

American Conference Institute's 11<sup>th</sup> Annual Advanced Forum on

Litigating and Managing

# ASBESTOS CLAIMS

New Science • New Claims • New Defendants • New Jurisdictions

May 18-19, 2010 | The Union League | Philadelphia

## Hear from:



**Hon. Eduardo C. Robreno**  
U.S. Dist. Ct., E.D. Pa.  
Presiding Judicial Officer of MDL-875



**Hon. James Robart**  
U.S. Dist. Ct., W.D. Wash.



**Hon. Mark Davidson**  
11th Civ. D. Ct., Harris Co.



**Hon. Helen E. Freedman**  
Sup. Ct., State of New York



**Hon. Harry Hanna**  
Cuyahoga Co. Ct. C.P.



**Hon. Sandra Mazer Moss**  
Philadelphia Ct. C.P.



**Hon. Daniel Stack**  
Madison Co. Cir. Ct, Ill.



**Hon. Fred Edwards**  
9th D. Ct., Montgomery Co.



**Laraine Pacheco Brokaw**  
Special Master, New York City  
Asbestos Litigation

## Plus, hear from:

**David Egilman, M.D., MPH**  
Clinical Associate Professor  
Brown University  
Department of Community Health

**James C. Bonner, PhD**  
Associate Professor  
Environmental and Molecular Toxicology  
North Carolina State University

**Jon H. Ritter, M.D.**  
Associate Professor of Pathology & Immunology  
Section Head, General Surgical Pathology  
Washington University School of Medicine

In-house counsel from EXXON, DUPONT, SHELL, and OWENS-ILLINOIS, as well as leading outside counsel, renowned jurists, and doctors on the front lines of new science, will provide you with up-to-the minute practical information on:

- Preparing for **new and upcoming claims by plaintiffs' counsel**
- Evolving trends and new and changing theories of liability, including **premises liability, "mixed dust," friction products, and pump and valve**
- **Component supplier litigation:** What you need to know to craft a solid defense
- The emerging **medical theories** involved in the **epistemology of causation in a mesothelioma case**
- The latest challenges with regard to **non-mesothelioma medical issues**
- How the varying jurisdictions, **including litigation hotspots**, are treating claims
- How **bankruptcies** are continuing to change the landscape
- The status of **MDL-875**
- The current status of the **Chrysotile vs. Amphiboles** debate
- When to use an **expert witness** and the latest on the admissibility of expert evidence at trial
- Navigating your way through the new developments in **Medicare/Medicaid**, including the timeline for the new **Medicare** requirements

## Don't Miss the Interactive Post-Conference Workshop:

**The New Asbestos Trial: Critical Strategies for Litigating Malignant Claims**  
May 19, 2010 • 3:00 p.m.-5:00 p.m.

Earn  
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Credits

## Distinguished Co-Chairs:

Michael S. Beckwith  
Senior Counsel  
Shell Oil Company

Robert Horkovich  
Managing Partner  
Anderson Kill & Olick, P.C.

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DANGER  
ASBESTOS HAZARD

An unparalleled faculty of in-house counsel, top litigators, renowned jurists and leading medical experts will convene and trade valuable pointers, strategies and insights on the most current techniques for litigating and managing asbestos claims.

American Conference Institute's *Litigating and Managing Asbestos Claims conference*, now in its 11<sup>th</sup> year, is renowned for its expert insight, sophisticated analysis and networking opportunities. The complexities surrounding asbestos litigation continue to change with new claimants, new targets and new jurisdictional hotspots. In the face of these changes, even the most experienced and tested asbestos participants find it necessary to constantly hone their skills and strategies to find new and creative ways to approach challenges.

