

PROFESSIONAL LIABILITY ROUNDTABLE

EXPERTS AND SOCIAL MEDIA:
NEW ISSUES AND SOME THAT WON'T GO AWAY



MAY 18, 2017

NEW YORK UNIVERSITY SCHOOL OF LAW
NEW YORK, NEW YORK

SCHEDULE

12:00 - 12:45 p.m.

REGISTRATION OPEN

12:45 - 1:00 p.m.

WELCOME AND INTRODUCTIONS

John T. Lay, Jr., IADC President, Gallivan, White & Boyd, P.A., Columbia, SC

Samuel W. Outten, Program Chair, Nelson Mullins Riley & Scarborough LLP, Greenville, SC

1:00 - 2:15 p.m.

USE OF EXPERT TESTIMONY IN PROFESSIONAL LIABILITY

This session will explore the development and admissibility of expert testimony in professional liability litigation, with an emphasis on themes that cross several disciplines (attorney; accountant; architects and engineers; miscellaneous professionals; etc.). The panel will discuss the evolution of professional liability opinions in the post-*Daubert* landscape. This will first address the circumstances under which opinions on a professional standard of care and/or causation must be (or should be) subjected to scientific testing or peer-review. Second, where the opinions are not sufficiently technical, the extent to which the expert must be familiar with peers in the particular locale. Through focus on various jurisdictions and locales, the panel will provide practical advice for development of favorable testimony and critical cross examination of adverse testimony across this continuum, with a focus on the way in which different rules and the timing of selection can impact litigation costs and exposure.

Speakers:

Wilhelm Dingler, Marshall, Dennehey, Warner, Coleman & Goggin, PC, Philadelphia, PA

Nicholas W. Levi, Kightlinger & Gray, LLP, Indianapolis, IN

Kristi Lush, Zupkus & Angell, Denver, CO

David Soltero, Aspen Insurance, Jersey City, NJ

2:15 - 2:30 p.m.

REFRESHMENT BREAK

2:30 - 3:20 p.m.

SOCIALLY UNACCEPTABLE: MALPRACTICE EXPOSURE AND ETHICAL CONCERNS WITH LAWYERS' MISUSE OF SOCIAL MEDIA - PART I

This session will examine the cutting-edge topic of lawyers' use of social media platforms like Facebook and Twitter, and how failure to use such social networking sites in a responsible and ethical manner can result in malpractice exposure, disciplinary actions, and adverse effects on cases, clients, and professional reputation. The panel will include a defense attorney; a leading expert on social media; legal ethics experts; and the VP of Claims for a national legal malpractice insurance carrier. Using recent real world examples from cases, disciplinary proceedings, and ethics opinions from around the country, this program will provide practical guidance on the ethical pitfalls associated with social media use as well as helpful pointers for avoiding them.

Speakers:

John G. Browning, Passman & Jones, A Professional Corporation, Dallas, TX

Steven C. Couch, Ohio Bar Liability Insurance Company, Columbus, OH

Jan L. Jacobowitz, University of Miami School of Law, Coral Gables, FL

Andrew R. Jones, Furman Kornfeld & Brennan LLP, New York, NY

Charles E. Lundberg, Lundberg Legal Ethics P.A., Roseville, MN

3:20 - 3:35 p.m.

REFRESHMENT BREAK

3:35 - 4:25 p.m.

SOCIALLY UNACCEPTABLE: MALPRACTICE EXPOSURE AND ETHICAL CONCERNS WITH LAWYERS' MISUSE OF SOCIAL MEDIA - PART II

This session will continue the discussion of the evolving landscape for lawyers practicing in the digital age, and the new standard of digital competence. It will look at the potential for social media misuse at virtually every stage in the case, from case investigation to discovery and preservation of evidence to researching prospective jurors' online profiles. In addition, the panelists will examine the potential fallout from lawyers' social media activities in their personal lives, including the impact on employment and client relationships.

Speakers:

John G. Browning, Passman & Jones, A Professional Corporation, Dallas, TX

Steven C. Couch, Ohio Bar Liability Insurance Company, Columbus, OH

Jan L. Jacobowitz, University of Miami School of Law, Coral Gables, FL

Andrew R. Jones, Furman Kornfeld & Brennan LLP, New York, NY

Charles E. Lundberg, Lundberg Legal Ethics P.A., Roseville, MN

4:25 - 4:30 p.m.

