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# AUTOMOTIVE PRODUCT LIABILITY LITIGATION

Expert Strategies for Singled-Out Vehicles and Media-Focused Issues

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## The premier automotive litigation event on:

- Defending against typical defect theories: rollovers, side curtain air bags, fires, tire aging, electronic stability control, unintended acceleration, keyless ignition, and seat backs
- Vehicle driver assist and sensor technologies, active safety systems, and autonomous cars: overcoming the product liability defense challenges and anticipating the future of claims
- Incorporating the latest regulatory initiatives on safety and design of automotive products into your litigation strategy
- Current battleground for automotive class action litigation including class certification, managing experts, pleadings, choice of law, and arbitration
- Combating the recent rise in the filing of claims and class actions involving no-injury, consumer fraud, and warranties (express and implied)
- How recalls are impacting class actions, litigation strategy to defeat class claims, recall-based Rule 23 arguments, and mootness
- Effectively cross-examining experts and developing newer qualified newer experts
- The latest nuances on the preemption defense and international personal jurisdiction and their impact on auto products liability cases
- Ensuring confidentiality and protecting work product in automotive litigation

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## Special Address by:

*O. Kevin Vincent*  
National Highway Traffic Safety Administration

## View from the Bench:



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Hon. Alan C. Torgerson  
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Phila Ct. C.P.



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Honda North America, Inc.	Ballard Spahr LLP	Moran Reeves & Conn PC
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Bombardier Recreational Products Inc.	Holland & Knight	Dinsmore & Shohl LLP
Hyundai Motor America	Lavin O'Neil Ricci Cedrone & DiSipio	Johnson, Trent, West & Taylor, LLP
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Now in its 7th year, **ACI's lauded Automotive Product Liability Litigation** conference is the highest-level national event on the market. It's the only one that combines federal and state judicial insights and networking and business development opportunities with dozens of in-house counsel from manufacturers and suppliers, all while allowing you to keep pace with the hot jurisdictions, case law, new and emerging parties, and advancements in technology. This year's agenda has been revamped to provide you with strategic advice, critical insights, and comprehensive updates for:

- Defending against typical defect theories: rollovers, side curtain air bags, fires, tire aging, electronic stability control, unintended acceleration, keyless ignition, and seat backs
- Vehicle driver assist and sensor technologies, active safety systems, and autonomous cars: overcoming the product liability defense challenges and anticipating the future of claims
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- How recalls are impacting class actions, litigation strategy to defeat class claims, recall-based Rule 23 arguments, and mootness
- The latest nuances on the preemption defense and international personal jurisdiction and their impact on auto products liability cases
- Effectively cross-examining experts and developing newer qualified newer experts
- Ensuring confidentiality in the litigation of automotive claims, protecting work product in a discovery dispute, and using arbitration to your advantage

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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**

8:00 **Co-Chairs' Welcoming Remarks**



**Thomas P. Branigan**  
Executive Managing Partner  
Bowman and Brooke LLP



**Cari K. Dawson**  
Partner  
Alston & Bird LLP

8:05 **In-House Insights on Case Evaluation, Litigation Management and Formulating Defense Strategy; Managing Costs; Selecting and Retaining Law Firms and Distribution of Legal Spend in Today's Environment; and More**

Panel 1 (8:05–9:20)		Panel 2 (9:20–10:40)
Erinn Deporre Senior Counsel - Product Litigation Chrysler	Alexandra Nellos Attorney Caterpillar Inc.	Thomas T. Johnson Legal Counsel Kawasaki
Donald R. Parshall, Jr. Senior Counsel, Legal Department Product and Business Litigation Group Nissan North America		Don Schiemann General Counsel TK Holdings, Inc.
James G. Derian Litigation Attorney Delphi Automotive Systems, LLC		Yves St-Arnaud Director Legal Services Bombardier Recreational Products Inc.
Brad J. Safon Senior Corporate Counsel Honda North America, Inc.		Jason Erb Assistant General Counsel Hyundai Motor America
Scott Cordes Vice President, Chief Legal Officer Gulf States Toyota		Nan Meyer Managing Director - Casualty/Products Liability Markel – Product Line Leadership
Scott Richardson Senior Counsel Bridgestone Americas		Nicole K. Schwieterman Litigation Counsel Cooper Tire & Rubber Company
Steve Taub Assistant General Counsel U-Haul International Legal Department		Webster Burns Vice President and Assistant General Counsel Toyota Legal One
Jorgen W. Weterrings Assistant General Counsel and Director of Legal Affairs - Product Mitsubishi Motors North America, Inc.		Charles S. Kim Assistant General Counsel, Product Litigation Mazda North Am. Operations
		Steve Grey Chief Counsel, Product Legal Isuzu North America, Inc.