- Be at the forefront of **evolving theories of liability and developments in asbestos medicine**. It is crucial for the players in this industry to be up to date on all of the recent regulations, court decisions and scientific developments in order to properly develop strategies for upcoming and ongoing claims and litigation.
- Remain ahead of the curve by fully understanding your clients' or your company's obligations under the **extensive new Medicare reporting requirements** that will become effective this year.
- Now more than ever when **malignant claims** are dominating the marketplace it is important to understand the **complex medical issues** involved in asbestos litigation. Delegates will not only be updated on the latest scientific developments, but will gain insight on what juries actually respond to and special considerations when consulting an expert witness.
- New theories of liability are becoming more prominent and can lead to **costly and complicated defense strategies**. This conference will help you streamline these defenses, and also drill down on the continuing impact of bankruptcies on asbestos litigation (including the use of **bankruptcy trusts** and the impact of recent filings on asbestos claims.)
- **In depth analysis of recent verdicts, settlements and case law** will keep you informed of the best developing strategies for dealing with these new theories of liability and the latest strategies on the defense of these claims.

And don't miss the interactive Post-Conference Workshop: **The New Asbestos Trial: Critical Strategies for Litigating Malignant Claims**  
May 19, 2010 • 3:00 p.m. – 5:00 p.m.

Register now by calling 888-224-2480, faxing your registration form to 877-927-1563 or registering online at [www.AmericanConference.com/Asbestos](http://www.AmericanConference.com/Asbestos)

#### ABOUT THE VENUE:



The Union League, which occupies an entire city block in the center of Philadelphia's commercial and cultural district, is a shining jewel of history in a city defined by such treasure. Founded in 1862 as a patriotic society to support the policies of President Abraham

Lincoln, The Union League has hosted U.S. presidents, heads of state, industrialists, entertainers and visiting dignitaries from around the globe. The classic French Renaissance-styled League House, with its brick and brownstone façade and dramatic twin circular staircases leading to the main entrance, is listed in the National Historic Register, and dates back to 1865, when the Broad Street building was completed. Adorning the walls and hallways is the League's distinguished art collection, artifacts imbued with the heritage and culture of its membership. The collection is a rich, historical chronicle of Philadelphia's unique imprint upon the American landscape from the nineteenth century to today.

#### Continuing Legal Education Credits



Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of 13.5 hours. An additional 3.5 credit hours will apply to workshop participation.

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ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

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## DAY ONE: TUESDAY, MAY 18, 2010

7:15 Registration Opens and Continental Breakfast 🍴

### 8:00 Welcoming Remarks from Conference Co-Chairs

*Michael S. Beckwith*

Senior Counsel  
Shell Oil Company

*Robert Horkovich*

Managing Partner  
Anderson Kill & Olick, P.C.

### 8:05 What the “Year in Asbestos Litigation” Means for You, Your Client, and Your Company



*Steven A. Hart*

Partner  
Segal McCambridge Singer & Mahoney



*Joseph J. O'Hara, Jr., Esq.,*

Vice President and Associate General Counsel,  
Owens-Illinois, Inc.

This session will offer an in-depth examination of recent and emerging trends in asbestos claims and litigation. The panel will explore recent developments impacting plaintiffs, defendants, insurers and counsel, recent cases of importance and what this will mean in terms of strategizing for the year ahead. With ample time for questions, this session will set the tone for an interactive and insightful two days.

- What are the “hot” jurisdictions this year?
- What are the national filings trends?
- What are the verdict trends?
- Where are defendants doing a better/good job with docket management? causation rulings? legislative efforts?

### 9:00 Jurisdictional Issues in Asbestos Litigation: An Up-to-the-Minute Look at How the Varying Jurisdictions Are Treating Claims



*Dawn Dezii*

Partner  
Margolis Edelstein

*Catharine E. Gillespie*

Senior Counsel  
DuPont Legal

- A state by state breakdown of recent asbestos litigation developments

- Recent trends in jurisdictional hotspots:
  - California
  - Pennsylvania
  - Delaware
  - Illinois
  - Massachusetts
  - New York
- Why certain jurisdictions are favorable to plaintiffs
  - out of state plaintiffs and choice of law issues
- Removal of cases to federal court
  - Navy Yard Cases as an illustrative example
  - Strategy concerns: weighing the pros and cons of settling versus removal
- Is it beneficial to have a court enforce forum non-conveniens laws?
- What are the “big picture” implications of jurisdictional issues on asbestos claims?
  - How will this impact the insurance world?

