



American Conference Institute's 2nd Annual Forum on Defending and Managing

AUTOMOTIVE PRODUCT LIABILITY LITIGATION

Expert Strategies and Key Insights for Prevailing Against
the Latest Plaintiffs' Theories While Minimizing Legal Costs

November 19 - 20, 2009 | Millennium Knickerbocker Hotel | Chicago, IL

Hear from these renowned jurists:

-  **Hon. Catherine D. Perry**
U.S. Dist. Ct., E.D. Mo.
-  **Hon. Nancy G. Edmunds**
U.S. Dist. Ct., E.D. Mich.
-  **Hon. David Alan Ezra**
U.S. Dist. Ct., D. Haw.
-  **Hon. W. Louis Sands**
U.S. Dist. Ct., M.D. Ga.
-  **Hon. John C. Coughenour**
U.S. Dist. Ct., W.D. Wash.
-  **Hon. Richard P. Mills**
U.S. Dist. Ct., C.D. Ill.
-  **Hon. Joe B. Brown**
U.S. Dist. Ct., M.D. Tenn.
-  **Hon. F.A. Gossett III**
U.S. Dist. Ct., D. Neb.
-  **Hon. Robert B. Collings**
U.S. Dist. Ct., D. Mass.
-  **Hon. Mildred E. Methvin**
U.S. Dist. Ct., W.D. La.
-  **Hon. James P. O'Hara**
U.S. Dist. Ct., D. Kan.
-  **Hon. Louisa S. Porter**
U.S. Dist. Ct., S.D. Cal.

Experienced in-house attorneys from these companies:


Ford • Takata • Key Safety Systems • Bosch
Kawasaki • Continental Tire

...as well as leading outside counsel and jurists will help you:

- PREPARE for the impact of the **new NHTSA roof crush standard** on current and future litigation
- OVERCOME juror sympathy for plaintiffs and **bias against auto manufacturers**
- DEFEND against the new wave of claims being made by plaintiffs in **crashworthiness cases**
- REDUCE **legal costs** without jeopardizing your litigation strategies
- ASSESS the **impact of automotive industry bankruptcies** on claims brought by plaintiffs and on the defense strategies of manufacturers and suppliers
- ADAPT your defense strategies to account for the **effect of venue choice** on your case
- PREPARE and DEFEND **Daubert challenges** using proven, effective methods
- COUNTER plaintiffs' claims relating to **electronic stability control (ESC)**
- COORDINATE **cross-border litigation** involving claims brought in the U.S. but arising from incidents that occurred in foreign countries

Distinguished Co-Chairs:

 **Andrew Pride**
Ford Motor Company

 **Gary A. Wolensky**
Snell & Wilmer L.L.P.



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Be a part of the automotive industry's premier product liability litigation defense forum and ensure that you are prepared to **cost-effectively defend against plaintiffs' claims involving the most complicated issues**

At a time when most companies are striving to reduce costs and trim staff, defending and managing complex product liability litigation can be an overwhelming task. And nowhere is this more apparent than in the automotive industry. Corporate attorneys and outside counsel for auto manufacturers and component part suppliers must find ways to reduce the costs of litigation while simultaneously dealing with the challenges of juror bias, sympathetic plaintiffs, and negative press. Add to this the new NHTSA roof crush standard and the impact that it is going to have on current and future litigation as well as the questions surrounding product liability claims against automotive companies that have emerged from bankruptcy. Defense counsel face a distinctly uphill battle in litigating and managing these claims and there is no room for error.

American Conference Institute's **2nd Annual Forum on Defending and Managing Automotive Product Liability Litigation** offers defense counsel the opportunity to obtain the strategies and insights needed to confront and overcome these challenges. Our faculty of expert in-house counsel from Ford, Takata, Key Safety Systems, Bosch, Kawasaki, and Continental Tire, as well as leading outside counsel and distinguished jurists will provide you with the knowledge necessary to:

- Manage the exorbitant cost of defending cases and evaluate which cases to settle and which to prepare for trial
- Defend against novel claims arising from the new NHTSA roof crush standard
- Ensure that the burdens of e-discovery do not undermine the defense's case on the merits
- Manage complex litigation while operating with a smaller legal department and under tighter budget constraints

