

Litigation Management: New Trends and Techniques

April 28-29, 2017

AGENDA and COURSE DESCRIPTION

Friday, April 28, 2017

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

9:10a - 9:30a **THE LEGAL IMPLICATIONS OF USING SAFETY ALGORITHMS IN PRODUCTS AND HEALTH CARE**

Nikki Nesbitt -- Goodell DeVries Leech & Dann (Baltimore, MD)

Safety-enhancing algorithms in product development and health care are designed to prevent risk to consumers and patients, but do they help prevent risk to the companies that use them in their products? What happens if the algorithm doesn't prevent the risk – who, if anyone, bears legal responsibility? Trial lawyer Nikki Nesbitt will discuss the legal implications of this technology, which is becoming ever more popular among companies from automobile manufacturers to hospitals.

9:30a - 9:50a **WHOSE PRIVILEGE IS IT ANYWAY? THORNY ISSUES IN THE ERA OF WHISTLEBLOWERS**

Scott O'Connell -- Nixon Peabody (Boston, MA)

Whistleblowers create many challenges for companies. One of them is battle over who controls the attorney client privilege. Recent cases have held that Senior Executives who reported concerns or improprieties to the legal department cannot use that fact in their defense without a waiver of privilege from the corporation. This dynamic creates material issues for in-house counsel to navigate. This session will discuss the issue as well as practical considerations for dealing with them.

9:50a - 10:10a **THE ROLE OF EMOTION IN LITIGATION**

Josh Lanning -- Moore & Van Allen (Charlotte, NC)

Virtually everything a lawyer does in the pursuit of a client's' case is targeted to one goal: getting someone to make a decision. As creatures trained heavily in logic, lawyers naturally approach that goal by trying to demonstrate that they are "right" based on facts, law, and logic – a critical, but incomplete, approach to persuasion. Science has repeatedly shown that human decision-making is governed largely by complex emotions, with logic and reason often taking a backseat. Trial lawyer Josh Lanning will discuss some of the many tools for recognizing and defusing emotional barriers to resolving conflicts.

10:10a - 10:50a **PANEL: CRISIS RESPONSE - DEFTLY HANDLING YOUR COMPANY'S EMERGENCY**

Moderator: Jessie Zeigler -- Bass Berry & Sims (Nashville, TN)

"A man's mind will very gradually refuse to make itself up until it is driven and compelled by emergency." - Anthony Trollope. Do not wait until you are compelled by an emergency. Be prepared to handle the explosion, the data breach, the government investigation... whatever crisis may hit your company with tips for a quick and effective response plan that effectively manages your litigation risks.

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

11:20a - 11:40a **DO YOU BELIEVE IN MIRACLES? THE ROAD TO PRE-SUIT RESOLUTION OF HIGH EXPOSURE CLAIMS**

Lyndon Sommer -- Sandberg Phoenix & von Gontard (St. Louis, MO)

It would be wonderful if multi-million dollar claims were resolved before suit is filed. Defense lawyers would persuade an eager attorney representing a plaintiff that they will not obtain a huge trial verdict and they should settle for a nominal amount. In reality, this almost never happens. Trial Attorney Lyndon Sommer discloses proven strategies and techniques for obtaining favorable pre-suit settlements of large damage claims.

11:40a - 12:00p **INTERNAL INVESTIGATIONS: LESSONS FROM A GOVERNOR'S IMPEACHMENT**

Jack Sharman -- Lightfoot Franklin & White (Birmingham, AL)

What can corporate internal counsel and advisers learn from the impeachment investigation of a state governor? Jack Sharman served as Special Counsel to the Alabama House Judiciary Committee for the impeachment of Governor Robert Bentley. Jack oversaw a months-long investigation, litigated in multiple courts and presented his findings to the Committee. Governor Bentley pled guilty to two criminal offenses and resigned. Hear the lessons for corporate counsel and internal investigations that Jack learned from the impeachment investigation of a state's chief executive.

12:00p - 12:20p **THE INTERNATIONAL TRADE COMMISSION: GAME CHANGING IP RESULTS IN AN UNDERUTILIZED ARENA**

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

The International Trade Commission, though seldom used, can provide unique and expansive remedies for companies looking to protect their IP from infringing importers. Venturing into the ITC can be an intimidating process, but dramatic results can be achieved quickly and efficiently. Trial lawyer Jennifer Fitzgerald will provide some background and a list of questions to ask yourself before you file suit.