CLOSING REMARKS

Samuel W. Outten, Program Chair, Nelson Mullins Riley & Scarborough LLP, Greenville, SC

4:30 - 5:30 p.m.

COCKTAIL RECEPTION

JOHN G. BROWNING, PASSMAN & JONES, A PROFESSIONAL CORPORATION, DALLAS, TX

John Browning is a shareholder at Passman & Jones, P.C. where he handles civil litigation in state and federal courts in areas ranging from employment and intellectual property to commercial cases and defense of products liability, professional liability, media law, and general negligence matters. He is the author of the books *The Lawyer's Guide to Social Networking*, *Understanding Social Media's Impact on the Law* (West 2010); *The Social Media and Litigation Practice Guide* (West 2014); and two forthcoming books, including a book on legal ethics and social media for the ABA. He has been quoted as a leading authority on social media and the law by such publications as *The New York Times*, *The Wall Street Journal*, *USA Today*, *Law 360*, *Time Magazine*, *The National Law Journal*, *the ABA Journal*, *WIRED Magazine*, and *Inside Counsel Magazine*, and he is a recurring legal commentator for the NBC, CBS, and FOX news stations in Dallas. He serves as Chair of the Texas Bar Journal Board of Editors, as a member of Professional Ethics Committee of the State Bar of Texas, and is a frequent speaker at CLE seminars and legal symposia all over the country.

STEVEN C. COUCH, OHIO BAR LIABILITY INSURANCE COMPANY, COLUMBUS, OH

Steve Couch joined the Ohio Bar Liability Insurance Company (OBLIC) in January 2012 as its President and CEO. The Ohio Bar Liability Insurance Company provides lawyer's professional liability (LPL) insurance coverage to Ohio attorneys and is a wholly-owned subsidiary of the Ohio State Bar Association (OSBA). Mr. Couch is an insurance company executive and former trial attorney with eighteen years of experience in the lawyer's professional liability insurance field. He also has nine years of experience in civil trial work, primarily insurance defense litigation. Prior to joining OBLIC, Mr. Couch served as vice president of claims for The Bar Plan Mutual Insurance Company of St. Louis, an LPL company originally formed by the Missouri Bar and currently operating in five states other than Ohio. He had earlier served as assistant vice president for claims, claims manager, and claims attorney for Great American Insurance Company. Mr. Couch has also worked as a trial attorney for several Texas law firms. He earned both his Juris Doctor and Bachelor of Arts in business administration from Baylor University in Texas.

WILHELM DINGLER, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, PC, PHILADELPHIA, PA

Wilhelm Dinger is a shareholder at Marshall Dennehey Warner Coleman & Goggin, P.C. He is in the firm headquarters in Philadelphia and leads the Accountant's Professional Liability Group. Mr. Dinger has represented professionals, primarily accountants, attorneys, architects, and engineers, in professional liability matters during his 33 year career as an attorney. In addition, Mr. Dinger was the lead of SAFECO Insurance Company's Accountant's Professional Liability and Attorney's Professional Liability Claims staff.

JAN L. JACOBOWITZ, UNIVERSITY OF MIAMI SCHOOL OF LAW, CORAL GABLES, FL

Jan Jacobowitz is a Lecturer in Law, the Associate Director of the Center for Ethics & Public Service, and the Director of the Professional Responsibility & Ethics Program (PREP) at the University of Miami's School of Law. Under Professor Jacobowitz's direction, PREP was a 2012 recipient of the ABA's E. Smythe Gambrell Award - the leading national award for a professionalism program. She also teaches the courses *Social Media and the Law* and *Mindful Ethics: Professional Responsibility for Lawyers in the Digital Age*. Prior to devoting herself to legal education, Professor Jacobowitz practiced law for more than twenty years. Professor Jacobowitz is an officer of the Association of Professional Responsibility Lawyers (APRL) and serves on its program and attorney advertising committees. She is often quoted in national publications and her work is widely cited.

ANDREW R. JONES, FURMAN KORNFELD & BRENNAN LLP, NEW YORK, NY

Andrew Jones is a partner at Furman Kornfeld & Brennan LLP. Mr. Jones' practice focusses on professional liability matters and includes: (i) the direct defense of lawyers and other professionals; and (ii) giving advice to domestic and international insurers, including on insurance policy language, product management, and claims management across the United States and abroad. He has tried multi-million dollar cases in both federal and state courts, and has represented insurers in international and domestic arbitrations, including in London, the United States, and Bermuda. Mr. Jones has drafted and managed numerous insurance policies and programs for insurers and is a regular lecturer on professional liability defense matters, including the Bi-Annual New York Bar Association-sponsored statewide Legal Malpractice Seminars. He is admitted as an attorney in New York, and is a Solicitor admitted to practice in England and Wales.

