

Minneapolis Products Liability SuperCourse

September 21, 2018

AGENDA and COURSE DESCRIPTION

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

9:10a – 9:30a

Another Reason to Hate Latin: Defending Against *Res Ipsa Loquitur* in Products Liability Litigation

Ray Lewis – Deutsch Kerrigan (New Orleans, LA)

Res Ipsa Loquitur, Latin for “the thing speaks for itself,” can be a windfall-evidentiary doctrine for plaintiffs, especially in products liability litigation. The doctrine often confirms a juror’s suspicion that “something must have gone wrong for this to happen” and shifts the burden to the manufacturer to prove an alternative cause. From *voir dire* through closing, trial lawyer Ray Lewis will share proven strategies for attacking and silencing *res ipsa loquitur*.

9:30a - 9:50a

New Tobacco: Lessons from the Opioid Litigation for All Product Manufacturers

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

Given the proliferation of litigation involving opioids, opioid cases have become the “new tobacco” of mass tort litigation. Trial lawyer Jessie Zeigler will address how plaintiffs are framing these cases and provide insights into how claims against manufacturers of all types of products, well beyond pharmaceuticals, are being pursued, and how product manufacturers can prepare against a litigation wave like this in the future.

9:50a - 10:10a

Telling the Corporate Story: Advantages and Potential Pitfalls of Good Conduct Evidence

Steve Schleicher -- Maslon (Minneapolis, MN)

People can see legal disputes in a “David v. Goliath” context – the under-resourced individual standing against a well-funded, multi-billion dollar corporation. But corporations have amazing backstories, compelling missions and positive impacts in their communities. In this presentation, Maslon’s Steve Schleicher will address messaging against corporate bias at all stages of litigation – from motion practice to trial, including evidentiary issues and best practices.

10:10a - 10:50a **Panel Discussion: MDL – To Centralize or Not Centralize, That is the Question**

Moderator: Enjoliqué Aytch -- Akerman (Fort Lauderdale, FL)

Whether you are requesting centralization from the Judicial Panel on Multidistrict Litigation or addressing such a motion to transfer by the opposing party, there are numerous factors to consider when faced with the decision to centralize federal products liability cases in a multidistrict litigation pursuant to 28 U.S.C. § 1407(a). This panel will explore those initial considerations in the MDL process and beyond, including: the number of cases currently filed; the potential growth of litigation with the common questions of fact; the likelihood of inconsistent rulings and competing scheduling orders; the volume of potential discovery; the selection of the venue and judge for the transferee court; increased media attention and legal advertising concerning the pharmaceutical, mass tort or products liability litigation; the ease of resolution, including trial or settlement; and whether, in the absence of a MDL, coordination orders will be agreed upon and/or entered.

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

11:20a - 11:40a **Opening Statements in Products Liability Trials: Recognizing Jurors' Bias to Persuade and Win**

Harlan Prater -- Lightfoot Franklin & White (Birmingham, AL)

Trial lawyers must recognize that jurors bring innate and understandable biases to their decision-making process. Most jurors, for example, believe that more warnings or safety features will prevent most accidents. In this session, Harlan Prater will address how to craft an opening statement that will catch the jurors' attention and capitalize on how jurors use cognitive shortcuts to process unfamiliar information and make decisions.

11:40a - 12:00p **Occam's Razor: Simplicity as an Effective Trial Tool in Products Liability Cases**

Emily Harris -- Corr Cronin (Seattle, WA)

Making complex cases or scientific evidence simple for the trier of fact is essential to winning cases. Occam's razor – the simple explanation is usually the right one – can be an effective tool for developing trial themes, creating memorable expert testimony, undercutting opposing experts, crafting opening and closing statements and, most importantly, focusing the trier of fact on what's important. Trial attorney Emily Harris will explore the use of simplicity as an effective trial tool.

12:00p - 12:20p **Best Practices for Avoiding Cybersecurity Risks Posed by Emerging Technology Trends**

Patrick Seyferth -- Bush Seyferth & Paige (Troy, MI)

The rapid technological development of connected devices requires fresh and constant attention to physical and cybersecurity. However, with the lack of special legislation, courts look to traditional legal principles to apply to these increasingly complex issues. This presentation will explore cybersecurity, privacy, and ethical data collection issues that must be considered with the rapid development of technology, including the legal implications of advanced technology and privacy considerations when collecting and using data.

