



# Agenda

## Seventeenth Annual Judicial Symposium on Civil Justice Issues

Sunday, November 12 through Tuesday, November 14, 2023

### Sunday, November 12

**5:30 pm**                      **Registration Begins**

**5:30 – 7:00 pm**            **Welcome Reception**

### Monday, November 13

**6:30 – 7:30 am**            **Breakfast** (*on own at the hotel*)

**7:30 – 8:00 am**            **Walk from hotel to Antonin Scalia Law School**

**8:00 – 8:05 am**            **Welcome**

[History of the LEC](#)

**Donald J. Kochan**, Professor of Law and Executive Director, Law & Economics Center,  
George Mason University Antonin Scalia Law School

**8:05 – 9:15 am**            **Panel I: Survey of Emerging Issues in Civil Justice Litigation**

**John H. Beisner**, Partner, Litigation: Mass Torts, Insurance and Consumer Litigation Skadden,  
Arps, Slate, Meagher & Flom, LLP & Affiliates

**Robert S. Peck**, Founder and President, Center for Constitutional Litigation

**Moderator: Lori S. Rowe**, Judge, Florida First District Court of Appeal

[Video Assignment:](#)

“Civil Justice Preview of the Supreme Court’s 2023-2024 Term”, *Civil Justice Academy Webinar*, LAW & ECONOMICS CENTER (Sept. 15, 2023). [Video here](#).

“Civil Justice Review of the Supreme Court’s 2022-2023 Term”, *Civil Justice Academy Webinar*, LAW & ECONOMICS CENTER (July 21, 2023). [Video here](#).

**9:15 – 9:30 am**            **Break**

**9:30 – 10:45 am**        **Panel II: Survey of State Civil Justice Legislative Developments**

**Mark Behrens**, Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P.

**Nate D. Finch**, Member, Motley Rice LLC

**Moderator: Sabrina S. McKenna**, Justice, Supreme Court of Hawaii

Reading Assignment:

ATRA, *State-Level Tort Reform in 2023: A Recap of Key Legislative Enactments*, ATRA TORT TALK (Jul. 11, 2023).

Joan Larsen, David F. Levi, Allison Eid, Goodwin Liu and Jeffrey S. Sutton, In Conversation, *51 Imperfect Solutions: State and Federal Judges Consider the Role of State Constitutions*, 103 JUDICATURE 34 (2019).

Recommended Supplemental Resource:

*State Tort Reform Enactments*, ATRA, <https://www.atra.org/resources/state-tort-reform-enactments/>.

**10:45 – 11:00 am**

**Break**

**11:00 am – 12:15 pm**

**Panel III: Rapidly Developing Issues in Third Party Litigation Funding**

**James Burnham**, Founder and President, Vallecito Capital LLC

**Dai Wai Chin Feman**, Managing Director — Commercial Litigation, Corporate Counsel, Parabellum Capital

**Tripp Haston**, Partner, Bradley Arant Boult Cummings LLP

**Aviva Wein**, Assistant General Counsel, Products Liability and Group Leader, Litigation Policy and Risk Mitigation Group, Johnson & Johnson

**Moderator: Daniel M. Traynor**, Judge, US District Court for the District of North Dakota

Reading Assignment:

Maya Steinitz, *Follow the Money? A Proposed Approach for Disclosure of Litigation Finance Agreements*, 53 U.C DAVIS L. REV. 1073 (2019).

US Government Accountability Office, GAO-23-105210, [Third-Party Litigation Financing: Market Characteristics, Data, and Trends](#) 11-12 (Dec. 2022).

US Chamber Institute for Legal Reform, [What You Need to Know About Third Party Litigation Funding](#) (Feb. 2023).

Recommended Supplemental Reading:

Donald J. Kochan, [Keep Foreign Cash Out of U.S. Courts](#), WALL ST. J., (Nov. 25, 2022)

Thomas Holzheu et al., [US Litigation Funding and Social Inflation: The Rising Costs of Legal Liability](#), SWISS RE INSTITUTE (Dec. 2021).

Leslie Stahl, [Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight](#), CBS’S “60 MINUTES” (Dec. 18, 2022).