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Who You Will Meet:

In-House Counsel for Automotive Manufacturers and Component Part Suppliers as well as Senior-Level Law Firm Attorneys specializing in the management and defense of:

- Product Liability Claims
- Complex Litigation
- Class Actions
- Multidistrict Litigation
- Mass Torts

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7:30 Registration and Continental Breakfast ☕

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



Andrew Pride
Attorney
Ford Motor Company
(Dearborn, MI)



Gary A. Wolensky
Partner
Snell & Wilmer L.L.P.
(Costa Mesa, CA)

8:45 **In-House Roundtable: Corporate Counsel Insights for Managing Litigation, Improving Communication with Outside Counsel, and Reducing Legal Costs**

Thomas M. Dono, Jr.
Sr. Vice President, Legal Affairs and General Counsel
Key Safety Systems, Inc.
(Sterling Heights, MI)

Don A. Schiemann
Managing Counsel
TK Holdings Inc. (Takata)
(Auburn Hills, MI)

Douglas A. Wilson (Invited)
Director, Product Litigation
Kawasaki Motors Corp., U.S.A.
(Santa Ana, CA)



Tammy L. deCastro
Senior Counsel
Continental Corporate Law Department
(Fort Mill, SC)



Andrew Pride
Attorney
Ford Motor Company
(Dearborn, MI)

Moderator:



Mark C. Walker
Partner
Brown McCarroll, L.L.P.
(El Paso, TX)

- Identifying outside counsel that are attuned to in-house counsel needs
- Ensuring that outside counsel are more responsive and accountable to in-house counsel
- Overcoming the instinct to hire the most recognizable – and, often, the most expensive – firm
- Types of work for which smaller-market firms may be equally or better suited than large-market firms

- Determining which smaller-market firms to work with
- Assessing the costs and benefits of alternative billing
- Managing complex litigation on a tight budget and with a reduced staff
 - Defending a case when key individuals (i.e. the corporate knowledge) are no longer with the company
- Strategies for managing costs associated with experts
 - Becoming more selective when determining whether or not to use experts
 - When to opt for less experienced, and less expensive, experts
- Managing the e-discovery process:
 - Implementing an e-discovery plan that defends against overly aggressive requests and ensures compliance
 - Overcoming complications associated with the production of confidential documents
 - Implementing the new rules, including Rule 502, into your daily business practices/litigation strategy
 - Softening the economic blow of retaining, collecting and producing e-documents
- Viability of alternative dispute resolution – determining when to pursue arbitration or mediation
 - Obtaining a satisfactory outcome

10:15 Morning Coffee Break ☕

10:30 **Preparing for the Impact of the New NHTSA Roof Crush Standard on Current and Future Litigation**



Erika Z. Jones
Partner
Mayer Brown LLP
(Washington, DC)



Gary A. Wolensky
Partner
Snell & Wilmer L.L.P.
(Costa Mesa, CA)

- Comparing the new standard to the old and the impact that it will have on manufacturers
- How the new roof crush standard is affecting litigation relating to pre-existing automobiles
 - Assessing the new claims being made by plaintiffs' attorneys
 - Defending against claims arising from vehicles that satisfied the roof crush standard at the time that they were manufactured but not the new standard
- Anticipating the effect that the new standard will have on litigation involving vehicles manufactured under the new standard
- Litigation implications of NHTSA's withdrawal of preemption language from the new roof crush standard
- Complying with the new standard in a timely and cost-effective manner

11:30 Litigating Claims Involving Component Part Suppliers

Don A. Schiemann
Managing Counsel
TK Holdings Inc. (Takata) (Auburn Hills, MI)



Edward C. Stewart
Partner
Wheeler Trigg O'Donnell LLP (Denver, CO)

- Managing the rise in litigation relating to OEM issues
- Working with the vehicle manufacturer at trial
- Adjusting your defense strategy to account for a co-defendant's decision to settle
 - How to maintain the consistency and cohesion of the litigation
- Assessing the liability exposure of component parts suppliers
 - Current strategies for automotive supplier co-defendants to seek dismissal of claims based on the component part supplier doctrine and other available defenses

12:30 Networking Luncheon for Speakers and Delegates

1:45 Impact of Venue on Defense Strategies: Determining How to Litigate Your Case in Both the Best and the Worst Jurisdictions for the Defense



