American Conference Institute’s

Chemical Products Liability and Environmental Litigation

The Essential Litigation Defense Forum for Oil, Gas, Chemical and Consumer Products Industries

April 28 – 29, 2010 | Sutton Place Hotel | Chicago, IL

Distinguished Co-Chairs:

Theodore P. Ray
Counsel
ExxonMobil Corporation
(Houston, TX)

Sean P. Wajert
Partner
Dechert, LLP (Philadelphia, PA)

Hear from these renowned jurists:

Hon. Elihu Berle
Los Angeles County Superior Court

Hon. Mark I. Bernstein
Philadelphia Court of Common Pleas

Hon. Ruben Castillo
U.S. Dist. Court, N.D. Illinois

Hon. Mark Davidson
Texas Eleventh Civil District Court

Hon. Fred Edwards
Texas Ninth Civil District Court

Hon. Donovan W. Frank
U.S. Dist. Court, D. Minnesota

Hon. Mark Fuller
U.S. Dist. Court, M.D. Alabama

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Illinois Third Judicial Circuit Court

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…as well as leading litigators and renowned jurists will provide highly-specialized, practical information on:

- Defending against public, private, and climate change nuisance actions
- Improving defense strategies against Consumer Fraud claims
- Reevaluating the personal injury claims and cases, including developments in benzene litigation, motions for forum non conveniens, and preemption
- Protecting the company’s business model and reputation through strategic communications and crisis management
- Presenting effective arguments to Courts against awarding medical monitoring damages
- Crafting a defense strategy when facing “Common Issues” and Bellwether trials
- Convincing courts to apply the “cause in fact” standard and effectively using experts and advancements in science and technology
- Bolstering defense advantage by exploiting potential plaintiffs’ problems with the Iqbal-Twombly standard
- Maintaining a strong defense position despite regulatory changes made by the Obama Administration
- Staying ahead of the curve by understanding the science and regulation of nanotechnology

Don’t Miss the Interactive Pre and Post Conference Workshops:

Evaluating and Explaining Developing Science in Trace Chemical Cases
Apr. 27, 2010 – 1:00 p.m. to 4:00 p.m.

Practical Information when Dealing with Cross-Border Suits, Regulations, and Business Relationships
April 30, 2010 – 9:00 a.m. to 12:00 p.m.

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Register Now • 888-224-2480 • AmericanConference.com/ChemProducts
The Second and Fifth Circuits recently held that Hurricane Katrina victims have standing to sue coal, oil, and chemical companies over global warming… and this is just the beginning…

Recent societal, regulatory and legal developments are ushering in a new era in chemical products litigation. Products that were originally seen as benefits to society are now being vilified because they affect a sensitive subpopulation, and a floodgate of litigation has been opened. Chemical companies and consumer products manufacturers are facing increasingly difficult challenges as causes of action are shifting away from traditional personal injury claims and focusing now on no-injury claims such as nuisance and consumer fraud. It is clear that chemical and consumer products manufacturers are now facing an uphill battle in defending against these claims, for example:

- Consumer fraud actions are increasing in abundance, wherein no injury needs to be proven.
- Chemicals are being banned rather than responsibly regulated.
- Courts are awarding medical monitoring damages that could be generational and therefore endless in nature.
- Certain cases are no longer preempted from being filed in state courts.
- Plaintiffs are prevailing despite offering a minimal causal nexus between the injury and the source.
- Advances in science, medicine, and technology have opened the door for plaintiffs to proffer new theories of liability.

Do you know what motion to file when a plaintiff offers an over-generalized pleading? Do you have different defense strategies for class action, MDL, Bellwether, and one-off cases? Are you prepared for the changing face of chemical products liability litigation?

Only one conference will provide even the most seasoned chemical products liability litigators with critical insights and practical strategies needed to protect and prepare their clients in this complex arena, keep them up to date on the emerging trends in law and science, and prepare them to roll out the most strategic defenses.

In response, ACI has developed the Chemical Products Liability and Environmental Litigation conference as an essential defense forum that will educate both in-house and outside counsel on the leading trends in chemical products litigation and emerging developments in science and technology to keep them ahead of the curve in the chemical and consumer products industries. You cannot afford to miss this event, which will inform you about pitfalls to avoid in chemical products cases, as well as provide you with defense strategies to put you in the best possible position when going to trial. There is no other conference that will afford you the opportunity to network with top outside counsel, 11 federal and state court judges, as well as experts from ConocoPhillips, Dow AgroSciences, Dow Chemical Co., DuPont, ExxonMobil, Georgia Gulf Corporation, LyondellBasell Industries, PPG, Praxair, Shell Oil, Solvay North America, and many more.

