



**50<sup>th</sup>**  
1974-2024

# Agenda

## **Eighteenth Annual Judicial Symposium on Civil Justice Issues**

Sunday, October 6 – Tuesday, October 8, 2024

### **Sunday, October 6**

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

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

### **Monday, October 7**

**7:00 – 7:55 am**            **Breakfast**

**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**

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

**Geoffrey M. Wyatt**, Partner, Mass Torts, Insurance and Consumer Litigation, Skadden, Arps,  
Slate, Meagher & Flom LLP and Affiliates

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

**Video Assignment:**

Law & Economics Center at GMU Scalia Law, “Civil Justice Preview of the Supreme Court’s  
2024-2025 Term”, *Civil Justice Academy Webinar*, YOUTUBE (Oct. 02, 2024).

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

**9:30 – 10:45 am**        **Panel II: Survey of State Civil Justice Legislative Developments and Federal and  
State Rules Committee Proposals**

**Alan Butler**, Executive Director and President, Electronic Privacy Information Center  
(EPIC)

**Sherman Joyce**, President, American Tort Reform Association

**Nino Marchese**, Director, Criminal & Civil Justice Task Forces, American Legislative  
Exchange Council

**Susan Steinman**, Senior Director of Policy and Senior Counsel, American Association  
for Justice

**Matt Webb**, Senior Vice President, Legal Reform Policy, US Chamber of Commerce  
Institute for Legal Reform

**Moderator: John W. Holcomb**, Judge, US District Court for the Central District of California

**Reading Assignments:**

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

Joan Larsen, et. al., In Conversation, *51 Imperfect Solutions: State and Federal Judges Consider the Role of State Constitutions*, 103 JUDICATURE 34 (2019).

Jonathan Williams et. al., *Rich States, Poor States 17th Edition*, AM. LEGIS. EXCH. COUNCIL (Apr. 9, 2024).

*Independent Administrative Law Judges Act*, AM. LEGIS. EXCH. COUNCIL (Aug 24, 2022).

*Judicial Deference Reform Act*, AM. LEGIS. EXCH. COUNCIL (Aug. 9, 2020).

**Recommended Supplemental Readings:**

*State Tort Reform Enactments*, AM. TORT REFORM ASS'N.

*101 Ways to Improve State Legal Systems: A User's Guide to Promoting Fair and Effective Civil Justice – Sixth Edition 2019*, US CHAMBER OF COM. INST. FOR LEGAL REFORM (Sept. 19, 2019).

**10:45 – 11:00 am**

**Break**

**11:00 am – 12:15 pm**

**Panel III: The Process of Developing a Case: Views from the Plaintiffs and Defense Bar**

**James Stengel**, Partner, Orrick, Herrington & Sutcliffe LLP

**Michael J. Warshauer**, Attorney, Warshauer Woodward Atkins, LLC

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

**Moderator: Andrew J. King**, Judge, Ohio Court of Appeals, Fifth District

**12:15 – 1:45 pm**

**Luncheon Keynote: Economic Analysis of the Civil Justice System Across 50 Years: How Much Has Changed? How Much Remains the Same?**

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

**Reading Assignment:**

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: Scientific Methodology and the Admissibility of Expert Testimony**

**Ann Marie Duffy**, Partner, Hollingsworth LLP

**Tara A. Enix**, Trial Attorney, Allen, Allen, Allen, & Allen, P.C.

**Nathan A. Schachtman**, Owner, Nathan A. Schachtman, Esq., P.C.

**Moderator: Jennifer Choe-Groves**, Judge, US Court of International Trade

**Reading Assignments:**

Nathan A. Schachtman, *The Convergence of Law and Science on Epistemic Virtues and Vices* (2024).

*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).

MICHAEL J. SAKS, *Chapter 4: Scientific Method: The Logic of Drawing Inferences From Empirical Evidence*, in DAVID FAIGMAN ET AL., MODERN SCIENTIFIC EVIDENCE, 313, 313-353 (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. (2023).

**Recommended Supplemental Readings:**

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 L. Faigman & Jennifer Mnookin, *The Curious Case of Wendell v. GlaxoSmithKline LLC*, 48 SETON HALL L. REV. 1, 1-18.

Eric G. Lasker & Joshua Leader, *New Federal Rule of Evidence Rule 702: A Circuit-by-Circuit Guide to the Overruled "Wayward Caselaw"*, DEF. COUNS. J. (2024).

