



Agenda

Sixteenth Annual Judicial Symposium on Civil Justice Issues

Sunday, October 9 through Thursday, October 11, 2022

Sunday, October 9

5:30 pm Registration Begins

6:00 – 8:00 pm Welcome Reception

Monday, October 10

6:45 & 7:15 am Bus Departs

7:00 – 7:50 am Breakfast

8:00 – 8:05 am Welcome

8:05 – 9:15 am Panel I: Emerging Issues in Civil Justice

Robert S. Peck, Founder and President, Center for Constitutional Litigation
Geoffrey M. Wyatt, Partner, Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
Moderator: William C. Mims, Justice, Supreme Court of Virginia

Video Assignment:

“Civil Justice Review of the Supreme Court’s 2021-2022 Term.” *Law and Economic Center*, VIMEO (July 22, 2022). [Vimeo video here](#).

“Civil Justice Preview of the Supreme Court’s 2022-2023 Term.” *Law and Economic Center*, September 16, 2022. Register [here](#).

9:15 – 9:30 am Break

9:30 – 10:45 am Panel II: Emerging and Evergreen Issues in Class Actions

Christopher E. Appel, Of Counsel, Shook, Hardy & Bacon L.L.P.
Basheer Ghorayeb, Managing Counsel, Business Litigation and Warranty/Lemon Law, Toyota North America, Inc.
Daniel R. Karon, Owner, Karon LLC.; Lecturer in Law, University of Michigan Law School
Moderator: Charles T. Canady, Justice, Supreme Court of Florida

Reading Assignment:

Federal Rules of Civil Procedure, Rule 23

Rules Suggestion to the Advisory Committee on Civil Rules, LAWYERS FOR CIVIL JUSTICE (2022).

Second Quarter 2022 Update on Class Actions, GIBSON, DUNN & CRUTCHER LLP (2022). (2022).

Randy Stutz. Class Action Issues Update Spring/Summer 2022, AMERICAN ANTITRUST INSTITUTE (2022).

10:45 – 11:00 am **Break**

11:00 am – 12:15 pm **Panel III: Judicial Gatekeeping and Developments Under Federal Rule 702 and in State Rules of Evidence Regarding Admissibility of Expert Testimony**

David E. Bernstein, University Professor and Executive Director,
Liberty & Law Center, George Mason University Antonin Scalia Law School
Adrienne Franco Busby, Partner, Faegre Drinker Biddle & Reath LLP
Alex Dahl, General Counsel, Lawyers for Civil Justice
Nate D. Finch, Member, Motley Rice LLC
Moderator: Melissa Damian, Judge, US District Court for the Southern District of Florida

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).

David E. Bernstein, Expert Witnesses, Adversarial Bias, and the (Partial) Failure of the Daubert Revolution, 93 IOWA L. REV. 451 (2008).

Shari Seidman Diamond & Richard O. Lempert. Introduction: Science and the Legal System, DAEDALUS: J. OF THE AM. ACAD. OF ARTS & SCI. 5, 5-14 (2018)

David L. Faigman, Bringing Scientific Peer Review to Scientific Evidence, 30 TOXICS L. REP. 205 (2015): 1-7.

Shari Seidman Diamond, How Jurors Deal with Expert Testimony and How Judges Can Help, 16 J.L. & POL’Y 47 (2007)

12:15 - 1:45 pm **Luncheon Panel IV: What Can and Should Jurors Consider When Awarding Damages?**

Mark A. Behrens, Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P.
Renée Lettow Lerner, Donald Phillip Rothschild Research Professor, George Washington University Law School
Brett Tarver, Associate, Troutman Pepper Hamilton Sanders LLP
Moderator: Sabrina S. McKenna, Justice, Supreme Court of Hawaii

Reading Assignment:
Christopher E. Appel and Cary Silverman, Nuclear Verdicts: Trends, Causes, and Solutions, U.S. CHAMBER OF COM. INST. FOR LEGAL REFORM (2022).