9:55 Networking and Coffee Break 🍴

### 10:05 Leading Plaintiff Counsel Perspectives on Litigating Asbestos Claims



*Anne McGinness Kears*

Partner  
Motley Rice LLC



*Robert I. Komitor*

Partner  
Levy Phillips & Konigsberg, LLP

- Facing non-traditional defendants
- Innovative discovery techniques
- How federal and state reforms will impact plaintiff's attorneys
- Why are certain cases moving to trial?
- The migration of claims: where they are going and why?
  - an analysis of notable verdicts
- What are the most commonly paid claims?
- What is the future of non-malignant claims?

### 11:00 Mastering the Strategy Behind a “Causation” Defense



*Edward Hugo*

Partner  
Brydon Hugo & Parker



*David Katzenstein*

Partner  
McGivney & Kluger, P.C.

### What is Exposure Assessment Dose Reconstruction?

- Low dose and secondary exposure
- Medical defense strategies
- Exposure Assessment
- Texas: Contributing factors
  - significant meanings exposure

### Analysis of Symptoms Caused by Other Factors

- Women and peritoneal issues
  - preexisting conditions
- Expanding on the “2 disease rule”
  - a new cause of action based on earlier resolution
  - asymptomatic cases
- Status as a smoker and other external factors
  - *Farnsworth v. Allied Glove Corp*
- CT scans and the increased risk of cancer

11:55 Networking Luncheon for Delegates and Speakers 

## EVOLVING TRENDS AND NEW AND CHANGING THEORIES OF LIABILITY

### 1:00 Premises Liability, “Mixed Dust” Cases and Other Current Theories



**Robert Horkovich**  
Managing Partner  
Anderson Kill & Olick, P.C.



**Michael L. Fox**  
Partner  
Sedgwick, Detert, Moran & Arnold LLP



**J. Russell Jackson**  
Partner  
Skadden, Arps, Slate, Meagher & Flom LLP

#### Premises Liability: How far do these cases reach?

- How to prepare an effective defense for “take home” cases
  - de minimis or remote exposures
- A closer look at cases involving contract workers — what do you need to know?
- Defense concerns: how do you reconcile between manufacturer clients and parent corporations?
- Discovery issues — where does the evidence come from?

### Defense strategies to combat emerging theories of liability

- Mixed Dust (the coal miner cases)
  - plaintiffs seeking to recover on multiple toxic exposures
- Friction Products
  - friction breaks still a problem?
- Pump and Valve defendants: how to curtail liability for your client

### Insurance Considerations

- An analysis of insurance considerations and developing trends

### 2:10 Component Supplier Litigation: What You Now Need to Know to Craft a Solid Defense



**Mark Behrens**  
Partner  
Shook, Hardy & Bacon L.L.P.



**Craig T. Liljestrand**  
Partner  
Hinshaw & Culbertson LLP

### Case Law Focus: Braaten/Simonetta, Taylor, O’Neil, Merrill

- How did the courts come out on the duty to warn and what will this mean for defense strategies?
- Can manufacturers of non-asbestos or repaired components be liable for asbestos made by others and attached post-sale?
- A closer look at component parts vs. replacement parts
- Theories of liability regarding external insulation

### The impact of west coast decisions on other jurisdictions

- *Mulcahy v. Rapid American Corp*
- Why the Navy Shipyard Cases continue to be important
  - Post-OSHA warnings case
  - “Qualified Products” list

### Defense strategies for “mom and pop” companies or smaller supply houses

- How do you represent a company that is family owned?

