

American Conference Institute's 3rd National Forum on

Chemical Products Liability and Environmental Litigation

A tactical, practical, and real-time guide to optimizing litigation strategy at the rapidly changing intersection of science, technology and the law

Experienced In-House Attorneys Share Best Practices:

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

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

Peter A. Drucker
Assistant General Counsel – Litigation
AkzoNobel (Tarrytown, NY)

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

Melissa Hunt
General Counsel
Occidental, Inc. (Dallas, TX)

Lisa Ketai
Senior Counsel – EHS&S Litigation
Chevron Phillips Chemical Company LP
(The Woodlands, TX)

Scott A. King
Vice President and General Counsel
Occidental Chemical Corporation (Dallas, TX)

Sophia Lee (invited)
Chief Counsel – Litigation
Sunoco, Inc. (Philadelphia, PA)

Kevin O'Neal
Senior Counsel – Litigation
Chevron Global Upstream and Gas (Houston, TX)

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

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

Leading litigators and preeminent jurists will provide highly specialized, practical information on:

- Advising clients on climate change matters in the wake of regulatory uncertainty
- Mitigating liability risk and damages stemming from catastrophic environmental releases
- Maintaining ethical standards when settling multiparty cases
- Communicating complex scientific and medical concepts to judges and juries
- Defending against consumer products actions
- Reducing liability for response costs and other economic damages in private party environmental causes of action

Complete your Training at the Pre-Conference Boot Camp and Post-Conference Business Development Working Group:

Pre-Conference Science Boot Camp: Employing Effective Defense Strategies to Explain Complex Science and Medical Terminology to Judges and Juries

April 24, 2012 | 1:00 p.m. – 4:00 p.m.

Post-Conference Business Development Working Group:

In-House Perspectives on Selection and Evaluation of Outside Counsel

April 27, 2012 | 9:00 a.m. – 12:00 p.m.

Hear from these Renowned Jurists:

Hon. Allan L. Tereshko
Philadelphia Court
of Common Pleas

Hon. Janis Graham Jack
U.S. Dist. Court
S.D. Texas

Hon. James L. Robart
U.S. Dist. Court
W.D. Washington

Hon. Frank A. Maas
U.S. Dist. Court
S.D. New York

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“This was one of the best conferences I have attended. In particular, I appreciated the seasoned audience and speakers. Also, it was an opportunity to learn new information and reconnect with old colleagues.”

– *Lisa Ketai*, Senior Counsel, Chevron Phillips Chemical Company (Prior Delegate)

Get ahead of crisis situations and protect the company before disaster strikes. Arm yourself with effective strategies and critical information to master strategic communications and crisis management.

Take advantage of the unparalleled opportunities now available to learn lessons from the beginning stages of Gulf Oil Spill litigation and the Supreme Court’s holding on the AEP climate change case. The past year’s events have made it clear that it is imperative to have plans in place to manage catastrophic events.

ACI has responded to the needs of the industry by creating the **Chemical Products Liability and Environmental Litigation** conference, now in its third year. This essential litigation forum is designed to educate practitioners—both in-house and outside counsel—on the leading trends in chemical products liability and environmental litigation.

There is no other conference available that not only addresses pressing changes in the industry that impact litigation, but also provides practical information to bolster your practice, the cutting-edge information about emerging areas of concern, and an opportunity to hear insights from esteemed jurists from throughout the country.

Join experts from **AkzoNobel, Chevron, Chevron Phillips Chemical Co., Dow AgroSciences, Dow Chemical, Georgia Gulf Corp., Occidental Chemical Corp., PPG Industries Praxair, Shell Oil, Sunoco, and many more**, as they discuss the hottest topics in chemical products liability and environmental litigation, including:

- Preparing for the future of climate change litigation post-*Connecticut v. AEP*
- Learning from the Deepwater Horizon to mitigate risk and damages in litigation over catastrophic events
- Protecting the company by mastering strategic communications and crisis management
- Learning from Louisiana legacy oilfield contamination cases to mitigate long-term risk in fracking operations
- Bolstering defense strategy by defeating arguments of exposure and causal nexus to injury
- Optimizing settlement strategies using the *Dukes* decision to your advantage
- Maintaining ethical standards when settling multiparty cases

Plus, benefit from the opportunity to hear from 6 state and federal court judges as they discuss important elements of litigation, including Daubert motions and discovery challenges.

