

2024 Product Liability **ROUNDTABLE**

SEPTEMBER 12

**J&J WORLD
HEADQUARTERS
NEW BRUNSWICK, NJ USA**

PRODUCT LIABILITY ROUNDTABLE

This full-day specialty roundtable, sponsored jointly by the Product Liability Committee and Drug, Device and Biotechnology Committee, creates a forum for in-house counsel and outside counsel to learn together and discuss new developments in the product liability arena. Roundtable participants are able to network with lawyers from multiple jurisdictions both during the program and at a concluding reception.

REGISTRATION AND FEES

REGISTRATION

Registration is available online only. To register for the Product Liability Roundtable:

www.iadclaw.org/events/2024-product-liability-roundtable

Please note that space is limited for this event. If you would like to attend, please register early to secure your spot.

FEES

Outside Counsel: \$545 (Member/Non-Member)

Insurance Executives/Corporate Counsel: Complimentary

QUESTIONS?

For questions on registration and any other meeting questions, email Melisa Maisel Vanis, Director of Meetings and Professional Development, at mmaisel@iadclaw.org.

SCHEDULE

8:30 a.m. – 9:00 a.m.

Registration

9:00 a.m. – 9:15 a.m.

Welcome and Introductions

Donna Lamontagne, IADC President, Lamontagne, Spaulding & Hayes, LLP, Cranston, RI USA

Brandee J. Kowalzyk, Program Co-Chair, Nelson Mullins Riley & Scarborough LLP, Atlanta, GA USA

Whitney Frazier Watt, Program Co-Chair, Stites & Harbison PLLC, Louisville, KY USA

9:15 a.m. – 10:15 a.m.

Crossroads of Product Liability and Consumer Protection Litigation

It is increasingly common for manufacturers to face simultaneous product liability and consumer protection litigations over a product. This confluence presents unique challenges, but it can also create opportunities. This panel presentation will identify and discuss emerging topics, trends, developments, and strategies for the intersection of product liability and consumer protection cases.

Moderator: **Christopher D. Morris**, *Butler Snow LLP, Ridgeland, MS USA*

Speakers:

Dana Baiocco, *Clyde & Co US LLP (former CPSC), Washington, DC USA*

Kristine Campbell, *U-Haul International, Phoenix, AZ USA*

Nicholas Connor, *Johnson & Johnson, New Brunswick, NJ USA*

David Marck, *Teva Pharmaceuticals USA, Inc., Parsippany, NJ USA*

10:15 a.m. – 10:30 a.m.

Networking Break

10:30 a.m. – 11:30 a.m.

When the End is Just the Beginning...How Remanded Cases Can Make or Break Multidistrict Litigation

In the United States, judges overseeing consolidated litigation are increasingly relying on remands — or orders transferring an individual case to another court for trial — to manage and resolve mass torts. This panel will examine the remand phase of multidistrict and other coordinated litigation and offer attendees — both product manufacturers who might face consolidated litigation and outside counsel who help manage it — tips for using remands to help (rather than hinder) resolution of mass torts. Panelists will discuss the challenges of remand orders and offer specific examples of how they can undo a product manufacturer's "exit strategy." The presentation will then address how manufacturers can turn remand orders into a sword against the plaintiffs' bar by planning for remands early in the litigation. Next, the panel will explain how to manage remanded cases both efficiently and effectively. Finally, attendees will learn the challenges and opportunities of trying remanded cases.

Moderator: **Daniel Higginbotham**, *Thomas Combs & Spann, PLLC, Charleston, WV USA*

Speakers:

Candace Camarata, *Becton Dickinson and Company, Franklin Lakes, NJ USA*

Larissa Eustice, *Bayer Corporation, Floor Whippany, NJ USA*

Zane C. Riester, *Johnson & Johnson, New Brunswick, NJ USA*

Paul S. Rosenblatt, *Butler Snow LLP, Ridgeland, MS USA*

11:30 a.m. – 11:45 a.m.

Networking Break

11:45 a.m. – 12:15 p.m.

Introduction to the New EU Product Liability Directive

The new product liability directive is designed to bring the EU's product liability laws into the digital age and ease the burden on consumers seeking compensation for defective products. Most of the agreed upon changes include:

- Extending the definition of "product" to digital manufacturing files and software (excluding free and open-source software developed/supplied outside the course of a commercial activity);
- Including medically recognized damage to psychological health as well as destruction or irreversible corruption of data in the definition of damage;
- Including non-material losses resulting from the damage within the right to claim compensation;
- Alleviating the burden of proof which remains on the injured consumer;
- Extending the liability period to 25 years in exceptional cases when symptoms are slow to emerge; and
- Introducing a cascade of attributable liability for the economic operators.

