

American Conference Institute's 10<sup>th</sup> National Advanced Forum on  
Litigating and Managing

# ASBESTOS CLAIMS

New Claims • New Defendants • New Jurisdictions



June 23 - 24, 2009 | The Union League | Philadelphia, PA

## Distinguished Co-Chairs:



**Robert M. Horkovich**  
Partner  
Anderson Kill & Olick P.C.



**Anne Kearse**  
Member  
Motley Rice LLC

## Hear from:



**Hon. Mark Davidson**  
11th Civ. D. Ct., Harris Co.



**Hon. Helen E. Freedman**  
Sup. Ct., State of New York



**Hon. Harry A. Hanna**  
Cuyahoga Co. Ct. C.P.



**Hon. Sandra Mazer Moss**  
Philadelphia Ct. C.P.



**Hon. Daniel J. Stack**  
Madison Co. Cir. Ct., Ill.



**Laraine Pacheco**  
Special Master  
New York City Asbestos Litigation

## Gain expert advice and strategic insights on:

- Preparing for new theories of liability, new classes of defendants, changing causation standards, **liability shifts**, and the latest case law, including a **state-by-state** review of recent decisions and legislation
- Countering broad and voluminous **discovery** requests to avoid coercive settlements
- The impact of **bankruptcies** on asbestos claims and recoveries and use of the **bankruptcy trust**
- The continued emergence of **secondhand exposure** and the shift of liability to the **pipe and valve** defendant
- Strengthening your case with the latest information from the medical frontier, including the **mesothelioma diagnosis**
- Preparing and defending *Daubert/Frye* challenges and finding qualified and reliable experts
- **Reducing costs** of litigating asbestos claims
- Accurately assessing and managing **future liabilities** and minimizing the risk of **punitive damages**
- What's happening **overseas** and how it will affect your practice

## Don't Miss the Interactive Workshop:

**The Asbestos Trial – Winning Approaches to Implement into Your Trial Strategies**

June 24, 2009 • 3:00 p.m.-5:30 p.m.

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DANGER  
ASBESTOS HAZARD

## The current asbestos strategies and techniques that you need to be prepared for NEW CLAIMS, NEW DEFENDANTS, and NEW JURISDICTIONS

Over the past 30 years, no area of toxic tort litigation has seen as much transition as asbestos litigation. The past year alone has been no exception. Recent court decisions have opened the gates to a new wave of litigation that is causing liability to shift to newer and more unlikely defendants. Additionally, with asbestos related bankruptcies continuing to present issues and the creation of more and more bankruptcy trusts, litigators are faced with the challenge of adapting to new rules and regulation. All of this coupled with the continuing impact of tort reform just beginning to take shape in certain jurisdictions, is leaving some practitioners to wonder what is next? In addition, insurers are seeing newer asbestos related claims and many in the insurance industry are struggling with how exactly to handle these matters both in the pre-litigation phase and during litigation.

There has never been a more important time to master how to litigate and manage asbestos claims, including a state-by-state analysis of how the courts are applying the law in key jurisdictions. At American Conference Institute's 10<sup>th</sup> National Advanced Forum on Litigating and Managing Asbestos Claims, the asbestos industry from both sides of the aisle will convene to share their insight and winning strategies on these and other critical issues. With all of the recent changes you cannot afford to miss these critical updates and informative sessions on emerging issues in the asbestos arena. Through an exceptional faculty of in-house counsel, outside defense and plaintiff's counsel, as well as six renowned jurists, this conference will provide even the most seasoned professionals with the most cutting edge comprehensive litigation review of the industry.

Do not miss the opportunity to network with asbestos claims experts and gain the most up-to-date information and strategies on how to get the most favorable result for your client. Featuring a panel of asbestos judges from jurisdictions around the country, no other conference allows you to interact and benchmark with the leaders in the industry while hearing the theories and approaches that are most effective.

Plus, add value to your attendance by also registering for the conference workshop: **The Asbestos Trial – Winning Approaches to Implement into Your Trial Strategies.**

June 24, 2009 | 3:00 p.m. - 5:30 p.m.