**3:15 – 3:30 pm**

**Break**

**3:30 – 4:45 pm**

**Panel V: Third Party Litigation Financing: What Effects on the Civil Justice System?**

**Lisa M. Bellino**, Vice President, Claims Judicial & Legislative Affairs, Zurich North America

**Page C. Faulk**, Senior Vice President, Legal Reform Initiatives, US Chamber of Commerce Institute for Legal Reform

**David A. Hyman**, Scott K. Ginsburg Professor of Health Law & Policy, Georgetown University Law Center

**Warren Postman**, Managing Partner, Keller Postman LLC

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

**Reading Assignments:**

Charles Silver & David A. Hyman, *Third Party Litigation Funding: Panacea or More Problems?*, Geo. Univ. L. Ctr. Rsch. Paper (Forthcoming May 2023).

GAO-23-105210, *Third-Party Litigation Financing: Market Characteristics, Data, and Trends*, US GOV'T ACCOUNTABILITY OFF. 11-12 (Dec. 2022).

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

Leslie Stahl, *Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight*, CBS's "60 MINUTES" (Dec. 18, 2022).

The Editorial Board, *The Litigation Finance Snare*, WALL ST. J. (Mar. 21, 2023).

*Justice or Profit? Separating Myths from Facts in Third-Party Litigation Funding*, US CHAMBER COM. INST. FOR LEGAL REFORM (Sept. 26, 2024).

*What You Need to Know About Third Party Litigation Funding*, US CHAMBER COM. INST. FOR LEGAL REFORM (June 7, 2024).

*Rules Suggestion to the Advisory Committee on Civil Rules*, US CHAMBER OF COM. INST. FOR LEGAL REFORM & LAW. FOR CIV. JUST. (Oct. 02, 2024).

*The US Intellectual Property System and the Impact of Litigation Financed by Third-Party Investors and Foreign Entities Before the U.S. H.R. The Subcomm. on Ct., Intell. Prop., and the Internet*, 118th Cong. (2024) (statement of the US Chamber of Commerce Institute for Legal Reform).

**4:45 pm**

**Adjourn for the Day**

**Tuesday, October 8**

**7:00 – 7:55 am**

**Breakfast**

**8:00 – 9:15 am**

**Panel VI: Third Party Litigation Financing: The Role of Disclosure and the Judicial Role**

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

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

**Rachelle Mortimer**, Senior Director, Legislative Affairs, US Chamber of Commerce Institute for Legal Reform

**Maya Steinitz**, Professor of Law, Boston University School of Law

**Moderator: Chad A. Readler**, Judge, US Court of Appeals for the Sixth Circuit

**Reading Assignments:**

Maya Steinitz, *Zombie Litigation: Claim Aggregation, Litigant Autonomy and Funders Intermeddling* (2024).

Letter from Lisa Kaufman, Gen. Couns. Tex. Civ. Just. League, Stephen Waguespack, President US Chamber of Com. Inst. for Legal Reform, & Molly Craig, President Law. for Civ. Just. to The Hon. Harvey Brown, Tex. Ct. App., First Dist. (Sept. 25, 2024).

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

**Recommended Supplemental Readings:**

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

Donald J. Kochan, *Keep Foreign Cash Out of U.S. Courts*, WALL ST. J. (Nov. 25, 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 – 9:35 am**

**Welcome to Scalia Law**

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

**9:35 – 10:45 am**

**Panel VII: Public Nuisance and Related Consumer Protection Suits: Where Do they Stand? Will SCOTUS Ever Weigh In?**

**Zandra E. Foley**, Partner, Thompson, Coe, Cousins & Irons, LLP

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

**Moderator: Timothy M. Tymkovich**, Judge, US Court of Appeals for the Tenth Circuit

**Reading Assignments:**

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 Readings:**

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).

**10:45 – 11:00 am**

**Break**

**11:00 am – 12:15 pm**

**Panel VIII: An Update on MDLs and Their Impact on Federal and State Court Dockets**

**Kevin R. Budner**, Partner, Lief Cabraser Heimann & Bernstein

**Gary Feldon**, Partner, Hollingsworth LLP

**Christopher M. Placitella**, Shareholder, Cohen, Placitella & Roth

**Andrew J. Trask**, Senior Counsel, Shook, Hardy, & Bacon L.L.P.

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

**Reading Assignment:**

Robert Johnston & Gary Feldon, *Federal MDL Rule Benefits From Public Comments*, HOLLINGSWORTH LLP (Apr. 2024).

**12:15 – 12:30 pm**

**Closing Remarks and Adjourn**