

American Conference Institute's 8th Annual Summit on Defending & Managing



AUTOMOTIVE PRODUCT LIABILITY LITIGATION

Expert Strategies for Singled-Out Vehicles and Media-Focused Issues

June 3-4, 2015 – The Omni Chicago Hotel on the Magnificent Mile – Chicago, IL

Distinguished Co-Chairs:



Cari K. Dawson
Alston & Bird LLP



Thomas P. Branigan
Bowman and Brooke LLP

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The premier automotive product liability event on:

- **Defending typical defect theories:** rollovers, side curtain air bags, tires, tire aging, electronic stability control, seat backs and beyond
- **Recalls: how they are impacting class actions,** duty to warn, and recall based Rule 23 arguments
- **VSA and autonomous cars:** anticipating the future of claims
- Incorporating the **latest regulatory initiatives on safety and design of automotive products** into your litigation strategy
- **Recent developments in class action litigation** including arbitration clauses on class action waivers and using MDL as a strategic measure to defeat class action litigation
- **Effectively cross-examining experts and developing qualified newer experts**
- **Privacy concerns with data collected on EDRs or other devices used for data mining:** the government's role in assessing/protecting data, auto manufacturer's responsibility, and related cyber security concerns
- **Evidence preservation/spoliation,** controlling costs associated with discovery and e-discovery, and avoiding sanctions for discovery abuse
- Overcoming the increasing use of **reptile theory as a trial tactic**
- **Ensuring confidentiality in the litigation of automotive claims,** protecting work product in a discovery dispute, and using arbitration to your advantage

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Special Address by:

Timothy H. Goodman
National Highway Traffic Safety Administration

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Hon. Karen Shreeves-Johns
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Hon. Judith H. Matarazzo
Multnomah Co. Cir. Ct. Ore.




Hon. Alan C. Torgerson (ret.)
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Here are just some of the agencies, companies and firms already participating:

| | | |
|---|---|--|
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Now in its 8th year, ACI's lauded **Automotive Product Liability Litigation** conference is the highest level national event on the market. It's the only one that combines federal and state judicial insights and networking and business development opportunities with dozens of in-house counsel from manufacturers and suppliers, all while allowing you to keep pace with the hot jurisdictions, case law, new and emerging parties, and advancements in technology. This year's agenda has been revamped to provide you with strategic advice, critical insights, and comprehensive updates for:

- **Defending typical defect theories: rollovers, side curtain air bags, tires, tire aging, electronic stability control, seat backs and beyond**
- **Recalls: how they are impacting class actions, duty to warn, and recall based Rule 23 arguments**
- **VSA and autonomous cars: anticipating the future of claims**
- **Incorporating the latest regulatory initiatives on safety and design of automotive products into your litigation strategy**
- **Recent developments in class action litigation including arbitration clauses on class action waivers and using MDL as a strategic measure to defeat class action litigation**
- **Effectively cross-examining expert and developing qualified newer experts**
- **Privacy concerns with data collected on EDR's or other devices used for data mining: the government's role in assessing/protecting data, auto manufacturer's responsibility, and related cyber security concerns**
- **Evidence preservation/spoliation, controlling costs associated with discovery and e-discovery, and avoiding sanctions for discovery abuse**
- **Overcoming the increasing use of reptile theory as a trial tactic**

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7:20 Registration and Continental Breakfast

8:00 Co-Chairs' Welcoming Remarks



Thomas P. Branigan
Executive Managing Partner
Bowman and Brooke LLP



Cari K. Dawson
Partner
Alston & Bird LLP

8:05 In-House Insights on Case Evaluation, Litigation Management and Formulating Defense Strategy; Managing Costs; Selecting and Retaining Law Firms and Distribution of Legal Spend in Today's Environment; and More

