

April 28 – 29, 2014 | Thompson Hotel | Chicago, IL



American Conference Institute's 5th National Forum on

# Chemical Products Liability & Environmental Litigation

Best practices for defending complex and novel cases, making demonstrative evidence compelling to juries, and crafting a winning overall defense strategy



## Hear from these Renowned Jurists:

The Honorable Vincent J. DiNubile  
Senior Judge  
Philadelphia Court of Common Pleas

The Honorable Allen S. Goldberg (Ret.)  
Circuit Court Judge, State of Illinois Circuit Court  
of Cook County, Mediator and Arbitrator, JAMS

The Honorable Sandra Mazer Moss  
Coordinating Judge, Complex Litigation Center  
Philadelphia Court of Common Pleas

The Honorable James L. Robart  
United States District Judge, United States  
District Court, Western District of Washington

The Honorable Allan L. Tereshko  
Presiding Judge  
Philadelphia Court of Common Pleas

## Experienced In-House Attorneys and Industry Experts Share Best Practices:

Joseph R. Alberts | Senior Counsel –  
Litigation | The Dow Chemical Company, Dow  
AgroSciences

Richard A. Becker, Ph.D., DABT | Senior  
Toxicologist, Regulatory and Technical Affairs |  
American Chemistry Council

David Fischer, M.P.H., J.D. | Senior Director,  
Chemical Products and Technology Division |  
American Chemistry Council

Mary L. Frontczak (invited) | Senior  
Vice President and General Counsel –  
Americas State Government Relations and  
Communications | Peabody Energy Corporation

Tyler Mercer | Senior Counsel – Refining &  
Procurement | Valero Energy Corp.

John Pendergast (invited) | Senior Counsel |  
BASF Corp.

F. Charles “Chip” Marionneaux | Senior Counsel  
– Litigation | Axiall Corp.

Christopher J. Riley | General Counsel |  
McLaughlin Gormley King Company

Andrew J. Yoder (invited) | Senior Counsel –  
Litigation | The Dow Chemical Company

## Distinguished Co-Chairs:

Eric S. Sarnier  
Associate General Counsel  
Praxair, Inc. (Danbury, CT)

Kevin O’Neal  
Senior Counsel – Litigation  
Chevron Global Upstream Oil & Gas

Join the nation’s leading in-house litigation counsel, outside litigators, and preeminent jurists who will provide highly specialized, practical information on:

- The latest developments in causation, dose, and epidemiology: Endocrine disruptors and interesting and bizarre disease endpoints
- Preparing for the list of five priority chemicals soon to be released under the California Green Chemistry initiative
- Best practices for cross examining a toxicologist, hematologist, and industrial hygienist
- Up-to-date analysis on recent litigation, including pricing, failure to warn, and fear of cancer cases
- Minimizing the effectiveness of plaintiffs using “Reptile Theory”
- Weighing benefits and risks when establishing a defense based on developing science
- Determining what is working a year after the Medicare reporting requirements have been implemented

## Spotlight Panel: Maximizing the Effectiveness of Working with a Special Master

Dominic J. Gianna | Special Master in Complex Civil Mass Tort Class Actions | Shareholder | Aaron & Gianna, PLC  
David R. Cohen | Federal Special Master

Compliment your training with the ONE DAY ADVANCE FOCUS MASTER CLASS ON PESTICIDES LITIGATION to learn how to tackle the hottest pesticides litigation topics

## THE LITIGATION AND REGULATORY GUIDEBOOK TO PREVAILING IN PESTICIDES CASES

April 30, 2014



## Our prior attendees say it best:

“This was one of the best CLE programs I have attended in my 35 years of practice.”

– Linda Joseph, Schrader Joseph & Associates, LLC, 2013 attendee

“This was the best conference I have attended. Very good.”

– Dean T. Howell, Woolf, McClane, Bright, Allen & Carpenter, PLLC, 2013 attendee

“Great and well planned! Good topics. Virtually all of the speakers were excellent and topics were timely and interesting.”

– Michael Baker, Strong Pipkin, 2013 speaker

“This is a first-rate event. It brings together highly knowledgeable participants with excellent presentation skills.”

– 2013 speaker

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## The dose no longer makes the poison...