This panel will explain how these changes will affect global manufacturers and practitioners.

Speakers:

Sarah-Jane Dobson, *Ashurst LLP, London, England*

Sylvie Gallage-Alwis, *Signature Litigation AARPI, Paris, France*

12:15 p.m. – 12:30 p.m.

Lunch Break

12:30 p.m. – 1:30 p.m.

A Former FDA Lawyer's Advice on Defending Drug and Medical Device Clients in Product Liability Litigation

In this session, IADC member James Fraser, a long-time product liability defense lawyer who also served for five years as an Associate Chief Counsel for Litigation at FDA, will share some of the lessons he learned at FDA that are relevant to defending drug and medical device clients in product liability litigation. Topics will include: how to more effectively utilize FDA regulatory expert witnesses, how to obtain amicus support from FDA, and how to obtain testimony from current and former FDA employees.

Speaker:

James Fraser, *Thompson Hine LLP, Washington, DC USA*

1:30 p.m. – 1:45 p.m.

Networking Break

1:45 p.m. – 2:45 p.m.

Pulling Back the Curtain on Third Party Litigation Finance: Trends, Issues, and Reforms

The industry of commercial third party litigation funding (TPLF) is growing quickly and plays a key role in the trial bar's "Mass Torts Playbook." This panel will discuss recent data on the TPLF industry and predictions about its future growth, as well as recent developments that highlight defendant concerns about the influence of TPLF on litigation decisions and settlement. Panelists will also discuss the potential "weaponization" of TPLF to weaken US industries and will conclude with a discussion of recent reforms adopted by courts and state legislatures to bring greater transparency to TPLF agreements.

Moderator: **Jennifer Snyder Heis**, *UB Greensfelder LLP, Cincinnati, OH USA*

Speakers:

Mark Behrens, *Shook, Hardy & Bacon, LLP, Washington, DC USA*

Prof. Donald Kochan, *George Mason University, Scalia Law School, Arlington, VA USA*

Rachelle Mortimer, *US Chamber of Commerce, Arlington, VA USA*

2:45 p.m. – 3:15 p.m.

Inclusion in Manufacturing: Failure to Consider Every Body

As more products are marketed directly to consumers, has a new "duty of inclusion" been created by these manufacturers? This panel will look at instances where claims have been alleged against manufacturers because the product failed to consider a person's gender, body composition, and/or skin complexion in manufacture or testing. We will explore whether there is a duty for manufacturers to ensure that their products serve a diverse population and provide safety for the members of that diverse population.

Speakers:

Nicole M. Brunson, *A.O. Smith Corporation, Milwaukee, WI USA*

Melissa Lin, *Righi Fitch Law Group, Phoenix, AZ USA*

3:15 p.m. – 3:30 p.m.

Networking Break

3:30 p.m. – 4:00 p.m.

The Preemption Defense, the Government Standards Defense, and *Sullivan v. Werner Co.*: A Crossroads in Defending Product Liability Cases

A key weapon in the arsenal of the product liability defense bar is under attack. The government standards test, which is also known as the regulatory compliance test, was recently eliminated by perennial judicial hellhole the Pennsylvania Supreme Court in *Sullivan v. Werner Co.* This panel will explore the strategy for trying cases under the government standards test in jurisdictions that allow it, how to handle risk-utility cases in Pennsylvania post-Sullivan, and when preemption may be an option to eliminate claims in a variety of industries.

Speakers:

Sharon L. Caffrey, *Duane Morris LLP, Philadelphia, PA USA*

R. Matthew Cairns, *Textron Inc., Providence, RI USA*

Edward Dumoulin, *Goldman Ismail Tomaselli Brennan & Baum LLP, Chicago, IL USA*

4:00 p.m. – 5:00 p.m.

Attempts to Rebrand Product Liability Claims is the Real Nuisance Here - Public Nuisance, The New Product Liability Super Tort

Public nuisance liability theory is generating much of the highest profile mass tort litigations of our era, including PFAS “forever chemicals,” opioids, climate change, and more. Plaintiffs are increasingly using this theory to hold product manufacturers responsible for harms that have traditionally been viewed as social and political issues. This presentation will delve into the origin of public nuisance and evaluate where this liability theory stands today and where it is headed next.