| Panel 1 (8:05–9:25) | Panel 2 (9:25–10:40) |
|---|--|
| <p>Donald R. Parshall, Jr Senior Counsel, Legal Department, Product and Business Litigation Group Nissan North America</p> <p>James G. Derian Litigation Attorney Delphi Automotive Systems, LLC</p> <p>Scott Cordes Vice President, Chief Legal Officer Gulf States Toyota</p> <p>Scott Richardson Senior Counsel Bridgestone Americas</p> <p>Steve Taub Assistant General Counsel U-Haul International Legal Department</p> <p>Spencer Scott Senior Legal Counsel Kawasaki Motors Corp USA</p> <p>Keith Benjamin Group Legal Director Jaguar Cars</p> <p>Victoria Webster Senior Counsel Yamaha Motor Corporation, U.S.A.</p> | <p>Thomas T. Johnson Legal Counsel Kawasaki Motors Corp., U.S.A.</p> <p>Steven L. Grey Chief Counsel - Product Legal Isuzu North America Inc.</p> <p>Jaime Myers Corporate Counsel, Litigation Law and Public Policy–Legal Services Division Caterpillar Inc.</p> <p>Ellen L. Farrell Assistant General Counsel Toyota Legal One c/o Toyota Motor Sales, U.S.A., Inc.</p> <p>Thomas N. Vanderford, Jr. Associate General Counsel, Executive Director, Litigation Legal Department Hyundai</p> <p>Angelyn Guanajuato Assistant General Counsel U-Haul International, Inc.</p> <p>Kathleen Cindric Litigation Counsel Cooper Tire & Rubber Company</p> |

Panel 1 & 2 Moderator:

John D. Golden

Partner

Golden & Grimes LLP

Examining the Changing Landscape of Automotive Product Liability and the Newest Trends in Claims Being Asserted

- Examining the latest claims being filed
 - o Vehicle safety assist technology that makes cars safer
 - o Evaluating the enormous cost of litigating a case and hiring an expensive expert
- Understanding the changing landscape including the trend toward catastrophic claims with potential for bigger settlement/verdict

Expertise and Coordination with Outside Counsel

- Managing defense counsel efficiently and effectively
- Balancing the difficulty of finding quality counsel
- Coordinating counsel for pattern litigation

Managing Legal Costs, Including Outside Counsel Fees

- Managing outside counsel through realistic and accurate budgets
- What alternative billing arrangements are out there and what are the success stories?
- Managing the exorbitant cost of defending cases that require retention of expert witnesses and expense of obtaining the testimony required by *Daubert* rulings
- Budgeting overall expense in taking a case through trial yet keeping the case resolvable level without the need for trial

- Frivolous lawsuits when injury results from the accident itself (not a defect): how to avoid the sheer volume of these suits placing a burden on legal resources
- Awareness of general counsels who have a responsibility to report and advise to a CEO

Case Evaluation

- Determining which case should go to trial and which should settle
- Controlling future litigation: identifying trends to ward off future lawsuits; knowing when to resolve a case for economic reasons and when to pay significantly more to defend a suit

In-House Perspectives on Selection and Evaluation of Outside Counsel

- Underlying partner relationships and engagement of outside counsel
- The things that clients really want to know before engaging outside counsel
- Demystifying the firm selection process
- Best practice for communications and candor with clients
- Pet peeves: “worst practices” that outside counsel should avoid committing
- Expectations relating to litigation budgets

10:40 Morning Break

10:55 The Latest Nuances on Defending Typical Defect Theories: Rollovers, Side Curtain Air Bags, Tire Aging, Electronic Stability Control, Seat Backs and Beyond

Brian J. Baggot

Partner

Rumberger, Kirk & Caldwell, P.A.

Jeffrey A. Cohen

Shareholder

Carlton Fields Jordan Burt

Michelle I. Schaffer

Shareholder

Campbell Campbell Edwards & Conroy PC

Rollovers

- Factoring in the latest mechanics and engineering issues into rollover claims

Side Curtain Safety Canopy/Rollover Curtain

- Combatting the latest claims that defendant should have had a Rollover Safety Canopy/Curtain in place or sooner and the injuries would have been mitigated if did; should not have been optional; should have covered more rows
- Factoring in accident sequence; pre-trip occupant position; occupant kinematics; type of injury
- Determining whether side curtain airbags should be required and more than a standard in vehicles
- Combating Plaintiff's argument that side curtain airbags should have been installed sooner or that all models should have side curtain air bags