Barry W. Ford
Shareholder
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (Jackson, MS)



Stephen A. Marcum
Shareholder
Stansberry, Petroff, Marcum & Blakley, P.C. (Huntsville, TN)



Basil J. Musnuff
Partner
Roetzel & Andress (Akron, OH)

- Venue transfer in the 5th Circuit after *In Re: Volkswagen of America Inc.*
 - Potential impact in other jurisdictions
- Which jurisdictions are the most difficult and unfriendly to corporate auto defendants?
- The courts/venues that are most likely to:
 - Entertain unlikely claims or permit the antics of plaintiffs' counsel
 - Attempt to make public policy in favor of a sympathetic injured plaintiff
 - Bar the introduction of evidence of plaintiff's conduct in strict liability
 - Allow plaintiffs to rely on proof of a nonspecific defect theory
- The test applied to determine whether a product's design is defective
 - States currently employing the risk/utility test and/or the consumer expectation test

- Apportionment and joint and several liability: state variations to consider when developing case strategy
 - Crashworthiness variations: determining whether comparative fault of the person who caused the accident (e.g. speeding, intoxication) can reduce the plaintiff's recovery against the auto manufacturer
 - How to get this type of evidence admitted
- "Proof of enhanced injury": variations on the standard and where the line is drawn
- Alternative causation: key state nuances on alteration; care, maintenance and condition of the product; and damage during repairs
- Coordinating cross-border litigation involving claims brought in the U.S. but arising from incidents that occurred in foreign countries

2:45 Preparing and Defending Daubert/Frye Challenges and Finding Qualified and Reliable Biomechanical and Accident Reconstruction Witnesses



Philippa V. Ellis
Partner
Owen, Gleaton, Egan, Jones & Sweeney, LLP (Atlanta, GA)



Joseph J. Ortego
Partner
Practice Group Leader, Products Group
Nixon Peabody LLP (New York, NY)



Michelle I. Schaffer
Shareholder
Campbell Campbell Edwards & Conroy (Boston, MA)

Causation

- Admissibility of expert testimony under the Rule 702 framework: the past year's *Daubert/Frye* cases regarding general causation for the automotive industry
 - Rulings, tactics, successes, and jurisdictional differences in standards and procedures
- Using your own experts effectively: preparing them to testify and communicate with and educate jurors
- Coping with judges who give lip service to *Daubert* but are unwilling to exclude junk science
- Excluding plaintiff's causation experts and debunking junk science
 - Successfully challenging the expert's propositions, credentials, and credibility
 - Minimizing the opposing expert's impact on your client's case
 - Cross-examination at trial: shooting down the hired gun and destroying credibility
- Problems and strategies relating to the admissibility of tests, experiments, and demonstrations
- Timing: when to file *Daubert* motions relative to experts

Special Nuances With Accident Reconstruction and Biomechanical Witnesses

- Finding and retaining qualified, reliable, and credible reconstruction and biomechanical witnesses
 - Selecting a witness with the most appropriate background, greatest level of expertise, and then preparing and showcasing that expert's knowledge

- How to counter the lack of new experts
- Minimizing the costs associated with experts without jeopardizing your case
- Accident reconstruction
 - Presenting accident reconstruction to a jury and using visuals to explain accident sequence
- Biomechanics
 - Coordination (both in and outside of the company) with regard to biomechanical engineering witnesses
 - Using competent biomechanical expert testimony: making or breaking the case
 - Maximizing the chances of a favorable ruling with regard to biomechanics and *Daubert/Frye* requirements

3:45 Afternoon Refreshment Break

4:00 Winning Over the Jury: Strategies for Overcoming the Hurdles Inherent in Defending Automotive Product Liability Litigation

Nicholas J. Durisek, Ph.D., P.E.
Dynamic Analysis Group LLC (The Woodlands, TX)



Anthony J. Monaco
Partner
Swanson, Martin & Bell, LLP (Chicago, IL)



Joel H. Smith
Partner
Nelson Mullins Riley & Scarborough LLP (Columbia, SC)

