State-Federal Conference
Balboa Bay Club, Newport Beach, CA
Roundtable Meeting Agenda
Conference Co-Chairs Hon. William Highberger and Hon. Brian Martinotti

Wednesday, February 27
6:00 PM  Welcome reception, sponsored by conference co-chair Mark Robinson

Wednesday, February 28
8:00 AM  Judicial Breakfast (Judges Only)
9:00 AM  Initial Census (Early Vetting) – New Approaches, Next Challenges
11:00 AM Break
11:15 AM State Court Insights: Appeals
12:15 PM Lunch Break
12:30 PM Timing & Breadth of Consolidation
1:45 PM Coordination Issues: Parallel State/Federal Proceedings
2:15 PM Break (attorneys adjourn)
2:45 PM Judges-Only Session
4:15 PM Judges-Only Happy Hour & Dinner

Featuring Our Judicial Panel:

**JCCP Judges:** Hon. William F. Hightberger; Hon. Mary E. Wiss; Hon. Kenneth Freeman; Hon. Carolyn Kuhl; Hon. Brad Seligman; Hon. Brian Walsh; Hon. Peter Wilson; Hon. Ann Jones

**Non-California Judges:** Hon. Rex M. Burlison; Hon. Rachelle Lea Harz; Hon. Buddy New


**Special Masters:** Hon. Jay Gandhi (ret.), JAMS; Ed Gentle, Gentle Turner Sexton & Harbison; Cathy Yanni, JAMS
State-Federal Conference Roundtable Session Descriptions

9:00 AM - Initial Census (Early Vetting) – New Approaches, Next Challenges

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?

11:15 AM - State Court Insights: Appeals

The Federal Rules Committee has received a number of submissions on the topic of MDL appeals. At our conference with the Rules committee, the federal judges raised a number of concerns with a mandatory rule, while some in-house attorneys took the view that a permissive rule would not solve the problems faced. In response, the Rules subcommittee asked for more information on the types of problems defendants were seeking to solve as a way to target any potential solution to the real problems experienced. This mini-session revisits the topic, reflecting an interest in hearing about the experiences of the state courts – the laboratories of innovation – and how different appeals regimes have impacted the complex litigation process.

12:30 PM - Timing & Breadth of Consolidation

While we do not want to be driven by outlier cases, they can at times be helpful in shedding new light on trends that had been emerging in other cases but had not been so clear. This year, counsel from both sides of the aisle have been increasingly asking when the time is right for coordinated proceedings to be created, and whether they have been formed too early in some cases—causing problems in both the federal and state courts. And, there have been related questions about the scope of MDLs and JCCPs as they are being defined—how broad is too broad, and to what extent should courts be deferring to the judgment of counsel about the appropriate breadth of a coordinated proceeding. In addition, with mass-MDLs there has been a notation of the unique challenges created in simply administering litigation with massive numbers of parallel state and federal cases – from how parties can effectively notice each other, to confusion between the courts about authority to make decisions on certain matters – before one even reaches issues like what happens where some courts bifurcate and others do not. One of our state court judges also raised the interesting question of what mechanisms exist or could be created to allow a revisitation of the scope defined at the outset, where it becomes apparent that the scope is not functioning as envisioned but instead has become problematic for any of a number of reasons.

1:45 PM - State/Federal Coordination – Challenges & Solutions

With the proliferation of parallel state and federal proceedings, the challenge of coordination not only by the courts but by counsel has grown exponentially. Even relatively simple matters like service of process and notice have become very complicated due to the sheer numbers of cases and forums. While we generally should not seek to create rules based on the complexities posed by so-called once-a-decade cases, they can be helpful in helping advance our thinking by testing the system in a unique way and often pushing counsel to find innovative new solutions that can then be beneficially applied in simpler cases. What lessons have already been learned that might be applied to more typical parallel proceedings? What challenges remain to be solved?