

Seventeenth Annual Judicial Symposium on Civil Justice Issues

Judicial Education Program

Law & Economics Center

Antonin Scalia Law School

George Mason University

Sunday, November 12 – Tuesday, November 14, 2023

Classes: Antonin Scalia Law School at George Mason University, 3301 Fairfax Drive, Arlington, VA 22201

Hotel: The Westin Arlington Gateway, 801 N Glebe Road, Arlington, VA 22203

Agenda

(Updated November 12, 2023)

Sunday, November 12

Registration and reception will be held at The Westin Arlington Gateway

5:30 pm **Registration Begins, F. Scott Fitzgerald Ballroom Foyer**

5:30 – 7:00 pm **Welcome Reception, F. Scott Fitzgerald Ballroom C**

Monday, November 13

All classes will be held at Antonin Scalia Law School, Van Metre Auditorium

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
Van Metre Multipurpose Room

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

All classes will be held at Antonin Scalia Law School, Van Metre Auditorium

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