**Causes of action using low dose causation theories, such as cases involving endocrine disruptors and benzene, are causing difficult defense challenges. In addition, you need to be prepared with a specific plan of action to defend against novel and innovative theories of causation that are being implemented by the plaintiffs' bar.**

Not only must practitioners face the challenge of changes in plaintiffs' theories dealing with causation and dose, but manufacturers and those who represent them must prepare for new labeling requirements under Prop 65 and be ready for the release of the five priority chemicals under California's Green Chemistry Initiative. You can't make products for everywhere but California and as such these new regulations will have a huge impact on chemical manufacturing and products nationwide.

*Now in its fifth year*, ACI's **Chemical Products Liability and Environmental Litigation** conference brings together an unparalleled faculty of litigation attorneys directly involved in key decisions throughout the year, as well as industry in-house counsel and the nation's leading jurists with on-point chemical products experience. This essential litigation forum is designed to educate practitioners—both in-house and outside counsel—on the leading trends in chemical products liability and environmental litigation.

There is no other conference available that not only addresses pressing changes in the industry that impact litigation, but also provides practical information that will provide you with an opportunity to hear insights from esteemed jurists from throughout the country, bolster your practice, and learn cutting-edge information about emerging areas of concern.

Join experts from American Chemistry Council, Axiall Corporation, Chevron Global Upstream Oil and Gas, The Dow Chemical Company, Dow AgroSciences, Peabody Energy Corporation, Praxair, Inc., Valero Energy Corp., and many more, as they discuss the hottest topics in chemical products liability and environmental litigation.

Plus, benefit from the opportunity to hear from 5 state and federal court judges as they discuss important elements of litigation, including *Daubert* motions and discovery challenges.

**New this year – a ONE-DAY ADVANCE FOCUS MASTER CLASS ON PESTICIDES**, featuring attorneys from the leading pesticide and herbicide manufacturers, including **BASF Corp.**, and **McLaughlin Gormley King Company**. This unique event will provide you with a litigation guidebook to tackle pressing issues such as FIFRA preemption, groundwater contamination, defeating causation theories, and more.

Ensure you are prepared to tackle emerging litigation trends and challenges at this unique and important event.

Space is extremely limited; ensure that you can attend this event by reserving your space now. Register by calling 1-888-224-2480, online at [www.AmericanConference.com/ChemProducts](http://www.AmericanConference.com/ChemProducts), or faxing your registration form to 1-877-927-1563.

## DISTINGUISHED FACULTY:

Joseph R. Alberts  
Senior Counsel – Litigation  
The Dow Chemical Company, Dow  
AgroSciences

Michael Baker  
Partner  
Strong, Pipken, Bissell & Ledyard

Richard A. Becker, Ph.D., DABT  
Senior Toxicologist  
Regulatory and Technical Affairs  
American Chemistry Council  
(Washington, DC)

Karl S. Bourdeau  
Principal  
Beveridge & Diamond LLP

Eugene Brown, Jr.  
Partner  
Sedgwick LLP

Tynan Buthod  
Partner  
Baker Botts LLP

Larry Chilton  
Partner  
Chilton Yambert & Porter LLP

Carla Christofferson  
Partner  
O'Melveny & Myers LLP

Jeff Civins  
Partner  
Haynes and Boone, LLP

David M. Cohen  
Partner  
Butler Snow LLP

David R. Cohen  
Federal Special Master

Timothy Coughlin  
Partner  
Thompson Hine LLP

Michele Hale DeShazo  
Partner  
Kuchler Polk Schell Weiner &  
Richeson, L.L.C.

The Honorable Victor J. DiNubile  
Senior Judge  
Philadelphia Court of Common Pleas

Joseph G. Eaton  
Partner  
Barnes & Thornburg LLP

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Chemical Products and  
Technology Division  
American Chemistry Council  
(Washington, DC)

Mary L. Frontczak (invited)  
Senior Vice President and  
General Counsel – Americas  
State Government Relations and  
Communications, Peabody Energy  
Corporation

Dominic J. Gianna  
Special Master in Complex Civil  
Mass Tort Class Actions  
Shareholder  
Aaron & Gianna, PLC

D. Patterson Gloor  
Partner  
The Gloor Law Group LLC  
(Chicago, IL)

The Honorable Allen S. Goldberg (Ret.)  
Circuit Court Judge, State of Illinois  
Circuit Court of Cook County  
Mediator and Arbitrator, JAMS

Peter L. Gray  
Partner  
McKenna Long & Aldridge LLP

Gary Guzy  
Fmr. Deputy Director  
and General Counsel  
White House Council on  
Environmental Quality  
Partner, Covington & Burling LLP

