



2024 PRODUCT LIABILITY ROUNDTABLE

THURSDAY, SEPTEMBER 12, 2024

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. **(60 General CLE Minutes)**

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*

10:15 a.m. – 10:30 a.m.

Networking Break

10:30 a.m. – 11:30 a.m. **(60 General CLE Minutes)**

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.

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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. (30 General CLE Minutes)

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. (60 General CLE Minutes)

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*

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1:30 p.m. – 1:45 p.m.

Networking Break

1:45 p.m. – 2:45 p.m. (60 General CLE Minutes)

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. (30 General CLE Minutes)

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. (30 General CLE Minutes)

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.

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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. (60 General CLE Minutes)

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