In addition, this advanced forum will provide you with the knowledge necessary to “check” your experts, and coherently explain the underlying science of chemical products cases to juries. Not only will you gain valuable insights into motion practice (i.e., successfully using Iqbal-Twombly motions), but you will also get the most up to date information on changes in chemical regulations (i.e. TSCA and California’s Proposition 65), new rules regarding preemption, and outright chemical bans. Your defense strategy relies not only on understanding these new challenges, but also overcoming their limitations and using them to your advantage.

This must-attend event will fill up quickly so register today to ensure your place. Register now by calling 888-224-2480, faxing your registration form to 877-927-1563 or registering online at www.AmericanConference.com/ChemProducts.

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PRE-CONFERENCE WORKSHOP

Tuesday, April 27, 2010
1:00 p.m. – 4:00 p.m. (Registration Opens at 12:30 p.m.)

Evaluating and Explaining Developing Science in Trace Chemical Cases

Larry Chilton
Partner
Chilton Yambert & Porter (Chicago, IL)

Robert Scofield, D.Env., M.P.H.
Principal and Center Director for the Exposure Assessment and Dose Reconstruction Center Exponent, Inc. (Oakland, CA)

The Developing Science in the field of Chemical Products Liability Litigation is of key concern not only to Chemical and Consumer Products Manufacturers, but also to the attorneys who represent them. The science and technology in chemical products cases involving trace chemicals is becoming increasingly technical and complex, yet juries are not getting any more sophisticated. This workshop will give you the information you need to effectively communicate the science of chemical products cases to juries, and provide the knowledge to select and “check” your experts.

- Understanding the impact trace chemicals will have on defense litigation strategy
- Recognizing chemicals in everyday products: a primer on the science behind Chinese drywall, BPA, etc.
- Using exposure modeling and other scientific tools to strengthen your case

DAY ONE – WEDNESDAY, APRIL 28, 2010

7:30 Conference Registration

8:30 Co-Chairs’ Welcoming Remarks

Theodore P. Ray
Counsel
ExxonMobil Corporation (Houston, TX)

Sean P. Wajert
Partner
Dechert, LLP (Philadelphia, PA)

Examining Emerging Trends towards Public and Private Nuisance and Economic Consumer Fraud Claims in Chemical Products Liability Litigation

The face of chemical products liability litigation is changing. A field that used to be rooted almost exclusively in personal injury causes of action and actions lying in strict liability is now seeing an emergence in claims of nuisance for property damage and consumer fraud actions for economic injury. The following sessions will address how to be prepared and develop a plan of action for this new line of litigation that focuses on no-injury damages.

8:45 Preparing for the Rise of Nuisance Claims, Including Defending Against Public, Private, and Climate Change Nuisance Actions

Joseph Speelman
Associate General Counsel
LyondellBasell Industries (Houston, TX)

Daniel J. Brown
Corporate Counsel
Georgia Gulf Corporation (Atlanta, GA)

Tynan Buthod
Partner
Baker Botts (Houston, TX)

Brian Lowenberg
Attorney – Principal Author of Texas Pattern Jury Charge on Nuisance
Morgan Lewis & Bockius (Houston, TX)

Moderator:

David B. Weinstein
Shareholder
Greenberg Traurig, LLP (Tampa, FL)

- Probing the use of nuisance claims for environmental damage by individuals or municipalities
- Status of types and uses of claims
- Comparing and contrasting public vs. private nuisance causes of action
- The trend towards privately funded public nuisance actions
- Devising defenses against nuisance claims alleging damages where EPA limits are not exceeded
- Handling state court claims that are not barred by preemption

Who You Will Meet

- In-House Counsel for Chemical and Consumer Products Manufacturing Companies
- Litigation Attorneys Specializing in:
  - Toxic Torts
  - Class Actions
  - Consumer Fraud Actions
  - Environmental Litigation
  - Life Sciences
  - Nanotechnology

American Conference Institute:
The leading networking and information resource for counsel and senior executives.

Each year more than 21,000 in-house counsel, attorneys in private practice and other senior executives participate in ACI events – and the numbers keep growing.

Guaranteed Value Based on Comprehensive Research

ACI’s highly trained team of attorney-producers are dedicated, full-time, to developing the content and scope of our conferences based on comprehensive research with you and others facing similar challenges. We speak your language, ensuring that our programs provide strategic, cutting edge guidance on practical issues.