Ensure you are prepared to tackle emerging litigation trends and challenges at this unique and important event.

Last year, this event almost sold out; ensure that you can attend this event by reserving your space now.

Register by calling **1-888-224-2480**, online at **www.AmericanConference.com/ChemProducts** or faxing your registration form to **1-877-927-1563**.

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With more than 500 conferences in the United States, Europe, Asia Pacific, and Latin America, **American Conference Institute (ACI)** provides a diverse portfolio devoted to providing business intelligence to senior decision makers who need to respond to challenges spanning various industries in the US and around the world.

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Head of Sales, American Conference Institute

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PRE-CONFERENCE Science Boot Camp

Tuesday, April 24, 2012 | 1:00 p.m. – 4:00 p.m.

(Registration begins at 12:00 p.m.)

Pre-conference Science Boot Camp: Employing Effective Defense Strategies to Explain Complex Science and Medical Terminology to Judges and Juries

Elizabeth Foley

Founding Partner

Zagnoli McEvoy & Foley LLC (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 are 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 formaldehyde, BPA, TCE, MTBE, etc.
- Using exposure modeling and other scientific tools to strengthen your case
- Overcoming the public perception and understanding of science and the scientific method through effective communication skills
- Proven methods to effectively and clearly communicate the causal nexus between exposure and illness
- Strategies to educate the jury about the complexities of the case they are about to hear
- Selecting the best experts to relate to judges and juries
 - The best scientists are not necessarily the best witnesses
 - Ensuring your expert is engaged in the case and will present him/herself well
- Understanding the science of the case to “check” your experts
- Defending general causation when possible

Day 1 Wednesday, April 25, 2012

7:30 **Conference Registration and Continental Breakfast**

8:30 **Co-Chairs’ Welcoming Remarks**

Melissa Hunt

General Counsel

Occidental, Inc. (Dallas, TX)

Eric S. Sarnier

Associate General Counsel

Praxair, Inc. (Danbury, CT)

8:45 **Eye on Climate Change Litigation: Assessing Risk and Preparing for the Future Post-AEP v. Connecticut**

Kevin P. Holewinski

Partner

Jones Day LLP (Washington, DC)

Kevin O’Neal

Senior Counsel – Litigation

Chevron Global Upstream and Gas (Houston, TX)

- Analyzing the holding in *Connecticut v. American Electric & Power*
 - What effect does the case have on pending cases in lower courts?
 - What other changes have occurred over the past year?
 - What cases have been filed in view of the decision?
 - Where is the new form of climate change litigation going?
 - What new theories are being proffered by plaintiffs?
- Update on the status of *Native Village of Kivalina, AK v. Exxon Mobil* and *Comer v. Murphy*
- Doing business in the carbon conscious world: Navigating the current landscape of climate change regulation
 - Where are we now?
 - Advising clients in the wake of regulatory uncertainty
- Avoiding potential unbounded corporate liability for the release of CO₂ and other greenhouse gases
- Protecting the company from unwanted exposure and admissions in SEC filings about greenhouse gas emissions
 - What disclosure does the SEC guidance document require?
 - Avoiding the risk of damaging statements made by sustainability officers in disclosures
 - Understanding the effect of statements made in SEC filings on litigation in the future

9:45 **Lessons Learned from the Aftermath of the Deepwater Horizon Incident: Responding to MDL Standards and Processes, Heightened Regulations, and Increased Media Scrutiny**

Kenneth J. Mallin

Partner

Bryan Cave LLP (St. Louis, MO)

Dawn Sestito

Partner

O'Melveny & Myers LLP (Los Angeles, CA)

- An overview of the current status of litigation stemming from the Gulf oil spill
 - Judge Barbier's LA District Court rulings
- Mitigating the impact of harsh offshore drilling regulations and monitoring post-Gulf oil spill
- Responding to new standards and processes for MDL litigation set by Judge Barbier
 - Mandamus action challenging standards
 - "Rocket docket" scheduling for MDL cases
- Taking steps following the lift of the moratorium on offshore drilling
 - Preparing for proposed legislation
- Understanding criminal and civil proceedings by the government
 - The official investigation into the cause
 - Investigations and presidential commissions looking into different aspects of the spill
- Challenging uncertain government regulations
- Dealing with protective order and violations thereof (or attempts)
 - Handling critiques of defendants in professional journals engaged in taking evidence used in a case (expert report) and putting it in a professional journal