12:20p - 12:40p **STRATEGIES FOR SUCCESSFULLY DEFENDING "NO INJURY" CONSUMER PROTECTION CLASS ACTIONS**

Steve Benenson -- Porzio Bromberg & Newman (Morristown, NJ)

In this presentation, we will explore the rise of these challenging and risky statutory penal damage class actions based on alleged unlawful terms in consumer contracts and on-line Terms of Use. New Jersey, which boasts having some of the most progressive consumer protection laws in the country, is on the vanguard. Using the State's "Truth-in-Consumer Contract, Warranty and Notice Act" ("TCCWNA") as a model, we will address evaluating dispositive motions in light of statutory prerequisites, analyzing the impact of choice-of-law and forum selection clauses, and opposing class certification under Fed. R. Civ. Pro. 23.

12:40p - 1:00p **WHEN TO PREPARE YOUR OPENING STATEMENT**

Sawnie McEntire -- Parsons McEntire McCleary & Clark (Dallas, TX)

The Opening Statement: Most judges, trial lawyers and trial consultants agree that your opening statement is the most important part of your case. But, many wait until discovery is complete to prepare their opening statement. Trial lawyer Sawnie McEntire shows a better way to prepare your winning opening statement.

Saturday, April 29, 2017

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

9:10a – 9:30a **THE PRICE IS NOT RIGHT: CLASS ACTION RISKS OF COMPARATIVE PRICE ADVERTISING**

Brandon Wisoff -- Farella Braun + Martel (San Francisco, CA)

Retailers have long relied on comparative price claims to convey a bargain and the ability of consumers to price shop on the internet has only increased the pressure for retailers to compete on price. But what was once a “buyers beware” market has become a “sellers beware” market. Trial lawyer Brandon Wisoff explores the recent explosion of consumer class action claims challenging alleged false price advertising and the increased scrutiny that courts are giving to retailer advertising claims of “bargain,” “discount,” or “sale” prices.

9:30a - 9:50a **CHANGING THE NARRATIVE IN EMPLOYMENT DISCRIMINATION CASES**

Blake Marks-Dias -- Corr Cronin (Seattle, WA)

Employment discrimination cases are increasingly getting past summary judgment and into trial. Too often, the defense focuses primarily on what the company did or did not do. This narrative plays right into the plaintiff's hands - - the more the jurors talks about the company's actions (or inaction), the more opportunity for them to pick it apart. A winning strategy requires the defense to change the narrative, in subtle and respectful ways, leading the jury to instead focus on the plaintiff's conduct.

9:50a - 10:10a **DUDE, WHERE'S MY CAR? A GLIMPSE OF THE FUTURE OF MOBILITY**

Emily Frascaroli -- Ford Motor Company

Autonomous vehicles, cars that communicate with each other, ride-sharing services and other emerging technologies are changing the way we get around. Emily Frascaroli, counsel at Ford Motor Company, discusses the evolving legal landscape for such paradigm-shifting mobility platforms.

10:10a - 10:50a **PANEL: VIEW FROM THE GENERAL COUNSEL'S OFFICE: PROACTIVE STRATEGIES FOR COMPLIANCE AND THE PROTECTION OF ASSETS**

Moderator: Sandra Heller -- Akerman (Fort Lauderdale, FL)

In this session, we will focus on how outside counsel can most effectively assist their in-house counterparts to anticipate, navigate and address their most critical regulatory, compliance and risk generating issues. This panel will feature real world examples from the worlds of insurance, broadcasting and other industries, with particular focus on the leveraging of outside counsel in fraud and abuse prevention strategies, governmental reporting and the protection of corporate assets.

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

11:20a - 11:40a

THIS IS A CONSPIRACY - AND EVERYONE'S IN ON IT!

Steve Finley -- Gibbons (Philadelphia, PA)

Few events that lead to litigation actually involve a conspiracy amongst the defendants. Yet civil conspiracy claims are common, needlessly turning routine cases into complex, protracted litigation. A civil conspiracy claim also involves an allegation that your client not only did something wrong, but did so with a pernicious intent. Trial lawyer Steve Finley will talk about defending against conspiracy claims, both by attacking the underlying causes of action and challenging the legal and factual basis for the claim.

11:40a - 12:00p

ESI DISCOVERY AND DELIVERING ON THE PROMISE OF PROPORTIONALITY

Jason Lien -- Maslon (Minneapolis, MN)

A major goal of the December 1, 2015 amendments to the Federal Rules of Civil Procedure was to curtail disproportionate discovery. But have they achieved this goal, particularly with respect to ESI discovery? Jason Lien, Maslon's co-chair of the Litigation Group, will discuss how federal courts have implemented the 2015 rule changes to ESI discovery and what steps you should take in your next case to make ESI discovery proportional.

12:00p – 12:05p

Closing Remarks before Break-Out Sessions

12:05p – 1:05p

BREAK-OUT SESSIONS ON LITIGATION MANAGEMENT