Unparalleled Learning and Networking

ACI understands that gaining perspectives from – and building relationships with – your fellow delegates during the breaks can be just as valuable as the structured conference sessions. ACI strives to make both the formal and informal aspects of your conference as productive as possible.

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10:00  Morning Coffee Break

10:15  Consumer Fraud Claims: Improving Defense Strategies Against No-Injury Litigation Involving Trace Chemicals Where There is No Proof of Harm Requirement

Laureen E. Galeoto  
Shareholder  
Greenberg Traurig, LLP (Tampa, FL)

Michael J. Kanute  
Partner  
Baker & Daniels (Chicago, IL)

John J. Weinholdz  
Partner  
Nixon Peabody (Buffalo, NY)

• Revisiting the nuisance claims of the past: new applications of nuisance claims in lead paint and firearms litigation as applied to environmental claims (e.g., surface and groundwater contamination)
• Exploring claims arising out of the Gulf Coast hurricanes  
  - Analyzing trends in 2nd and 5th Circuit holdings that allow virtually formless liability for chemical companies
• Understanding the Political Question doctrine vis-à-vis nuisance claims based on damage caused by global warming
• Discussing the future of climate change litigation  
  - What does the future hold with regard to courts allowing this trend to continue?
  - How can certain companies be held responsible for global warming, excluding others?
  - Assessing the consequences of giving plaintiffs power to bring causes of action as a result of climate change

11:15  Considering Ethics in Complex Chemical Products Litigation Matters

Mary Erin Mariani  
Corporate Counsel  
DuPont Legal (Wilmington, DE)

Joseph G. Eaton  
Partner  
Barnes & Thornburg LLP (Indianapolis, IN)

• Considering Ethics in Complex Chemical Products Litigation Matters  
  - Restrictive settlements: limitations on future actions
  - Mass settlements: conflicts of interest and the aggregate settlement rule disclosure requirements

2:00  Updating Current Trends and Problems in Chemical Products Personal Injury Cases

Lawrence Riff  
Partner  
Steptoe & Johnson (Los Angeles, CA)

Larry Chilton  
Partner  
Chilton Yambert & Porter (Chicago, IL)

• Effectively communicating with the media and public:
  - How can certain companies be held responsible for global warming, excluding others?
  - Assessing the consequences of giving plaintiffs power
• Minimizing effects of crisis situations using strategic communications
• Devising a comprehensive plan for strategic communications
• Minimizing effects of crisis situations using strategic communications
• Identifying ways to distinguish between the amount of chemical product that is linked to the harm

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• Exploring today’s “Judicial Hellholes”: what’s new for the plaintiff and the defendant?
• Motions for forum non conveniens: plaintiffs and defendants—look before you leap!
• Identifying the new “new thing” in trace benzene
• Preemption and chemical personal injury case: do those terms ever go in the same sentence anymore?

3:00 Afternoon Refreshment Break

3:15 Presenting Effective Arguments to Courts Against Awarding Medical Monitoring Damages

Sean P. Wajert
Partner
Dechert, LLP (Philadelphia, PA)

Jerome R. Doak
Partner
Jones Day (Dallas, TX)

Barbara Beck, Ph.D., DABT, FATS
Principal Toxicologist
Gradient (Cambridge, MA)

• Introducing the legal theory for medical monitoring
• Providing an overview of courts accepting/rejecting medical monitoring
• Assessing the medical community’s view of screening tests
• Insights for successfully defending a medical-monitoring class action
• The principles of toxicology: a science primer
• Evaluating claims with regard to possible health effects and exposure routes
• Discussing the risks, benefits, and uncertainties of medical monitoring
• Analyzing relevant scientific literature and regulatory guidelines
• Implicating advancements in science to our state of knowledge

4:15 Quelling Plaintiffs’ Causation Arguments: Strengthening Defense Tactics by Using Experts and Advancements in Science Effectively and Convincing Courts to Apply the Cause in Fact Standard

Thomas D. Allen
Partner
Weinberg, Wheeler, Hudgins, Gunn & Dial (Atlanta, GA)

Howard E. Jarvis
Partner
Woolf, McClane, Bright, Allen & Carpenter (Knoxville, TN)

José A. Hernández Mayoral
Partner
Hernández Mayoral Law Firm (San Juan, Puerto Rico)

N. Kathleen Strickland
Shareholder
Ropers Majeski Kohn & Bentley (San Francisco, CA)

• Dissecting the concept of cause in fact vs. “substantial contributing cause”
  - Causation in fact arguments presented in asbestos/toxic tort cases