Tires and Tire Aging

- Combatting the latest claims regarding lack of proper warnings, improper tire manufacture or design, improper recommendation, failure to follow recommendations by retailers
- Analyzing the relationship between tread separation and loss of control
- Analyzing typical tire defenses, including damage from service abuse and damage from road hazards
- Successfully creating the best defense strategy for tire claims
- Tire technology and its impact on performance of the vehicles
- Assessing the issues regarding low profile tires and higher end vehicles
- Emerging technology on run flat tires
- Developing litigation strategy to dismiss the product liability claims and minimizing damages
- Identifying the dangers associated with high PSI tires

Electronic Stability Control (ESC)

- Examining the liability issues presented by electronic stability control (ESC): the federal regulation that applies, and its effect on liability
 - o FMVSS regulations

- How to counter "lack of" electronic stability control (ESC) claims: Countering plaintiff's argument that if said changes were made (usually at a few dollars per vehicle) the accident/injury would not have occurred
- How to respond to ESC as a direct challenge to the defense that rollovers are the result of driver conduct and that an accident is unavoidable

Seat Back Litigation

- Combatting the latest claims arising from rear-impact cases in which occupant(s) of the vehicle hit sustain injuries due to the deformation of the front passenger seats

Asbestos Brake Pads

- Litigation over brake pads that contain asbestos

12:15 Networking Lunch for Speakers and Attendees

1:15 Recalls: How They Are Impacting Class Actions, Duty to Warn, and Recall-Based Rule 23 Arguments

S. Vance Wittie

Special Counsel

Sedgwick LLP

J. Tracy Walker IV

Partner

McGuireWoods LLP

Terri S. Reiskin

Member

Dykema Gossett PLLC

- Developing a strategy when plaintiff gets notice of a recall after an accident
- What is the litigation strategy for recall cases?
 - o Strategies for helping the jury understand that despite recall company acted reasonably in terms of timing and notification of issuance of recall
 - o Punitive damages
- Duty to warn concerning alleged manufacturing defect
- Business to business relationship
 - o How one company will sue another company in the aftermath of a recall and claim part or system was fully to blame for the recall
- Dispute over problem and cause of defect
- Recalls and Business Impact: How the latest recalls are impacting class claims
- Using recalls as a strategic measure to defeat class actions
- Identify and develop appropriate Recall based Rule 23 arguments
- Asserting mootness arguments
- Litigation based on diminution of value of car as a result of the alleged defect
- Dealing with pattern litigation – individual lawsuits based on recalls
- Resolving time delay issues

2:25 **Recent Developments in Class Action Litigation Including Arbitration Clauses on Class Action Waivers and Using MDL as a Strategic Measure to Defeat Class Action Litigation**

Michael B. Gallub
Member
Herzfeld & Rubin, P.C.

Neal Walters
Partner
Ballard Spahr LLP

- What cases are recently decided and brewing that will directly affect manufacturers and consumers? Where is the battleground today and for the near future in Class Actions?
- Examining the interplay between *Knowles* and CAFA: Removal from state to federal court where total recovery including attorney's fees is \$5million or more; Preventing forum shopping
- Identifying the commonality of class action claims
- "Rule 23(b)(3)" class actions
- Class action in the absence of manifest defect: Examining the *Whirlpool* decision
- Arbitration clauses on class action waivers
- Nuances with MDL Litigation
 - o Choice of law issues
 - o Procedural considerations - discovery issues unique to MDL litigation
 - o Coordination between state and federal MDL proceedings
 - o Using MDL as a method to defeat class action litigation

3:25 **Afternoon Break**

3:40 **The Current Regulatory Environment for Litigators: Incorporating the Latest Regulatory Initiatives on Safety and Design of Automotive Products Into Your Litigation Strategy**

Timothy H. Goodman
Assistant Chief Counsel for Litigation and Enforcement
National Highway Traffic Safety Administration
U.S. Department of Transportation

Erika Z. Jones
Partner
Mayer Brown

- The latest safety technologies, the regulatory environment, and what to expect in the coming months and years
- Make sure your client is rigorously documenting its "engineering logic" methodology
- Ensuring your client has the right conversations with the regulators
- Reviewing the impact of new, proposed, or final FMVSS rules and issues
- NHTSA developments and bulletins and legitimately recalling a car that was compliant with NHTSA
- Potential regulatory implications for autonomous cars
- Global trends: Safety standards; Energy efficiency; Environmental protection; Theft-resistance