Stephen J. Harburg  
Partner  
Skadden, Arps, Slate, Meagher  
& Flom LLP

Howard E. Jarvis  
Member  
Woolf, McClane, Bright, Allen &  
Carpenter, PLLC

Michael J. Kanute  
Partner  
Faegre Baker Daniels LLP

Nicholas D. Kayhan  
Partner  
King & Spalding LLP

Gregory G. Little  
Partner  
White & Case LLP  
Paul V. Majkowski  
Partner  
Rivkin Radler LLP (Uniondale, NY)

Kenneth J. Mallin  
Partner  
Bryan Cave LLP

F. Charles "Chip" Marionneaux  
Senior Counsel – Litigation  
Axiall Corporation

Jeffrey Margulies  
Partner  
Fulbright & Jaworski LLP

Stacy Watson May  
Of Counsel  
Holland & Knight LLP

Tyler Mercer  
Senior Counsel – Refining &  
Procurement  
Valero Energy Corp.

Richard G. Morgan  
Executive Managing Partner  
Bowman and Brooke LLP

The Honorable Sandra Mazer Moss  
Coordinating Judge, Complex  
Litigation Center, Philadelphia Court  
of Common Pleas

Jeffrey J. Norton  
Member  
Eckert Seamans Cherin & Mellott, LLC

Michael T. Novak  
Partner  
Keller & Heckman LLP

Kevin O'Neal  
Senior Counsel – Litigation  
Chevron Global Upstream Oil & Gas  
(Houston, TX)

John Pendergast (invited)  
Senior Counsel  
BASF Corp.

Telisport W. Putsavage  
Counsel  
Sullivan & Worcester LLP

Steven W. Quattlebaum  
Managing Member  
Quattlebaum, Grooms, Tull &  
Burrow PLLC

Lawrence Riff  
Partner  
Steptoe & Johnson LLP

Christopher J. Riley  
General Counsel  
McLaughlin Gormley King Company

The Honorable James L. Robart  
United States District Judge, United  
States District Court, Western  
District of Washington

Amy Rudd  
Partner  
Dechert LLP

Will Sachse  
Partner  
Dechert LLP

Eric S. Samer  
Associate General Counsel  
Praxair, Inc.

Steven Siros  
Partner  
Jenner & Block LLP

The Honorable Allan L. Tereshko  
Presiding Judge  
Philadelphia Court of  
Common Pleas

David B. Weinberg  
Partner  
Wiley Rein LLP (Washington, DC)

Andrew J. Yoder (invited)  
Senior Counsel – Litigation  
The Dow Chemical Company

Clifford J. Zatz  
Partner  
Crowell & Moring LLP

7:00 Conference Registration and Continental Breakfast

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

*Eric S. Sarnier*  
Associate General Counsel  
Praxair, Inc. (Danbury, CT)

*Kevin O'Neal*  
Senior Counsel – Litigation  
Chevron Global Upstream Oil & Gas (Houston, TX)

8:15 **VIEW FROM THE BENCH**  
**The Judicial Perspective on Trying a Products Liability Case from Pretrial Issues, Pleadings and Motion Practice to the Trial Phase and Settlement**

*The Honorable Victor J. DiNubile*  
Senior Judge  
Philadelphia Court of Common Pleas

*The Honorable Allen S. Goldberg (Ret.)*  
Circuit Court Judge, State of Illinois Circuit Court of Cook County  
Mediator and Arbitrator, JAMS (Chicago, IL)

*The Honorable Sandra Mazer Moss*  
Coordinating Judge, Complex Litigation Center  
Philadelphia Court of Common Pleas

*The Honorable James L. Robart*  
United States District Judge  
United States District Court, Western District of Washington

*The Honorable Allan L. Tereshko*  
Presiding Judge  
Philadelphia Court of Common Pleas

**Moderator:**

*Will Sachse*  
Partner  
Dechert LLP (Philadelphia, PA)

9:30 **It's all About Protecting the Children: Endocrine Disruptors and Continuing Developments in Causation, Dose, and Epidemiology**

*Richard A. Becker, Ph.D., DABT*  
Senior Toxicologist  
Regulatory and Technical Affairs  
American Chemistry Council (Washington, DC)

*Timothy Coughlin*  
Partner  
Thompson Hine LLP (Cleveland, OH)

