Regional CLE Workshop:

Current Issues in Pharmaceutical, Medical Device, and Biotech Litigation

Bristol-Myers Squibb
3401 Princeton Pike
Lawrence Township, NJ 08648
October 20, 2017

Presented by the ABA Section of Litigation Pharmaceutical, Medical Device and Biotech Subcommittee and Mass Tort Subcommittee of the Products Liability Committee

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### Program Agenda*

**Thursday, October 19, 2017**

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| 5:00 am – 7:00 pm | **Cocktail Reception:** Salt Creek Grille  
Princeton Forrestal Village  
(along U.S. Route 1 next to the Westin Princeton)  
One Rockingham Row  
Princeton, NJ 08540 |

**Friday, October 20, 2017**

<table>
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<td>8:00 am – 8:45 am</td>
<td><strong>Registration and Breakfast</strong></td>
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| 8:45 am – 10:00 am | **Effect of the First Amendment on Off-Label Marketing**  
This panel will explore the bases for claims of off-label marketing against drug and device manufacturers, how those claims have been and will be affected by recent First Amendment case law, and how FDA is reacting to the changing landscape. The panelists will also discuss best practices and ethical considerations for the cautious manufacturer, sales representatives interacting with physicians, and in-house counsel in light of these decisions.  
**Moderator:** Janet M. Richardson, Edwards Lifesciences LLC, Irvine, CA  
**Panelists:** Linda Pissott Reig, Buchanan Ingersoll and Rooney, 550 Broad Street, Suite 810, Newark, Tamar B. Kelber, Gass Weber Mullins LLC, Milwaukee, WI, Paul Penticuff, Baker Sterchi Cowden & Rice LLC, Kansas City, MO |
| 10:00 am – 11:15 am | **E-Discovery in the Age of the Mass Tort**  
This panel will identify and discuss how to work through the challenging e-discovery issues that present themselves during the course of mass tort proceedings. During the discussion, the panelists will discuss negotiating the discovery plan, addressing spoliation concerns, electronic search methodologies for identifying relevant information, the risks and benefits of using cloud-based document repositories, proportionality rules and decisions, and international discovery and privacy issues.  
**Moderator:** Richard Bernardo, Skadden, Arps, Slate, Meagher & Flom LLP, New York, NY  
**Panelists:** Jeffrey Nass, Boehringer Ingelheim, 900 Ridgebury Road, Ridgefield, CT, Matthew Jennings, Ernst & Young, Washington, D.C., Julia M. Voss, Greensfelder, Hemker & Gale, P.C., St. Louis, MO, Randi Kassan, Sanders Viener Grossman, L.L.P., Garden City, NY, Vince Carnevale, Sanders Viener Grossman, L.L.P., 100 Garden City Plaza, Suite 500, Garden City, NY |
| 11:15 am – 11:30 am | **Break**                                        |
Recent Trends in MDLs: Consolidated and Multi-Plaintiff Trials

This panel will discuss the legal and practical justifications for trial courts’ use of consolidated and multi-plaintiff trials, what recent verdicts can tell us about the pros and cons of using these mechanisms for trying cases, the impact of the United States Supreme Court’s anticipated decision in *Bristol-Myers Squibb Co. v. Superior Court* on further developments in this area, issues relating to plaintiffs’ residencies and different labels, and best practices for conducting trial in such settings.

**Moderator:** Kenneth A. Murphy, Drinker Biddle & Reath LLP, Philadelphia, PA


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Litigating Public Health Epidemics

This panel will discuss the status of litigation by cities and other governmental entities seeking to hold manufacturers liable for public health epidemics like the opioid addiction crisis. Included will be a discussion of the theories of liability and remedies sought, potential defenses to the claims, registration of sales representatives, and the controversy over using contingency fee lawyers to pursue the claims.

**Moderator:** Raymond M. Williams, DLA Piper, Philadelphia, PA


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Recent Trends in the American Legal System

This panel will cover a variety of topics that are expected to affect the practice of law in coming years, including an assessment of the Trump presidency on product liability litigation, the potential impact of rollbacks of federal regulations on preemption and other defenses, the impact of attorney advertising on mass actions and patient health, and the status and pros/cons of litigation funding following the *Terry Bollea v. Gawker Media Group* verdict.

**Moderator:** Jennifer L. Steinmetz, Tucker Ellis LLP, Cleveland, OH

**Panelists:** Donald C. Le Gower, Bristol-Myers Squibb, Lawrenceville, NJ, James Orr, Heygood Orr & Pearson, Irving, TX, Steven Sokolow, Guidepost Solutions, New York, NY, Adam J. Spicer, Butler Snow, Ridgeland, MS, Bryan Pratt, Shook Hardy & Bacon L.L.P., Kansas City, MO
Program Organizers

SPONSORED BY the ABA Section of Litigation Pharmaceutical, Medical Device, and Biotech Subcommittee and Mass Tort Subcommittee of the Products Liability Committee

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To register online, visit:  LINK: https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=285585997
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321 N. Clark Street, Floor 16
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Secure Fax Number: 312-988-5850
Please register by October 13, 2017 to reserve your spot.

