



Agenda

Seventeenth Meeting of the American College of Business Court Judges

Wednesday, October 26 through Friday, October 28, 2022

Wednesday, October 26

4:00 – 6:00 pm **Registration**

6:30 – 9:00 pm **Welcome Reception & Dinner**
(Guests Welcome)

Welcoming Remarks

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

Timothy Driscoll, Justice, Supreme Court of New York, Nassau County Commercial Division

Opening Lecture: The Gold Coast of Long Island

Amy Driscoll, Director, North Shore Historical Museum

Thursday, October 27

7:00 – 7:50 am **Breakfast**

8:00 – 8:15 am **Welcoming Remarks | Justice Driscoll**

8:15 – 9:30 am **Session 1: Get Your Motor Running! The Economic Way of Thinking | Kochan**

Reading Assignment:

Chapter I: The Economics Perspective: Incentives Matter, and Chapter III: The Legislative Process and the Courts in HENRY N. BUTLER, ET AL., ECONOMIC ANALYSIS FOR LAWYERS 3-55, A&B (125-26) (3rd ed. 2014).

9:45 – 11:00 am **Session 2: Developments in Discovery: Proportionality and Cost Allocation Issues**

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

Debashish Bakshi, Associate, Hausfeld LLP.

Alex Dahl, General Counsel, Lawyers for Civil Justice

Moderator: Meghan Adams, Judge, Delaware Superior Court

Reading Assignment:

Alex Dahl & John Vail, *Discovery Cost Shifting: Has Its Time Come*, POINT COUNTERPOINT 99, 2.

Jonah B. Gelbach & Bruce Kobayashi, *The Law and Economics of Proportionality in Discovery*, GA. L.REV. 50, 1 (2016).

Recommended Supplemental Reading:

Bruce Kobayashi, *Law's Information Revolution as Procedural Reform: Predictive Search as a Solution to the In Terrorem Effect of Externalized Discovery Costs*, 2014 UNIV. OF ILL L.REV. 1473 (2014)

11:15 am –12:30 pm

Session 3: Bankruptcy Law and Mass Tort Litigation

Barry E. Adler, Lawrence King Professor of Law and Associate Dean for Information Systems and Technology, NYU School of Law

Robin Effron, Professor of Law, Brooklyn Law School

Jessica Liou, Partner, Weil, Gotschal & Manges LLP

Moderator: Elizabeth Emerson, Justice, Supreme Court of New York, Suffolk County Commercial Division

Reading Assignment:

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

12:30 – 1:45 pm

Session 4: Lunch and Roundtable Discussion: Examining the American Law Institute's Restatement of the Law, Corporate Governance

Robert Miller, Associate Dean for Faculty Development and F. Arnold Daum Chair in Corporate Finance and Law, University of Iowa College of Law

Ed Rock, Martin Lipton Professor of Law, New York University School of Law

Moderator: Donald J. Kochan

Reading Assignment:

American Law Institute, *Restatements*, REVISED STYLE MANUAL (January 2015).

Stephen M. Bainbridge, *Do We Need a Restatement of the Law of Corporate Governance?* UCLA School of Law, Law-Econ Research Paper No. 22-06.

American Law Institute, *Restatement of the Law, Corporate Governance*, Tentative Draft No. 1 (2022).

2:00 – 3:15 pm

Session 5: The State of Takings Law: 100 Years After Pennsylvania Coal Co. v. Mahon and One Year After Cedar Point Nursery v. Hassid

Richard Epstein, Laurence A. Tisch Professor of Law and Director, Classical Liberal Institute, NYU School of Law; James Parker Hall Distinguished Service Professor of Law Emeritus and senior lecturer, University of Chicago Law School

Julia Mahoney, John S. Battle Professor of Law and Joseph C. Carter, Jr., Research Professor of Law, University of Virginia School of Law

Nancie G. Marzulla, Founding Partner, Marzulla Law, LLC

Robert Thomas, William & Mary Law School; Pacific Legal Foundation

Moderator: Paul Wallace, Judge, Superior Court of Delaware

Reading Assignment:

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).

Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (2021).

3:30 – 4:45 pm

Session 6: Scientific Methodology and the Admissibility of Expert Testimony

Lee Mickus, Partner, Evans Fears & Schuttert LLP

David Venderbush, Counsel, Alston & Bird LLP

Moderator: Clifton Newman, Judge, South Carolina Circuit Court

Reading Assignment:

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)

Recommended Supplemental Reading:

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)

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).

5:00 – 7:00 pm

Tennille Time Reception

Friday, October 28

7:00 – 7:50 am

Breakfast

8:00 – 9:15 am

Session 7: Continuing Trends in Public Nuisance Litigation

Trevor S. Cox, Partner, Hunton Andrews Kurth LLP

Andrea E. Neuman, Partner, Gibson, Dunn & Crutcher LLP

Jennifer Scullion, Partner, Seeger Weiss LLP

Catherine Sharkey, Segal Family Professor of Regulatory Law and Policy, New York University School of Law

Moderator: Mark Denton, Judge, Eighth Judicial District Court, Nevada

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).

Catherine M. Sharkey, *Public Nuisance as Modern Business Tort: A New Unified Framework for Liability for Economic Harms*, DEPAUL LAW REVIEW 70, no. 201 (2021): 202-234.

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).

9:30 – 10:45 am

Session 8: Corralling the Complex Case: Managing ADR, Expert Witnesses, and Special Masters

Louis Bledsoe, Judge, North Carolina Business Court

William Johnston, Partner, Young Conaway Stargatt & Taylor, LLP

Richard Licht, Judge, Superior Court of Rhode Island

Christopher Yates, Judge, Michigan Court of Appeals

Moderator: Mary Johnston, Judge, Superior Court of Delaware

11:00 – 11:15 am

Closing Remarks | Justice Driscoll & Professor Kochan