10:45 **Morning Coffee Break**

11:00 **Strategic Communications and Crisis Management: Protecting the Company's Business Model and Reputation**

Gregory G. Little

Partner

White & Case LLP (New York, NY)

Jeremy D. Mishkin

Partner & Chair of Litigation Department

Montgomery, McCracken, Walker & Rhoads, LLP (Philadelphia, PA)

As companies are learning lessons following the Deepwater Horizon incident, it has never been more important to have a plan in place to communicate with the media and the public about the chemicals they produce. Best practices for corporations need to be established to prepare to defend if something happens, whether it be proactive (getting ahead of the media) or reactive (responding to a crisis situation). In this social media era where everyone can access media and reach countless numbers of people literally at the click of a button, companies need to be ahead of the curve and be media-ready to handle any situation that may occur.

- Analysis of internal inventory practices: devising a plan for strategic communications
- Creating best practices to be proactively prepared to defend a company's image
- Minimizing crisis situations using strategic communications

- Case Study: A look at bans on bromine in flame retardants – environmental concerns in everyday products
- Effectively communicating with the public: getting "media trained"
- Navigating the slippery slope of corporate product stewardship to avoid damaging admissions in future litigation
 - Complying with EPA guidelines without arming plaintiffs

12:00 **Networking Lunch for Speakers and Delegates**

1:15 **Maintaining Ethical Standards when Settling Multiparty Cases**

Tynan Buthod

Partner

Baker Botts LLP (Houston, TX)

This session will present the positions of both plaintiffs and defendants when dealing with multiparty toxic tort settlement agreements. Settling multiparty cases is different from settling a class action, as individual consent is required of each claimant. There are various tools and techniques used to ensure the consent of all claimants to the settlement offer; however, ethical treatment must be maintained. Topics to be discussed include:

- Determining the ethics of mass settlements
- Avoiding non-compliance penalties by addressing Medicare/Medicaid reimbursement in settlements
- Balancing aggregate settlements with individual payouts
- Invoking judicial involvement in problematic aggregate settlements
- Review of tricks and traps in foreign jurisdictions
- Demanding closure and achieving individual consent to settlement
- Ensuring that plaintiffs' counsel's "package deals" truly equate to individual consent
 - Including terms that make it unlikely for any claimant to decline

2:15 **Arguing Against Exposure Pathways and Defeating the Causal Nexus to Injury**

Michael J. Kanute

Partner

Faegre Baker Daniels LLP (Chicago, IL)

Janika Polk

Partner

Kuchler Polk Schell Wiener & Richeson, LLC (New Orleans, LA)

- Adapting to the material changes being used by the plaintiffs' bar following the release of the 3rd edition of the federal reference manual on scientific evidence
- Limiting the expense of trying to disprove exposure and the lack of causal link to the alleged harm
- Determining the extent to which very low levels of exposure to any given substance can be considered

a “substantial factor” in the causation of adverse health effects

- Differentiating “substantial factor” from “one dose”
- Ensuring experts’ opinions about causation will survive a *Daubert* challenge
- Handling exposure reconstructions dating back 20-30 years while minimizing costs and ensuring accuracy
- Determining the geographic scope of an alleged injury in chemical exposure cases
- Handling fear of injury cases
 - What happens when there is a latency period between exposure and injury?
 - No injury class actions

3:15 **Afternoon Refreshment Break**

3:30 **Navigating the Changing Landscape of MDLs and Class Certification Post-*Walmart v. Dukes***

Carolyn Frantz

Partner

Bartlit Beck Herman Palenchar & Scott LLP (Chicago, IL)

Leonard S. Kurfirst

Partner

Edwards Wildman Palmer LLP (Chicago, IL)

Sean Wajert

Partner

Dechert LLP (Philadelphia, PA)

- Understanding how classes are formed following *Dukes*
- Assessing the impact on no-injury consumer fraud class actions
- Optimizing settlement strategies by using *Dukes* to your advantage
- What is the JCMDL doing regarding case consolidation?
 - What should you worry about?
 - What types of cases are *not* being consolidated?

