



American Conference Institute's Premier Forum on Defending and Managing

AVIATION LITIGATION

The essential defense counsel forum that will shape the future of personal injury & wrongful death strategies for leading outside counsel and in-house counsel for manufacturers, carriers, and insurers

June 23-24, 2009 – Hyatt Regency Boston – Boston, MA

Distinguished Co-Chairs:



Andrew C. Spacone
Deputy General Counsel-Litigation
& Assistant Secretary, Textron Inc.



David J. Harrington
Partner
Holland & Knight LLP

Faculty includes 24 experienced in-house counsel & claims officers from these manufacturers, carriers & insurers:

AIG Aviation	Global Aerospace
Airbus	Integro
Air Canada	JetBlue
Allianz Aviation	Lycoming
American Airlines	Textron
Bell Helicopter	Trans States
British Airways	United Airlines
Dassault Falcon	US Airways
Delta	USAU
Embraer	XL Aerospace
Garmin	

Senior in-house counsel, top outside defense litigators and renowned jurists will provide you with up-to-the minute practical information on:

- **Forum Non Conveniens** and the increase in U.S. cases brought by foreign plaintiffs arising from overseas crashes and incidents
- Navigating the current landscape on **choice of law**, including in foreign crashes/incidents
- Ensuring that **investigation, preservation, and inspection** don't overwhelm your case on the merits
- The **admissibility of other incidents** in aviation litigation cases
- **Liability apportionment** given the tug-of-war between **pilot error, maintenance, and defects**
- Preparing and defending **Daubert challenges** and selecting **metallurgists, aircraft engine maintenance experts, and economists**
- Asserting key defenses, including **preemption, GARA, and government contractor**
- Formulating a **discovery** plan for U.S. and foreign defendants that counters overly aggressive requests and ensures compliance
- Using demonstrative evidence and themes, telling a detailed story, and overcoming sympathy for plaintiffs during **jury communication**
- Minimizing the risk of **punitives** and clarifying **pre-impact/post-impact** damage nuances
- **Aviation insurance** for the general practitioner, including the terms, the market, and coverage types

A unique opportunity to hear how judges interpret evidence/arguments – Hear from these 11 jurists:



Hon. David A. Ezra
U.S. Dist. Ct., D. Haw.



Hon. W. Louis Sands
U.S. Dist. Ct., M.D. Ga.



Hon. John C. Coughenour
U.S. Dist. Ct., D. Wash.



Hon. Richard P. Mills
U.S. Dist. Ct., C.D. Ill.



Hon. Donald William Molloy
U.S. Dist. Ct., D. Mon.



Hon. John Corbett O'Meara
U.S. Dist. Ct., E.D. Mich.



Hon. Adalberto Jordan
U.S. Dist. Ct., S.D. Fla.



Hon. James P. O'Hara
U.S. Dist. Ct., D. Kan.



Hon. Louisa S. Porter
U.S. Dist. Ct., S.D. Calif.



Hon. Mildred E. Methvin
U.S. Dist. Ct., W.D. La.



Hon. Leslie E. Kobayashi
U.S. Dist. Ct., D. Haw.

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The EVOLUTION in the defense of personal injury and wrongful death aviation litigation continues:

\$2.8B in WTC case... Defective design blamed for neurological injury ... Crash of helicopter blamed on defective digital electronic control units... Design of helicopter allegedly caused crash... Manufacturers blame airport in Brazil crash... Defense motion for protective order as to aviation program safety reports denied... Jet engine malfunction allegedly caused crash... Faulty jet engine fuel pump allegedly caused crash... Estates, survivors sue over Thai plane crash... Aircraft company balks at trio of crash complaints... \$10.2M and \$7.1M fines by FAA for safety violations... DVT: law firm ordered to pay fees in DVT suit; judgment affirmed in DVT airlines MDL... Request to exclude expert testimony in crash trial denied

It's no secret that these and other recent decisions, judgments, and developments have a significant impact on a company's bottom line. But in defending and managing these claims, **defense counsel face a distinct uphill battle**, including: organized, well-connected, and effective **plaintiff attorneys** filing (in a broad brush manner) large numbers of lawsuits/theories and seeing what sticks, with the sheer volume of cases alone placing a huge burden on defense resources; overwhelming natural **sympathy** for plaintiffs; **juror bias** against defendants; **judges** who decline to dismiss frivolous cases, supervise antics of counsel, and/or exclude poor plaintiff witnesses; and an extreme disparity in **venue**, with many being particularly difficult for corporate defendants.