European Union (EU) Directives; UNECE Regulations; UN Global Technical Regulations

- NHTSA's request for data for purposes of infrastructure; how does this reconcile with FTC's consumer privacy concerns?
- Recent activity by the CPSC

4:40 **VSA and Autonomous Cars: Overcoming the Product Liability Defense Challenges Associated with Vehicle Driver Assist Technologies, Sensor Technologies and Active Safety Systems; and Anticipating the Future of Product Liability Claims Involving Autonomous Cars**

Thomas P. Branigan
Executive Managing Partner
Bowman and Brooke LLP

Gerard Cedrone, Esquire
Shareholder
Lavin, O'Neil, Cedrone & DiSipio

David M. Rice
Partner
Carroll, Burdick & McDonough LLP

- Technologies that apply brakes, blind spot warnings, switch lanes, rear steering, lane departure warnings, adapted cruise control to assist the driver: What is the consumer expectation?; What is the comparative negligence?; Determining whether additional features will lead to product liability claims
- How do auto manufacturers deal with requests for source codes (proprietary information on how the vehicle functions)
- Where are we on the latest claims and where are we headed?
- Defense challenges: limitations of sensors; difficulty in testing and proving durability and reliability over the long term; absence of regulation
- How to factor in questions of driver's unreasonable reliance on manufacturer/distributor representations and driver's possible misunderstanding of system functions or limitations
- What happens when the system fails and operation by the driver could have prevented an accident?
- Responding to the argument that the new technology should have been installed in lower models
 - o Phasing in new technology
- Anticipating the future of product liability litigation in autonomous cars

5:45 **Conference Adjourns**

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Director of Sales, American Conference Institute

Tel: 212-352-3220 x5242
w.tyler@AmericanConference.com

7:30 **Continental Breakfast**

8:00 **Privacy Concerns with Data Collected on EDRs, or Other Devices Used for Data Mining: the Government's Role in Accessing/Protecting Data, Auto Manufacturers' Responsibility, and Related Cyber Security Concerns**

Jerry L. Johnson
Vice-President & Deputy General Counsel
Robert Bosch LLC

Robert F. Chapski
Shareholder
Lewis, Thomason, King, Krieg & Waldrop, P.C.

Peter J. Fazio
Partner
Aaronson Rappaport Feinstein and Deutsch, LLP

- To what extent can the government obtain data recorded in vehicles? Who owns the data?
- State by state variations on laws protecting privacy and the data collected from vehicles
- Cyber security – how is the government protecting the data?
- How insurance companies are tapping into data that tracks if the driver is safely operating the vehicle; to what extent can insurance companies tap into the data and can any of it be used in criminal prosecutions?
- How can this data be used in autonomous vehicles?

9:05 **View From the Bench: A Unique Opportunity to Hear How Judges Interpret Evidence/Arguments in the Automotive Context**

Hon. John M. Younge
Phila. Ct. Common Pleas

Hon. Karen Shreeves-Johns
Phila Ct. Common Pleas

Hon. Judith H. Matarazzo
Multnomah Co. Cir. Ct. Ore.

Hon. Alan C. Torgerson (ret.)
U.S. Dist. Ct., D.N.M.

Moderator

Anthony J. Monaco
Partner
Swanson, Martin & Bell, LLP

10:35 **Morning Break**

10:50 **Practical Pointers on Experts: Effectively Cross-Examining Plaintiff's Expert, Sharing Defense Experts, and Developing Qualified Newer Experts**

De Martenson
Senior Partner
Huie, Fernambucq & Stewart, LLP

Jeffrey M. Croasdell
Director
Rodey, Dickason, Sloan, Akin, & Robb, P.A.

Joseph S. Kiefer
Partner
Snell & Wilmer

Cross-Examining Plaintiff's Experts

- Creating the right defense strategy to effectively cross examine Plaintiff's expert and exclude their testimony
- Responding to Plaintiff's proposed vocational expert
- Handling Plaintiff's NHTSA experts and the claim that the manufacturer did not act quickly and withheld information from NHTSA
- Overcoming Plaintiff's allegation that Defendants committed fraud against NHTSA
- How discovery plays a key role on fraud claims; examining the record

Sharing Defense Experts

- What are the issues associated with sharing defense experts? What are the traps? How do you handle sharing defense experts when one defendant is out of the trial but other defendants are still in the litigation/trial?