3:05 Afternoon Refreshment Break

3:15 **How Bankruptcies Are Continuing to Change the Landscape of Asbestos Litigation and How to Implement Strategies in Response**



**Leslie A. Davis**  
Counsel  
Crowell & Moring



**John E. Heintz**  
Partner  
Kelley Drye and Warren LLP



**Gary Svirsky**  
Partner  
O'Melveny & Meyers LLP

*The money is changing hands: an examination of the movement of asbestos bankruptcies and bankruptcy trusts*

- How will things change now that trusts are up and running?
  - transparency issues
- The big players
  - W.R. Grace
  - Armstrong
  - Federal Mobile
  - T. H. Agriculture
  - Quigly
- Trust distribution procedures
- Dealing with “set-off” and recovery
- How much money is out there after determining true assets and liabilities
  - Will plaintiffs see a payout?
- Fallout from Chrysler and General Motors
  - friction products litigation and bankruptcy

*Timing and strategy concerns when filing a claim*

- How are claims being processed?
- What are the right reasons to go to trial?
- Asbestos trust issues and ‘double dipping’
  - how insurance claims are affected by the underlying cases and what that means for resolving these claims
- Determining plaintiff’s full claimed asbestos exposure through discovery of prior claims made

*Corporate Alternatives*

- What you need to know about alternative solutions
- Third-party acquisitions of corporate liabilities
  - getting a premium for taking over liability and running them off into the future

*Case Law Focus:*

- *In re: Congoleum Corporation* — does this spell the end of “pre-packaged” bankruptcies?
- The *Travelers/Manville* case
  - what the Supreme Court has to say
- Implications of *Skinner Engine*

4:30 **The Status and Future Plan for MDL-875**



**Eduardo C. Robreno**  
U.S. Dist. Ct., E.D. Pa.  
Presiding Judicial Officer of MDL-875

Judge Robreno will speak on his processes and procedures for MDL-875 and what changes he has and continues to see. Don't miss out on this exciting opportunity to hear first hand about the future plan for MDL-875.

5:00 Conference Adjourns

**DAY TWO: WEDNESDAY, MAY 19, 2010**

7:15 Continental Breakfast ☪

8:00 **View From the Bench: Federal and State Judges Speak Out on Current Litigation Trends, Successful Plaintiff Claims and Defense Strategies**



**Hon. James Robart**  
U.S. Dist.Ct., W.D. Wash.



**Hon. Mark Davidson**  
11th Civ. D. Ct., Harris Co.



**Hon. Helen E. Freedman**  
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9th D. Ct., Montgomery Co.



**Laraine Pacheco Brokaw**  
Special Master, New York City  
Asbestos Litigation

Moderator:



**Steven A. Hart**

Shareholder  
Segal McCambridge Singer & Mahoney, Ltd.

Renowned Federal and state jurists who have presided over asbestos litigation matters will provide attendees with highly sought after insight on current litigation trends and what the future holds. Points for discussion include:

- What claims have proved successful and what strategies work best in the courtroom
- Resolving legitimate claims quickly
- Prioritizing asbestos cases
- Settlement solution
- MDL: Observations and advice

10:00 Networking and Coffee Break ☕

10:10 Strategic Concerns When Deciding to Use an Expert Witness



**Albert H. Parnell**

Partner  
Hawkins & Parnell LLP

**Glenna M. Kyle**

Counsel  
Exxon Mobil Corp.

Cost/benefit analysis

- When to use an expert witness
- What are the concerns?
  - is it cost efficient to bring a case to trial?
- Recent court decisions impact on diagnostic procedures of medical experts

Decisions involving admissibility of expert evidence in trials

- General Causation: the use of the *Daubert* standard rather than an epidemiological standard
- When a “layperson’s” testimony is not sufficient (*Cashman v. Pacific Scientific Co.*)

Deposing a witness

- Preparing your witness
- Determining who the claimant should depose
- Techniques and strategies

11:00 The Emerging Medical Theories Involved in the Epistemology of Causation in a Mesothelioma Case

**David Egilman M.D., MPH**

Clinical Associate Professor  
Brown University  
Department of Community Health

**Jon H. Ritter, M.D.**

Associate Professor of Pathology & Immunology  
Section Head, General Surgical Pathology  
Washington University School of Medicine