As a result of this uphill battle, **there is simply no room for error in the defense of these claims.**

In response, **American Conference Institute (ACI)** is proud to introduce its premiere installment of the *essential defense counsel forum that will shape the future of personal injury and wrongful death strategies for leading outside counsel litigators and in-house counsel for manufacturers, carriers, users/owners/operators, maintenance facilities and insurers: **Defending and Managing AVIATION LITIGATION.*** Through a faculty of **24 distinguished in-house counsel**, the leading outside defense counsel in the industry, as well as **11 renowned jurists**, this conference will provide even the most seasoned aviation lawyers with clarity and certainty with respect *to today's key issues crucial to mounting a rigorous and complete defense.*

ACI's litigation events, including our *Automotive Liability* conference and our flagship *Drug & Medical Device Litigation* conference (now in its 14th installment), offer unique opportunities for law firm litigators to learn from some of the best in the industry and for in-house counsel to gain expertise in evaluating litigation tactics and approaches and providing valuable input to the legal department. They offer tremendous networking opportunities with senior practitioners in the field.

Register now by calling **888-224-2480**, faxing your registration form to **877-927-1563** or registering online at www.AmericanConference.com/Aviation

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For more information about this program or our global portfolio of events, please contact:

Michael Felden

Senior Business Development Executive | American Conference Institute

Tel: 212-352-3220 x260 | Fax: 212-220-4281 | m.felden@AmericanConference.com

Who You Will Meet

- ➔ In-House Litigation Counsel for aviation manufacturers, carriers, users/owners/operators, and maintenance facilities
- ➔ Insurance Claims Officers
- ➔ 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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Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of 19.5 hours.

ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 16.5 hours.

ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

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7:20 **Registration and Continental Breakfast**

8:00 **Co-Chairs' Opening Remarks**



Andrew C. Spacone
Deputy General Counsel-Litigation & Assistant Secretary
Textron Inc. (Providence, RI)



David J. Harrington
Partner
Holland & Knight LLP (New York, NY)

8:05 **In-House Counsel and Claims Officer Think Tank on Managing Litigation, Containing Costs, and Formulating Defense Strategy**

The Manufacturers 8:05-9:00	The Carriers 9:00-10:15 <i>(morning coffee break from 10:15-10:25)</i>	The Insurers 10:25-11:20
<p><i>Andrew C. Spacone</i> Deputy General Counsel-Litigation & Assistant Secretary Textron Inc. (Providence, RI)</p> <p><i>Tim J. Harrington, Jr.</i> Deputy General Counsel – Litigation, Bell Helicopter General Counsel, Lycoming Engines, a div. of Avco Corporation (Fort Worth, TX)</p> <p><i>Fabio Ferreira Cunha</i> U.S. Counsel Embraer Aircraft Holding, Inc. (Ft. Lauderdale, FL)</p> <p><i>Oliver Furtak</i> Worldwide General Counsel Airbus S.A.S. (Blagnac Cedex, France)</p> <p><i>Andrew R. Etkind</i> Vice President and General Counsel Garmin International, Inc. (Olathe, KS)</p> <p><i>James V. Marks</i> Deputy General Counsel Dassault Falcon Jet Corp. (Little Ferry, NJ)</p>	<p><i>Louise-Hélène Sénécal</i> Assistant General Counsel-Litigation Air Canada (Montreal, Canada)</p> <p><i>David J. A. Hayes III</i> Vice-President & General Counsel Trans States Holdings, Inc. (St. Louis, MO)</p> <p><i>Susan B. Bovee</i> Associate General Counsel and Managing Director, Legal Affairs US Airways (Tempe, AZ)</p> <p><i>Ricks P. Frazier</i> Assistant General Counsel United Airlines (Chicago, IL)</p> <p><i>Gary Bunce</i> General Attorney Delta Air Lines, Inc. (Eagan, MN)</p> <p><i>James B. Blaney</i> Senior Counsel, Americas British Airways Plc (Jackson Heights, NY)</p> <p><i>Michael Carbone</i> Director-Litigation JetBlue Airways (Forest Hills, NY)</p>	<p><i>Kevin Murphy</i> Vice President – Claims Allianz Aviation Managers, LLC (Chicago, IL)</p> <p><i>Sharon M. Holahan</i> Senior Vice President Deputy Director of Claims Global Aerospace (Short Hills, NJ)</p> <p><i>Russell M. Mirabile</i> Vice President, Aviation Claims Manager XL Aerospace (New York, NY)</p> <p><i>R. Michael Barrett</i> Chief Claims Officer AIG Aviation, Inc. (Atlanta, GA)</p> <p><i>William Ranieri</i> Sr. Vice President United States Aviation Underwriters (New York)</p>