4:30 **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**

The Honorable Janis Graham Jack

United States District Judge, United States District Court Southern District of Texas

The Honorable Frank Maas

United States District Judge, United States District Court Southern District of New York

The Honorable James L. Robart

United States District Judge, United States District Court Western District of Washington

The Honorable Allan R. Tereshko

Presiding Judge, Philadelphia Court of Common Pleas

Moderator:

Lori G. Cohen

Shareholder

Greenberg Traurig LLP (Atlanta, GA)

5:45 **Conference Adjourns to Day Two**

7:30 **Continental Breakfast**

8:20 **Co-Chairs’ Opening Remarks and Recap of Day One**

8:30 **Resolving Discovery, Federal Court Removal, and other Pre-Trial Challenges in Toxic Tort and Environmental Matters: Views from In-House Attorneys**

Joseph R. Alberts

Senior Counsel – Litigation

The Dow Chemical Company (Midland, MI)

Dow AgroSciences, LLC (Indianapolis, IN)

Daniel J. Brown

Corporate Counsel

Georgia Gulf Corporation (Atlanta, GA)

Peter A. Drucker

Assistant General Counsel – Litigation

AkzoNobel (Tarrytown, NY)

Sophia Lee (invited)

Chief Counsel – Litigation

Sunoco, Inc. (Philadelphia, PA)

Moderator:

Joseph G. Eaton

Partner

Barnes & Thornburg LLP (Indianapolis, IN)

- Avoiding prohibitive costs when managing databases and discovery requests on a large scale
- Finding the right arguments to challenge unreasonable discovery requests that are designed to harass
- Collecting and maintaining documents in e-discovery
 - Records retrieval and retention
 - Proper search methods
 - Evaluation
 - Preparing a privilege log in a case involving e-discovery
- Preventing the abuse of corporate designation 30(b)(6) depositions
- Preparing corporate designee deponents to survive cross-examination
 - How to answer questions about document retention and hold patterns
 - Separating the corporate designee from the individual

9:45 **Morning Coffee Break**

10:00 **In-House Perspectives: Controlling Costs When Preparing and Trying Cases**

Eric S. Sarnier

Associate General Counsel

Praxair, Inc. (Danbury, CT)

Wesley N. Harris (invited)

Senior Counsel

Shell Oil Company (Houston, TX)

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Chevron Phillips Chemical Company LP
(The Woodlands, TX)

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

Moderator:

Stephen J. McConnell
Partner
Dechert LLP (Philadelphia, PA)

- Building a trial team, including hiring outside counsel, while keeping costs down
 - Managing a multi-law firm team that has been “knitted” together to maximize expertise
- Minimizing your financial output when facing complex chemical products liability litigation
- Responding to plaintiffs’ forum shopping: Tailoring trial management strategies to fit mass tort, class tort, or one-off cases
- Avoiding settlements as a cost-cutting tool while reducing the cost of trying a case
 - Communicating to management the need to defend products rather than settle cases despite the fact that settlement may be a faster and less expensive alternative to trial
- Strategizing expert selection and effectively working with your trial team
 - Cost effective tools for expert selection
 - Understanding that the “best” is not necessarily the most expensive
- Proffering effective and “correct” discovery challenges to avoid risk and strengthen defense position
- Controlling the discovery process to minimize costs
- Minimizing the impact of social media on discovery
 - Monitoring employees posts
 - Responding to posts made in favor of plaintiffs and to the detriment of defendants
 - Combating the unfiltered nature of social media content in the discovery process
 - Strategies to prevent social media posts from doing damage before they can be filtered in the courtroom
- Best practices for maintaining privilege on internal documents
- Discoverability of a corporation’s internal risk assessment documents
 - When is it favorable to have these documents viewed by a judge and jury?

11:15 **Preparing for Litigation Arising out of Unconventional Gas Drilling Operations in Shale Plays**

Jeffrey J. Norton
Member
Eckert Seamans Cherin & Mellott, LLC (Harrisburg, PA)

Jennifer Quinn-Barabanov
Partner
Step toe & Johnson LLP (Washington, DC)

Douglas B. Sanders
Partner
Baker & McKenzie LLP (Chicago, IL)

- Assessing the impact of the FRAC Act and state legislation seeking to preserve water quality by enjoining shale drilling operations
 - State legislatures and Congress’ involvement in developing environmental safeguards
 - Identifying the potential for lawsuits arising out of “fracking” legislation
- Assessing the unique regulatory and common law legal framework for the Marcellus Shale
- Evaluating the impact of shale play developments on private land well permitting
 - Difficulty in obtaining a permit to put a private well on private lands
 - Heightened scrutiny of environmental quality issues as related to well installation and operation
- Defeating the link between fracking and groundwater contamination
 - FRAC Act update
 - Litigation on the horizon?