**John R. Osburn**

Shareholder  
Bullivant Houser Bailey PC



**Brian D. Weinstein**

Partner  
Bergman Draper & Frockt, PLLC

- The current status of the Chrysotile vs. Amphiboles debate (focus on diagnosis)
- Fiber burden analysis
- Fiber Type: what type of fiber is in people lungs and pleura?
- What is the scientific basis for “each and every exposure” and what is the difference between science and law on medical epistemology?
  - dose, total dose, contributing factors

12:30 Networking Luncheon for Delegates and Speakers 

1:30 Overcoming the Latest Challenges With Regard to Non–Mesothelioma Medical Issues



**James C. Bonner, PhD**

Associate Professor  
Environmental and Molecular Toxicology  
North Carolina State University

- Understanding the ABC’s of the lung
  - how this will help with understanding a mesothelioma claim
- Pleural plaques and asbestosis
  - developments with the diseases
  - new pathologies
  - asbestos and other cancers
    - supporting evidence for colon cancer cases?
    - how asbestosis and pleural plaques relate to thoracic cancers
- Emerging technologies with asbestos-like properties

- What is nanotechnology and risk of carbon nanotubes?
- Carbon nanotubes representing the next asbestos?

## 2:10 Navigating Your Way Through the New Developments in Medicare/Medicaid: The Nuts and Bolts Approach



**Philip R. Matthews**  
Partner  
Duane Morris LLP

**Michael S. Beckwith**  
Senior Counsel  
Shell Oil Company

### Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (P.L. 110-173)

- Mandatory reporting requirements
- Centers for Medicaid and Medicare Services (“CMS”) requirements
  - determining early exposure: how will this factor into claims?
  - how to know who will be affected?
  - insurers and the new developments: who has to report?
  - *Abernathy*: important implications beyond the Section 111 Reporting Act

### What to do if you will be impacted?

- best practices
- understanding the requirements and the timeline
- in-house focus: what companies need to know
- working efficiently
- secondary payer options

## 3:00 Conference Concludes



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Each year more than 21,000 in-house counsel, attorneys in private practice and other senior executives participate in ACI events – and the numbers keep growing.

### Guaranteed Value Based on Comprehensive Research

ACI's highly trained team of attorney-producers are dedicated, full-time, to developing the content and scope of our conferences based on comprehensive research with you and others facing similar challenges. We speak your language, ensuring that our programs provide strategic, cutting edge guidance on practical issues.

### Unparalleled Learning and Networking

ACI understands that gaining perspectives from – and building relationships with – your fellow delegates during the breaks can be just as valuable as the structured conference sessions. ACI strives to make both the formal and informal aspects of your conference as productive as possible.

## Post-Conference Workshop

Wednesday May 19, 2010 • 3 p.m. to 5 p.m.

## The New Asbestos Trial: Critical Strategies for Litigating Malignant Claims



**Edward Hugo**  
Partner  
Brydon Hugo & Parker



**Anne McGinness Kearsse**  
Partner  
Motley Rice LLC

- Pre-Trial Discovery Strategies
  - Get more with less: honing discovery for the specifics of asbestos litigation
  - Who should you depose in asbestos litigation?
  - Identifying and prepping key witnesses
  - Critical considerations when deposing your opponent's witnesses (the implications of the new generation of defendants)
- Preparing and delivering effective opening statements and closing arguments for asbestos claims
- Direct and cross examination strategies
- What exhibits work best at trial?
- Considerations when selecting a jury
  - Drafting favorable jury instructions and ensuring they get to the jury



## Expand Your Network

The complimentary ACI Alumni Program is designed to provide returning delegates with unique networking and learning opportunities beyond the scope of their conference experience.

### Highlights include:

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Hon. James Robart  
Hon. Eduardo C. Robreno  
Special Master Laraine Pacheco Brokaw

DON'T MISS THE INTERACTIVE WORKSHOP

The New Asbestos Trial:  
Critical Strategies for Litigating Malignant Claims

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

### Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

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**American Conference Institute** is pleased to offer our delegates a limited number of hotel rooms at a preferential rate. Please contact the hotel directly and mention the "ACI Asbestos" conference to receive this rate:

Venue: The Union League of Philadelphia  
Address: 140 South Broad Street, Philadelphia, PA 19102  
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