

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

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

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

Wednesday, March 3, 2010

6:00 PM Networking Event: Wine & Cheese Reception - Meet the Judges

Thursday, March 4, 2010

7:45 Continental Breakfast and Morning Registration

8:15 Welcome & Introductory Remarks

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

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-Here and Abroad

- Modalities of treatments
 - Comparison of diagnosis rates nationally and internationally
- 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 Phenomenon of the "Selected Jurisdiction"

- What are the current "selected" jurisdictions and why?
- As more cases go to trial, is this concept fading?
- The plaintiff's choice of forum: should claimants, attorneys, litigation conveniences or jurisdictional infrastructures and capabilities determine forum?
- What are the costs and benefits for both claimants and defendants in developing new jurisdictional platform?
- From the Clerk's office to the jury pool: the silent burden of increased claims on a selected jurisdiction

Defense: Michael Pietrykowski, Esq., Gordon & Rees, LLP, San Francisco
 Plaintiff: Charles Siegel, Esq., Waters & Kraus, L.L.P., Dallas

11:30 Trends in Asbestos Settlements

- History of the litigation - settlement patterns and future projections
- Creating leverage in settlement talks and avoiding trial
- 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

1:15 In-House Counsel and the Courts: A Discussion

- Managing litigation costs-corporate and court concerns
- Court closures-true impacts and the future of the civil trial

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
 Michael Sehr, Senior Vice President, Environmental & Mass Tort Claims, CNA Insurance, Chicago
 Paul Slater, Esq., Counsel, General Electric, Fairfield, CT
 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

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: Anita Pryor, Esq., Terrell Hogan, Jacksonville, FL

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: Thomas Hart III, Esq., Law Offices of Thomas H. Hart III, P.C., Christiansted, VI
 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?
- The use of magistrate judges and discovery in the MDL
- 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 Jacques 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

Friday, March 5, 2010

7:00 Women's Networking Breakfast

8:00 Continental Breakfast

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?

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

Defense: Sharon Caffrey, Esq., Duane Morris LLP, Philadelphia

Plaintiff: Kathy Byrne, Esq., Cooney & Conway, Chicago

Matthew Garretson, The Garretson Law Firm, Cincinnati, OH

James Tanella, Managing Director, Navigant Consulting, Inc., Lawrenceville, NJ

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

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 and 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

Defense: Lynn Luker, Esq., Lynn Luker & Associates, New Orleans

Plaintiff: Peter Kraus, Esq., Waters & Kraus, L.L.P., Dallas

12:30 Adjourn

About the Chairs

Lawrence G. Cetrulo's primary practice areas are (1) industry-wide toxic tort litigation defense; (2) business litigation; (3) insurance and re-insurance complex coverage litigation; (4) environmental litigation; and (5) the defense of auto design liability litigation. Mr. Cetrulo has over 30 years of experience in all aspects of the national coordination, administration, preparation, and the trial and appeal of toxic tort cases, involving substances such as asbestos, lead paint, and benzene. Mr. Cetrulo serves as National and Regional Trial Counsel and Coordinating Counsel of toxic tort litigation for Fortune 500 companies, and as Defendants' Liaison Counsel in the Massachusetts and Rhode Island asbestos litigation. In addition to his extensive trial experience, Mr. Cetrulo has written extensively on toxic tort issues, authoring the three-volume treatise, *Toxic Torts Litigation Guide*, published by Thompson/West. Mr. Cetrulo frequently speaks, both locally and nationally. Mr. Cetrulo graduated from Harvard College (B.A., with Honors in American Government, 1971); Harvard University Graduate School of Education (Ed.M., 1972); and, Northeastern University School of Law (J.D., 1975).

Steven Kazan, Founding, senior and managing principal; admitted to New York (since 1967-) and California (since 1970-) Bars; U.S. Courts of Appeals, Third, Fifth and Ninth Circuits; California and U.S. District Courts, Northern and Eastern Districts of California; U.S. Supreme Court; Harvard University (LL.B., 1966); Brandeis University (A.B., 1963.) He filed his first case on behalf of an asbestos victim in 1974, and since then has represented thousands of injured workers and their family members in court cases. He has also represented their interests through his service on creditors' committees for asbestos disease victims in the reorganizations of asbestos companies that sought to avoid their responsibility under the bankruptcy laws, including Amatec, Carey Canada, Celotex and H.K. Porter, and was class counsel in the Fibreboard Global Settlement. Mr. Kazan served on the Asbestos Victims Creditor's Committee in the Chapter XI bankruptcy reorganization of Babcock and Wilcox, and also serves as counsel to asbestos victim members of the Creditors' Committees in the Chapter XI reorganization of Armstrong World Industries (AWI), W.R. Grace, NARCO, Federal Mogul, Kaiser Aluminum, Global Technologies (GIT), ACandS, ARTRA, Owens Corning, Plibrico, T&N, U.S. Gypsum, Combustion Engineering, the Muralo Company, Congoleum, Flintkote Company, Special Electric, and ABB Lummus Global, and T H Agriculture & Nutrition. He is a member of the Plaintiffs' Steering Committee for Asbestos Multi-District Litigation (MDL) for cases filed in Federal Courts throughout the United States, and a member of the Trustees' Advisory Committee to the Celotex Asbestos Compensation Trust. Recently, there has been much attention directed at the mounting asbestos litigation, corporate bankruptcies resulting from their asbestos liabilities, and possible legislative remedies to these problems. He often talks to reporters so they can better understand these issues as they write their articles, which provide more detailed information on this complex topic.

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