- Using themes to explain the details to the jury:
 - the technology that was in use at the time of manufacture
 - the notion that “failure” does not necessarily equal “defect”
 - presenting jurors as “investigators of the truth” to counter the often overly simplistic, generalized case laid out by plaintiff’s counsel
- Simplifying the critical issues for the jury: demystifying complicated engineering concepts, complex technical issues, and factual proof
- Overcoming the overwhelming sympathy that juries will often have for catastrophically injured plaintiffs
 - Establishing a theme of personal responsibility over “deep pockets” responsibility
 - Techniques for cross-examining a severely injured plaintiff without offending the jury
- Overcoming juror bias against auto manufacturers, including:
 - Intolerance of virtually any risk of harm or malfunction
 - The assumption that given advancements in vehicle safety features, any serious injury as a result of an accident means that there must have been something wrong with the vehicle
 - The expectation that all product risks, no matter how minor or unlikely, ought to be publicly disclosed

5:00 Conference Adjourns

8:00 Continental Breakfast

8:30 Co-Chairs' Remarks

8:45 A View From the Bench: U.S. District Court Judges' Views on Effective Theories/Defenses, *Daubert* and Evidentiary Approaches, and Deciding Cases Early



The Honorable Catherine D. Perry
United States Chief Judge
U.S. Dist. Court, Eastern District of Missouri



The Honorable Nancy G. Edmunds
United States District Judge
U.S. Dist. Court, Eastern District of Michigan



The Honorable David Alan Ezra
United States District Judge
U.S. Dist. Court, District of Hawaii



The Honorable W. Louis Sands
United States District Judge
U.S. Dist. Court, Middle District of Georgia



The Honorable John C. Coughenour
United States District Judge
U.S. Dist. Court, Western District of Washington



The Honorable Richard P. Mills
United States District Judge
U.S. Dist. Court, Central District of Illinois

Moderator:



Keith W. McDaniel
Shareholder
McCranie, Sistrunk, Anzelmo, Hardy, Maxwell & McDaniel, PC (Covington, LA)

Renowned federal district court jurists will provide their insights on:

- Early defense considerations (motions to dismiss, federal preemption, offers of judgment)
- Applying *Daubert/Frye* standards to causation experts
- Motion practice, manageability, trial plan, interlocutory appeals
- Summary judgment practice (timing, one-way intervention)
- Class certification
- Settlements (individual versus class, fairness hearings, CAFA)
- Conveying complex issues to fact-finders and explaining complex theories to laypersons
- Novel approaches to trial and case management

10:30 Morning Coffee Break

10:45 A View from the Bench (Part II): Federal Magistrate Judges Speak Out on E-Discovery, Document Holds, Burden Issues and More



The Honorable Joe B. Brown
United States Magistrate Judge
U.S. Dist. Court, Middle District of Tennessee



The Honorable E.A. Gossett III
United States Magistrate Judge
U.S. Dist. Court, District of Nebraska



The Honorable Robert B. Collings
United States Magistrate Judge
U.S. Dist. Court, District of Massachusetts



The Honorable Mildred E. Methvin
United States Magistrate Judge
U.S. Dist. Court, Western District of Louisiana



The Honorable James P. O'Hara
United States Magistrate Judge
U.S. Dist. Court, District of Kansas



The Honorable Louisa S. Porter
United States Magistrate Judge
U.S. Dist. Court, Southern District of California

Moderator:



Patricia A. Sexton
Practice Group Chair
Polsinelli Shughart PC (Kansas City, MO)

In this panel, federal magistrate judges will discuss what their expectations of counsel are during the discovery process, including:

- What are the expectations of counsel when dealing with a case involving voluminous discovery requests?
- How should you work with the judge to limit the scope and form of discoverable information without over-stepping your bounds?
- How are judges treating privilege and what's the latest on discovery requirements trumping attorney-client privilege?
- Privilege, communication, and accountability: FRE 502 and beyond
- Approaches for cross-border conflicts involving discovery
- Overcoming hurdles relative to disclosure and early conference mandates under Rule 26
- Expectations of courts regarding admissibility of electronic records
- Avoiding sanctions for spoliation or other alleged discovery misconduct

12:15 Networking Luncheon for Speakers and Delegates 

1:30 Crashworthiness: Defending Against Plaintiff Claims Relating to Automotive Design



