



Agenda
Nineteenth Annual Judicial Symposium
on Civil Justice Issues
Sunday, September 28 through
Tuesday, September 30, 2025

Agenda

Sunday, September 28

- 5:30 pm** **Registration**
- 5:30 – 7:00 pm** **Opening Reception**

Monday, September 29

- 8:00 – 8:20 am** **Welcome, and a Tribute to Victor Schwartz**

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

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

Reading Assignments:

The History of the Law & Economics Center

Press Release, Shook, Hardy & Bacon L.L.P., *Shook Mourns the Passing of Beloved Public Policy Chair Victor Schwartz* (July 29, 2025).

Victor E. Schwartz, Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P., *Luncheon Address and Interview – The State of Civil Justice: Past, Present & Future* (Nov. 16, 2021).

Law & Economics Center at GMU Scalia Law, *The State of Civil Justice: Past, Present & Future (Recorded November 16, 2021)*, (YouTube, September 15, 2025),
<https://www.youtube.com/watch?v=V2XizahSPoA>

- 8:20 – 9:35 am** **Session I: Survey of Emerging Issues in Civil Justice Litigation**

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

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

Moderator: Jennifer M. Perkins, Judge, Arizona Court of Appeals, Division One

Reading Assignments:

Mark A. Behrens, *2024 Civil Justice Update*, 26 Federalist Soc’y Rev. 1 (2025).

John G. Roberts Jr., *Chief Justice’s 2024 Year End Report on the Federal Judiciary*, U.S. (2024).

Alicia Bannon, *What this Year’s SCOTUS Term Means for State Courts*, St. C. Rep.: Civ. Due Process (July 3, 2025).

- 9:35 – 9:50 am** **Break**

9:50 – 11:05 am

Session II: The Judicial Gatekeeping Role in Admissibility of Expert Testimony: Continuing Developments

Emily T. Acosta, Senior Counsel, Wagstaff Law Firm

Kelly E. Brilleaux, Partner, Barnes & Thornburg LLP

Nathan D. Finch, Member, Motley Rice LLC

Katherine E. Nolan, Associate, Hollingsworth LLP

Moderator: Katherine A. Crytzer, Judge, U.S. District Court for the Eastern District of Tennessee

Reading Assignments:

Memorandum from Patrick J. Schiltz, Chair, Advisory Comm. on Evidence Rules, to John D. Bates, Chair, Standing Comm. on Rules of Prac. & Proc., *Report of the Advisory Committee on Evidence Rules* (May 15, 2022).

Michael J. Saks, *Chapter 4: Scientific Method: The Logic of Drawing Inferences From Empirical Evidence*, in David Faigman et. al., *Modern Scientific Evidence: The Law and Science of Expert Testimony*, 313, 313-353 (supp. vol. 3, 2002).

David L. Faigman, *A Preliminary Exploration of the Problem of Reasoning from General Scientific Data to Individualized Legal Decision-Making*, 75 Brook. L. Rev. 1115 (2010).

Eric G. Lasker et. al, *How to Make the Most of the Rule 702 Amendments*, Atl. Legal Found. Ann. Rep. (2023).

Recommended Supplemental Reading:

David E. Bernstein & Eric G. Lasker, *Defending Daubert: It's Time to Amend Federal Rule of Evidence 702*, 57 Wm. & Mary L. Rev. 1 (2015).

11:05 – 11:20 am

Break

11:20 am – 12:35 pm

Session III: The Regulatory and Tax Treatment of Third Party Litigation Financing and Litigation Profits

Jim Carter, Principal and Policy Director, Navigators Global LLC

Phil Goldberg, Managing Partner, Shook, Hardy & Bacon L.L.P.

Erika Levin, Partner, Fox Rothschild LLP

William C. Marra, Director, Certum Group

Moderator: Michael B. Kaplan, Judge, U.S. Bankruptcy Court for the District of New Jersey

Reading Assignments:

Press Release, Sen. Thom Tillis, *Tillis Introduces Legislation to Target Predatory Litigation Funding Practices* (May 22, 2025).

James Carter, *End the Third-Party Litigation Funding Tax Loophole*, 40 Wash. Legal Found. 1 (2025).

Mark Behrens, *Third-Party Litigation Funding: A Call for Disclosure and Other Reforms to Address the Stealthy Financial Product that is Transforming the Civil Justice System*, 34 Corn. J. of L. & Pub. Pol'y 1 (2025).

Recommended Supplemental Readings:

Maya Steinitz, *Zombie Litigation: Claim Aggregation, Litigant Autonomy and Funders' Intermeddling*, Corn. L. Rev. (forthcoming, Nov. 2024).

Letter from Law. for Civ. Just., to the Advisory Comm. on Civ. Rules and its TPLF Subcomm., *Uniform Disclosure of Third-Party Litigation Funding Contracts is Necessary to Inform Judges' and Parties' Key Case Management Decisions* (Sept. 3, 2025).

Suneal Bedi & William C. Marra, *The Shadows of Litigation Finance*, 74 Vand. L. Rev. 563 (2021).

Brian Fitzpatrick, *Senate's Tax Bill Picks Winners and Losers in Litigation Finance*, BL Tax: Tax Insights & Comment. (June 20, 2025, at 10:00 am EDT).

