principal Member
Brydon Hugo & Parker



Dean A. Olson
Partner
Morris, Polich & Purdy LLP



Geoffrey M. Davis
Partner
K&L Gates LLP

B

ILLINOIS



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- Risk Managers
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American Conference Institute's 12th Annual Advanced Forum on

ASBESTOS

Claims & Litigation

January 26–27, 2012 | Union League | Philadelphia, PA

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- B** Illinois
- C** East Coast

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