Requests for refunds must be made in writing and received no later than October 6, 2017 in the ABA Section of Litigation office. Please email your request to Monica Anchondo at Monica.Anchondo@americanbar.org. There will be a $10 administrative fee deducted from the refund. Cancellations received after October 6, 2017 will not be refunded; however, the Section will gladly accept substitutions for those unable to attend.

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Tuition Assistance:
A limited number of scholarships to defray registration fees may be available for government employees, public interest lawyers employed with nonprofits, academics, and law students, as well as unemployed attorneys. For more information, please contact: Monica Anchondo at (312) 988-6245.

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The Westin Princeton at Forrestal Village, 201 Village Blvd, Princeton, NJ 08540, Front desk phone: 609-452-7900, Hotel reservations: 888-627-7036

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A limited amount of scholarships are available for this program. For more information, please contact: Monica Anchondo at (312) 988-6245.

Registration Information
• $175.00 Section of Litigation members
• $235.00 Non-Section members
Checks for attendance and course materials should be made payable to the AMERICAN BAR ASSOCIATION (credit cards for online registration only).

☐ I will attend the meeting and my check for $______.00 is enclosed.

☐ I would like to bring a young lawyer from my firm for half the price of my registration:

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For additional information about the program, please contact Monica Anchondo at (312) 988-6245.
By Edna Selan Epstein
This two-volume treatise, written by Edna Selan Epstein and now in its sixth edition, is the go-to reference by attorneys and judges nationwide on common issues that arise in the attorney-client privilege and work-product protection contexts. This comprehensive new edition incorporates the general coverage from previous editions but has been extensively updated and expanded to include the most recent legal developments.

New! Her Story: Lessons in Success From Lawyers Who Live It
Edited by Theresa Marie Beck, Jacqueline Mecchellla Bushwack, and Shayna Michele Steinfeld
A collection of essays by and about lawyers overcoming obstacles, reaching goals, and leading lives that are full to the brim and rich with challenges, successes, and opportunities. These are stories of hope and lessons learned; stories with advice and unique perspectives.

New! Model Jury Instructions: Product Liability
Edited by Tina Schaefer, Laura Whitmore, and Jana Wozniak
Model Jury Instructions: Product Liability provides model jury instructions and verdict from interrogatories for use in most product liability cases, as well as law and commentary from which the instructions are derived. Each chapter provides an overview of the current state of the law, including the pivotal cases and a discussion of the practical issues to consider.

New! International Aspects of U.S. Litigation
Edited by James E. Berger
This two-volume set edited by James E. Berger serves as a comprehensive reference guide to practitioners, both in the U.S. and abroad, on the various issues that can arise when cross-border cases are litigated in U.S. courts. Mr. Berger is a litigator with a practice focusing almost exclusively on cross-border litigation in U.S. courts and arbitration-related matters, and he writes and speaks frequently on international litigation and arbitration-related topics.

New! When Products Kill
By James T. O'Reilly and Thomas G. Neltner
Fatal accidents often lead to litigation, and attorneys involved in this type of litigation need to understand what information is available about the product associated with the death and what the product regulatory agency does or could do about the allegations that the product has caused a death.
Fifty-State Survey: Toxic Exposure Claims
By the Products Liability Committee
A quick reference dedicated solely to covering claims and defenses applicable to toxic exposure across all fifty states and the District of Columbia, including case law and statutory authority. This book is ideal for litigators practicing in this area, as well as for in-house counsel whose businesses deal with chemical products.

An Introduction to Health Law Litigation Based on Contract and Government Claims
Edited by Aaron Krauss
Litigators seeking to gain experience in health law litigation, as well as those looking for guidance on a specific issue, will find in this book practical advice on how to try health law cases and suggestions for “issue spotting” and case management.

The Curmudgeon's Guide to Practicing Law
By Mark Edward Herrmann
Find out what drives law partners crazy, what will impress them, and the ten mistakes you should avoid. Concise, humorous and full of valuable (but curmudgeonly) insight, this is a must-read for every lawyer and law student.

A Brief Guide to Brief Writing: Demystifying The Memorandum of Law
By Janet S. Kole
Persuasive brief writing—which involves a combination of legal reasoning and good storytelling—is a skill that can be learned by following the principles in this book. Learn how to construct your client’s story in a manner that effectively shows the court why your client should win.

McElhaney's Trial Notebook, Fourth Edition
By James McElhaney
One of the all-time bestselling books on trial practice, this edition covers everything from discovery through rebuttal, and provides techniques, tactics, and strategies for every stage of trial. The information is grounded in actual courtroom experience that litigators want to read, can understand, will enjoy, and will use daily in court.