12:15 **Networking Lunch for Speakers and Delegates**

1:30 **Case Study: Learning from Louisiana Legacy Oilfield Contamination Cases to Mitigate Long-Term Risk in Fracking Operations**

Michael Phillips
Partner
Kean Miller (New Orleans, LA)

This session will provide best practices tips to attorneys in the northeast and other non-traditional mineral mining states from the perspective of attorneys in TX and LA who have dealt with the problems that occur 20 years after the wellhead is closed. One of the main sources of litigation in LA is oilfield contamination litigation. Instructors will provide valuable insight to companies getting into the natural gas boom and will provide the opportunity to peer into the crystal ball of what will happen after the gas has been extracted, royalty checks stop, and landowners are seeking more returns.

2:30 **Regulatory Update: Protecting the Company and Mitigating Risk in the Battle between EPA, Congress, and the States to Regulate Chemicals**

William Hubbard
Partner
Thompson Hine LLP (Cleveland, OH)

Steven M. Siros
Partner
Jenner & Block LLP (Chicago, IL)

- Bracing for the uncertainty caused by the slanted scientific review process and unreasonable chemical classifications coming out of EPA’s IRIS

- What are the cleanup, litigation, and transactional costs?
- Impacts on causation theories
- Preparing for the effects of TSCA reform
 - What will it look like?
 - What is the impact on the industry?
- Assessing the nationwide impact of California's Proposition 65 labeling requirements
 - Interplay between the California Proposition 65 and litigation on a national scale
 - California as a bellwether for the rest of the nation
 - AG's power to deputize private attorneys to enforce Proposition 65
- Guilty until proven innocent: operating under a precautionary standard of regulation similar to the EU's R.E.A.Ch.
 - Planning for discrete state regulation of chemicals stemming from California's Green Chemistry Initiative
- Dealing with the shift in OSHA's regulatory role from passive to active enforcement initiatives
- Overcoming permitting challenges stemming from the discord between EPA and state agencies over permitting rules
 - TX DEQ challenge to EPA authority
 - What is CA doing?

3:30 **Afternoon Refreshment Break**

3:45 **Staying Ahead of the Curve: Understanding the Science and Regulation of Nanotechnology and the Implications in Chemical and Consumer Products Liability**

Theodore Voorhees, Jr.

Partner

Covington & Burling LLP (Washington, DC)

Ronald C. Wernette, Jr.

Partner

Bowman and Brooke, LLP (Detroit, MI)

- Nanoparticles and human health: explaining the current state of the science relevant to consumer products (TiO₂, nanotubes, nanosilver, etc.)
- Evolving concepts and methods of risk assessment: characterizing physiochemical 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

4:45 **Conference Concludes**

POST-CONFERENCE

Business Development Working Group

Friday, April 27, 2012 | 9:00 a.m. – 12:00 p.m.

In-House Perspectives on Selection and Evaluation of Outside Counsel

Melissa Hunt

General Counsel

Occidental, Inc. (Dallas, TX)

Lisa Ketai

Senior Counsel – EHS&S Litigation

Chevron Phillips Chemical Company LP

(The Woodlands, TX)

- Is the client choosing the partner or the firm? Underlying partner relationships and engagement of outside counsel
- The things that clients really want to know before engaging outside counsel
- Demystifying the firm selection process
 - Referral resources and decision-making
 - How important are firm rankings and surveys that rate firms?
 - Use of preferred provider lists
- Best practice for communications and candor with clients
- Developing relationships while putting a focus on knowledge and quality
- Pet peeves: “worst practices” that outside counsel should avoid committing
- Taking an updated look at the “virtual law firm” model and whether it has proven satisfactory to clients
 - Evaluating the model from costs and results perspectives
- Expectations relating to litigation budgets
- In-house counsel views towards the handling of document production
 - Are some firms utilizing unique methods that resulted in lower costs?
- Factoring how legal fees are being structured into law firm selection and evaluation
 - In-house views on trends and innovations in alternative fee arrangements
- How do the selection processes differ for high-stakes work?

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Philadelphia Court of Common Pleas

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Hon. James L. Robart
U.S. Dist. Court, W.D. Washington

Hon. Frank A. Maas
U.S. Dist. Court, S.D. New York

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Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

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American Conference Institute is pleased to offer our delegates a limited number of hotel rooms at a preferential rate. Please contact the hotel directly and mention the "ACI" conference to receive this rate:

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