12:20p - 1:00p

Panel Discussion: How Experts are Viewed – Lawyers’ vs. Judges’ and Jurors’ Perspectives

Moderator: Brad Marsh -- Swift Currie McGhee & Hiers (Atlanta, GA)

This panel will address the disparity between how lawyers and their clients view experts and how everyone else in the courtroom views them. Topics of discussion will include: making sure the views are similar or different (depending on the expert); considerations of client input when retaining experts; expert experience and demeanor; and jury bias against certain kinds of experts.

1:00p - 2:00p

WORKING-LUNCH ROUNDTABLE DISCUSSION GROUPS

Track A: Tales from the Frontlines

Moderator: Todd Ohlms — Freeborn & Peters (Chicago, IL)

Todd Ohlms from Chicago’s Freeborn & Peters will lead a round table discussion regarding issues raised in recent products liability trials, including necessity and sufficiency of written product warnings, reasonably anticipated use of products, a defendant’s knowledge of potential dangers of its products and use of shadow juries to provide feedback during trials.

Panelists: Mary Anne Mellow – Sandberg Phoenix & von Gontard
John Buckley – Nixon Peabody
Name – Company
Name - Company

Track B: Best Practices for Accident Investigations

Moderator: Andrew Cox — Thompson Hine (Cleveland, OH)

There is key evidence to be gained and preserved in the hours and days following a workplace accident or environmental release. Unfortunately, the call to action never comes at a convenient time. Smart companies plan ahead and have accident investigation protocols in place in advance of any incident. Hear in-house counsel discuss lessons learned from accident and workplace investigations, and how those investigations have informed their company’s accident investigation protocols.

Panelists: Bobby Hood, Jr. – Hood Law Firm
Jessie Zeigler – Bass Berry & Sims
Name – Company
Name - Company

Track C: Preventing Product Liability Claims Before They Arise and How Prevention Affects Settlement

Moderator: Tom Myrick — Moore & Van Allen (Charlotte, NC)

Participants in this interactive session will discuss various components of product liability law, including contractual language used to limit product liability, how the UCC plays into product liability claims, product recalls, and getting the most from preventative measures when looking ahead to settlement or trial.

Panelists: Ericka Downie – Goodell DeVries Leech & Dann
Ray Lewis – Deutsch Kerrigan
Name – Company
Name - Company

2:00p – 2:20p

The Removal Road Trip: Plotting the Best Course with Your Clients

Steve Finley -- Gibbons (Philadelphia, PA)

Where a case is litigated is often just as important to its outcome as the underlying claims and defenses. Federal court typically offers defendants significant advantages over state court. Removal is the path to federal court, but district courts across the country have imposed requirements beyond those found in the statute. This presentation will look at recent developments regarding timing, notice and consent for removal and outline the nuts and bolts of removal practice to ensure that cases that belong in federal court stay there.

2:20p -2:40p

Lobbying The Gatekeeper: Leveraging Efficiency To Promote Meaningful Judicial Economy In Mass Torts

Martin Healy -- Porzio Bromberg & Newman (Morristown, NJ)

With the ability to stockpile thousands of cases (good and bad) with the click of a mouse, and find medical/scientific support (good and bad) for most any legal theory online, it has become far too easy to generate mass tort litigations. Accordingly, now more than ever, we must resurrect the ghosts of “Lone Pine” and the value of staged litigation to educate the court and empower it to play its role as “Gatekeeper.” This presentation will highlight some of the more successful litigation tactics used to “separate the wheat from the chaff” and discuss other creative measures designed to help foster greater efficiency in mass torts.

2:40p -3:40p

ETHICS Panel Discussion: Ethics and Social Media – Is It Truly Old Wine, New Bottle?

Liz McOmber -- Snell & Wilmer (Salt Lake City, UT)

As social media proliferates and evolves, questions remain unsettled and courts divided. The panel will discuss how social media shapes the duties of competency, evidence preservation, and confidentiality, in addition to addressing how social media may be used for investigations, discovery, and trial.

3:40p – 3:45p

Closing Remarks