



American Conference Institute's 18th National Advanced Forum on

ASBESTOS Claims & Litigation

January 15-16, 2015 | The Union League | Philadelphia, PA

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Conference Co-Chairs:



Jennifer L. Adams
Partner
Dunham, Kerrigan & Sikes, New Orleans



Rick Schlegel
Assistant General Counsel
Exelon Corporation (Philadelphia)

Learn from and meet:

Jennifer C. Hackett, Esq.
Vice President, Claims, Accounting
& Litigation Management
Sovis Re America Holding Corporation

Michael Johnson
Senior Train Counsel
Union Pacific Railroad

Paul J. Sharr
Executive Counsel - Environmental, Real
Estate, &
Chy, PLLC
General Electric

Michael J. Blair
Vice President - Environmental Claims
Gen. Re - A Berkshire Hathaway Company

Christopher Abegg
Vice President - Claims
and Litigation Management
Alliant Insurance

Michael M. Monrille
Vice President, N.Y. Claims Program
Munich Reinsurance America, Inc.

Christopher K. Carpenter
Senior Vice President
Sovis Re America Holding Corporation

Samuel R. Marshall
President & Chief Executive Officer
Insurance Federation of Pennsylvania, Inc.

New and updated sessions include:

- **Hothbed states; increased lung cancer and mesothelioma filings;** recent removal and FNC rulings; trends in joint and several liability, punitive, successor liability, and supplier liability/duty to warn; and newer parties
- **Lung cancer: Madison County developments; novel forum non conveniens issues;** interrelation between asbestos, asbestosis, smoking & lung cancer; and new twists on "take home" exposure as a cause
- **Giordano: procedural issues and the latest trust transparency nuances**
- **Take home and bystander exposure: jurisdictional variations and recent rulings; epidemiology studies;** current scientific literature; the defense that exposure was idiopathic or occurs from nature; and new liability implications when premise owners are included on the verdict form
- **The Teory case in PA and its impact**
- **Contractor liability for disturbing asbestos on a job site, installing asbestos, or removing asbestos**
- **Low dose exposure claims, and the latest on the "every exposure theory"**
- **The use of asbestos by the United States Military other than the Navy**
- **Expert witnesses: Daubert challenges and winning the science battle**
- **Component part supplier claims and asbestos equipment litigation**
- **New insurance coverage issues**
- **Litigation, deposition, trial and jury strategies to allocate fault**

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N.Y. State Sup. Ct.



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Philadelphia Ct. C.P.



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Hon. Paul R. Wallace
Super. Ct. of Delaware



Hon. Richard A. Kramer
Calif. Super. Ct.

Featuring unparalleled medical insights from:

Faris Farassati, PhD, PharmD
KU Medical Center

Rachel P. Maines, PhD
Cornell University

Tom Hesterberg, PhD MBA
CTEH

David Egilman MD, MPH
Brown University

Arthur I. Frank, MD, PhD
Drexel University

Bryan D. Hardin, PhD ATS
Veritox, Inc.

David B. Sicilia, PhD
University of Maryland

Charles A. Weaver, III, PhD
Baylor University

...and others

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7:00 Registration and Continental Breakfast

8:00 Co-Chairs' Welcome

Jennifer E. Adams
Partner
Deutsch, Kerrigan & Stiles, L.L.P. (New Orleans)

Rick Schlegel
Assistant General Counsel
Exelon Corporation (Philadelphia)

8:05 Corporate and Insurer Panel: The Latest In-House Asbestos Litigation Concerns Including Challenging Jurisdictions, Cost Effectively Managing Claims, Changes in Financial & Legal Decisions, Insurer & Insured Cooperation and Relationships in 2015, Settlement Negotiations, and More

Jennifer C. Hecker, Esq.
Vice President | Claims, Accounting & Liability Management
Swiss Re America Holding Corporation

Christopher K. Carpenter
Senior Vice President
Swiss Re America Holding Corporation

Michael L. Johnson
Assistant General Solicitor & National Counsel
Occupational Claims
Union Pacific Railroad

Paul F. Slater
Executive Counsel – Environmental Tort Litigation
One EHS
General Electric

Michael J. Blair
Vice President – Environmental Claims
Gen Re – A Berkshire Hathaway Company

Christopher Alving
Vice President – Claims and Litigation Management
Alliant Insurance

Michael McManagle
Vice President
SM-Claims Princeton
Munich Reinsurance America, Inc.

Peter Dinunzio
Vice President
Resolute Management, Inc.