*David Fischer, M.P.H., J.D.*  
Senior Director  
Chemical Products and Technology Division  
American Chemistry Council (Washington, DC)

*Clifford J. Zatz*  
Partner  
Crowell & Moring LLP (Washington, DC)

- Endocrine disruption and obesity: new theories, new plaintiffs, new legal issues
  - Endocrine disrupting chemicals in the regulatory spotlight
  - Allegations of low-dose causation: turning “dose makes the poison” toxicology on its head
  - The “obesogen” hypothesis and the global obesity epidemic
  - “Critical windows of vulnerability”: in utero exposure as the cause of adult obesity
  - Claims of multi-generational and transgenerational effects

- “Weighty” legal issues: Who may sue? What is the compensable injury? Does the obesogen theory satisfy Daubert and Frye? How will the statute of limitations work? How will plaintiffs prove general and specific causation? Is a medical monitoring claim viable?
- Holding an entire industry responsible: getting around causation requirements when assumptions are made that a particular industry caused a contaminant to be in the ground
  - Dissecting Judge Sheindlin’s MTBE decision
  - Mitigating liability by identifying trends in industry-wide liability
  - Crafting narrow defenses at trial
- Creating strategies to attack epidemiology used to prove/disprove causation
- Defeating plaintiffs’ arguments that any contamination is too much contamination by using tort theory to do an end-run around environmental limits
- Interesting and bizarre disease endpoints: overcoming plaintiffs’ attempts to create causal links of certain diseases not previously associated with a particular type of exposure
- Constructing defenses for the increased plaintiffs’ focus on the benzene docket to link new disease subtypes and low dose causation
- Minimizing the impact of plaintiffs’ attorneys abandoning science and relying on doctors and other medical professionals to determine exposure
  - Ceasing to use predictive air modeling to reverse engineer exposure
  - What to do when Daubert cannot exclude experts

10:45 Morning Coffee Break  
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11:00 **Limiting Exorbitant Liability in Environmental Citizen Suits and Differentiating a Case Brought by Private Citizens from a Case in which EPA is Involved**

*Jeff Civins*  
Partner  
Haynes and Boone, LLP (Austin, TX)

*Karl S. Bourdeau*  
Principal  
Beveridge & Diamond, P.C. (Washington, DC)

- Understanding the key elements of federal environmental citizen suit provisions
- Important differences in citizen suit claims alleging regulatory violations vs. an imminent and substantial endangerment
- Standing of plaintiffs to sue
- Relief available under citizen suit provisions
- Possible bases for early disposition of citizen suit claims
- Coordination with regulatory agencies to forestall citizen suits (the “diligent prosecution” defense)
- How the courts have interpreted what constitutes an “imminent and substantial endangerment”
- The availability of attorneys fees in citizen suit cases
- Addressing common law claims that may be filed with or arise out of a citizen suit

12:00 Networking Lunch for Speakers and Delegates

1:15 **CASE STUDY**  
**Using the Developing Science of Genomics to Efficiently Disprove Causation Theories: The Latest on N.O.R.M. Cases in Louisiana**

*Howard Jarvis*  
Member  
Wolf, McClane, Bright, Allen & Carpenter, PLLC (Knoxville, TN)

*Eugene J. Brown, Jr.*  
Partner  
Sedgwick LLP (San Francisco, CA)



- Weighing benefits and risks when establishing a defense based on developing science
- Working around the inevitably destructive nature of testing cancerous and non-cancerous tissue
  - Is admitting there are damages worth the risk?
- Making the invisible visible: Using cutting edge RNA sequencing technology to prove or disprove genetic predisposition to disease
- Getting a defense verdict by effectively working with experts to make the medical case overwhelm other issues
- Daubert challenges: Understanding the importance of relying on published, peer reviewed, and accepted studies when using developing science as a main feature of your defense
- Comprehending the science behind RNA sequencing and identifying genetic predisposition
  - Radiation signature
- Using genomics in defenses of other types of exposure cases
- Strategies for an effective and eviscerating cross examination of plaintiff's experts

2:00

## Destroying Opposing Experts on Cross, Working Effectively with Your Experts, and Managing the Challenges of Complex Science Used in Causation Theories

David M. Cohen

Partner  
Butler Snow LLP (New York, NY)

Larry Chilton

Partner  
Chilton Yambert & Porter LLP (Chicago, IL)

Kenneth J. Mallin

Partner  
Bryan Cave LLP (St. Louis, MO)