Panel Co-Moderators:

**Robert F. Chapski**  
Shareholder  
Lewis, Thomason, King, Krieg & Waldrop, P.C.

**Peter J. Fazio**  
Partner  
Aaronson Rappaport Feinstein & Deutsch, LLP

The Changing Landscape of Automotive Liability and the Newest Claims Being Asserted

- Vehicle safety assist technology that makes cars safer
- The trend toward catastrophic claims

Case Evaluation

- Determining which case should go to trial and which should settle
- Controlling future litigation: identifying trends to ward off future lawsuits; knowing when to resolve a case and when to pay more to defend a suit
- Reporting to and advising a CEO

Selection and Evaluation of Outside Counsel

- Underlying partner relationships and engagement of outside counsel

- The things that clients really want to know before engaging outside counsel
- Pet peeves: “worst practices” that outside counsel should avoid committing

Managing Legal Costs, Including Outside Counsel Fees

- Managing outside counsel through realistic and accurate litigation budgets and best practice for communications and candor with clients
- Alternative billing success stories
- Managing the cost of defending cases that require retention of expert witnesses and expense of obtaining the testimony required by *Daubert* rulings
- Frivolous lawsuits when injury results from the accident itself (not a defect): how to avoid the sheer volume of these suits placing a burden on legal resources

10:35 **Morning Break**

10:45 **The Latest Nuances in Defending Against Typical Defect Theories: Rollovers, Side Curtain Air Bags, Fires, Tire Aging, Electronic Stability Control, Unintended Acceleration, Keyless Ignition, Seat Backs and Beyond**

*Dane E. Taylor, Esq.*

Senior Counsel/Litigation/RDE&Q  
The Goodyear Tire & Rubber Company

*John R. (Jay) Reid, Jr.*

Partner  
McDonald Toole Wiggins, P.A.

*Richard H. Grafton*

Principal  
Germer PLLC

*Nancy M. Erfle*

Partner  
Gordon & Rees LLP

**Rollovers**

- Factoring in the latest mechanics and engineering issues into rollover claims

**Unintended Acceleration**

- Updates on unintended acceleration cases

**Fires**

- Newest science behind fire cases
- Examining claims that a defect caused fire, and evidence issues associated with the claims
- Standards to prove defect

**Keyless Ignition**

- Problems associated with rollaways and leaving the car running (carbon monoxide poisoning)
- Push button ignition technology
- FMVSS 114

**Side Curtain Safety Canopy/Rollover Curtain**

- Combatting the latest claims that defendant should have had a Rollover Safety Canopy/Curtain in place or sooner and the injuries would have been mitigated if did; should not have been optional; should have covered more rows
- Factoring in accident sequence; pre-trip occupant position; occupant kinematics; type of injury
- Side curtain airbag requirements, standards, and claims
- Combating Plaintiff's argument that side curtain airbags should have been installed sooner or that all models should have side curtain air bags

**Tires and Tire Aging**

- The latest claims regarding lack of proper warnings, improper tire manufacture or design, improper recommendation, failure to follow recommendations by retailers
- The relationship between tread separation and loss of control
- Analyzing typical tire defenses, including damage from service abuse and damage from road hazards
- Successfully creating the best defense strategy for tire claims
- Tire technology and its impact on performance of the vehicles
- Assessing the issues regarding low profile tires and higher end vehicles
- Emerging technology on run flat tires

- Developing litigation strategy to dismiss the product liability claims and minimizing damages
- Identifying the dangers associated with high PSI tires

**Electronic Stability Control (ESC)**

- Examining the liability issues presented by electronic stability control (ESC): the federal regulation that applies, and its effect on liability
  - FMVSS regulations
- How to counter "lack of" electronic stability control (ESC) claims: Countering plaintiff's argument that if said changes were made (usually at a few dollars per vehicle) 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

**Seat Back Litigation**

- Combatting the latest claims arising from rear-impact cases in which occupant(s) of the vehicle hit sustain injuries due to the deformation of the front passenger seats

12:20 **VSA and Autonomous Cars: Overcoming the Product Liability Defense Challenges Associated with Vehicle Driver Assist Technologies, Sensor Technologies and Active Safety Systems; and Anticipating the Future of Claims Involving Autonomous Cars**