Moderator:

Ingrid K. Campagne
Partner
Walsworth Franklin Bevins & McCall, LLP

Corporate Non-Insurer

- Shrinking legal budgets and doing more with less
- Increasing involvement of carriers and the impact of legislation

- Budget limitations on settlement opportunities
- Alleviating rising transaction costs
- Factoring in national and local valuation discrepancies and national management of costs
- Transitioning claims representatives, clients and associates from claims administration/settlement mode to actual litigation of serious cases

Insurer

- Addressing the increasing use by insurers of outside billing vendors/auditors
- Is the products/non-products distinction driving how claims are made or litigated in underlying tort litigation and how they are presented to insurers?
- Getting carriers and plaintiff's counsel to agree to language
- Dealing with multiple clients/carriers varying guidelines
- When an "injury" occurs for purposes of coverage
- The medical aspects of when an injury occurs
- Trigger – which theory of policy trigger is appropriate (exposure, injury in fact, manifestation, continuous)

9:15 State of the Market: Hotbed States; Increased Filings; Recent Removal and FNC Rulings; Trends in Joint and Several Liability, Punitives, Successor Liability, and Supplier Liability/Duty to Warn; and Newer Defendants and Plaintiffs (including Women) and Issues Associated With These New Parties

Jonathan M. Lively
Shareholder
Segal McCambridge Singer & Mahoney, Ltd. (Chicago)

Jayne C. Long
Partner
McKenna Long & Aldridge LLP (Los Angeles)

Lauri A. Kavulich
Partner
O'Hagan LLC (Philadelphia)

David A. Oliver
Partner
Vorys, Sater, Seymour and Pease LLP (Houston)

Carol G. Snider
Senior Partner
Damon Morey LLP (Buffalo, NY)

This panel will provide you with the latest developments, emerging issues, trends, and the current pulse of the market and industry. Top outside counsel from hotbed states will give you an in-depth examination of the year's most challenging issues and recommendations for how practitioners can update their litigation strategies in response to the new developments going forward. Learn how and why the industry as a whole has seen an uptick in filings and how this impacts the industry down the road. With recent asbestos filings in hotbed jurisdictions, how are removal and FNC issues being resolved and where will the asbestos claims be filed going forward? Trends in joint and several liability, punitives, successor liability, and supplier liability/duty to warn will be thoroughly addressed. You will find this session invaluable for getting up to speed on the latest developments, cases, and strategies while maximizing your opportunity to engage in the advanced discussion that is the hallmark of the conference.

10:35 Coffee Break

10:35 Increase in Lung Cancer Claims: Madison County Developments; Novel Forum Non Conveniens Issues; the Latest on the Interrelation Between Asbestos, Asbestosis, Smoking & Lung Cancer; and New Twists With Regard to "Take Home" Exposure as a Cause of Lung Cancer

Arthur I. Frank, MD, PhD
Professor, Chair, Emeritus
School of Public Health
Environmental and Occupational Health
Drexel University

Anne D. Harman
Partner
Dinsmore & Shohl LLP

James N. Sinunu
Partner
Sinunu Bruni LLP

Raymond R. Fournie
Partner
Armstrong Teasdale LLP

Knight S. Anderson
Counsel
Tucker Ellis LLP

- The increase in lung cancer filings, in Madison County and other parts of the country
- Medical update on any new studies regarding lung cancer
- Determining whether there is presence of asbestosis
 - Determining series of medical defenses that interposes to liability
- How cigarette warnings correlate with warnings on asbestos products
 - Are plaintiffs who smoke cigarettes and ignore warnings on cigarette labels more likely to ignore the warnings of the dangers of asbestos on asbestos products?
- The latest on arguments that had plaintiff known of the dangers of asbestos products he/she would have followed the warning
- The distinction between lung cancer cases and traditional mesothelioma cases
 - What are the different elements of proof?
- Examining the new body of claimants getting lung cancer, including the second disease case
- What is the connection between asbestos and smoking?
 - Does asbestos and smoking cause more damage?
- Low dose exposure issues
- Underlying asbestos exposure: Assessing asbestos markers and dose
- Hybrid exposures: Asbestos and other types of exposure such as industrial plant exposure caused lung cancer; What caused the exposure?
- Forum non convenien
 - How some jurisdictions are more attractive than others for filing lung cancer claims
- The next wave of cancer cases: throat cancer, laryngeal cancer, colon cancer, etc.
 - Examining the science/studies that show the connection between cancer and asbestos

1:00 Causation, Causation, Causation: The Latest on Dose in Asbestos Cases Including Low Dose Exposure Claims, Toxicology Studies of Low Dose Exposure to Asbestos, and Recent Trends, Decisions and Expert Testimony (Including Cross-Examination) With Regard to the "Every Exposure Theory"

Charles A. Weaver, III, PhD
Professor of Psychology and Neuroscience
Baylor University

Tom Hesterberg, PhD MBA
Principal Toxicologist
Center for Toxicology and Environmental Health

Anthony J. Sbarra, Jr
Shareholder
Hermes, Netburn, O'Connor & Spearing, P.C.