David H. Levitt with Francis H. Brown III, [Third Party Litigation Funding: Civil Justice and the Need for Transparency](#), DRI CTR. FOR L. & PUB. POL’Y, THIRD PARTY LITIGATION FUNDING WORKING GROUP (2018).

[The Litigation Finance Snare](#), WALL ST. J. (Mar. 21, 2023).

12:15 – 1:45 pm

**Luncheon Keynote: The History and Future of Tort Law**

**Richard A. Epstein**, Laurence A. Tisch Professor of Law and Director, Classical Liberal Institute, New York University School of Law; James Parker Hall Distinguished Service Professor of Law Emeritus and Senior Lecturer, University of Chicago Law School

Reading Assignment:

Richard A. Epstein, *The Static Conception of the Common Law*, 9. THE J. OF LEGAL ST. 253 (1980).

Victor E. Schwartz, *Rendering Justice in Key Areas of Tort Law in the Next Decade*, 49 SW. L. REV. 378 (2021).

1:45 – 2:00 pm

**Break**

2:00 – 3:15 pm

**Panel IV: Admissibility of Expert Testimony: A View from State Rules**

**David E. Bernstein**, University Professor and Executive Director, Liberty & Law Center, George Mason University Antonin Scalia Law School

**Alex Dahl**, General Counsel, Lawyers for Civil Justice

**Eric G. Lasker**, Partner, Hollingsworth LLP

**Douglas J. McNamara**, Partner, Cohen Milstein Sellers & Toll PLLC

**Moderator: J. Michelle Childs**, Judge, US Court of Appeals for the District of Columbia Circuit

Reading Assignment:

[\*Advisory Committee on Rules of Practice and Procedure of the Judicial Conference of the United States\*](#), REPORT TO THE STANDING COMMITTEE, 866-867, 870-873, 891-896 (2022).

Kateland R. Jackson & Andrew J. Trask, *Federal Rule of Evidence 702: A One-Year Review and Study of Decisions in 2020*, LAW.FOR CIV. JUST. (2021).

Recommended Supplemental Reading:

David E. Bernstein & Eric G. Lasker, [\*Defending Daubert: It's Time to Amend Federal Rule of Evidence 702\*](#), 57 WILLIAM & MARY L. REV. 1 (2015).

3:15 – 3:30 pm

**Break**

3:30 – 4:45 pm

**Panel V: Expanding Reach of Public Nuisance: What Are Its Boundaries?**

**Anderson T. Bailey**, Partner, Jones Day

**Ellen Bublick**, Dan B. Dobbs Professor of Law and Faculty Fellow and Faculty Director, Phoenix Program, The University of Arizona James E. Rogers College of Law

**James L. Huffman**, Professor and Dean Emeritus, Lewis & Clark Law School

**James R. May**, Distinguished Professor of Law and Founder of the Global Environmental Rights Institute, Widener University Delaware Law School

**Moderator: Hope Cannon**, Judge, US District Court for the Northern District of Florida

Reading Assignment:

Ellen M. Bublick, *Tort Common Law Future: Preventing Harm and Providing Redress to the Uncounted Injured*, ARIZ. LEGAL STUD. DISCUSSION PAPER NO. 22-06 (2022).

Richard A. Epstein, [\*The Private Law Connections to Public Nuisance Law: Some Realism About Today's Intellectual Nominalism\*](#), 17 J.L. ECON. & POL'Y 282 (2022).

James L. Huffman, [\*Public Nuisance: Public Rights, Private Rights, And The Common Good\*](#), 17 J.L. ECON. & POL'Y 325 (2022).

Catherine M. Sharkey, *Public Nuisance as Modern Business Tort: A New Unified Framework for Liability for Economic Harms*, 70 DEPAUL L. REV 201 (2021).

Recommended Supplemental Reading:

John S. Baker, Jr. & Joanmarie I. Davoli, [\*State Attorneys General And The Public Nuisance Doctrine: Lessons to be Derived from State Ex Rel. Attorney General of Oklahoma v. Johnson & Johnson\*](#), 17 J.L. ECON. & POL'Y 263 (2022).

Thomas W. Merrill, [\*Public Nuisance as Risk Regulation\*](#), 17 J.L. ECON. & POL'Y 358 (2022).