Each of the Above 3 Panels Co-Moderated By:

Brian C. Dalrymple
Nixon Peabody LLP (San Francisco, CA)

Mark C. Fava
Nelson Mullins Riley & Scarborough LLP (Charleston, SC)

Expertise and Coordination

- Handling the defense more efficiently and effectively through national/regional counsel and experts who have specialized expertise in a particular subject area
- Hiring dilemmas: when to stay in-house and when to go with outside counsel immediately; if the latter, balancing the difficulty of finding quality counsel with costs
- Determining which factors to consider when hiring outside counsel and how those factors will be weighed: when is it cost-effective to use national counsel?
- Coordinating, both inside and outside the company, when handling pattern cases to fend off the emerging coordination and technological sophistication of the plaintiff's bar

Managing Costs

- Managing the exorbitant cost of defending cases that may require retention of 3-5 expert witnesses and expense of obtaining the testimony required by *Daubert* rulings
- Budgeting the overall expense in taking a case through trial yet keeping a case resolvable at a reasonable level without the need for trial
- How to avoid the sheer volume of these suits placing a financial burden on legal resources
- Lessons learned on discovery burdens & exorbitant costs of discovery falling disproportionately on defense
- Controlling costs by keeping routine, pattern litigation under control
- Managing outside counsel through realistic and accurate budgets
- Do flat fees really exist? What alternative billing arrangements are out there and have people been successful in using them?

Case Evaluation

- Early case assessment: Evaluating the cost of defense versus chronic settlement of unmeritorious claims and the precedential value of a settlement
- 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
- How to reach an early and cost-effective resolution of class action claims that will not result in payment of attorney fees that are disproportionately large in relation to the amount that will benefit or can be achieved by individual plaintiffs participating in a class action

11:20 Where is the Case Pending?: Jurisdiction, Forum, and Venue



Thad T. Dameris

Hogan & Hartson LLP (Houston, TX)



Lory Barsdate Easton

Sidley Austin LLP (Washington, DC)



Elizabeth M. Freidenberg

Freidenberg, Freidenberg & Lifsc (Buenos Aires, Argentina)

Choice of Forum

- Why plaintiffs sue where they do: Understanding plaintiffs' perspective on forum selection
- Evaluating the pros and cons of potential alternative fora (state, federal, and overseas)
 - getting litigation into a jurisdiction which limits or excludes recovery from joint tortfeasors
 - how the different negligence standards applied by states are a key factor in litigation arising from disputes in relation to personal jurisdiction
 - how the determination is continually changing with regard to personal jurisdiction involving American passengers on American domestic airlines, as opposed to international incidents
- Improving the venue of the case, whether in state or federal court
- Considering pretrial consolidation of litigation pending in several districts:
 - Whether, when, and how to seek MDL consolidation
 - State court coordination issues

Removal

- Assessing cases for removability to federal court
- Avoiding procedural flaws in removal
- Defending against motions to remand

Personal Jurisdiction

- Evaluating, preserving, and presenting jurisdictional defenses
- Deploying resources in the determination of the existence of personal jurisdiction
- Dealing with jurisdictional facts – and with divergent precedents on jurisdictional questions (same activities, different results)
- International incidents: Countering creative arguments by plaintiffs for personal jurisdiction