Nicholas P. Vari
Partner
K&L Gates

Jennifer E. Adams
Partner
Deutsch, Kerrigan & Stiles

- The latest court decisions on each and every exposure testimony – what are the trends?
 - Refining the causation standard in *Bosic*
- Notable experts, including each expert's formulation of the every exposure theory and specific examples of some of the exposures that these experts have opined are causes of disease
- How does the defense attack the testimony, including using weaknesses in the data relied on by the experts?
- Requiring some evidence of exposure (frequency, proximity)
 - How long and how many times did the plaintiff work with the product?
- Causation – what standard will Defendant be held liable?
 - Establishing medical causation
 - Expert testimony by pathologists
 - Single solitary exposure is a contributing cause of mesothelioma
- Product Identification
 - Plaintiff identifying defendant's product that caused mesothelioma v. plaintiff saying all products he worked with caused mesothelioma
- *Daubert* challenges

2:25 Garlock Estimation Ruling; New Procedural Issues (Discovery Motions, Motions to Unseal Records, Lack of Enforcement Mechanisms and What to Do With the Information at Trial); How These Issues Impact Future Liability; and the Latest Trust Transparency Nuances Given Increased Court Awareness, Judge Familiarity and Recent Trend Requiring Full Disclosure of Claims

Samuel R. Marshall
President & Chief Executive Officer
Insurance Federation of Pennsylvania, Inc.

Mary Margares Gay
Partner
Forman Perry Watkins Krutz & Tardy LLP

12:00 Networking Luncheon for Attendees and Speakers

Mark A. Behrens, Esq.
Partner
Shook, Hardy & Bacon L.L.P.

Garlock procedural motions

- The effect of the decision on asbestos litigation as a whole, and the fallout from that decision
- Filing discovery motions
- Filing motions to unseal records
- How the Garlock estimation ruling impacts analysis of future liability

Congressional legislative issues

- Bankruptcy transparency
- Plaintiffs not forthcoming with information they're filing and what trusts are paying out

Bankruptcy trusts

- Two types of trusts
 - Claims dealt with by bankruptcy trusts
 - Open system – claimants suing the insurance company
 - Legal question of assignment
- Bankruptcy Trust Documents: Disclosure and Usage in Local Courts
- Bankruptcy trusts and disclosures
 - How jurisdictions prevent trial date until disclosures have been made

12:00 Afternoon Break

3:30 **Take Home and Bystander Exposure: Jurisdictional Variations and Recent Rulings; Epidemiology Studies and Take Home Duty; Current Scientific Literature; Recent Developments in the Defense that Exposure Was Idiopathic or Occurs From Nature; and New Liability Implications When Premises Owners Are Included on the Verdict Form**

Barry N. Meiser
Partner
Sedgwick LLP

Dean A. Olson
Partner
Morris Polich & Purdy LLP

Michael J. Crist
Partner
DLA Lawyers

Demay, Labrador, Drake, Victor & Cabeza

- Defending cases against the worker who brought home asbestos to family members
 - How jurisdictions differ in their approach to handling take home exposure cases: California's recent change on standard to prove exposure
- How liability is impacted in certain jurisdictions where the premise owner and/or bystanders are defendants
- Determining whether premise owners owe a duty to household members
- Examining the credibility that asbestos exposure is idiopathic

- Asbestos exposure occurs from nature such as the serpentine rock, natural veins to chrysotile, and other forms of asbestos running through hills
 - this type of defense when the plaintiff is in her/his 40s
- Duty to warn – *Georgia Pacific, LLC v. Farrar*
- Risk of take home exposure not foreseeable – *Hoyt v. Lockheed Martin Corp*

4:30 **Contractor Liability for Disturbing Asbestos on a Job Site, Installing Asbestos, or Removing Asbestos**

Bryan D. Hardin, PhD ATS
Assistant Surgeon General (Retired)
Principal, Veritox, Inc.

