

Emerging Trends in Asbestos Litigation



What You Need to Know to Survive the Litigation Throughout the Next Decade

March 3-5, 2010 | The Ritz-Carlton Marina del Rey

Co-Chairs:

Lawrence Cetrulo, Esq., Cetrulo & Capone, LLP, Boston

Steven Kazan, Esq., Kazan, McClain, Lyons, Greenwood & Harley, PLC, Oakland, CA

Wednesday, March 3, 2010

6:00 Networking Event: Wine & Cheese Reception - Meet the Judges
Location: Ballroom Terrace

Thursday, March 4, 2010

7:45 Continental Breakfast and Morning Registration - Salons 1&2

8:15 Welcome & Introductory Remarks - Salons 1&2

8:30 New and Enduring Issues in Asbestos Litigation - Premises Cases, Equipment Cases and US Navy Litigation
 • Premises liability, the new defendants and the recent case law
 • Friction and brake-lining cases
 • The changing case against equipment defendants
 • On the periphery – what new types of plaintiffs are filing suits and who are the new defendants in asbestos litigation?
 • Will there be an increase in non-malignancy filings?
 • Unique issues with Navy cases and their removal
 • New York's pending decision: vicarious liability for premises owners
 • Pennsylvania-a friendly jurisdiction for all? The recent plaintiff and defense verdicts - *Williams* and *Shaffner*
 Defense: Rodney Umberger, Esq., Williams Kastner, Seattle
 Plaintiff: Joseph Satterley, Esq., Sales & Satterley, Louisville, KY
 Plaintiff: Alani Golanski, Esq., Weitz & Luxenberg P.C., New York
 Defense: Michael Ramirez, Esq., K&L Gates, Dallas

9:30 Latest Developments in the Understanding of Mesothelioma
 • An objective view from the front line of the current state of treatment options, advancements in medicine, and the hope for the future
 Hedy Lee Kindler, MD, Associate Professor of Medicine & Director, Mesothelioma Program, Section of Hematology/Oncology, University of Chicago, Chicago

10:15 Morning Break

10:30 The Latest on Removal
 • The merits of recent removal / remand efforts in light of the changing nature of the MDL
 • Fraudulent joinder and removal-are they still a problem?
 • Plaintiff and defense perspectives on where to file a case and how to respond to removal
 • Federal officer removal
 • Federal enclave removal - ethical considerations from both sides
 Defense: Michael Pietrykowski, Esq., Gordon & Rees, LLP, San Francisco
 Plaintiff: Charles Siegel, Esq., Waters & Kraus, L.L.P., Dallas

11:30 Trends in Asbestos Claim Filings and Settlement Patterns
 • History of the litigation - settlement patterns and future projections
 • Models for forecasting future malignant disease rates
 • The decline in non-malignant claiming
 • Inside and outside the US
 • Costs of resolving claims in the future – non-malignant vs. cancer claims
 Francine Rabinovitz, President, Hamilton, Rabinovitz & Associates, Inc., Carmel, CA
 Defense: Stephen Foley, Esq., Foley & Mansfield, PLLP, Oakland, CA
 Plaintiff: Steven Kazan, Esq., Kazan, McClain, Lyons, Greenwood & Harley, PLC, Oakland, CA

12:15 Networking Luncheon - Sponsored by Navigant Consulting
Location: Salon 3

1:15 In-House Counsel and the Courts: A Panel Discussion With Four Managing Judges
 • Finding the balance for the exigent cases-speed v. fair process
 • The role of the judge in the settlement process-pros and cons of different approaches
 • Forum shopping-what are the national trends and why?
 • Private deals-should they be accommodated in CMO's?
 • Motions regarding workers' compensation and invoking the intentional tort exception
 • Reducing litigation costs-company and court concerns
 Moderator: Robert Riley, Esq., Schiff Hardin LLP, Chicago
 Joseph O'Hara, Jr., Esq., V.P. & Associate G.C., Owens-Illinois, Inc., Perrysburg, OH
 Robert Ryan, Esq., Deputy General Counsel, Stallion Oilfield Services, Houston
 Paul Slater, Esq., Counsel, General Electric, Fairfield, CT
 Charles Siegel, Esq., Waters & Kraus, L.L.P., Dallas
 Hon. Elihu Berle, Civil Supervising Judge, Los Angeles Superior Court
 Hon. Sandra Mazer Moss, Philadelphia Court of Common Pleas
 Hon. Mark Davidson, Texas MDL Asbestos Judge
 Hon. Harold Kahn, San Francisco Superior Court

2:15 Case Management Orders: "The Good, The Bad, and The Ugly"
 • What CMOs work in the current litigation?
 • What CMOs require fine tuning or wholesale revision?
 • What changes should be made and why?
 Defense: Lawrence Cetrulo, Esq., Cetrulo & Capone, LLP, Boston
 Plaintiff: Gordon Greenwood, Esq., Kazan, McClain, Lyons, Greenwood & Harley, PLC, Oakland, CA

3:00 The Costs of Bet-the-Company Litigation
 • Estimating the risks: evaluating existing & future liability
 • Where were the blockbuster verdicts and will they be upheld?
 • The new wave of bet-the-company trials-what will be over the next two years and how to strategize so that your firm is prepared
 • How huge verdicts impact both sides of the bar
 Plaintiff: William Levin, Esq., Levin Simes Kaiser & Gornick, LLP, San Francisco
 Defense: Kevin Hexstall, Esq., Rawle & Henderson LLP, Philadelphia