NICHOLAS W. LEVI, KIGHTLINGER & GRAY, LLP, INDIANAPOLIS, IN

Nick Levi is a partner in the Indianapolis office of Kightlinger & Gray, LLP with a diverse litigation practice. Throughout his career, Mr. Levi has handled a broad spectrum of civil tort litigation, with particular emphasis on professional liability. He has experience working with insurance companies, manufacturers, national retailers, and utilities in the defense of all manner of tort claims. In addition, Mr. Levi is active in the Association of Credit and Collection Professionals (ACA International) and has significant consumer law defense experience, including claims involving the Telephone Consumer Protection Act (TCPA), the Fair Debt Collection Practices Act (FDCPA), and the Fair Credit Reporting Act (FCRA).

CHARLES E. LUNDBERG, LUNDBERG LEGAL ETHICS P.A., ROSEVILLE, MN

Chuck Lundberg is recognized nationally as a leader in the fields of legal ethics and professional liability. He is a Past President of the Association of Professional Responsibility Lawyers, the Immediate Past Chair of the Professional Liability Committee of the International Association of Defense Counsel, and a liaison to the ABA Standing Committee on Lawyers Professional Liability. In 2015, Chuck retired after 35 years as a partner with the Minneapolis trial firm of Bassford Remele. He now consults with lawyers and law firms on matters involving legal malpractice, legal ethics, and other areas of the law of lawyering through Lundberg Legal Ethics. Mr. Lundberg served for 12 years on the Minnesota Lawyers Professional Responsibility Board, including six years as Board Chair. He is an adjunct professor at the University of Minnesota Law School where he teaches legal malpractice law and professional responsibility. For many years, he has been recognized as a Top 100 *Super Lawyer* and one of the *Best Lawyers in America* in the fields of Appellate Law and Legal Malpractice Law.

KRISTI LUSH, ZUPKUS & ANGELL, DENVER, CO

Kristi Lush is a partner at Zupkus & Angell, P.C., a WBENC-certified women and minority owned law firm. Ms. Lush obtained both her law and undergraduate degrees from Washington University in St. Louis, Missouri. Her practice focuses on representing and defending retailers, businesses, insurance carriers, and individuals in a wide spectrum of civil litigation matters. She is a member of multiple professional organizations, including the IADC, DRI, and TLA. Ms. Lush has been continually recognized as a Rising Star by *Super Lawyers* of Colorado since 2014 and serves as the Vice Chair of Webinars for the IADC Professional Liability Committee.

DAVID SOLTERO, ASPEN INSURANCE, JERSEY CITY, NJ

David Soltero is a Vice President for Professional Liability Claims at Aspen Insurance. In his 13 years as an insurance claims adjuster, he has handled insurance broker, lawyer, accountant, and miscellaneous professional liability claims, as well as medical malpractice matters; but his primary focus has been with architects and engineers claims. Prior to entering the insurance field, Mr. Soltero was in private practice as an insurance defense attorney.

PROFESSIONAL LIABILITY ROUNDTABLE INFORMATION

LOCATION AND DIRECTIONS

New York University School of Law
D'Agostino Hall
110 West Third Street
New York, NY

New York University is located in Greenwich Village near the West 4th Street subway station of the ACE and BDFM subway lines. Please enter the following link into your internet browser for more information on directions to campus: <http://www.law.nyu.edu/jdadmissions/visitingnyu/directionstocampus>. There are no NYU parking facilities on campus, although there are a number of commercial garages in the neighborhood.

ACCOMMODATIONS AND TRAVEL

If you require lodging while attending the conference, please plan to make reservations at your preferred hotel as soon as possible.

CLIMATE AND DRESS

When packing for your trip, please note that average temperatures in New York this time of year range from a high of 69 degrees Fahrenheit to a low of 53 degrees Fahrenheit. Business and business casual attire are appropriate for the conference.

CLE CREDITS

Approximately 3.0 hours of general CLE credit in 60-minute states and 3.6 hours of general CLE credit in 50-minute states will be requested for accreditation from all mandatory continuing legal education jurisdictions where registered attendees are licensed.