Dawn Dezii
Partner
Margolis Edelstein

- Contractors getting sued for disturbing asbestos, installing asbestos, or removing asbestos
- Establishing negligence
- State of the art defense
- Who are the plaintiffs in contractor liability cases? Can family members sue contractors if the worker brings home the asbestos as a result of contractor liability?

5:20 **What It Means to Be a Caused Case: Understanding the Epistemology of Causation and/or Lung Cancer and Asbestos — Asbestosis Is Not Necessary**

David Egilman MD, MPH
Editor JJOEH
Clinical Professor
Department of Family Medicine
Brown University

6:05 **Conference Adjourns**

ABOUT THE VENUE



The Union League, which occupies an entire city block in the center of Philadelphia's commercial and cultural district, is a shining jewel of history in a city defined by such treasure. Founded in 1862 as a patriotic society to support the policies of President Abraham Lincoln, the Union League has hosted U.S. presidents, heads of state, industrialists, entertainers and visiting dignitaries from around the globe. The classic French Renaissance-styled League House, with its brick and brownstone facade and dramatic twin circular staircases leading to the main entrance, is listed in the National Historic Register, and dates back to 1865, when the Broad Street building was completed. Adorning the walls and hallways is the League's distinguished art collection, artifacts imbued with the heritage and culture of its membership. The collection is a rich, historical chronicle of Philadelphia's unique imprint upon the American landscape from the nineteenth century to today.

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DAY TWO: FRIDAY, JANUARY 16, 2015

7:30 Registration and Continental Breakfast

8:00 View From the Bench

<i>Hon. Michael M. Bayson</i> U.S. Dist. Ct., E.D. Pa.	<i>Hon. Richard T. Aulisi</i> New York State Sup. Ct.
<i>Hon. C. Ashley Royal</i> U.S. Dist. Ct., M.D. Ga.	<i>Hon. Mark I. Bernstein</i> Philadelphia Ct. C.P.
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<i>Hon. Martin Shulman</i> New York State Sup. Ct.	<i>Hon. Richard A. Kramer</i> San Francisco Super. Ct.
<i>Hon. Paul R. Wallace</i> Super. Ct. of Delaware	

Co-Moderators:

<i>Ross Stomel</i> Partner Shrader & Associates, LLP	<i>Philip R. Matthews</i> Partner Duane Morris LLP
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8:30 Morning Break

9:45 The View From the Plaintiff's Bar

Joseph W. Belluck
Founding Partner
Belluck & Fox, L.L.P.

Vincent L. Greene, IV
Member
Motley Rice LLC

Daniel Patrick Blouin, Esq.
Attorney
Weitz & Luxenberg, P.C.

10:40 Examining the Tooley Case in PA and Its Impact with Workers Compensation Laws in Different Jurisdictions and How It Shapes the Course of Asbestos Litigation Going Forward

Rick Schlogel
Assistant General Counsel
Exelon Corporation

Philip Y. Yannella
Partner
Ballard Spahr LLP

William C. Mills
Partner
Gordon & Rees LLP

Sean Higgins
Partner
Wilson Elser Moskowitz Edelman & Dicker LLP

- Examining the impact of the Pennsylvania Supreme Court's ruling in the *Tooley* case and how it impacts workers compensation law
- Other jurisdictions— Illinois, Missouri, Louisiana
 - o Examining the *Folta* case in Illinois

11:40 Expert Witnesses in Asbestos Cases: *Daubert* Challenges, Winning the Science Battle in the Courtroom, and Correcting the Historical Record with Empirical Evidence

David B. Sicilia, PhD
University of Maryland
Department of History and Smith School of Business

Kay Baxter
Founding Partner
Swetman Baxter Massenburg, LLC

- Pretrial hearings regarding expert witness testimony
- New and novel types of expert witnesses
- Sargon evaluations and the scientific validity of expert testimony
- *Daubert* challenges
- Winning the battle of science in the courtroom and aggressively challenging experts
- Develop the record for the challenges

12:30 Molecular Genetics of Mesothelioma and Novel Therapeutic Approaches

Faris Farassati, PhD, PharmD,
Associate Professor of Medicine
Department of Medicine
The University of Kansas Medical School

- Novel therapeutic approaches against mesothelioma
- Genetics and mesothelioma
- Current clinical trials in mesothelioma

12:45 Networking Luncheon for Attendees and Speakers

2:10 The Use of Asbestos by the United States Military Other than the Navy

Rachel P. Maines, PhD
School of Electrical and Computer Engineering
Cornell University

Thomas F. McCaffery
President
McCaffery & Associates, Inc.