Forum Non Conveniens

- When jurisdiction is proper, but should be declined: When and how to challenge the plaintiffs' choice of forum
- Influencing the court in weighing the *Gilbert* factors
- Countering plaintiffs' attempt to evade a FNC dismissal in the US by invoking and then attacking the foreign court's jurisdiction over their claims
- International commercial flights: adequately reviewing the appropriateness of plaintiff's choice of forum under the Warsaw and Montreal conventions
- Best advocacy practices and clear, persuasive briefing to guide courts through difficult, multijurisdictional factual and legal analyses

12:15 Navigating Through the Current Chaos and Complexity of Choice of Law, Including in Foreign Crashes/Incidents



Andrew Harakas

Clyde & Co LLP (New York, NY)



William L. Maynard

Beirne Maynard & Parsons, L.L.P. (Houston, TX)



Stephen R. Stegich

Condon & Forsyth LLP (New York, NY)

- Determining what law applies to the claim – evaluating a claim that has the damages law of another country applying vs. one where domestic law applies
 - wrongful death nuances in this regard
- Understanding what law applies to maximize the focus of discovery efforts
- Adequately performing a choice of law analysis at the outset of a case

- Challenging the plaintiffs' choice of law: How to counter the fact the plaintiffs will seek to apply the liability and damage laws that maximize the chance of liability and high damage awards
- Application of choice of law rules when an action is governed by FSIA or Warsaw Convention
- Best practices on conflict of law analysis, for both liability and damages
- Choice of law motions: best practices to determine the applicable law on liability and damages issues at an early stage of the litigation, to foster meaningful settlement negotiations
- How to influence the threshold decision on which choice of law rule will control the court's choice of law analysis
- Special nuances with the Law of Mexico, and for experiences with cases arising out of accidents occurring in Mexico, Latin America, and South America
- How choice of law issues fit into the mix on foreign accidents when FNC is the initial defense

1:10 Networking Luncheon for Speakers and Delegates

2:10 Ensuring that EVIDENCE Doesn't Overwhelm the Defense's Case on the Merits: Investigation, Preservation, Inspection, "Other Incidents," NTSB/FAA Reports and Beyond



Rachel Giesber Clingman

Sutherland (Houston, TX)



Ann Thornton Field

Cozen O'Connor (Philadelphia, PA)

Dane B. Jaques

Dombroff, Gilmore, Jaques & French, PC (McLean, VA)

Investigation, Evidence Preservation/Spoilation, Inspection, and Collecting Data and Documents in a Way That Avoids Business Interruption

- Securing, preserving & getting access to physical evidence & conducting effective forensic investigation
- Product/part identification: Is it mine?; complete history (manufacture date, service history, alterations etc.)
- Conducting an early detailed investigation and reconstruction into the facts surrounding an accident/incident: inquiries into the pilot's background/qualifications; reviewing the aircraft's maintenance history; interviewing fact witnesses; examining weather conditions and ATC transcripts; inspecting wreckage; background checks of the plaintiffs and plaintiffs' decedents
- Managing the wreckage: Preservation of evidence (and location of evidence) and inspection issues, to determine what really went wrong and comparative fault
- Gathering the information (documents and witnesses) needed to defend the suit in a way that minimizes potential for discovery issues and accusations of document destruction/hiding and maximizes the ability of the company to tell its story
- Getting the client to place a "litigation hold" on all documents and electronic data relating to the accident, the aircraft, and other info, to avoid spoliation arguments and sanction requests
- Spoliation: what are the courts doing and what abuses are still being experienced?; how to adequately explain the destruction of documents
- Retrieving "old" design and testing information where non US entities are involved since data retention policies can be much different than for US companies in the aerospace industry

Limiting the Scope of "Other Incidents"

- Similar incidents: Admissibility of "other incidents": keeping out evidence of accidents in which third parties suffered injury as a result of the alleged same defect
- Current federal law on the admissibility of prior and subsequent incidents involving same products
- Widely differing applications and interpretations of the "substantial similarity" doctrine and its impact on the analysis
- When the defense sees the same evidence in every case: countering a well organized plaintiffs' bar