D. Patterson Gloor

Partner  
The Gloor Law Group LLC (Chicago, IL)

- Weighing the risks and benefits of using an epidemiologist
- How to best utilize an industrial hygienist and math modeling when there is only current air sampling protocol
- Best practices for cross examining a toxicologist, hematologist, and industrial hygienist
- How to best diminish plaintiff's claims when the standard does not require scientific proof
- Avoiding inadvertently admitting exposure: When is it okay to present a dose argument
  - Using dose as a compliment to toxicology and epidemiology
- Combating negative literature (e.g., manganese from welding fumes linked to Parkinson's and Manganism) when trying a case
  - Overcoming negative public perception and epidemiology
- Finding and disproving or defending an environmental cause for a specific disease
  - Where is the science?
  - What are the litigation implications?

3:15

## Afternoon Refreshment Break

3:30

## Toxic Tort Litigation Update: Bolstering Defense Strategy by Learning from the Docket

Tynan Buthod

Partner  
Baker Botts LLP (Houston, TX)

Carla Christofferson

Partner  
O'Melveny & Myers LLP (Los Angeles, CA)

Jeffrey J. Norton

Member  
Eckert Seamans Cherin & Mellott, LLC (Harrisburg, PA)

- What is the status of the case law of fracking?

- Class actions currently in progress claiming personal injury and property damage for contaminated well water, exposure to fracking fluid, and nuisance for noise, dust, and disruption of roads
- Increase in filing for nuisance, air emissions, water contamination
- Compared to the last 5 years, volume of cases being filed has doubled
- Personal injury complaints: fear of cancer (medical monitoring)
- Failure to warn: Defending cases that test the range and the limits of when a company can be held liable
  - Duty and causation analysis for take-home and other bystander exposures
  - Increasingly nuanced versions of an "every exposure" theory that plaintiffs' experts develop in moving target fashion
  - The inadequacy of "consumer expectations" tests and "failure to warn" jurisprudence that developed in the context of product purchasers/users, and not bystanders
- Addressing the trends of damages for fear of cancer cases
  - Recent decision in MD
- Updates on *Burlington Northern*: supervisor liability and divisibility of harm under Superfund
- Predicting if there will be more case law on climate change this year
- Challenging the "discovery rule" in chemical exposure cases affecting the statute of limitations
- The "new" legacy litigation: oil and gas legacy cases brought under the Coastal Zone Management Act
  - Differences and overlaps in defense strategies
- Examining the benzene docket: identifying trends, challenges, and pitfalls in current benzene cases
- Using creosote trial strategy to try coal tar pitch cases
  - Claims of bladder cancer: causal link with a dose issue
- Evaluating risks and reasonableness in cleanup levels
  - How do you handle a case dealing with a novel chemical that has not been the subject of studies?
- *Tooley v. AK Steel*: What is the future of the interplay of workers compensation and tort liability for chemical products cases?
  - Where are there limits to its applicability?
  - What sorts of plaintiffs' claims can escape workers compensation act requirements?
  - How far does the exclusivity of the act extend?
- Defeating class certification: New and interesting ways to challenge a class of plaintiffs
  - Ascertainability: determining if too much individualized proof is required
    - 3rd Circuit cases
  - Challenging the standing of the putative class representatives to defeat plaintiffs on an individual basis and then attacking the entire class
    - *Genesis Healthcare* collective action case

4:45

## Neutralizing Plaintiffs' "Reptile Strategy" and Devising Defense Strategies to Minimize its Effectiveness

Steven W. Quattlebaum

Managing Member  
Quattlebaum, Grooms, Tull & Burrow PLLC (Little Rock, AR)

Gregory G. Little

Partner  
White & Case LLP (New York, NY)

- Understanding the "reptile" formula of creating rules and narrowing them to the facts of the case
- How to defend against plaintiff's counsel using rules established by the defense to substitute for law
  - Coping with losing the flexibility of the law to use to your benefit
- Identifying the components of the multi layered strategy: How do prevent plaintiffs from manipulating the jurors?
  - Overcoming sympathy for injured plaintiffs
- Mitigating juror bias against companies
  - Intolerance of virtually any risk of harm
  - Explaining hard evidence in a way that lay people can internalize
- Minimizing juror anxiety about incidents, releases, events, accidents, etc.