Moderator: **Grant Worden**, *Torys LLP, Toronto, ON Canada*

Speakers:

Zandra Foley, *Thompson, Coe, Cousins & Irons, LLP, Houston, TX USA*

Stephanie Laws, *Maslon LLP, Minneapolis, MN USA*

Marc E. Williams, *Nelson Mullins Riley & Scarborough, LLP, Huntington, WV USA*

5:00 p.m.

Closing Remarks

Brandee J. Kowalzyk, *Program Co-Chair, Nelson Mullins Riley & Scarborough LLP, Atlanta, GA USA*

Whitney Frazier Watt, *Program Co-Chair, Stites & Harbison PLLC, Louisville, KY USA*

5:00 p.m. – 6:00 p.m.

Cocktail Reception

GENERAL INFORMATION

LOCATION

J&J World Headquarters, Corporate Conference Center
1 Johnson and Johnson Plaza
New Brunswick, New Jersey 08901

ACCOMMODATIONS AND TRANSPORTATION

The IADC will not be hosting a room block during this meeting. If you require lodging while attending the conference, please plan to make reservations at your preferred hotel as soon as possible. Nearby hotel suggestions include: [The Hyatt Regency New Brunswick](#) and [The Heldrich Hotel & Conference Center](#).

Newark Liberty International Airport is approximately 25 miles from the facility. Other nearby New York airports include John F. Kennedy International and LaGuardia Airport.

Visitor parking is located at 1 Johnson and Johnson Plaza.

CLIMATE AND DRESS

When packing for your trip, please note that average temperatures in New Brunswick this time of year range from a high of 80 degrees Fahrenheit to a low of 58 degrees Fahrenheit. Business and business casual attire are appropriate for the conference.

CLE CREDITS

Approximately 6.5 hours of general CLE credit in 60-minute states and 7.8 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 Product Liability Roundtable, 6.5 CPD credits are available.

SPECIAL NEEDS

If you have any special needs during the meeting (i.e. diet or accessibility), please email Melisa Maisel Vanis, Director of Meetings and Professional Development, at mmaisel@iadclaw.org in advance of the meeting.

DATA PRIVACY AND COLLECTION

Data is collected on attendees through registration for the purposes of executing the meeting and communicating with attendees about the meeting. Meeting sponsors have access to the registration list provided to all attendees.

If any attendee has questions on data use and privacy, please contact Mary Beth Kurzak, Executive Director and CEO, at mkurzak@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.

PRODUCT LIABILITY ROUNDTABLE

SEPTEMBER 12, 2024

THANK YOU

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

PRODUCT LIABILITY ROUNDTABLE PLANNING COMMITTEE

Brandee J. Kowalzyk, Program Co-Chair

Nelson Mullins Riley & Scarborough LLP, Atlanta, GA USA

Whitney Frazier Watt, Program Co-Chair

Stites & Harbison PLLC, Louisville, KY USA

Nicole M. Brunson, A.O. Smith Corporation, Milwaukee, WI USA

Sharon L. Caffrey, Duane Morris LLP, Philadelphia, PA USA

R. Matthew Cairns, Textron Inc., Providence, RI USA

Candace Camarata, Becton Dickinson and Company, Franklin Lakes, NJ USA

Sylvie Gallage-Alwis, Signature Litigation AARPI, Paris, France

James Fraser, Thompson Hine LLP, Washington, DC USA

Ashley Garry, Viatris, Indianapolis, IN USA

Jennifer Snyder Heis, UB Greensfelder LLP, Cincinnati, OH USA

Daniel Higginbotham, Thomas Combs & Spann, PLLC, Charleston, WV USA

Melissa Dorman Matthews, Steptoe & Johnson PLLC, Dallas, TX USA

Christopher D. Morris, Butler Snow LLP, Ridgeland, MS USA

Zane C. Riester, Johnson & Johnson, New Brunswick, NJ USA

Caroline M. Tinsley, Tucker Ellis LLP, Saint Louis, MO USA

Sonia Valdes, Medmarc Insurance Company, Reston, VA USA

Grant Worden, Torys LLP, Toronto, ON Canada

Jessalyn H. Zeigler, Bass, Berry & Sims PLC, Nashville, TN USA