Admissibility and Use of NTSB and FAA Reports

- Why issues surrounding NTSB report tends to complicate matters because of its reliability but inadmissibility
- Determining whether the NTSB report is advantageous to your client; determining the likelihood that portions of an NTSB or FAA report will be admissible at trial
- Answering with certainty the key questions regarding the admissibility of info contained in NTSB reports

3:05 **Liability Apportionment Given the Tug-of-War Between Pilot Error, Maintenance, and Mechanical Defects: Countering the Focus on Manufacturers and Maintenance Facilities**



John D. Goetz
Jones Day (Pittsburgh, PA)



David J. Harrington
Holland & Knight LLP (New York, NY)



Christa M. Hinckley
Husch Blackwell Sanders LLP (Irving, TX)

Maintenance

- Fleshing out the entire prior maintenance picture
- Ensuring you have all A&P records for maintenance history on a part and confirming applicable Airworthiness Directives with annual maintenance requirements and their compliance therewith
- The expense of FAA and AD compliance – How to “finesse” the fact that: pilots often go to local mechanics who are cheap; pilot fails to get required checks; the mechanics do maintenance without the log books; mechanics don’t have a lot of insurance if a suit arises
- Given that so many of the parts are re-worked during scheduled maintenance, how do you determine whether a particular part is OEM (and therefore subject to a statute of repose)?
- Searching and obtaining all Service Difficulty Reports for same aircraft and seeing if there are patterns—failures due to maintenance issues?

Pilot Error

- Even if the product caused engine failure, should the pilot have been able to make a safe forced landing?
- Building the case on the incompetence and shortcuts taken by the pilot
- Allocating fault to a pilot when the defendant’s product may have caused an in-flight emergency
- Analyzing the interface between pilot error and product liability – where does one become the driving force behind an accident as opposed to the other?
- Utilizing the pilot log and maintenance books to establish the number of hours as pilot in command and that all annual and bi-annual inspections requirements were met

Causation/Percentage of Fault and the “Circular Firing Squad”

- Evaluation of additional parties
 - commencing a 3rd-party action against non-parties for contribution and other reasons
 - how to successfully implead third-parties in the early stages of the case (such as mechanics, maintenance facilities, weather briefers, aircraft user/owner)
 - deploying legal strategies to shift the burden of liability to a party other than your client
- Apportionment nuances with regard to negligence, strict liability, and breach of warranty
- Ensuring that the “deep pocket dilemma” doesn’t harm your client: what you now need to know about joint and several liability
- Carefully drafted disclaimers in purchase agreements: examining their effect on apportioning liability between the user and manufacturer
- Funding/sharing agreements
- Damages under Warsaw /Montreal--impact on apportionment
- Liability with respect to code share flights
- Family Assistance and Advance Payments

4:00 **Afternoon Refreshment Break**

4:10 **Expert Testimony: Handling a Case Involving Expert Evidence Under FRE, Preparing and Defending Daubert Challenges, and Selecting Metallurgists, Aircraft Engine Maintenance Experts, and Economists**



David P. Herman
Murray, Morin & Herman, P.A. (Coral Gables, FL)



William D. Janicki
Morrison & Foerster LLP (San Diego, CA)

Causation: Did the design or manufacture of the aircraft or part play into the cause of the accident?

- Admissibility of expert testimony under the Rule 702 framework: the past year’s *Daubert* cases regarding general causation for the aviation industry
 - rulings, tactics, successes, and jurisdictional differences procedures
- Foundational requirements for experts, specific to the aviation industry
- Laying the groundwork for *Daubert* motion and being prepared to deal with a *Daubert* challenge to your expert witness testimony
- Using your own experts effectively: preparing them to testify and communicate with and educate jurors
- Admissibility of “junk science” and coping with judges who give lip service to *Daubert* and are unwilling to exclude junk science
- Excluding plaintiff’s causation experts and debunking junk science vis-a-vis unqualified experts
- Dealing with the difference in the use of experts in foreign air disasters

Special Nuances in the Selection of Experts, Including Metallurgists, Aircraft Engine Maintenance Experts, and Economists

