

State-Federal Conference

Balboa Bay Club, Newport Beach, CA

March 1, 2019 Agenda



Institute for Complex
Litigation and Mass Claims

Working Group Co-Chairs: Hon. William Highberger & Hon. Brian Martinotti
Conference Co-Chairs: Amy Laurendeau (O'Melveny) & Kim Adams (Levin Papantonio)



- 7:30 AM **Light Breakfast/Registration** – Sponsored by LMI (Sonya Virant & Megan Pizor)
- 8:30 AM Opening Remarks by Judge Kuhl on the State of State-Federal Relations
- 8:45 AM **SESSION 1**
The Federal Courts: The Latest on Lexicon – Amy Laurendeau (O'Melveny), Kim Adams (Levin Papantonio)
Current Judicial Approaches to Bellwethers – Judge Fallon & Judge New
End Games – What Next? – Judge Martinotti
- 10:30 AM **Break** – Sponsored by Milestone Consulting (John Bair)
- 10:45 AM **SESSION 2**
State/Federal Filing Decisions – Lexi Hazam (Lief Cabraser),
Troy Rafferty (Levin Papantonio), Mollie Benedict (Tucker Ellis)
The Ethics of Case Selection – Ed Gentle (Gentle Turner Saxton)
The Ethics of Mass-Settlements – Hon. Cathy Yanni (JAMS) with Henry Garrard (Blasingame, Burch,
Garrard, & Ashley), Jayne Conroy (Simmons Hanly Conroy), Alicia Donahue (Shook Hardy)
- 12:30 PM **Lunch Served** – Sponsored by Brown Greer (Orran Brown Sr. & Phil Strunk)
- 12:45 PM Myths & Lessons From Both Sides of The "V" – Mark Lanier (The Lanier Law Firm)
- 1:15 PM **Break**
- 1:30 PM **SESSION 3**
Update on Proof of Use/ Proof of Injury Orders – Jaime Dodge (Emory Law School)
Challenges in Negotiating POU/POI Orders – Elizabeth Cabraser (Seeger Weiss) & Sean Fahey (Pepper Hamilton)
Statute of Limitations, Medical Monitoring, and Less-Injured Plaintiffs: Case Management Strategies –
Henry Garrard (Blasingame, Burch, Garrard, & Ashley) & Hon. Rachelle Harz, Alycia Degen (Sidley)
- 3:30 PM **Adjourn**
- 5:00 PM **Optional Dinner for Judges and Advisory Board Members**

Requested CLE credit: 6 hours total (including 1 hour California ethics)

State-Federal Conference Session Descriptions

8:45 AM - Session 1

The first session focuses on how coordinated proceedings can be resolved, with particular attention to the interplay between developments in state and federal proceedings.

- What has become of the federal bellwether in the wake of Lexicon? What is the thinking of judges now on whether to use bellwethers and, if so, how that process should be structured? What are the strategic consequences for state/federal forum selection at the outset, as lawyers now draw on this experience in deciding where to file their next cases?
- Increasingly, even if one side runs the table in bellwethers, the MDL does not necessarily resolve. In other cases, despite settlement agreements, cases continue to linger on the docket without the settlements being finalized. And even in the best settlement, some subset of plaintiffs usually decline to accept the settlement, whether global or firm-by-firm. Judges are increasingly trying different approaches to try to get to closure, but remand continues to grow as an option for judges. This second part of the session focuses on some of those experiences and how you can mitigate, or avoid, that challenge – as well as advice from the attorneys for the judges on what can be better done to facilitate resolution.

10:45 AM - Session 2

This second session focuses on the interplay between the beginning and end of a coordinated proceeding.

- Should counsel attempt to only take the strongest available cases, or is the better approach to take a variety of cases – whether because of per case averages or to mitigate risk as the case develops? Our discussion will focus on both the factual underpinnings of these calculations and the ethics rules that should be considered in making these decisions.
- In the wake of BMS, how are plaintiffs' lawyers making the strategic decision of where and when to file relative to coordination decisions? Is this being impacted by differences in law, such as the availability of common benefit and potential rule changes?
- This session concludes with the judges and special master offering insights on some of the settlement provisions that are catching their eye, with a focus not only on ethics rules but also areas where they are asking more questions, want to know more, or are taking a hard look at who should bear certain costs – as well as recommendations from leading counsel on how these problems may be avoided or solved.