5:30 Day One Concludes

DAY TWO – THURSDAY, APRIL 29, 2010

7:30 Continental Breakfast

8:00 Co-Chairs’ Opening Remarks

8:10 View from the Bench: The Judicial Perspective on Trying a Products Liability Case from Pretrial Issues, Pleadings and Motion Practice to the Trial Phase and Settlement (Part I)

The Honorable Mark Fuller
Chief United States District Judge
U.S. District Court, Middle District of Alabama

The Honorable Elihu Berle
Supervising Judge of the Civil Division
Superior Court of California, County of Los Angeles

The Honorable Janis Graham Jack
United States District Judge
U.S. District Court, Southern District of Texas

The Honorable Fred Edwards
Presiding Judge
Texas Ninth Civil District Court, Montgomery County

The Honorable James McBride
Presiding Judge
Superior Court of California, County of San Francisco

Moderator:
Lori G. Cohen
Shareholder
Greenberg Traurig, LLP (Atlanta, GA)

9:30 View from the Bench: The Judicial Perspective on Trying a Products Liability Case from Pretrial Issues, Pleadings and Motion Practice to the Trial Phase and Settlement (Part II)

The Honorable Ruben Castillo
United States District Judge
U.S. District Court, Northern District of Illinois
The Honorable Martin Shulman  
Associate Justice  
New York State Supreme Court, Appellate Term  
First Judicial Department

The Honorable Mark Davidson  
Presiding Judge  
Texas Eleventh Civil District Court

The Honorable Daniel J. Stack  
Circuit Judge and Chief Judge of the Civil Division  
Illinois Third Judicial Circuit Court, Madison County

The Honorable Donovan W. Frank  
United States District Judge  
U.S. District Court, District of Minnesota

Moderator:  
Ezra D. Rosenberg  
Partner  
Dechert, LLP (Princeton, NJ)

10:50  
Morning Coffee Break

11:00  
In-House Panel: Developing a Plan to Defend Against Imminent Litigation

Robert Morse  
Senior Counsel – Litigation  
ConocoPhillips (Houston, TX)

Joseph R. Alberts  
Litigation Counsel  
The Dow Chemical Company (Midland, MI)  
Dow AgroSciences, LLC (Indianapolis, IN)

Michael A. Glackin  
Managing Counsel/Products, IP & DAS Litigation  
The Dow Chemical Company (Midland, MI)

Diana L. Reed  
Senior Counsel – Litigation  
PPG Industries, Inc. (Pittsburgh, PA)

Eric S. Sarner  
Associate General Counsel  
Praxair, Inc. (Danbury, CT)

Wesley N. Harris  
Senior Counsel  
Shell Oil Company (Houston, TX)

Charlene Tsang-Kao  
Associate General Counsel  
Solvay North America, LLC (Houston, TX)

Moderator:  
Kathleen O’Connor  
Partner  
Dechert, LLP (New York, NY)

- Minimizing your financial output when facing complex chemical products liability litigation
- Communicating with key stakeholders both inside and outside the company
- Gathering information about plaintiffs’ counsel
- Responding to plaintiffs’ forum shopping: Tailoring trial management strategies to fit mass tort, class tort, or one-off cases
- Strategizing jury selection and effectively working with your trial team
- How to deal with Discovery  
  - eDiscovery problems  
  - Paying careful attention to discovery
- Managing hold orders: How to keep your head above water

12:30  
Networking Luncheon for Speakers and Delegates

1:35  
Improving Your Defense Strategy When Facing “Common Issues” and Bellwether Trials

Carla Christofferson  
Managing Partner  
O’Melveny & Myers (Los Angeles, CA)

Carolyn Frantz  
Partner  
Bartlit Beck Herman Palenchar & Scott (Chicago, IL)

James Martingano  
Shareholder  
Mehaffy Weber (Houston, TX)

Herbert L. Zarov  
Partner  
Mayer Brown (Chicago, IL)

- Combating plaintiffs’ techniques of putting pressure on the defense by using a case management order
- Exposing the dangers that lie in consolidated MDL actions  
  - How to reduce the leverage gained by plaintiffs in common issue trials
- Case Study: Success in the “Teflon” litigation
  - Strategies for defeating no-injury consumer class actions
- Dealing with the trend of plaintiffs to have mass torts instead of class torts:  
  - Plaintiffs response to the difficulty to fit personal injury into class action
  - Examining the trend in Plaintiffs’ firms to aggregate thousands of plaintiffs and strategies to deal with this (i.e., individual litigation, common issue trials, bellwether trial approach)

2:45  
Changes in Pleading Requirements: Bolstering Defense Advantage by Using Potential Plaintiff Problems with the Iqbal-Twombly Standard

Theodore P. Ray  
Counsel  
ExxonMobil Corporation (Houston, TX)

John H. Beisner  
Partner  
Skadden Arps (Washington, D.C.)