5:45

## Conference Adjourns to Day Two



7:30 Continental Breakfast

8:20 **Co-Chairs' Opening Remarks and Recap of Day One**

8:30 **Medicare Reporting Requirements and Settlements: A Year in Review**

*Michael Baker*  
Partner

Strong, Pipkin, Bissell & Ledyard (Beaumont, TX)

*Michele Hale DeShazo*

Partner

Kuchler Polk Schell Weiner & Richeson, L.L.C. (New Orleans, LA)

*Michael J. Kanute*

Partner

Faegre Baker Daniels (Chicago, IL)

- What is working a year later after the Medicare requirements have been in play?
  - What isn't working?
- Mitigating delays in settling and closing cases
  - Best practices for searching Medicare to determine if the plaintiff's treatment was covered
- Obtaining a final cost amount from Medicare
  - Relying on the "paid" amount as opposed to the "incurred" amount
- Determining "set-asides" for future treatment
- Understanding what CMS wants from Medicare reports
  - Documentation
  - How to determine costs
  - Covering the cost of future treatment that Medicare will not cover
- What to do when the Medicare lien exceeds the amount offered in settlement
- Drafting enforceable releases and minimizing the risk of including terms that are outside the scope of the original damages sought in the case
  - Seeking release for actual and punitive damages to satisfy the Medicare requirements
- Best practices to tackle the nightmare of mass tort settlements

9:30 Morning Coffee Break

9:45 **IN-HOUSE PERSPECTIVES**

**Meeting the Challenges of the Discovery Process in Complex and Mass Tort Cases**

*Joseph R. Alberts*

Senior Counsel – Litigation

The Dow Chemical Company, Dow AgroSciences (Indianapolis, IN)

*Mary L. Frontczak (invited)*

Senior Vice President and General Counsel – Americas State

Government Relations and Communications

Peabody Energy Corporation (St. Louis, MO)

*Tyler Mercer*

Senior Counsel – Refining & Procurement

Valero Energy Corp. (San Antonio, TX)

Moderator:

*Joseph G. Eaton*

Partner

Barnes & Thornburg LLP (Indianapolis, IN)

- Proffering effective and "correct" discovery challenges to avoid risk and strengthen defense position
- Controlling the discovery process to minimize costs

- Minimizing the impact of social media on discovery
  - Monitoring employees posts
  - Responding to posts made in favor of plaintiffs and to the detriment of defendants
  - Combating the unfiltered nature of social media content in the discovery process
  - Strategies to prevent social media posts from doing damage before they can be filtered in the courtroom
- Best practices for maintaining privilege on internal documents
- Discoverability of a corporation's internal risk assessment documents
  - When is it favorable to have these documents viewed by a judge and jury?

11:00 **SPOTLIGHT PANEL**

**Maximizing the Effectiveness of Working with a Special Master**

*Dominic J. Gianna*

Special Master in Complex Civil Mass Tort Class Actions

Shareholder

Aaron & Gianna, PLC (New Orleans, LA)

*David R. Cohen*

Federal Special Master (Cleveland, OH)

Moderator:

*Stephen J. Harburg*

Partner

Skadden, Arps, Slate, Meagher & Flom LLP (Washington, DC)

12:00 Networking Lunch for Speakers and Delegates

1:15 **Deadening the Blow of California Initiatives that Impose Arduous Conditions on Manufacturers: Proposition 65, Labeling, Green Chemistry**

*Jeffrey B. Margulies*

Partner

Norton Rose Fulbright (Los Angeles, CA)

*Amy Rudd*

Partner

Dechert LLP (Los Angeles, CA)

- Defending against the series of flame retardants cases under Prop 65
  - What is the nationwide impact?
- Product labeling consumer class actions: Altering defense strategy when reliance on unfair competition claims takes out the damages component
  - Acrylamide in coffee
  - Lead in packaged fruit juice
  - Crystallized ginger containing lead
  - Naturally occurring lead
- Understanding the California Green Chemistry initiative and its effect on products next year
  - Identifying the list of 1200 "bad" chemicals and designations of combinations of products and chemicals
  - What 5-6 chemicals will likely be on the initial list?
  - Overcoming the uncertainty and fear if a manufacturer wants to continue using the chemical
    - Outlining the alternatives analysis process that is covered by CA Green Chemistry
  - How do you handle a potential admission in your Alternatives Analysis report?
    - Is a report stating there is a safer alternative an admission of a design defect?
    - Potential defenses?
  - Advising clients now to get ahead of the requirements to avoid the necessity of an Alternatives Analysis report