- Identification and retention of the appropriate experts: Because aviation cases so often involve many products, parts, or components, how do you identify and retain the right expert witnesses to assist with the technical side of the case?
- Locating and engaging competent and persuasive experts, often under extreme time pressure
- Finding and retaining qualified, reliable, and credible experts
- Selecting experts that provide meaningful assistance in the pretrial phase of the case – why and how the expert’s experience in the aviation industry and familiarity with the aircraft/engine/component is critical
- How to find those who provide depth to defense counsel’s understanding of the subject matter and allows defense counsel to zero in on key areas during discovery
- Background checks of your potential experts: how to do it so that there is never a surprise at trial
- Background checks of the plaintiff’s experts: how to do it so that you can challenge qualifications and credibility at trial

4:55 **Changing the Landscape of a Pending Case by Asserting Key Defenses Provided by Statute and Case Law: An In-Depth Look at Federal Preemption, GARA, and the Government Contractor Defense**

Steven M. Rasher
Assistant General Counsel
United Airlines (Chicago, IL)



S. Brad Brown
Jackson Walker L.L.P. (Dallas, TX)



Garth W. Aubert
Mendes & Mount, LLP (Los Angeles, CA)

Moderator:



John G. Sams
Brown, Dean, Wiseman, Proctor, Hart & Howell, L.L.P.
(Fort Worth, TX)

The Viability/Scope of the Preemption Defense in Accidents and Commercial Matters – Implied/Field Preemption, the Airline Deregulation Act’s Express Preemption, and Beyond

- The different types of litigation involved in the aviation context and how preemption is currently being applied in them
- The latest on express preemption pursuant to the Airline Deregulation Act of 1978

- Relying on implied preemption (field and conflict) principles to dispose of plaintiff's claim
- Carefully and promptly considering whether the plaintiff's state law cause of action should be challenged on the basis of preemption
- Making a successful preemption argument/challenge
- Special nuances with simplifying the preemption analysis in the context of domestic commercial flights
- The preemptive effect of the Warsaw Convention/Montreal Protocol on claims arising during an international itinerary
- The scope of preemption on issues of aircraft design and manuals

General Aviation Revitalization Act (GARA)

- Knowing the age of the alleged defective part in order to ascertain if GARA applies and being prepared to address plaintiff's attempt to circumvent this bar by establishing a knowing misrepresentation
- Adequately making the determination whether GARA provides a complete defense to the action
- The uses of GARA's repose period and countering attempts to pierce the defense through stated exceptions
- A manual as a part? What is the latest?
- What is the applicability of state statutes of repose?

Government Contractor Defense for Military Aircraft Cases

- Using the defense to provide a viable grounds for dismissal when defending manufacturers of military or other products supplied to the government
- Successfully using the GCD in the summary judgment and post-trial contexts
- How to use the GCD to immunize manufacturers of nonmilitary products supplied to the U.S. govt.
- What's the latest on efforts to restrict the reach of *Boyle*?
- How to handle the conflicting circuit court approaches as to the appropriate standard in failure to warn cases

6:00 Conference Adjourns

DAY TWO: June 24, 2009

7:30 Continental Breakfast

8:00 A View From the Bench: U.S. District Court Judge Views on Effective Theories/Defenses, *Daubert* and Evidentiary Approaches, and Deciding Cases Early



The Honorable David A. Ezra
U.S. Dist. Ct., D. Haw.



The Honorable W. Louis Sands
U.S. Dist. Ct., M.D. Ga.



The Honorable John C. Coughenour
U.S. Dist. Ct., D. Wash.



The Honorable Richard P. Mills
U.S. Dist. Ct., C.D. Ill.



The Honorable Donald William Molloy
U.S. Dist. Ct., D. Mon.



The Honorable John Corbett O'Meara
U.S. Dist. Ct., E.D. Mich.



The Honorable Adalberto Jordan
U.S. Dist. Ct., S.D. Fla.