- Explaining the scope of Iqbal-Twombly and how the need for a well plead and articulated cause of action benefits the defense

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• Enforcing pleading requirements and the Federal Court’s role
• Understanding the impact of Iqbal-Twombly on chemical products liability matters
  - Focusing on the difficulty of meeting the Iqbal-Twombly pleading requirements when filing non-traditional Anglo-American torts such as RCRA, CERCLA, CWA violations
  - Battling against the “Discovery Tort” game by disqualifying plaintiffs at the pleadings stage
• Anticipating pending Congressional bills seeking to overturn Iqbal-Twombly

3:45 Afternoon Refreshment Break

3:55 Strengthening Defense Positions Despite Regulatory Changes Made by the Obama Administration: Overcoming Preemption Hurdles, Accepting Proposed TSCA Changes, and Coming to Terms with Chemical Bans

Gary Roberts
Partner
Sonnenschein Nath & Rosenthal (Los Angeles, CA)

Robert Scofield, D.Env., M.P.H.
Principal and Center Director for the Exposure Assessment and Dose Reconstruction Center
Exponent, Inc. (Oakland, CA)

Timothy Coughlin
Partner
Thompson Hine (Cleveland, OH)

• Predicting the future landscape based on the Supreme Court and the new administration’s changes to federal preemption rules
  - Looking at Riegel and Levine
  - Using recent Supreme Court holdings to your advantage
• Examining the changes proposed to TSCA and the potential impact on the chemical producer and products manufacturer community
• Proactively developing a strategic plan to address the trend to implement an outright ban on chemicals rather than responsible regulation of them
• Dissecting the CPSC’s increased scrutiny of the chemical industry over the past year
• Gearing up for big changes: studying California’s Proposition 65 labeling requirements for products containing chemicals known to be carcinogenic or cause reproductive toxicity
  - Impacts on the chemical industry and chemical products manufacturers nationwide
  - Interplay between the California Proposition 65 and litigation on a national scale

5:00 Staying Ahead of the Curve: Understanding the Science and Regulation of Nanotechnology and the Implications in Chemical and Consumer Products Liability

Amy K. Madl, M.S., DABT
Senior Managing Health Scientist
ChemRisk (San Francisco, CA)

Theodore Voorhees, Jr.
Partner
Covington & Burling (Washington, D.C.)

Orlyn O. Lockard, III
Partner
Alston & Bird (Atlanta, GA)

David P. Flynn
Partner
Phillips Lytle (Buffalo/New York, NY)

• Nanoparticles and human health: explaining the current state of the science relevant to consumer products (TiO2, nanotubes, silver, etc.)
• Evolving concepts and methods of risk assessment: characterizing physicochemical properties as a critical tool in bridging information between animal toxicology literature and potential human exposure settings
• Understanding the current regulatory framework
  - What is the current status of nanotechnology regulation in the United States?
  - Emerging regulatory trends
  - Alternative policy models for addressing potential hazards
• Anticipating and preparing for occupational, consumer, and environmental claims
• Managing risk: product stewardship, insurance and other proactive tools for nanomaterials

5:45 Conference Concludes

POST-CONFERENCE WORKSHOP
Friday, April 30, 2010
9:00 a.m. – 12:00 p.m. (Registration Opens at 8:30 a.m.)

Practical Information when Dealing with Cross-Border Suits, Regulations, and Business Relationships

Theodore P. Ray
Counsel
ExxonMobil Corporation (Houston, TX)

N. Kathleen Strickland
Shareholder
Ropers Majeski Kohn & Bentley (San Francisco, CA)

• Evaluating cases and suits with products produced or workers operating in other countries
• Case management strategies: are forum non conveniens motions still a good idea to get plaintiffs thrown out of the country?
  - Ramifications of ending up in court in a foreign jurisdiction
• What does the future hold in light of the present state of the Chinese Drywall MDL
  - The relationship with China and regulatory issues
  - Foreign manufacturers and ramifications in the U.S.
• Questioning the viability of Alien Tort Claims Act cases post Sosa v. Alvarez-Machain: is the door still open on these types of claims?
• R.E.A.C.H. requirements in the E.U.: Preparing for heightened health and safety protection standards in the U.S.
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