2:15 Afternoon Refreshment Break



2:30

## IN-HOUSE PERSPECTIVES

### Managing the Continuing Evolution Towards the Virtual Law Firm in Complex Litigation

*F. Charles "Chip" Marionneax*  
Senior Counsel, Litigation  
Axiell Corporation (Atlanta, GA)

*Kevin O'Neal*  
Senior Counsel - Litigation  
Chevron Global Upstream  
Oil & Gas (Houston, TX)

*Eric S. Sarnier*  
Associate General Counsel  
Praxair, Inc. (Danbury, CT)

*Andrew J. Yoder (invited)*  
Senior Counsel - Litigation  
Dow (Midland, MI)

#### Moderator:

*Richard G. Morgan*  
Executive Managing Partner  
Bowman and Brooke LLP (Minneapolis, MN)

- Building a trial team, including hiring outside counsel, while keeping costs down
  - Managing a multi-law firm team that has been "knitted" together to maximize expertise
- Coordinating national strategies to set up test cases
  - Dealing with tort reform
  - Setting up and grooming experts and counsel to get ahead of the emerging issues
- Minimizing your financial output when facing complex chemical products liability litigation
- Responding to plaintiffs' forum shopping: Tailoring trial management strategies to fit mass tort, class tort, or one-off cases
- Avoiding settlements as a cost-cutting tool while reducing the cost of trying a case
  - Communicating to management the need to defend products rather than settle cases despite the fact that settlement may be a faster and less expensive alternative to trial
- Strategizing expert selection and effectively working with your trial team
  - Cost effective tools for expert selection
  - Understanding that the "best" is not necessarily the most expensive

3:45

### Understanding Current Policy Initiatives that have a Wide-Reaching Impact on Manufacturers: EPA's IRIS, Administrative Reporting Requirements, and TSCA Reform

*Gary Guzy*  
Fmr. Deputy Director and General Counsel  
White House Council on Environmental Quality  
Partner, Covington & Burling LLP (Washington, DC)

*Steven Siros*  
Partner  
Jenner & Block LLP (Washington, DC)

- What is happening with EPA's IRIS program?
  - New toxicity values (below background) that could be used in torts about new chemicals
    - Can they be challenged?
    - Are they subject to judicial review?
    - How to attack them
- Understanding the regulatory aspects of chemicals to bolster defense strategy
- Dealing with release reporting under environmental programs
  - How to manage an air release or spill that triggers superfund reporting requirements
  - State requirements and common law implications
  - Use of citizen suits to establish policy
- Responding to the use of the migratory bird treaty act and ESA
  - Violations
- Predicting the effect of TSCA reform on preemption to mitigate liability

4:45

### Thwarting Plaintiffs' Advantage in a Vapor Intrusion Case by Defeating the Causal Link to Injury

*Lawrence Riff*  
Partner  
Steptoe & Johnson LLP (Los Angeles, CA)

- Understanding the regulatory issues regarding vapor intrusion in superfund and toxic tort cases
  - What's in the ground?
  - What's in the building?
  - What is the liability?
- Making sense of EPA's new, pernicious vapor intrusion guidance and how plaintiffs are using it to their advantage
- Learning from current vapor intrusion cases to strengthen defense strategy
  - Theory being used in Mississippi in a RCRA case claiming a soil vapor risk posed to residents
  - Texas case dealing with exposure to carcinogens in a bank building
- Breaking down the science of vapor intrusion
  - Vapors can migrate through the soil into the ambient air and into buildings
- Using modeling to determine what vapor levels exist in water and soil
  - What levels are of concern?
  - What levels are likely to be there?
- Strategies for mitigating regulatory and common law liability for personal injury damages and diminution of property value

5:30

### Conference Concludes

**ONE-DAY ADVANCE FOCUS MASTER CLASS: WEDNESDAY, APRIL 30, 2014**

**THE LITIGATION AND REGULATORY GUIDEBOOK TO PREVAILING IN PESTICIDES CASES**



8:30

Registration and Continental Breakfast

9:30

### Bridging the Litigation and Regulatory World of Pesticides

*Telisport W. Putsavage*  
Counsel  
Sullivan & Worcester LLP  
(Washington, DC)

*David B. Weinberg*  
Partner  
Wiley Rein LLP  
(Washington, DC)