1:45 – 2:00 pm **Break**

2:00 - 3:15 pm **Panel V: What Information Should Flow to Juries? A Case Study in Drug Device Approvals and 510k Clearances**

Abigail M. Butler, Partner, Faegre Drinker Biddle & Reath LLP
Philip S. Goldberg, Managing Partner and Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P.
Jonathan D. Orent, Partner, Motley Rice LLC
Moderator: David N. Wecht, Justice, Supreme Court of Pennsylvania

Reading Assignment:
“Overview 510(k) Clearances,” F.D.A. (August 31, 2021).

3:15 – 3:30 pm **Break**

3:30 - 4:45 pm

Panel VI: The Evolution of Third-Party Litigation Financing

Andrew Cohen, Director, Burford Capital LLC

Tripp Haston, Partner, Bradley Arant Boult Cummings LLP

Maya Steinitz, Charles E. Floete Distinguished Professor of Law, Iowa College of Law

Jordan M. Schwartz, Counsel, Skadden, Arps, Slate, Meagher & Flom, LLP & Affiliates

Moderator: Kenneth Griffis, Justice, Supreme Court of Mississippi

Reading Assignment:

Standing Order Regarding Third-Party Litigation Funding Arrangements, D.Del.R.1. (April 18, 2022)

A.B.A., American Bar Association Best Practices for Third-Party Litigation Funding (2020).

“Selling More Lawsuits, Buying More Trouble.” *US Chamber Institute for Legal Reform* (January 2020.).

4:45 pm

Adjourn for the Day

Bus Departs

Tuesday, October 11

6:45 & 7:15 am

Bus Departs

7:00 – 7:50 am

Breakfast

8:00 – 9:15 am

Panel VII: Developments in Public Nuisance and Locality Litigation

Brian E. Bowcut, Partner, Cohen Milstein Sellers & Toll PLLC

Andrew Cook, Of Counsel, Orrick Herrington & Sutcliffe LLP

Paul F. Novak, Managing Attorney, Weitz & Luxenberg P.C.

Luther J. Strange III, Founder & Principal, Luther Strange & Associates, LLC

Moderator: Maureen O’Connor, Chief Justice, Supreme Court of Ohio

Reading Assignment:

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 314 (2022).

Recommended Supplemental Reading:

Jonathan H. Adler, *Displacement And Preemption of Climate Nuisance Claims*, 17 J.L. ECON. & POL’Y 217 (2022).

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 347 (2022).

Shelley Ross Saxer, *Public Nuisance and a Theory of State Action*, 17 J.L. ECON. & POL’Y 371 (2022).

9:15 – 9:30 am

Break

9:30 – 10:45 am

Panel VIII: Bankruptcy Law and Mass Tort Litigation Liabilities

Cary Joshi, Partner, Bailey & Glasser, LLP

John M. Masslon II, Senior Litigation Counsel, Washington Legal Foundation

Todd Zywicki, George Mason University Foundation Professor of Law, George Mason University Antonin Scalia Law School

Paul H. Zumbro Partner, Cravath, Swaine & Moore LLP

Moderator: Todd W. Eddins, Justice, Supreme Court of Hawaii

Reading Assignment:

LTL Management, LLC, Memorandum Opinion (U.S. Bankruptcy Court, D.N.J. Feb. 25, 2022).

10:45 – 11:00 am

Break

11:00 am – 12:15 pm

Panel IX: The Economics and Law of Arbitration

Mary Donovan, Principal, ndp | analytics

Brian Farkas, Associate, Arent Fox LLP; Adjunct Professor of Law, Benjamin N. Cardozo School of Law

Peter Bowman “Bo” Rutledge, Dean & Herman E. Talmadge Chair of Law, University of Georgia School of Law

Stephen Ware, Frank Edwards Tyler Distinguished Professor of Law, University of Kansas School of Law

Moderator: Dominique A. Callins, Judge, Virginia Court of Appeals

Reading Assignment:

Christopher R. Drahozal, *Arbitration and Rule Production*, 72 CASE WESTERN RESERVE L. REV. 91 (2021).

Christopher R. Drahozal & Peter B. Rutledge, *“Sticky” Arbitration Clauses?: The Use of Arbitration Clauses after Concepcion and Amex*, 67 VAND. L. REV. 955 (2014).

12:15 – 12:30 pm

Closing Remarks and Adjourn