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/Asbestos](http://www.AmericanConference.com/Asbestos)

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For more information about this program or our global portfolio of events, please contact:

Wendy Tyler

Group Leader & Business Development Executive  
American Conference Institute

Tel: 212-352-3220 x242 | Fax: 212-220-4281  
[w.tyler@AmericanConference.com](mailto:w.tyler@AmericanConference.com)

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Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

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- Join a live Industry Chat in progress
- Earn Forum points towards free conferences & workshops

Expand your Network at [www.my-aci.com](http://www.my-aci.com)

7:30 Registration & Continental Breakfast 

8:30 **Co-Chairs' Opening Remarks**



**Robert M. Horkovich**  
Partner  
Anderson Kill & Olick P.C. (New York, NY)



**Anne Kearse**  
Member  
Motley Rice LLC (Mount Pleasant, SC)

8:45 **2009 Mid-Year Update: The Ever-Evolving Asbestos Litigation Landscape and Current Trends Setting the Future of Claims**



**Mark A. Behrens**  
Partner  
Shook, Hardy & Bacon LLP (Washington, DC)



**Charles McGivney**  
Partner  
McGivney & Kluger, P.C. (Florham Park, NJ)

This session will offer an in-depth examination of recent and emerging trends in asbestos. The panel will explore recent developments impacting plaintiffs, defendants, insurers, and counsel, recent cases of importance – and what they all mean for you, your client and your company. With ample time for questions, this session will set the tone for an interactive, insightful two days.

- Recent court decisions that are affecting Asbestos Litigation
  - *Braaten v. Saberhagen Holdings*
  - *Simonetta v. Viad Corporation*
- Where is liability headed?
- The continuing emergence of secondhand exposure
- How are states treating the new rules
  - Accessing insurance coverage
  - The 'special docket'

10:00 Networking Coffee Break 

10:15 **Forum Selection, the Migration of Asbestos-Related Claims Into Newer Jurisdictions, and the Continuing Impact of Tort Reform in Key Jurisdictions**



**Steven A. Hart**  
Shareholder  
Segal McCambridge Singer & Mahoney, Ltd. (Chicago, IL)

**Lorento P. Rufo**  
Rufo Associates, PA (Hockessin, DE)

- The migration of claims: where they are going and why
- The future of unimpaired claims
- How the jurisdictions are adapting to tort reform
- Forum non-conveniens: getting the court you are in to enforce forum non conveniens laws
- Jurisdictional hotspots: What is happening where and which issues are being tried?
  - California
  - Pennsylvania
  - Illinois

- Washington
- Ohio
- Delaware
- New York
- How are the varying jurisdictions handling trials?
- Strategies for dealing with new trial and appellate issues

11:30 **Examining the New Theories of Liability that Are Being Pursued and Tested and the Liability Shift to New Defendants and Back to Plaintiffs**



**Edward R. Hugo**  
Partner  
Brydon Hugo & Parker (San Francisco, CA)



**Michael L. Fox**  
Partner  
Sedgwick Detert Moran & Arnold LLP (San Francisco, CA)



**Tancred Schiavoni**  
Partner  
O'Melveny & Myers LLP (New York, NY)

- The latest on component supplier liability, secondhand exposure claims, and de minimus or remote exposures
- The emergence of the pipe and valve defendant: Avoiding liability for another manufacturer's products
- Jurisdictional views on the duty to warn
- How jurisdictions are now handling the causation requirement: which require a showing of defendant-specific evidence relating to the approximate dose to which the plaintiff was exposed, coupled with evidence that the dose was a substantial factor in causing the asbestos-related disease?
- How the courts are treating these new defendants
- Proving contributory negligence in today's landscape
- Comparative fault: Union knowledge, Government knowledge & Common knowledge

1:00 Networking Luncheon for Speakers and Delegates 

2:15 **The Increased Interplay Between Bankruptcy and Asbestos Claims and How to Maneuver Your Way Through the Bankruptcy Process**



**Leslie A. Davis**  
Counsel  
Crowell & Moring LLP (Washington, DC)



**Gary Svirskey**  
Partner  
O'Melveny & Myers LLP (New York, NY)

Discovery in the bankruptcy process

- Determining plaintiffs' total claimed asbestos exposure through discovery of claims made against bankruptcy trusts
- Using bankruptcy claims data to defend claims against non-bankrupt parties
- Where and when prior claims data is, or should be, admissible

Managing asbestos bankruptcies

- Alternatives to bankruptcy
- Reasons for filing a bankruptcy petition
- The impact of bankruptcy on asbestos claims

- The scope of bankruptcy court authority and its impact on asbestos claims
- What impact will the current bankruptcy cases have on your client?