New Experts

- How to find newer experts as the aging population of older experts retire
- Addressing the aging population of routinely utilized experts and developing/herding qualified newer experts

11:55 **Evidence Preservation/Spoliation, Controlling Costs Associated with Discovery and E-Discovery, and Avoiding Sanctions for Discovery Abuse**

Dennis P. Ziemba, Esq.
Member
Eckert Seamans Cherin & Mellott, LLC

Joseph Thacker
Shareholder
Thacker Martinsek LPA

Evidence Preservation/Spoliation

- PRESERVATION OF: The subject vehicle; all parts and components of the subject vehicle; downloadable computer data; Photos/video of the vehicle and the scene; Email, letters, memoranda or other documents; Online social media content created
- Reconstructing evidence and schematics of vehicle impact
- Spoliation: what are the courts doing and what abuses are still being experienced?

- Elements to a spoliation argument: Culpability, relevance, and prejudice; Proposed amendment to Rule 37(e)
- Overcoming the issue when the vehicle is completely destroyed and evidence is lost
- Issues and accusations of document destruction/hiding; how to adequately explain the destruction of documents and maximize the ability of the manufacturer to tell its story

Discovery/E-Discovery

- Ways to effectively and defensibly control costs associated with discovery
- Understanding the law in different jurisdiction and how this impacts your case
- Implementing document/litigation holds
- Addressing proportionality in e-discovery
 - o How courts are addressing e-discovery issues in the beginning of the litigation process rather than the end
- Keeping e-discovery plans current and defensible
- How e-discovery practices apply to automotive databases for warranty and service maintained by automotive companies
- Proposed changes to the Federal Rules of Civil Procedure: Safe harbor provisions; Preservation; Production
- What big data means in the e-discovery context

Sanctions for Allegations of Discovery Abuse

- How courts are increasing sanctions for allegations of discovery abuse
 - o Recovering attorney's fees
 - o Striking pleadings
- Implementing strategies and procedures both in house and with local/national counsel to streamline the discovery response
- Dealing with expensive discovery requests meant to trap the defendant to get sanctioned
 - o Limiting broad, overwhelming, and unnecessary discovery requests
 - o Examining motion practice

12:45 **Networking Lunch for Speakers and Attendees**

1:45 **Overcoming the Increasing Use of Reptile Theory as a Trial Tactic Used for the Jury**

Paul E Wojcicki

Shareholder

Segal McCambridge Singer & Mahoney

James J. Yukevich

Partner

Yukevich Cavanaugh

Kevin C. Schiferl

Member

Frost Brown Todd LLC

- How does the reptile theory work?
- Sizable verdicts based on the use of the reptile theory during trial
- Tapping into the reptile part of the brain of the jury
- Asking the jury to put themselves in the shoes of the plaintiff

2:45 **Ensuring Confidentiality in the Litigation of Automotive Claims, Protecting Work Product in a Discovery Dispute, and Using Arbitration to Your Advantage (featuring 30 minutes of CLE-Ethics credit)**

R. Thomas Warburton

Partner

Bradley Arant Boult Cummings LLP

Cari K. Dawson

Partner

Alston & Bird LLP

- Properly communicating with the client on document retention and production
- Advising experts on deleting draft opinions that are considered work product
- Notifying class of arbitration via the internet and whether this satisfies due process
- Filing motion to compel arbitration by a third party beneficiary (component part manufacturer)
- Determining whether the claim and product at issue is within the ambit of the contract
- Allowing the third party beneficiary to arbitrate even though the contract is between the plaintiff and the dealer



3:45 **Conference Ends**

Who You Will Meet

- In-House Counsel for Automotive Manufacturers and Component Part Suppliers as well as Senior-Level Law Firm Attorneys specializing in the management and defense of:
 - Product Liability Claims
 - Complex Litigation
 - Class Actions
 - Multidistrict Litigation
 - Mass Torts

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AUTOMOTIVE PRODUCT LIABILITY LITIGATION

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