1:30 PM - Session 3

Since our conference last year, Emory has had a working group preparing a report summarizing the direction of early vetting in the federal courts and offering recommendations on the continued direction of these efforts, which we should be able to share shortly. Generally speaking, both plaintiffs' and defense counsel noted the inefficiency in preparing lengthy submissions (as with traditional plaintiff fact sheets) and a preference for a simple one-page POU/POI form. For judges, this affords an opportunity to "get one's arms around the litigation" earlier, and allows all stakeholders to have a discussion about the shape of the litigation (for example, buckets of injury and how each should proceed) at the outset, allowing a more targeted approach to the litigation tailored to the anticipated needs of the case. We will therefore begin with a discussion of cases that have taken this approach, together with the practical hurdles that prevent obtaining agreement to the single-page POU/POI in practice.

In that process, plaintiffs began to express concern with what "injury" really means, raising a number of second-generation issues. This second part of the session will explore those secondary effects on strategy on both sides of the aisle, and then turn to the case management solutions; for example, some companies have experimented with tolling arrangements, while courts have used inactive dockets. How are these processes working? What is the best way to address this situation going forward that meets the concerns and interests of all stakeholders?

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Participating Judges/ Neutrals:

JCCP Judges: Hon. William F. Highberger; Hon. David Cunningham; Hon. Ken Freeman; Hon. Curtis Karnow; Hon. Carolyn Kuhl; Hon. Yvette Palazuelos; Hon. Peter Wilson

Non-California Judges: Hon. Rex M. Burlison (MO); Hon. Rachelle Lea Harz (NJ); Hon. Arnold New (PA)

Federal Judges: Hon. Eldon E. Fallon; Hon. Carl J. Barbier; Hon. Robert M. Dow Jr.; Hon. Joan N. Ericksen; Hon. Donovan W. Frank; Hon. Brian R. Martinotti; Hon. Casey Rodgers; Hon. James V. Selna

Special Masters: Ed Gentle, Gentle Turner Sexton & Harbison; Cathy Yanni, JAMS

Participating Attorneys:

Outside Counsel: Anand Agneshwar (Arnold & Porter), Bill Beausoleil (Hughes Hubbard), Kelly Crawford (Riker Danzig), Mollie Benedict (Tucker Ellis), Kimberly Branscome (Kirkland & Ellis), Celeste Brecht (Venable), Michael Brown (Reed Smith), Sheila Birnbaum (Dechert), Ken Conour (Butler Snow), Alycia Degan (Sidley Austin), Nancy Erfle (Gordon & Rees), Blaine Evanson (Gibson Dunn), Sean Fahey (Pepper Hamilton), Amy Gernon (Sapientia Law Group), William Hanssen (Drinker Biddle), Mike Healy (Shook Hardy), Amy Laurendeau (O'Melveny), Amir Nassihi (Shook Hardy), Joe Petrosinelli (Williams & Connolly), Ellen Reisman (Reisman Karron), Susan Sharko (Drinker Biddle), Paige Sharpe (Arnold & Porter), Dan Smulian (Greenberg Traurig)

In-House Counsel: Dave Logan (Sempra), Connie Matteo (Pfizer), Tom Szivos (Bayer)

Other Defense: Alex Dahl (Lawyers for Civil Justice)

Plaintiffs: Kim Adams (Levin Papantonio), Khaldoun Baghdadi (Walkup Melodia), Andy Birchfield (Beasley Allen), Gayle Blatt (Casey Gerry), Bill Cash (Levin Papantonio), Jayne Conroy (Simmons Hanly Conroy), Lauren Davis (Andrews & Thornton), Adriana Desmond (Skikos Crawford), Henry Garrard (Blasingame), Camille Guerra (Casey Gerry), Lexi Hazam (Lief Cabraser), Dara Hegar (Lanier Firm), Rachel Jensen (Robbins Geller), Megan Jones (Hausfeld), Karen Karavatos (Robinson Calcagnie, Inc), Mark Lanier (The Lanier Firm), Rachel Lanier (The Lanier Firm), Jennifer Lenze (Lenze Lawyers), Melinda Nokes (Weitz & Luxenberg), Amber Pang Parra (Justinian & Assoc.), Wesley Polischuk (Robinson Calcagnie, Inc), Troy Rafferty (Levin Papantonio), Lila Razmara (Robinson Calcagnie, Inc), Daniel Robinson (Robinson Calcagnie, Inc.), Mark Robinson (Robinson Calcagnie), Chris Seeger (Seeger Weiss), Ken Seeger (Seeger Salvas & Devine), Steve Skikos (Skikos Crawford), Robert Siko (Andrews & Thornton), Adam Slater (Mazie Slater), David Stellings (Lief Cabraser), Jessica Williams (Gomez Trial Lawyers); Elizabeth Cabraser - *via Skype* (Lief Cabraser)

Other Participants: Jen Alpert & Ed Bell (Ankura), Orran Brown Sr. & Phil Strunk (Brown Greer), Sonya Virant & Megan Pizor (LMI), Allison Chock (Bentham IMF), Wayne Nitti (Case Anywhere), John Bair (Milestone Consulting)