#### Bankruptcy Trusts

- The availability of funds to non-debtor co-defendants
- Advantages and disadvantages to submitting claims to a trust
- Understanding and interpreting the trust agreement
- Transparency
- Impact of bankruptcy trusts on filing patterns in the tort system
- Securing compensation and set-offs

#### 3:30 Afternoon Refreshment Break

#### 3:45 The Expert Witness and Causation Evidence: Preparing and Defending *Daubert/Frye* Challenges and Finding Qualified and Reliable Experts



##### *Albert H. Parnell*

Partner

Hawkins & Parnell LLP (Atlanta, GA)



##### *James A. Varner*

Partner

McNeer, Highland, McMunn and Varner L.C. (Clarksburg, WV)

- Planning successful *Daubert* and *Frye* challenges
- How the jurisdictions are adapting to recent case law affecting the testimony of expert witnesses
- The use of the expert witness at trial
- Choosing the best expert witness: what you should look for
- Key evidentiary issues to consider re: expert testimony
- Depositions
  - Preparing your witness
  - How to get the most out of your witness
  - Determining who the claimant should depose
  - Tips and techniques for deposing an expert witness

#### 5:00 Mesothelioma Diagnosis: Pathology, Epidemiology and Compensation

##### *Bruce W. Case, M.D., M.Sc., Dipl. Occupational Hygiene*

F.R.C.P., Associate Professor

Department of Pathology and Associate Member Combined Departments of Epidemiology, Biostatistics and Occupational Health and School of Environment McGill University (Montreal, Quebec)

The success or failure of an asbestos claim can depend on the evaluation of the medical experts. Through this interactive session attendees will learn:

- Recent advancements in treatment and diagnosis
- How are recent court decisions impacting the medical expert's diagnosis procedure?
- The mesothelioma diagnosis: What has changed and how it will affect asbestos claims
- The possibility for overdiagnosis and the use of pathology to reduce further overdiagnosis
- The symptoms caused by asbestos and asbestos-related disease
- Symptoms caused by conditions other than mesothelioma
- How doctor's causation theories differ from those of lawyers

#### 6:00 Conference Adjourns for the Day

### DAY TWO: JUNE 24, 2009

#### 7:30 Continental Breakfast ☐

#### 8:00 A View From the Bench: Judges Speak out on Successful Plaintiff Claims and Defense Strategies, Efficient Adjudication, Settlements, and More



##### *The Honorable Mark Davidson*

11th Civil District Court of Texas

Harris County



##### *The Honorable Helen E. Freedman*

New York State Supreme Court Appellate Division

New York



##### *The Honorable Harry A. Hanna*

Presiding Judge of Asbestos Litigation

Cuyahoga County, OH



##### *The Honorable Sandra Mazer Moss*

Philadelphia Court of Common Pleas

Philadelphia



##### *The Honorable Daniel J. Stack*

Madison County Circuit Court

Edwardsville, IL



##### *Laraine Pacheco*

Law Office of Laraine Pacheco (Tucson, Arizona)

Special Master, New York City Asbestos Litigation

#### Moderator



##### *John H. Kazanjian*

Principal

Beveridge & Diamond, P.C. (New York, NY)

Renowned federal and state jurists who have presided over asbestos litigation matters will provide attendees with highly sought after insight on current litigation trends and what the future holds. Points for discussion include:

- What claims have proven the most successful for plaintiffs and what defense strategies work best in the court room
- Curtailing "junk" claims
- Ensuring that legitimate claims are quickly resolved and that defendants with tenuous connections are not bearing the bulk of liability
- Prioritizing asbestos cases
- Solutions for adjudication delays
- The settlement path
- MDL: Observations and advice

#### 9:50 Networking Coffee Break ☐

#### 10:00 Insurance and Claims Management: Determining Coverage, Providing Notice to Carriers, and Improving Relationships Among Insurers, Policyholders, and Defense Counsel



##### *Irene Yesowitch*

Partner

Long & Levit LLP (San Francisco, CA)



##### *Robert M. Horkovich*

Partner

Anderson Kill & Olick P.C. (New York, NY)