4:45 pm

**Adjourn for the Day**

**Tuesday, November 14**

6:30 – 7:30 am

**Breakfast** (*on own at hotel*)

7:30 – 8:00 am

**Walk from hotel to Antonin Scalia Law School**

8:00 – 8:05 am

**Welcome**

**Ken Randall**, Allison and Dorothy Rouse Dean and George Mason University Foundation Professor of Law, George Mason University Antonin Scalia Law School

[Fast Facts About Scalia Law](#)

8:05 – 9:15 am

**Panel VI: Third Party Litigation Funding and the Judicial Role**

**Bob Goodlatte**, Former Member of the United States Congress (1993-2019) and Chairman, House Judiciary Committee

**Donald J. Kochan**, Professor of Law and Executive Director, Law & Economics Center, George Mason University Antonin Scalia Law School

**William C. Marra**, Director, Certum Group

**Jordan M. Schwartz**, Counsel, Mass Torts, Insurance and Consumer Litigation, Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates

**Moderator: William C. Mims**, Justice, Supreme Court of Virginia

Reading Assignment:

[Standing Order Regarding Third-Party Litigation Funding Arrangements](#), D.DEL.R.1. (April 18, 2022).

Bert Huang, *Litigation Finance: What Do Judges Need to Know?*, 45 COLUM. J. L. & SOC. PROBS. 525 (2012)

9:15 – 9:30 am

**Break**

9:30 – 10:45 am

**Panel VII: Alternative Enforcement Regimes: Who Can Sue and On Whose Behalf?**

**Jonathan Mitchell**, Principal, Mitchell Law PLLC

**Shelley R. Slade**, Partner, Vogel, Slade & Goldstein LLP

**Divonne Smoyer**, Founder and Principal, Albemarle Law & Policy, PLLC; Adjunct Law Professor, George Mason University Antonin Scalia Law School

**Adam J. White**, Co-Executive Director, The C. Boyden Gray Center for the Study of the Administrative State, George Mason University Antonin Scalia Law School; Senior Fellow, American Enterprise Institute

**Moderator: Anna M. Manasco**, US District Court for the Northern District of Alabama

Video Assignment:

“State and Federal “Private Right of Action” Legislation: Are These Mechanisms Wise or Worrisome?”, *Civil Justice Academy Webinar*, LAW & ECONOMICS CENTER (June 9, 2023). [Video here](#).

Reading Assignment:

Neel Guha et al, *Private Enforcement in the States*, UNIV. OF PA L. REV. (forthcoming).

John C. P. Goldberg & Benjamin C. Zipursky, *Tort Theory, Private Attorneys General, and State Action: From Mass Torts to Texas S.B. 8*, 14 J. Tort. L. 1 (2021).

Jonathan F. Mitchell, [The Writ-of-Erasure Fallacy](#), 104 VA. L. REV. 933 (2018).

Daniel Seiden, *Thomas Dissent Could Signal ‘Twilight’ for False Claims Act*, BL (Jun. 23, 2023).

Recommended Supplemental Readings

Constitutionality of the Qui Tam Provisions of the False Claims Act, 13 O.P. O.L.C. 207 (1989).

10:45 – 11:00 am

**Break**

11:00 am – 12:15 pm

**Panel VIII: The New Wave of Consumer Deception Lawsuits and Statutory Vehicles for Lawsuits**

**James C. Cooper**, Professor of Law and Director of Program on Economics & Privacy, Law & Economics Center, George Mason University Antonin Scalia Law School

**John C. Dernbach**, Commonwealth Professor of Environmental Law and

Sustainability; Director, Environmental Law and Sustainability Center, Widener University Commonwealth Law School

**Phil Goldberg**, Managing Partner and Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P.

**Kristi C. Kelly**, Attorney, Kelly Guzzo, PLC

**Janet R. Varnell**, Varnell & Warwick PA

**Moderator: William G. Montgomery**, Justice, Supreme Court of Arizona

Reading Assignment:

Elbert Lin et al., *French Fries to Fossil Fuels: The Misplaced Reliance on UDAPs to Pursue Policy Agendas*, U.S. CHAMBER OF COM. INST. FOR L. REFORM (Aug. 2023).

*Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws*, NAT'L CONSUMER L. CTR. (MAR. 2018).

**12:15 – 12:30 pm**

**Closing Remarks and Adjourn**