Moderator:

Jeffrey J. Ellis

Quirk and Bakalor, P.C. (New York, NY)

Renowned federal district court jurists will provide their insights on:

- Early defense considerations (motions to dismiss, federal preemption, offers of judgment)
- Applying *Daubert/Frye* standards to causation experts
- Motion practice, manageability, trial plan, interlocutory appeals
- Summary judgment practice (timing, one-way intervention)
- Settlements (individual versus class, fairness hearings, CAFA)
- Conveying complex issues to fact-finders
- Novel approaches to trial and case management
- Judicial "pet peeves"

9:50 Morning Coffee Break

10:00 View from the Bench (Part II): Federal Magistrate Judges Speak Out on Discovery – *Zubulake* and E-Discovery, Document Holds, Burden Issues and More



The Honorable Leslie E. Kobayashi
U.S. Dist. Ct., D. Haw.



The Honorable Mildred E. Methvin
U.S. Dist. Ct., W.D. La.



The Honorable James P. O'Hara
U.S. Dist. Ct., D. Kan.



The Honorable Louisa S. Porter
U.S. Dist. Ct., S.D. Calif.

Moderator:



David Brennan

Associate Professor of Law and Director,
Civil/Judicial Externship Program
Western State University College of Law (Fullerton, CA)

In this panel, federal magistrate judges will discuss what their expectations of counsel are during the discovery process, including:

- What are the expectations of counsel when dealing with a case involving voluminous discovery requests?
- How should you work with the judge to limit the scope and form of discoverable information without over-stepping your bounds?
- How are judges treating privilege and what's the latest on discovery requirements trumping attorney-client privilege?
- Privilege, communication, and accountability: FRE 502 and beyond
- Approaches for cross-border conflicts involving discovery
- Overcoming hurdles relative to disclosure and early conference mandates under Rule 26
- Expectations of courts regarding admissibility of electronic records
- Avoiding sanctions for spoliation or other alleged discovery misconduct

11:20 Formulating a Paper and ESI Discovery Plan for U.S. and Foreign Defendants that Counters Overly Aggressive Requests and Ensures Compliance

D. Douglas Cotton

Senior Attorney
American Airlines Legal Department (Fort Worth, TX)



Kathryn J. Humphrey
Dykema Gossett PLLC (Detroit, MI)



Lisa J. Savitt
Crowell & Moring LLP (Washington, DC)

Moderator:



Anthony P. Strasius

Wilson, Elser, Moskowitz, Edelman & Dicker LLP (Miami, FL)

- Managing discovery costs
 - preparing for the demands of discovery before litigation becomes an issue
 - assuring quality control in document coding without absorbing the costs of high paid associates
 - cutting e-discovery costs: conducting metrics to determine the efficiency of vendors; in-sourcing e-discovery work: comparing the services of different vendors
- The scope of information that the defendant must turn over to the plaintiff
 - softening the economic blow of retaining, collecting, and producing e-documents
 - electronic storage of information: striking a balance between the plaintiff's need for information and the burdens created by retrieval and processing
 - factoring in a manufacturer's technology, strategic priorities, and financial resources when formulating discovery plans
- The mechanics, subtleties, and realities of new and onerous FRCP rules regarding e-discovery

- defending against increasingly aggressive discovery requests involving e-discovery
- overcoming Rule 26 disclosure and early conference hurdles
- addressing technologies including IM and unified messaging
- anticipating ways that the plaintiff will manipulate the data
- Discovery considerations in representing non-U.S. parties
 - the huge first issue with foreign clients: explaining the concept of discovery
 - educating your client about the meaning and scope of discovery in the U.S.
 - analysis of other judicial systems, and a familiarity with application of foreign law
 - issues of attorney-client privilege in other countries
- Discussing whether recent actions in foreign countries enforcing internal “blocking statutes” could now be argued to prevent voluntary disclosures of discoverable information

12:35 Networking Luncheon for Speakers and Delegates

1:35 Jury Communication and Advocacy During Opening/Closing Statements and Otherwise: Using Demonstrative Evidence and Themes, Telling a Detailed Story, and Overcoming Sympathy for Plaintiffs



John M. Fitzpatrick
Wheeler Trigg Kennedy, LLP (Denver, CO)



Thomas M. Madruga
Clark, Goldberg & Madruga (Los Angeles, CA)



Elizabeth B. Wright
Thompson Hine LLP (Cleveland, OH)