3:45 Afternoon Break

4:00 The Latest Developments in MDL 875: From Graveyard to the New Frontier?
 • Report on activity
 • Moving beyond show cause hearings-now what?
 • Settlement conferences within the MDL - What happens before, during and after
 • The use of magistrate judges and discovery in the MDL
 -MDL website and EDPA website
 -Rule 26f conferences and orders
 -Authorizations, interrogatories, and requests to produce
 • The number of cases moving forward and their impact on the litigation
 • Developments in the MARDOC
 • The use of removal
 Defense: Kyle Bjornlund, Esq., Cetrulo & Capone LLP, Boston
 Plaintiff: Donald Krispin, Esq., The Jaques Admiralty Law Firm, P.C., Detroit, MI
 Plaintiff: Janet Ward Black, Esq., Ward Black Law, Greensboro, NC

4:45 **Where Will Trials Be for the Next Decade and How to Handle Them-Increased Trial Activity in Old and New Jurisdictions**
• Overview of Trials in New York, Missouri, Pennsylvania, Minnesota, Massachusetts, Illinois, Delaware and Iowa
• Trends in filings in the last five years – why are cases shifting away from places like California?
• What do the different jurisdictions have to offer plaintiffs and defendants?
• Plaintiff and defense views on trying cases in different states
Defense: Gary Elliston, Esq., DeHay & Elliston, L.L.P., Dallas
Defense: David Speziali, Esq., Speziali, Greenwald & Hawkins, Williamstown, NJ
Plaintiff: Gilbert Purcell, Esq., Brayton Purcell LLP, Novato, CA
Plaintiff: Perry Browder, Esq., Simmons Browder Gianaris Angelides & Barnerd LLC, East Alton, IL

5:45 **Networking Reception - Sponsored by Cetrulo & Capone, LLP**
Location: Ballroom Terrace

Friday, March 5, 2010

7:00 **Women's Networking Breakfast - Ballroom Terrace**

8:00 **Continental Breakfast - Salons 1 & 2**

8:30 **Role of the Bankruptcy Trusts in Civil Asbestos**
• Who should choose the plaintiffs' strategy?
• Exposure evidence, timing, true values
• Transparency, contribution and offsets – what are current solvent defendants doing to assign liability to the trusts?
• Asbestos bankruptcy trusts on-line: a closer look at the assets and payments of the existing (and soon to be confirmed) bankruptcy trusts
• Jurisdictional developments
• Will newly-funded trusts impact filing trends?
• Reorganized companies without 524(g) injunctions-Chrysler, GM, Allis-Chalmers, Kentile Floors, etc.
• The re-emergence of plaintiffs' screening programs – will this trend continue?
• A retrospective and a look out to the horizon: the Rand studies-what's coming, when and their anticipated impact
• International comparatives-co-defendant standing and how Australia is handling their influence in bankruptcies settings
Defense: Kirk Hartley, Esq., Childress Duffy Goldblatt, Ltd., Chicago
Defense: Mark Behrens, Esq., Shook, Hardy & Bacon L.L.P., Washington, DC
Defense: Joseph O'Hara, Jr., Esq., V.P. & Associate G.C., Owens-Illinois, Inc., Perrysburg, OH
Plaintiff: Natalie Ramsey, Esq., Montgomery, McCracken, Walker & Rhoads, LLP, Philadelphia
Plaintiff: Kathy Byrne, Esq., Cooney & Conway, Chicago

9:30 **Medicare Secondary Payer Update-What Asbestos Plaintiffs & Defendants Need to Know**
• Review & explanation of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (P.L. 110-173)
• Key milestones and implementation timeline
• Who will be directly affected?
• Best practices for handling claims potentially involving Medicare beneficiaries
• Benefits to using a third party administrator (TPA)
• Compliance strategies
James Tanella, Managing Director, Navigant Consulting, Inc., Lawrenceville, NJ
Defense: Sharon Caffrey, Esq., Duane Morris LLP, Philadelphia
Plaintiff: Kathy Byrne, Esq., Cooney & Conway, Chicago
Sylvius Von Saucken, The Garretson Law Firm, Cincinnati, OH

10:15 **Morning Break**

10:30 **Judicial Roundtable**
• Motions in limine
• Docket management
• Court resource allocation
• What is working in the courtroom and what isn't
• Effective motion practice in asbestos litigation
• The new defendants emerging and their impact on docket and case management-court congestion, settlement, etc.
Moderators: Lawrence Cetrulo, Esq., Cetrulo & Capone, LLP, Boston, and Steven Kazan, Esq., Kazan, McClain, Lyons, Greenwood & Harley, PLC, Oakland, CA
Hon. Sandra Mazer Moss, Philadelphia Court of Common Pleas
Hon. Sherry Klein Heitler, Administrative Judge for Civil Matters, First Judicial District, New York State Supreme Court - Civil Branch
Hon. Elihu Berle, Civil Supervising Judge, Los Angeles Superior Court
Hon. Mark Davidson, Texas MDL Asbestos Judge
Hon. Harold Kahn, San Francisco Superior Court

11:30 **Ethics & Integrity in the Law-Rockin' & Rollin' Your Way to Better Practices**
• The Jagger Discovery Doctrine and Model Rule 3.4
• Henley's Imperative of Advocatorial Candor and Model Rule 3.3
• The Temptations' Advisory Against Unnecessary Recusals and Model Rule 1.16
• Carpenter's Rule on Post-Defeat Behavior and Model Rule 3.5
• Dire Straits' Imperative of Case Economy and Model Rule 3.2, 1.3
• Fuller Four's Warning Against Overly Inventive Pleadings and Model Rule 3.1
• Hall & Oates's Ruling on Excessive Attorney's Fees and Model Rule 1.5
• Bachman Turner Overdrive's Grievance Avoidance Technique and Model Rule 1.4
Hon. Mark Davidson, 11th Civil District Court-Texas MDL Judge, Houston

12:30 **Adjourn**

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