

# Litigation Management: A Helping Hand on the Rio Grande

April 26-27, 2019

## AGENDA and COURSE DESCRIPTION

FRIDAY, APRIL 26, 2019

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

9:10a – 9:30a                    **Intellectual Property – What to Reveal, and What to Keep Secret**

*Terry Newby – Maslon (Minneapolis, MN)*

It is often said that a secret's worth depends on the people from whom it must be kept. If you are in-house counsel charged with managing an IP portfolio, you fully understand this reality as you are tasked with deciding the best way to protect your company's intellectual property assets. For some companies, patents are the best form of protection. For others, trade secrets are the only way to go. Picking the wrong one can be disastrous for your company. Learn the difference between patents and trade secrets, the benefits and disadvantages of each, and how savvy in-house counsel can decide which is the best tool to use to protect and manage critical intellectual property assets.

9:30a - 9:50a                    **Breaking Bad – Creative Solutions For Litigating In Challenging Jurisdictions**

*Greg Marshall – Snell & Wilmer (Phoenix, AZ)*

Defending businesses in unfamiliar and challenging jurisdictions—like New Mexico—can present unique obstacles and unusual challenges. Greg Marshall will discuss creative solutions to defending problematic consumer litigation in places where the chips seem stacked against the company.

9:50a - 10:50a                    **Panel: The Client Relationship – Beyond the Case**

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

A panel of in-house counsel will discuss the relationship between companies and their outside counsel beyond the confines of cases. The discussion will center on areas where outside counsel can set themselves apart from a client perspective. The topics that will be touched upon include: the business aspects behind the litigation; the personal touch of the outside counsel; recognizing and assisting with the in-house counsel's corporate responsibilities and reporting; planning for the future through mentoring associates and succession planning; diversity efforts; and other differentiators that strengthen the relationship and allow companies and their outside counsel to have a healthy partnership.

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

11:20a - 11:40a

**Defending Managed Care Decisions: Understanding Patient Disputes Over Coverage Denials**

*Belinda Jones – Christian & Barton (Richmond, VA)*

The denial of an employee's claim for ERISA benefits typically is not the end of a dispute, but just the beginning. Trial lawyer Belinda Jones will explore prospective ERISA plan design, administration strategies and litigation tactics that can be utilized in defending against claims asserted by those for whom benefits have been denied.

11:40a – 12:00p

**Drug Abuse or Disability: Are Employees who Take Prescription Drugs in a Protected Class?**

*Ronda Harvey – Bowles Rice (Charleston, WV)*

Many employers, including law firms, are experiencing the opioid crisis firsthand when dealing with employees addicted to prescription drugs. Several questions arise from this exposure in the workplace: is the addicted employee disabled? Is an employer who terminates an addicted employee subject to a wrongful termination claim? Learn the national trends so that you can provide the right advice to your clients and your law partners.

12:00p - 1:00p

**Interactive Panel Discussion Groups**

TRACK A: Discovery Sanctions: A Closer Look

*Moderator: Nikki Nesbitt – Goodell DeVries Leech & Dann (Baltimore, MD)*

Nikki Nesbitt will lead a panel discussion regarding the latest trends and cases regarding discovery sanctions. Individual plaintiff litigants have long used motions for sanctions as a means of strong-arming corporate and organizational litigants into settling to avoid expense, but corporate litigants sometimes miss opportunities to seek sanctions regarding individuals' discovery violations. The panel will discuss creative means of both defending against and bringing motions for sanctions in the appropriate cases.

TRACK B: Doing Business Abroad - Risk Assessments as Part of an Effective FCPA Compliance Program

*Moderator: Scott O'Connell — Nixon Peabody (Boston, MA)*

The Department of Justice continues to make enforcement of the Foreign Corrupt Practices Act a priority. Every company doing business abroad needs an effective compliance program with company-specific risk assessments. This breakout session will discuss best practices developed between and among in-house compliance professionals and their outside attorneys. Come participate in what should be an active and informative session.

TRACK C: Win or Lose - How Well Did Your Company Witness Do in Deposition?

*Moderator: Cheryl Bush – Bush Seyferth & Paige (Troy, MI)*

For corporate parties who find themselves in litigation, corporate depositions can make or break a case. Though the rules for these depositions haven't changed in almost 50 years, the strategies for a successful deposition certainly have. In this panel, four seasoned trial lawyers offer practical recommendations and tips for maneuvering the minefield of company witness depositions, including how to select the right witness, how to use company materials effectively, and how to prepare that witness to tell the company's story.

TRACK D: Cautionary Tales – Lessons Litigators Learned the Hard Way  
*Your Client Needs*  
*Moderator: Jennifer Fitzgerald — Freeborn & Peters (Chicago, IL)*

Those that don't learn from history are doomed to repeat it. We've all been there, and thought to ourselves, "I'll never make that mistake again." This is your opportunity to come and discuss your life lessons and to learn from others as well. We will discuss tricks of the trade ranging from approaching a difficult judge to training associates and interacting with clients.