12:35 – 1:45 pm

Lunch

1:45 – 2:00 pm

Break

2:00 – 3:15 pm

Session IV: The Role of the Rigors of Causation, Traceability, and Attribution in Establishing Liability

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

Kathryn Sacco Jensen, Partner, Hollingsworth LLP

Corinne Snow, Counsel, Environmental & Natural Resources, Vinson & Elkins LLP

Moderator: J. Campbell Barker, Judge, U.S. District Court for the Eastern District of Texas

Reading Assignments:

David E. Bernstein, *Getting to Causation in Toxic Court Cases*, 74 Brook. L. Rev. 51 (2008).

Richard A. Epstein, *Whither Joint and Several Liability: Pareto Improvement or Covert Redistribution*, 20 J. of L., Econ. & Pol'y 666 (2025).

George L. Priest, *The Deep Contradiction Between Product Liability and Market Share Liability*, 20 J. of L., Econ. & Pol'y 752 (2025).

3:15 – 3:30 pm

Break

3:30 – 4:45 pm

Session V: Processes for Assessing Validity and Quality of Claims in MDLs, Class Actions, and Mass Arbitrations

Michael W. McTigue Jr., Partner, Complex Litigation and Trials; Mass Torts, Insurance and Consumer Litigation, Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates

Archis A. Parasharami, Partner, Co-Leader of Washington D.C. Office Litigation and Dispute Resolution, Mayer Brown

Kaspar J. Stoffelmayer, Partner, Bartlit Beck LLP

Moderator: Micaela Alvarez, Judge, U.S. District Court for the Western District of Texas

Reading Assignments:

Committee on Rules of Practice and Procedure, *Summary of the Report of the Judicial Conference Committee on Rules of Practice and Procedure*, 11-13, App. C: 4-19 (Sept. 2024).

Archis A. Parasharami & Daniel E. Jones, *A Step in the: Right Direction for MDLs: New Federal Rule of Civil Procedure 16.1*, U.S. Chamber of Com. Inst. for Legal Reform (June 2025).

Law. For Civ. Just., Comment to the Preliminary Draft of Rule 16.1 of the Federal Rules of Civil Procedure (Sept. 18, 2023).

4:45 pm

Adjourn for the Day

Tuesday, September 30

8:00 – 9:15 am

Session VI: What are the Current “Super Torts” and How are They Affecting Civil Justice? PFAS, Public Nuisance and More

Zac Arbitman, Partner, Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig LLP

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

Jennifer Scullion, Partner, Seeger Weiss LLP

Marc E. Williams, Partner, Nelson Mullins Riley & Scarborough LLP

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

Reading Assignment:

Victor E. Schwartz et. al., *Deep Pocket Jurisprudence: Where Tort Law Should Draw the Line*, 70 Okla. L. Rev. 359 (2018).

The Plaintiffs’ Lawyer Quest for the Holy Grail: The Public Nuisance “Super Tort”, Am. Tort Reform Ass’n. (Mar. 2025).

Leslie Kendrick, *The Perils and Promise of Public Nuisance*, 132 Yale L. J. 702 (2023).

9:15 – 9:30 am

Break

9:30 – 10:45 am

Session VII: Update on the American Law Institute and the *Restatement of the Law Third, Torts*

Christopher E. Appel, Senior Counsel, Shook, Hardy & Bacon L.L.P.

Michael D. Green, Visiting Professor of Law, Washington University School of Law

Larry S. Stewart, Miami Personal Injury Attorney, Stewart Tilghman Fox Bianchi & Cain P.A.

Geoffrey M. Wyatt, Partner, Kirkland & Ellis LLP

Moderator: Timothy M. Tymkovich, Judge, U.S. Court of Appeals for the Tenth Circuit

Reading Assignment:

Larry S. Stewart, *The American Law Institute and the New Restatement Third: Torts – A Brief Primer* (Aug. 2025).

Motion to Amend, Have Institute Take No Position with Respect to § 11 “Special Rule on Vicarious Liability for Sexual Assault” *in re* Restatement of Torts, Third: Miscellaneous Provisions § 11 (A.L.I. Proposed Amendment 2025).

Michael D. Green, *The Restatement (Third) of Torts: A Brief History and How the Miscellaneous Provisions Restatement Came to Be* (Sept. 2025).

10:45 – 11:00 am

Break

11:00 am – 12:15 pm

Session VIII: Developments in Consumer Protection, UDAP Laws, and Private Enforcement Models

Tiffany Aguiar, Associate, Crowell & Moring LLP

Karen R. Harned, President, Harned Strategies LLC

Christine Hines, Senior Policy Director, National Association of Consumer Advocates

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

Moderator: Todd W. Eddins, Justice, Supreme Court of Hawai'i

Reading Assignment:

Eugene Volokh, *Private Enforcement in the States*, by Prof. Diego Zambrano (Stanford) et. al, The Volokh Conspiracy: Civ. Proc. (Mar. 27, 2023 at 8:01 am et).

Karen Harned, *Testing the Testers: The Supreme Court is Set to Consider the Standing of Private Citizens Who Sue to Enforce the Americans with Disabilities Act*, The Federalist Soc'y: FedSoc Blog (Sept. 27, 2023).

Recommended Supplemental Readings:

Karen Harned, *Exiting the 'Constitutional Twilight Zone'*, Nat'l Rev.: Bench Memos | L. & the Ct. (July 11, 2023 at 4:11 pm et).

Susana Martinez, *Using civil suits to enforce laws is an uncivil solution*, The Hill: Op., Judiciary (Jan. 25, 2023 at 4:00 pm et).

Andrea Boyack, *Abuse of Contract: Boilerplate Erasure of Consumer Counterparty Rights*, 110 Iowa L. Rev. 498 (2025).

12:15 – 12:30 pm

Closing Remarks and Adjourn

Participants depart at their leisure