*Jerry L. Johnson*

Vice-President & Deputy General Counsel  
Robert Bosch LLC

*Thomas P. Branigan*

Executive Managing Partner  
Bowman and Brooke LLP

*Gerard Cedrone*

Shareholder  
Lavin O'Neil

- Potential regulatory implications for autonomous cars
- Technologies that apply brakes, blind spot warnings, switch lanes, rear steering, and push button starts to assist the driver: What is the consumer expectation?; What is the comparative negligence?; Determining whether additional features will lead to product liability claims
- Where are we on the latest claims and where are we headed?
- Defense challenges: limitations of sensors; difficulty in testing and proving durability and reliability over the long term; absence of regulation
- How to factor in questions of driver's unreasonable reliance on manufacturer/distributor representations and driver's possible misunderstanding of system functions or limitations
- What happens when the system fails and operation by the driver could have prevented an accident?
- Responding to the argument that the new technology should have been installed in lower models
  - Phasing in new technology
- Anticipating the future of product liability litigation in autonomous cars

1:10 **Networking Lunch for Speakers and Delegates**

2:10 **Special Address on the Latest Safety Technologies, the Regulatory Environment, and What to Expect in the Coming Months and Years**

*O. Kevin Vincent*

Chief Counsel  
National Highway Traffic Safety Administration

2:50

## The Current Battleground for Automotive Class Action Litigation: Class Certification and Managing Experts, Attacks on Pleadings in Class Claims, Choice of Law, Arbitration and More

### H. Grant Law

Partner

Shook, Hardy & Bacon L.L.P.

### Neal Walters

Partner

Ballard Spahr LLP

### Class Development and Case Law Update

- What cases are recently decided and brewing that will directly affect manufacturers and consumers? Where is the battleground today and for the near future in Class Actions?
- Examining the interplay between *Knowles* and CAFA: Removal from state to federal court where total recovery including attorney's fees is \$5million or more; Preventing forum shopping
- Identifying the commonality of class action claims
- Rule 23(b)(3) class actions
  - Examining the *Comcast* decision
- Issue certification under Rule 23(c)(4)
- Class action in the absence of manifest defect: Examining the *Whirlpool* decision
- Examining the *Sears* decision

### Attacks on the Pleadings in Class Claims (Through Motion to Dismiss and Summary Judgment):

- Recent class case law on MTDs involving presale knowledge of a defect; and manifestation beyond the warranty
- Aggressively developing a defense strategy earlier in the process including filing a motion for summary judgment to get the majority of the counts thrown out
- Expand the pleadings record by incorporating technical service bulletins: using the bulletins as a sword to expand the record and expose plaintiffs' argument

### Certification, Managing Class Experts, and Daubert Review

- CAFA and its impact on Experts in automotive class action litigation
- The standard for class certification scrutiny of experts
- Scope of *Daubert* review at class cert in the Circuits
- Challenging the merit of plaintiffs' case at class cert.
- Analyzing pleadings and experts offered by your opponent
- Preparing experts for rigorous analysis in a full *Daubert*-like review at the class cert. stage.

### Choice of Law

- Defending against the nationwide vehicle-defect class action based on a single state's laws
- Will plaintiffs resort to statewide classes to avoid choice-of-law problems and circumvent CAFA?
- Lining up the cases against nationwide classes
- Making arguments in the context of choice-of-law rules
- Building a choice-of-law record
- The plaintiff's predominance burden, including a workable trial plan with specific proposed jury instructions

### Arbitration

- Understanding the Supreme Court's ruling in *Concepcion* and its impact on the right to arbitrate class action claims in the automotive context
- Blocking class action through arbitration
  - Interplay between *Walmart* and arbitration

3:50

## Afternoon Break

4:00

## Combating the Recent Rise in the Filing of Claims and Class Actions Involving No-Injury, Consumer Fraud and Warranties (Express and Implied)

### Cari K. Dawson

Partner

Alston & Bird LLP

### Jeffrey P. Hinebaugh

Partner

Dinsmore & Shohl LLP

- Defending against the latest consumer fraud and warranty claims; claims of reliance on general defect; claims involving manufacturing supplied literature; economic loss/damage claims; and more. Other topics include:

### Consumer Fraud

- Defending against consumer fraud class action suits: Identifying claims based on false advertising
- Identifying the nuances of consumer fraud statutes from state to state
- Overcoming the claim that Defendant should have informed the Plaintiff it had pre-existing knowledge of the defect
- Assessing whether consumer fraud and negligent misrepresentation or glorified breach of warranty cases are disguised as class action claims
- Identifying and managing vehicle manufacturing, sales and service documents and data that raise consumer fraud claims
- Creating trial tactics for defeating automotive consumer fraud claims: deploying consumer behavior principles
- Seeking nationwide class certification status by relying on a particular state's consumer fraud statute that is favorable to the facts of the case even though some cars were purchased in a completely different state
- Countering plaintiff attorneys' efforts to take low exposure claims and turn them into huge class actions
- Countering plaintiff's efforts to look to commercial-type remedies such as restitution to provide class-wide relief

### Warranties

- Liability issues arising out of warranty claims
  - Breach of warranty claims: express or implied
  - Magnusson-Moss Warranty Act on attorney fee shifting provision for breach of warranty claims involving consumer products
- Updates on status of warranty law as it relates to the automotive industry
- Breach of warranty cases that become class action cases
- How secret warranties ("after warranty assistance") and warranty administration are impacting class claims

### Disclosure/Accuracy

- Assessing claims that the fuel economy is misrepresented on Monroney Label
- Examining claims of odometer inaccuracy; assessing risk and damages
- Identifying successful defense strategies
- Claims based on breach of express and implied warranty
- Examining regulatory action and investigations by the EPA over fuel rating and MPG

5:00 **Recalls: How They Are Impacting Class Actions; Litigation Strategy to Defeat Class Claims; Recall-Based Rule 23 Arguments; Mootness; and More**

*S. Vance Wittie*  
Special Counsel  
Segdwick LLP

*Michelle I. Schaffer*  
Shareholder  
Campbell Campbell Edwards & Conroy PC

*Barry I. Buchman*  
Partner  
Gilbert LLP

*Paul E. Wojcicki*  
Shareholder  
Segal McCambridge Singer  
& Mahoney, Ltd.

- Developing a strategy when plaintiff gets notice of a recall after an accident
- What is the litigation strategy for recall cases?
  - Strategies for helping the jury understand that despite recall, company acted reasonably in terms of timing and notification of issuance of recall
  - Punitive damages
- Business to business relationship
  - How one company will sue another company in the aftermath of a recall and claim part or system was fully to blame for the recall
- Recalls and Business Impact: How the latest recalls are impacting class claims
- Using Recalls to help defeat class actions
- Identify and develop appropriate recall based Rule 23 arguments
- Asserting mootness arguments

6:00 **Conference Adjourns**



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Head of Sales, American Conference Institute  
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w.tyler@AmericanConference.com

**DAY TWO – THURSDAY, JUNE 5, 2014**

7:30 **Continental Breakfast**

8:00 **View From the Bench**

*Honorable Leslie E. Kobayashi*  
United States District Court, District of Hawaii

*Honorable James P. O'Hara*  
United States District Court, District of Kansas

*Honorable Alan C. Torgerson*  
United States District Court, District of New Mexico

*Honorable Paul Warner*  
United States District Court, District of Utah

*Honorable F.A. Gossett III*  
United States District Court, District of Nebraska

*Honorable John M. Younge*  
Philadelphia Court of Common Pleas

*Honorable Richard Kramer*  
San Francisco Superior Court

**Moderator**

*Anthony J. Monaco*  
Partner  
Swanson, Martin & Bell, LLP

9:50 **Morning Break**

10:00 **Practical Pointers on Experts in the Automotive Context: Effectively Cross-Examining Plaintiff's Expert and Developing Qualified Newer Experts**

*Dennis P. Ziemba*  
Member  
Eckert Seamans Cherin & Mellott, LLC

*Jeffrey Croasdell*  
Director  
Rodey Law Firm

*Colin P. Smith*  
Partner  
Holland & Knight LLP

*Robert M. Cook*  
Partner  
Goldberg Segalla LLP

**Cross-Examining Plaintiff's Experts**

- Creating the right defense strategy to effectively cross examine Plaintiff's expert and exclude their testimony
- Responding to Plaintiff's proposed vocational expert
- Handling Plaintiff's NHTSA experts and the claim that the manufacturer did not act quickly and withheld information from NHTSA
- Overcoming Plaintiff's allegation that Defendants committed fraud against NHTSA
- How discovery plays a key role on fraud claims; examining the record

### New Experts

- How to find newer experts as the aging population of older experts retire
- Addressing the aging population of routinely utilized experts and developing/herding qualified newer experts

## 11:00 Evidence Preservation/Spoilation, Controlling Costs Associated with Discovery and E-Discovery, and Avoiding Sanctions for Discovery Abuse