- Understanding the regulatory scheme for a specialized product, which is essentially an intentional poison
- Working under FIFRA's regulations and its implementing scheme by EPA that is byzantine and complex
- Navigating the highly regulated environment by the EPA under FIFRA
  - What liability for pesticide litigation has been limited?
- What is the EPA doing to broaden its regulations to include labeling and factors involving the ESA?
- Delving deeper into pesticides regulation: Emerging issues in nanotechnology and consumer products
  - Nanosilver particles (antimicrobial)
  - NGO involvement
- Responding to enforcement actions under EPA
  - Increased focus on chemicals
  - High priority for NGOs in support of EPA enforcement
  - Administrative Procedures Act challenges: rulemaking, challenging agency decisions, and more
- Differentiating between federal and state regulations of pesticides
  - Identifying discrete state issues



10:30 Morning Coffee Break

10:45 **IN-HOUSE COUNSEL PANEL**

**Sharing Strategies for Cost-Saving and Effective Ways to Work with Outside Counsel and Experts**

John Pendergast (invited)  
Senior Counsel  
BASF Corp. (Cleveland, OH)

Christopher J. Riley  
General Counsel  
McLaughlin Gormley King Company (Minneapolis, MN)

Moderator:

Peter L. Gray  
Partner  
McKenna Long & Aldridge LLP (Washington, DC)

- Structuring a trial team that balances the needs of corporate stakeholders with successful defense strategy for the case
- Working with regional and national counsel to get the best result at trial
- Distinguishing a pesticides case from a traditional chemical products liability case and its impact on trial strategy
- Minimizing costs when working with experts

12:15 Networking Lunch for Speakers and Delegates

1:30 **Creating a Strong Defense Strategy by Determining What Remains of Preemption under FIFRA**

Michael T. Novak  
Partner  
Keller & Heckman LLP (Washington, DC)

- Understanding the impact of the *Bates* case in 2005 on preemption cases
  - Changes to the landscape following the *Pliva* case
- Recent developments on the Court distancing itself from *Bates* by using *Pliva*
- Advising clients on how to minimize the cost to alter a registered product by efficiently navigating the re-registration process and using the impossibility prong of implied preemption
- Distinguishing between design defect and labeling defect claim under FIFRA and differentiating between *Bates* and *Pliva*
- Understanding the interplay between ESA, CWA, and FIFRA and how preemption relates to defense strategy under each of the statutes
- Surviving Daubert challenges and prevailing in motions challenging plaintiffs' experts

2:30 Afternoon Refreshment Break

2:45 **Following the Benzene Model: Defeating the Causal Link of Pesticides and Cancer**

Paul V. Majkowski  
Partner  
Rivkin Radler LLP (Uniondale, NY)

- Using benzene trial strategy to successfully try pesticides cases
  - What are the common issues?
  - Advantages and disadvantages of following a similar trial strategy
- Turning the tables: Using studies linking pesticides to cancer to your advantage
  - Challenging the causal link of pesticides and work-related leukemia
  - Using benzene trial strategy to minimize the effect of studies
- Comprehending the causation issues of dose and causal link to strengthen your defense

- Understanding the science behind the physical manifestations of exposure and injury
  - Dermal
  - Inhalation
  - Known cancers associated with exposure
- Creating arguments that will resonate with modern juries when defending Silent Spring era chemicals (banned in 1980) in 2014
- Working with experts to defeat toxicology results from historic exposure
- Overcoming sophisticated juries and their bias about known harmful chemicals

3:45 **Crafting Winning Defenses against the Entire World of Property Damage Litigation Involving Pesticide Contamination of Groundwater**

Nicholas D. Kayhan  
Partner  
King & Spalding LLP (San Francisco, CA)

Stacy Watson May  
Of Counsel  
Holland & Knight LLP (Jacksonville, FL)

- Lessons learned from the \$105M settlement in the Madison County Atrazine case (*City of Greenville v. Syngenta Crop Protection, Inc.*)
- Case study: Successfully defending one-off cases relying on theories of volatilization leading to crop cross-contamination
  - Why did two different results come of 2,4-D cases when one was rice farmers contaminating tomato crops and the other was contaminating cotton crops?
- Understanding the agricultural side of pesticide migration into fields labeled as "organic" and what impact these issues have on litigation
- Combating claims of property damage for pesticide use in buildings
  - Fires
  - Infestations

4:45 **Master Class Concludes**

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