State-Federal Conference
Balboa Bay Club, Newport Beach, CA
March 1, 2019 Agenda

Keynote address by Mark Lanier; Opening Remarks by Judge Kuhl

Conference Co-Chairs Amy Laurendeu (O’Melveny) and Kim Adams (Levin Papantonio)

7:30 AM Light Breakfast/Registration
8:30 AM The State of State/Federal Relations
8:45 AM End Games
10:30 AM Break
10:45 AM The Shape, Contours and Strategy of the Consolidated Proceeding
12:30 PM Lunch served
12:55 PM Myths & Lessons From Both Sides of the “V”
1:15 PM Break
1:30 PM Discovery
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)

Featuring Our Judicial Panel:

**JCCP Judges:** Hon. William F. Highberger; 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 Session Descriptions

8:45 AM - End Games

The second 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 - The Shape, Contours and Strategy of the Consolidated Proceeding

This first 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 - Discovery

The most requested topic by counsel was discovery, and the day will conclude with a discussion of two issues – one selected by plaintiffs and one by defendants.

- The use of technology has dramatically shifted the nature of discovery from the days when we all began our practices. Technology promises amazing efficiencies not only for the lawyers and clients, but to even be able to improve the rulings of judges as judges (or magistrates). But with these advances have come second-generation problems—new battlefields for plaintiffs’ and defense counsel. In this segment, Chris Seeger provides an introduction to the new technology being used in complex litigation cases, and then turns to a substantive discussion of the uses and abuses experienced by counsel.

- There have been increasing questions about the rise of state and local actions as part of complex litigation. In particular, the use of contingency attorneys to represent AGs, as well as the side-by-side litigation in these cases even where the AG’s office does not retain outside counsel. Some of the concerns involve: (1) the state’s ability to issue civil investigative subpoenas to obtain discovery from a potential defendant even before a lawsuit is filed, (2) the introduction of certain private financial incentives and litigation funding into what is supposed to be a purely governmental function; and (3) threatened or actual employment of the state’s criminal processes.