- Maneuvering your way through multiple exposure claims
- Facilitating communication between their insurers and defense counsel
- Managing the parties' expectations
- Why excess carriers and reinsurers are at risk for bad faith in asbestos litigation
- Determining when asbestos claims will be treated as a single occurrence and when they will be treated as multiple occurrences

### 11:15 A Global View: What's Happening Overseas and How It Will Affect Your Practice



**John H. Kazanjian**

Principal  
Beveridge & Diamond, P.C. (New York, NY)

- In what direction is overseas asbestos case law heading?
- What changes in the law have affected the way that claims are presented?
- What types of claims are being brought and which ones most often end up being settled by insurers?
- How current overseas hot spots are handling asbestos claims
- UK asbestos litigation: The courts application of trigger
- How international claims may impact potential US trusts
- What's ahead for the world of international asbestos litigation

### 12:00 Discovery: Reducing the Cost and Burdens of Overly Broad and Voluminous Requests to Avoid Coercive Settlements

**Catharine E. Gillespie**

Senior Counsel  
DuPont Legal (Wilmington, DE)



**Jeanne F. Loftis**

Shareholder  
Bullivant Houser Bailey P.C. (Portland, OR)

- Avoiding common discovery pitfalls in asbestos litigation
- Countering sweeping sets of standard interrogatories and document production requirements
- Best practices for limiting discovery- key components of a successful discovery plan
- E-Discovery and asbestos litigation
- Gaining more with less: Honing discovery for the specifics of asbestos litigation
- Developing a winning theme for your case
- Preparing for depositions:
  - Who should be deposed?
  - Consideration when deposing your varied opponents' witnesses
  - Theories of attack

### 1:15 Conference Ends – Lunch for Workshop Participants

#### ABOUT THE VENUE



The Union League, which occupies an entire city block in the center of Philadelphia's commercial and cultural district, is a shining jewel of history in a city defined by such treasure. Founded in 1862 as a patriotic society to support the policies of President Abraham Lincoln, The Union League has hosted

U.S. presidents, heads of state, industrialists, entertainers and visiting dignitaries from around the globe. The classic French Renaissance-styled League House, with its brick and brownstone façade and dramatic twin circular staircases leading to the main entrance, is listed in the National Historic Register, and dates back to 1865, when the Broad Street building was completed. Adorning the walls and hallways is the League's distinguished art collection, artifacts imbued with the heritage and culture of its membership. The collection is a rich, historical chronicle of Philadelphia's unique imprint upon the American landscape from the nineteenth century to today.

### Post-Conference Workshop

Wednesday, June 24, 2009

3:00 p.m. to 5:30 p.m. (Registration Opens at 2:30 p.m.)

### The Asbestos Trial: Winning Approaches to Implement into Your Litigation Strategies



**Gary Svirsky**

Partner  
O' Melveny & Myers LLP (New York, NY)



**Anne Kearse**

Member  
Motley Rice LLC (Mount Pleasant, SC)



**Richard O. Faulk**

Chair, Litigation Department  
Gardere Wynne Sewell LLP (Houston, TX)

- Voir Dire: tips and techniques for favorable jury selection
  - Strategic approaches for preparation
  - Effectively evaluating potential jurors
  - Selecting appropriate jurors for liability v. damages
- Preparing and delivering effective opening statements and closing arguments for asbestos claims
- Direct and cross-examination strategies
  - Witnesses: when should they be called and innovative strategies for preparation
- Exhibits:
  - What works best before judges?
  - Keeping the jury interested and avoiding confusion
- Drafting favorable jury instructions and ensuring they get to the jury
- Utilizing medical experts



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#### 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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Litigating and Managing

# ASBESTOS CLAIMS

New Claims • New Defendants • New Jurisdictions

June 23 - 24, 2009 | The Union League | Philadelphia, PA



## DON'T MISS OUR INTERACTIVE WORKSHOP:

The Asbestos Trial: Winning Approaches to Implement into Your Trial Strategies  
June 24, 2009 | 3 p.m. - 5:30 p.m.

### Hear From:

- Honorable Mark Davidson
- Honorable Helen E. Freedman
- Honorable Harry A. Hanna
- Honorable Sandra Mazer Moss
- Honorable Daniel J. Stack
- Special Master Laraine Pacheco

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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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