- Putting masses of complex information into an understandable context: Educating jurors concerning the facts of the case and leaving them with firm reasons to go into deliberations as advocates for your client
- Using a clear and concise presentation which conveys credibility while staying within legal limits
- Using themes to explain the details for the jury:
 - the technology that was in use at the time of manufacture
 - “behind the challenged design, there is a positive company story”
 - the notion that “failure” does not necessarily equal “defect”
 - jurors as “investigators of the truth” to counter plaintiff’s case done in an overly simplistic, broad brush manner
- Explaining (persuasively) very complex mechanical or electrical systems to a jury – Simplifying the critical issues for the jury and demystifying complicated engineering concepts, complex technical issues, and factual proof
- Overcoming overwhelming natural and understandable sympathy for plaintiffs
 - establishing a theme of personal responsibility over deep pockets responsibility
- Explaining (persuasively) what is a reasonable risk of a design, and why an alternative design, although perhaps risk-reducing, is not feasible or desirable
- Overcoming juror bias against manufacturers, including:
 - intolerance of virtually any risk of harm or malfunction
 - the assumption that given advancements in safety features, any death or serious injury means that there must have been something wrong with the aircraft
 - the expectation that all product risks, no matter how minor/unlikely, will be publicly disclosed
- Demonstrative Evidence nuances – using it to make the complex simple and persuade the jury
 - educating the jurors about complex evidence and convincing them to adopt a theory
 - using aids to the explanation of data and persuasion of the jury to provide accurate representations and debunk opposing theories
 - using technology to counter limited attention spans and meet the jury’s need for visual gratification

2:35 Afternoon Refreshment Break

2:45 Damages: Forensic Economics, Minimizing the Risk of Punitives, and Clarifying Pre-Impact/Post-Impact Damage Nuances



J. Denny Shupe
Schnader Harrison Segal & Lewis LLP (Philadelphia, PA)



William L. Waudby
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (Birmingham, AL)

Compensatory

- Determining whether damages for pre-impact pain and suffering are recoverable
- Explaining (persuasively) what is pre-impact and what is post-impact damage
- The rise in compensatory verdicts post-*State Farm*: how to counter the plaintiff’s bar changing the focus to higher compensatory awards to justify the ratio of a large punitive award
- Forensic economics—a myth?
- *Daubert* challenges to the forensic economist
- Economics underlying personal injury damages

Punitives

- When can punitives be recovered? Making sense of the latest jurisprudence on punitive damages: a comprehensive update on a rapidly changing area of law
- How courts are interpreting and squaring *Exxon Valdez*, *State Farm v. Campbell*, *Williams v. Philip Morris*, and its progeny, in the aviation litigation context
- Defending against a punitive damage case in light of recent case law: what the aviation industry can expect going forward and whether there are real prospects for tort reform
- How to handle plaintiff’s theory that a punitive damages claim makes a bunch of highly prejudicial, irrelevant evidence suddenly relevant because it establishes the manufacturer’s pattern of conscious disregard

3:35 Aviation Insurance for the General Practitioner: Demystifying the Terms, the Market in Which It’s Written, and the Types of Coverage

Tara Palmer

Unit Claims Manager - Airlines
AIG Aviation, Inc. (Atlanta, GA)

Tracey Campbell

Assistant Vice President, Airline Claims
Global Aerospace (Short Hills, NJ)

W. Timothy McSwain

Chief Claims Officer
Allianz Aviation Managers, LLC (New York, NY)

Patricia Moores

Principal, Aviation
Integro Insurance Brokers (New York, NY)

Co-Moderators:



Roderick D. Margo
Condon & Forsyth LLP
(Los Angeles, CA)



Kathleen M. Guilfoyle
Campbell Campbell Edwards & Conroy
(Boston, MA)

- The aviation insurance industry and the marketplace in which aviation insurance is written
- Types of aviation coverages in the commercial area
- The workings of the international aviation insurance market
- The role of aviation insurance brokers and surveyors
- The types of aviation coverage available
- Ascertaining the existence and scope of indemnity clauses contained in the relevant contracts
- Determining whether a right to indemnity or additional insured coverage exists, and if so tendering them promptly
- Ensuring that excess insurers are notified of loss

5:15 Conference Ends

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