Edward R. Hugo
Founding Partner
Brydon Hugo & Parker

- Alternative causative factors of the Plaintiff's disease and questioning Plaintiffs that served in any branch of the military about their job duties, physical location and day to day
- Questioning of the witness with respect to potential exposures to other toxic chemicals while serving in the military
- Deposition strategies regarding plaintiffs specific job duties in the military, the products that they encountered, the tools that they used and the machines they operated
- Examining specific barrack locations, office locations, building locations, and every installation where the Plaintiff was stationed
- Asbestos remediation information and obtaining information from the United States government through FOIA
- Removal strategies under Federal Enclave and/or Federal Officer Jurisdiction

3:05 Insurance Coverage Issues: Pursuing Claims Against Bankrupt, Dissolved, or Defunct Entities; Issues Involving Joint Insurers and Non-Settling Insurers; Trigger, Exhaustion and Allocation Nuances; Assignment of Policies and Proceeds; and Developments with Respect to CUMIS Counsel

Leslie A. Davis
Counsel
Crowell & Moring LLP

Stephen Hoke
Partner
Hoke LLC

Scott N. Godes
Partner
Barnes & Thornburg LLP

- What is the current landscape of defendants who are primarily smaller enterprises and entities (contractors, site owners)?
- Reviewing the *Anderson* case that allowed claims to proceed against defunct entities
- Reviewing the *Continental Casualty* case that allowed plaintiff to proceed against a company not in business anymore but still had an insurance policy in place
- What happens to insurance policies still in place after a business is defunct, dissolved, or bankrupt?
- What happens when there is an exhaustion of limits on insurance policies?
 - What is the effect on bankruptcy trusts?
- Bankruptcy nuances: Effect on non-settling insurers/contribution claims; Protection for non-debtors; Estimation methodology; Insurance neutrality; Assignment of policies/proceeds; determining whether there are other asbestos debtors; 524(g) relief
- Assessing the umbrella policies
- Issues relative to representative of joint insurers
- Determining when coverage is triggered
 - Claim is made that asbestos really manifested later

California Nuances

- Pollution exclusion
- Issues arising out of CUMIS counsel
 - Coverage disputes
- Policyholder paying counsel fees

4:00 Atremont Beak

4:00 Litigation, Deposition, Trial and Jury Strategies to Allocate Fault: Defending Your Case While Advancing One Against Multiple Other Parties Through Proof That Supports Other Shares, and Factoring the Latest on Products, Product Types, Product Uses and Product Identification Witnesses Into the Analysis

Linda J. Clark
Partner
Hiscock & Barclay, LLP

Mark A. Wisniewski
Principal
Kitch Drutchas Wagner Valinutti & Sherbrook

Shaun M. Ridley
Partner
Howard Rome Martin & Ridley LLP

Fault Apportionment

- Dividing liability to all entities that caused/contributed to plaintiff's disease
- Reducing and extinguishing liability
- How defendants limit their role in plaintiff's exposure by pointing out other products containing asbestos that plaintiff was exposed to
 - Creating a defense strategy – using plaintiff's testimony to establish multiple exposure to different types of asbestos containing products that will reduce percentage of liability
- What is defendant's real percentage of fault in an allocation of fault state?

Nuances in PA and NJ

- PA's *Fair Share Act*
- NJ's joint and several liability and how to prove cross claims

Deposition Strategies to Reduce Liability and Build Apportionment

- Knowledge of products, product types, and uses and how it reduce the liability of the trial defendants and shift liability to bankrupt and settled defendants
- Maximizing the effectiveness of product identification witnesses

4:55 Component Part Supplier Claims and Asbestos Equipment Litigation: The Evolution of Theories and Strategies With Regard to the Various Types of Defendants

C. Matt Alva
Attorney

Matusek, Nilles & Sinars, LLC

- Litigation nuances with regard to the types of defendants:
 - Manufacturer of product (the product) that includes an asbestos-containing component part;
 - Manufacturer of same type of product;
 - Manufacturer of component part to the product
 - Manufacturer of replacement for component part to the product;
 - Designer of the product
 - Designer of system or fixture that uses the product
- Questions for Each Defendant: Duty regarding defendant's own product or work?; Duties regarding the products or work of others?; Causation?; Limited to asbestos?

5:25 Conference Ends

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