### Alex Purvis

Partner

Bradley Arant Boult Cummings LLP

### James J. Yukevich

Partner

Yukevich Cavanaugh

### Evidence Preservation/Spoilation

- PRESERVATION OF: The subject vehicle; all parts and components of the subject vehicle; downloadable computer data; Photos/video of the vehicle and the scene; Email, letters, memoranda or other documents; Online social media content created
- Reconstructing evidence and schematics of vehicle impact
- Spoilation: what are the courts doing and what abuses are still being experienced?
- Elements to a spoilation argument: Culpability, relevance, and prejudice; Proposed amendment to Rule 37(e)
- Overcoming the issue when the vehicle is completely destroyed and evidence is lost
- Issues and accusations of document destruction/hiding; how to adequately explain the destruction of documents and maximize the ability of the manufacturer to tell its story

### Discovery/E-Discovery

- Ways to effectively control costs associated with discovery
- Understanding the law in different jurisdiction and how this impacts your case
- Implementing document/litigation holds
- Addressing proportionality in e-discovery
  - How courts are addressing e-discovery issues in the beginning of the litigation process rather than the end
- Keeping e-discovery plans current and defensible
- How e-discovery practices apply to automotive databases for warranty and service maintained by automotive companies
- Proposed changes to the Federal Rules of Civil Procedure: Safe harbor provisions; Preservation; Production
- What big data means in the e-discovery context

### Sanctions for Allegations of Discovery Abuse

- How courts are increasing sanctions for allegations of discovery abuse
  - Recovering attorney's fees
  - Striking pleadings
- Implementing strategies and procedures both in house and with local/national counsel to streamline the discovery response
- Dealing with expensive discovery requests meant to trap the defendant to get sanctioned
  - Limiting broad, overwhelming, and unnecessary discovery requests
  - Examining motion practice

## 12:00 Networking Lunch for Delegates and Speakers

## 1:00 Updates on the Preemption Defense and International Personal Jurisdiction and Their Impact on Auto Products Liability Cases

### Jonathan M. Hoffman

Attorney

Martin, Bischoff, Templeton, Langslet & Hoffman LLP

### David M. Rice, Esq.

Partner

Carroll, Burdick & McDonough LLP

### Preemption

- What has been the impact of all recent cases on the preemption defense in automotive cases?
- Examining decisions going both ways

### Personal Jurisdiction

- The latest minimum contacts required for specific personal jurisdiction, i.e., where the claim arises from the defendant's contacts with the forum?
- Products claims against foreign manufacturers that do not arise from the defendant's contacts with the forum
- Assessing the sufficiency of a foreign manufacturer's alleged contacts with the forum
- Examining the role of stream of commerce
- Determining whether compliance with U.S. federal safety standards is enough
- Examining the impact of *Daimler AG. v. Bauman* on general jurisdiction
- The 9th circuit court decision in *Walden v. Fiore* on finding specific jurisdiction

## 2:00 1 HOUR OF CLE-ETHICS: Ensuring Confidentiality in the Litigation of Automotive Claims, Protecting Work Product in a Discovery Dispute, and Using Arbitration to Your Advantage

### Alex Purvis

Partner

Bradley Arant Boult & Cummings LLP

### Rafe Taylor

Partner

Johnson, Trent, West & Taylor, LLP

### Lisa Moran McMurdo

Attorney

Moran Reeves & Conn PC

- Properly communicating with the client on document retention and production
- Advising on the deletion of draft opinions that are considered work product
- Notifying class of arbitration via the internet and whether this satisfies due process
- Filing motion to compel arbitration by a third party beneficiary (component part manufacturer)
- Determining whether the claim and product at issue is within the ambit of the contract
- Allowing the third party beneficiary to arbitrate even though the contract is between the plaintiff and the dealer

## 3:00 Conference Ends



American Conference Institute's 7th Annual Summit on Defending & Managing

# AUTOMOTIVE PRODUCT LIABILITY LITIGATION

Expert Strategies for Singled-Out Vehicles and Media-Focused Issues

June 4-5, 2014 | The Omni Chicago Hotel on the Magnificent Mile | Chicago, IL

## Experienced faculty includes:

O. Kevin Vincent NHTSA	Yves St-Arnaud Bombardier Recreational
Donald R. Parshall, Jr. Nissan North America	Jason Erb Hyundai Motor America
James G. Derian Delphi Automotive	Jorgen W. Weterrings Mitsubishi
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