Gerard Cedrone
Shareholder
Lavin, O'Neil, Ricci, Cedrone & DiSipio (Philadelphia, PA)



Larry D. Grayson
Partner
Hartline, Dacus, Barger, Dreyer & Kern, L.L.P. (Dallas, TX)



H. Grant Law
Partner
Shook, Hardy & Bacon L.L.P. (San Francisco, CA)



Robert W. Powell
Member
Dickinson Wright PLLC (Detroit, MI)

Airbags, Seat Belts, and Restraint Systems

- Improving your defense strategy with regard to occupant restraint issues, including defense of airbag litigation
 - Countering allegations of improper deployment, failure to deploy, and inflation-induced injuries
- Seatbelt litigation nuances: working through a case with an unbelted occupant when state law prohibits the introduction of seatbelt usage (or lack thereof)
- Child restraint injury cases: responding to a claim that the manufacturer did not design its restraint system to accommodate children
 - Complex liability and damage issues that arise when a child is involved
 - Easing the burden of defending these cases
- Factoring in the increasing complexity of "smart restraint systems"

Glass Glazing and Laminated-Side Glass

- Glazing litigation: defending against a claim that glass in the door should have been made out of laminated glass
- FMVSS 205, automotive glazing, and the move toward laminated side-glass: what you now need to know about meeting the mandatory two-part rule and avoiding suits for both compensatory and punitive damages
- How NHTSA regulations relating to window glazing come into play (for vehicles with original windows as well as those with after-market windows installed)

2:45 Afternoon Refreshment Break

3:00 Defending Against Automotive Product Liability Claims in a Tumultuous Market: Impact of Bankruptcy on Plaintiffs, Manufacturers, Suppliers, and Dealerships



Jerry L. Johnson
Assistant General Counsel
Robert Bosch LLC (Farmington Hills, MI)

Raphael ("Rafe") C. Taylor
Partner
Johnson, Spalding, Doyle, West & Trent, L.L.P. (Houston, TX)



J. Tracy Walker, IV
Partner
McGuireWoods LLP (Richmond, VA)

- Evaluating the status of product liability suits brought against entities that have since declared bankruptcy
 - How are these claims handled in bankruptcy court?

- Likelihood of plaintiffs collecting damages, even if they win in court
 - Impact on product liability litigation
- Defending against product liability claims brought against an entity that has emerged from bankruptcy
 - Future product liability lawsuits arising from products sold by a bankrupt entity prior to bankruptcy filing
 - Assessing the ability of a bankruptcy court to grant a company immunity from such suits
- Assessing the impact of new manufacturers on litigation
 - Can claims be brought against a manufacturer that takes over a bankrupt entity for products created by that entity prior to bankruptcy?
- How auto manufacturer bankruptcies affect litigation against suppliers, dealerships, and other parties
 - Duty of a bankrupt manufacturer to indemnify sellers of its products both during and after bankruptcy
 - Countering product liability claims against dealerships
- Defending against product liability claims when one or more co-defendants have declared bankruptcy

4:00 **Defending Against Claims Involving Electronic Stability Control (ESC)**

Emily Frascaroli

Attorney

Ford Motor Company (Dearborn, MI)



John A. Krivicich

Partner

Donohue Brown Mathewson & Smyth LLC (Chicago, IL)

- Examining the liability issues presented by ESC
- Evaluating the federal regulations that apply to ESC and their impact on liability
- Assessing how claims relating to ESC have been playing out in the courts
- Defending against “lack of ESC” claims
 - Countering plaintiff’s argument that if said changes had been made the accident/injury would not have occurred
- How to respond to ESC as a direct challenge to the defense that rollovers are the result of driver conduct and that an accident is unavoidable

5:00 **Conference Ends**



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You'll also hear from these renowned jurists:

Honorable Catherine D. Perry
Honorable Nancy G. Edmunds
Honorable David Alan Ezra
Honorable W. Louis Sands
Honorable John C. Coughenour
Honorable Richard P. Mills
Honorable Joe B. Brown
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Honorable Robert B. Collings
Honorable Mildred E. Methvin
Honorable James P. O'Hara
Honorable Louisa S. Porter

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The fee includes the conference, all program materials, continental breakfasts, lunches, refreshments and complimentary membership of the ACI Alumni program.

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