CPD CREDIT (CANADA)

The IADC is a Pre-Approved Provider of CPD Credit with the Law Society of British Columbia. The Quebec CPD Committee recognizes courses approved by other Canadian bars as approved in Quebec. For those in attendance at the Professional Liability Roundtable, 3 CPD credits are available.

A SPECIAL NOTE FOR THE DISABLED

The IADC wishes to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently from other individuals because of the absence of auxiliary aids and services. If you are in need of auxiliary aids or services, please contact Melisa Maisel Vanis at mmaisel@iadclaw.org.

CANCELLATION POLICY

A CASH REFUND, less a \$150 processing fee, will be made if a written notice of cancellation is received by the IADC office more than thirty (30) days prior to the first day of the meeting. No reason for the cancellation need be provided for a timely notice of cancellation.

NO CASH REFUND will be made if notice of cancellation is received by the IADC office thirty (30) days or less prior to the first day of the meeting. However, if special circumstances arise before the meeting which prevent attendance, a member may request a future meeting credit. The request needs to be in writing and submitted to the IADC office. It should be directed to the Finance Committee's attention and note the special circumstances which caused cancellation. The credit request can only apply to meeting registration fees (not air, hotel, activity, tour, or special event fees) and, if approved, will be valid for use toward any IADC meeting for one (1) year from the date of the meeting for which credit is requested. A \$150 processing fee will be deducted from the total future meeting credit.

All future meeting credit requests will be considered by the Finance Committee and the decision of that Committee will be final.

IADC FINANCIAL AID POLICY

It is the policy of the International Association of Defense Counsel to offer a registration fee discount to attorneys who wish to attend selected IADC CLE programs but who find it difficult to attend due to cost considerations. The IADC will consider financial aid based on the following scale:

Involuntary Unemployment: Full scholarship

Income up to \$25,000: 50% discount

Income \$25,000 to \$50,000: 25% discount

Income above \$50,000: No discount

The discount may only be applied towards CLE program fees and does not include discounts for social events. The appropriate discount will be pro-rated accordingly for each meeting. Attorneys with annual incomes of less than \$50,000 or those who are employed in the public sector or who work for a not-for-profit corporation are eligible. A letter of application for this discount must be submitted to the IADC Finance Committee four weeks prior to the CLE program for which it applies. Discounts will be awarded on a case by case basis at the discretion of the Finance Committee.

Application and Income Verification

Please forward a letter explaining the reasons for your request for financial aid assistance to IADC's mailing address. Please include your name, address, daytime phone and fax numbers, and email address. If applying based upon annual income, please include a letter from your current employer confirming your anticipated current year earnings with your submission. If you are currently unemployed, please include a personal statement confirming your current unemployment status with your submission. If applying based upon type of employment, please include proof of your employment within the public or non-profit sector.

2017 IADC PROFESSIONAL LIABILITY ROUNDTABLE

DATE: May 18, 2017 • LOCATION: New York University School of Law, D'Agostino Hall
110 West Third Street, New York, NY

International Association of Defense Counsel • 303 West Madison, Suite 925, Chicago, IL 60606 • www.iadclaw.org

All Outside Counsel: IADC Member or Non-Member

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All In-House Insurance and Corporate Attendees: IADC Member or Non-Member

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If paying by wire transfer, please contact Jenée Williams at jwilliams@iadclaw.org for wire transfer details.

Please note: There is no fee for in-house insurance industry and corporate counsel attendees, but advanced registration is requested by May 5, 2017. Guest registration is not limited. Please print additional copies of this form to register multiple attendees or go to www.iadclaw.org to register online.

If you have any questions, email Amy O'Maley McGuire, Director of Professional Development, at aomaley@iadclaw.org or call 1.312.252.3802.

International Association of Defense Counsel
303 West Madison, Suite 925
Chicago, IL 60606 USA

ROUNDTABLE PLANNING COMMITTEE

Thank you to the members of the Professional Liability Roundtable Planning Committee for their work to make this meeting possible.

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What past attendees are saying....

"A wonderful opportunity for topical CLE in a client development conducive environment."

"The insights offered by defense counsel and insurers with respect to matters of common interest were most helpful."

"The networking is great – seeing people again whom I met at other IADC events. Meeting new people as well."

"Timely and topical presentations with very knowledgeable presenters. Great networking opportunities."

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