SATURDAY, APRIL 28, 2019

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

9:10a – 9:30a                      **Controlling the Battlefield - How to Pick a Winning Jury**

*Sawnie McEntire – Parsons McEntire McCleary (Dallas, TX)*

Focusing on jury selection strategies and techniques, Trial lawyer Sawnie McEntire will share tips on identifying ideal jurors and, equally important, dangerous jurors to avoid. Explore and address the do's and the don'ts of an effective voir dire.

9:30a – 9:50a                      **Think Inside the Box: When to Enlist Jury Consultants and Conduct Pretrial Research**

*Joshua Metcalf – Forman Watkins & Krutz (Jackson, MS)*

Mock trials and focus groups can be a powerful tool in helping litigators and litigants evaluate their cases and prepare them for trial. From narrowly-tailored presentations of specific issues to full-blown mini-trials, jury research services can help attorneys identify the strengths and weaknesses in their cases, see how potential jurors react to key witnesses, facts and themes, and gauge potential damages scenarios. Joshua Metcalf will discuss the various types of jury research, when to use them, what to present and how, the potential costs, and ways to save.

9:50a -10:50a                      **Panel Discussion: Understanding Changing Juror Dynamics**

*Moderator: Joe Ortego – Nixon Peabody (New York, NY)*

Discard your old stereotypes and outdated ideas and explore the changing demographics, including the political and social outlook, of today's jury pool. Trial attorney, Joe Ortego, will lead a lively discussion among in-house and outside counsel exploring the myths, the facts and effective strategies implemented in a recent successful jury verdict.

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

11:20a – 11:40a

**The Road to Pre-Suit Resolution of a High-Exposure Claim. Do You Believe in Miracles?**

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

Many companies naturally are reluctant to consider early resolution of high exposure cases as such an approach requires an exchange of information and details that does not typically occur until much later in litigation. To achieve a timely, favorable outcome, companies must be prepared to voluntarily disclose sensitive documents and information, to share promptly the findings of their experts with the other side, and to be participate in mediations that can add considerable expense. Trial lawyer Lyndon Sommer will discuss key strategies that can be employed when attempting to settle claims before suit is filed, and explores how professional liability claims can be good candidates for this approach.

11:40a – 12:00p

**A Brave New World: Algorithms and 3-D Printing and the Implication on Medical Products Liability Law**

*Jeff Hines – Goodell DeVries Leech & Dann (Baltimore, MD)*

As has often been said, life can only be understood backwards; but it must be lived forwards. This is especially true when it comes to litigation, where an increasing reliance on technology like advanced algorithms and artificial intelligence, including in automobile technology, three-dimensional printing, and medical products, are altering the face of litigation. At a time when tomorrow is blurring into today, it is imperative that lawyers and in-house counsel future-proof their companies by understanding how emerging technologies are impacting a variety of issues, including the standard of care and the scope of liability.

12:00p – 12:10p

Closing Remarks

12:10p – 1:10p

**Interactive Panel Discussion Groups**

TRACK A: Protecting Client Information During Litigation

*Moderator: Cabell Clay – Moore & Van Allen (Charlotte, NC)*

With litigation comes discovery and, often, the requirement to share sensitive business information with your opponent and even the Court. This session will explore techniques for protecting business information, such as protective orders and motions to seal, as well as the pitfalls to avoid.

TRACK B: Making Litigation Part of Your Compliance Toolbox

*Moderator: David Esquivel – Bass Berry & Sims (Nashville, TN)*

Defending lawsuits should not just be a backwards-looking exercise. The litigation and discovery process often shines a light on issues that need to be fixed or tweaked. This session will explore best practices for incorporating lessons learned from litigation into your company's compliance program.

**TRACK C: Identifying and Preparing Expert Witnesses for Trial**

*Moderator: Steve Lowenthal — Farella Braun + Martel (San Francisco, CA)*

How do you identify the key experts you need for trial? And once you have them, what are the best practices for preparing them for trial, and how do these practices vary depending on your venue and on whether you are trying the case before a judge or jury. Come join an interactive discussion with in-house and outside counsel about this critical part of every trial.

**TRACK D: Cutting It Down To Size - Strategies for Handling Life Care Plans**

*Moderator: Joh Keller — Deutsch Kerrigan (New Orleans, LA)*

Ridiculously expensive and artificially-inflated Life Care Plans are increasingly common in personal injury cases. A panel of in-house and outside counsel will share their strategies for dealing with exorbitant future medical expenses. Join us as we discuss how to cut their Life Care Plan down to size with discovery, motion practice, and cross-examination. Tell us how you decide whether to give the jury a Defense Life Care Plan and which medical opinions to feed your expert.