

# Chinese Drywall Litigation and Coverage Conference

October 25-26, 2010 | The Ritz-Carlton Hotel, Amelia Island, FL



CONFERENCE CHAIRS:

Matthew Jacobs, Esq., Jenner & Block LLP, Washington, DC

Michael Ryan, Esq., Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee, P.A., Ft. Lauderdale, FL

## Monday, October 25, 2010

8:30 Registration and Continental Breakfast

9:00 Introductions & Opening Remarks

9:15 MDL Update

- What is going on in the MDL?
  - What has been resolved and what has been the impact?
  - What is next? When the next bellwether trials and what are they going to be about?
- Gary Baumann, Esq., Fulmer, Leroy, Albee, Baumann, & Glass, Ft. Lauderdale, FL

10:00 Emerging Litigations and Jurisdictions

- Suits against US Manufacturer
  - Status of pending cases against domestic drywall manufacturers and retailers
  - Recent developments
  - Suits against suppliers and retailers
  - Banner documents no longer banned
  - The ins and outs of the confidentiality agreement between Banner & Knauf
  - Impacts of the unsealed documents
  - What's happening beyond Florida and Louisiana
  - The first class-action certification-Harrell v. South Kendall Construction Corp. et al., No. 09-008401 (11th Judicial Circuit, Fla.)
  - The allegations and why certification was granted
- Gregory Weiss, Esq., Leopold Kuvin, P.A., Palm Beach Gardens, FL  
 Hugh Turner, Esq., Akerman Senterfitt, Fort Lauderdale, FL  
 Jeffrey Backman, Esq., Adorn & Yoss, Fort Lauderdale, FL  
 Michael Ryan, Esq., Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee, P.A., Fort Lauderdale, FL

11:00 Morning Break

11:15 Recent Verdicts and Their Appellate Forecasting

- Taishan Gypsum's appeal of Judge Fallon's \$2.6 million damages award
  - What does it mean, where it will go and why?
  - Dealing with a government owned or backed party
  - What other cases are likely to be appealed?
  - How to bring and defend against a CDW appeal?
  - The Siefert case against Banner Supply -- a \$2.47 million verdict
- Jeffrey Paskert, Esq., Mills Paskert Divers, Tampa  
 Max Swetman, Esq., Swetman Baxter Massenburg, LLC, New Orleans

12:00 Networking Lunch

1:15 Remediation Protocols and Cost Estimations

- The evolution of the science
  - Protocols being utilized within the MDL v. state matters
  - The most reliable processes thus far and why
  - The costs associated with the most reliable remediation methods
  - Who is paying for the costs of remediation?
- Ben Kollmeyer, MPH, CIH, Chief Technical Officer, Forensic Analytical Consulting Services, Inc., Rancho Dominguez, CA  
 Nate Sanders, CIH, LEED®AP, Technical Consultant, Air Quality Sciences Inc., Marietta, GA

2:15 Settling a Chinese Drywall Case

- Do you want to?
  - When should it be considered?
  - Practical considerations for settlement
  - Trends and statistics to facilitate settlement
  - A global claims process-panacea or Pandora's box?
  - Can it work?
  - What are the moving parts?
  - Similar toxic torts or mass torts examples to follow or avoid
- Katherine Ann Cahill, Global Managing Director, Product Risk Services, Marsh USA, Inc., New York  
 Gregory Dillion, Esq., Newmeyer & Dillion LLP, Newport Beach, CA  
 Rodney Romano, Esq., Matrix Mediation, LLC, West Palm Beach, FL

3:00 Afternoon Break

3:15 The Insurance Coverage Evolution of Chinese Drywall Claims

- Who is pursuing insurance coverage?
  - The basic coverage issues: policyholder v. carriers
  - The recent coverage decisions:
  - Finger v. Audubon -- March 23, 2010, Louisiana Dist. Ct., Orleans Prsh.
  - Ross v. C. Adams Construction & Design LLC, et al., -- April 14, 2010, Louisiana Dist. Ct., Jefferson Prsh.
  - Travco Ins. v. Ward -- June 3, 2010, E.D. Va., Norfolk Division (Doumar)
  - Builders Mutual Ins. Co. v. Dragas Mng't, et al. -- E.D. Va., Norfolk Division (Smith)
  - What do these decisions mean for future CDW coverage cases?
- John B. Mumford, Jr., Esq., Hancock, Daniel, Johnson & Nagle, P.C., Richmond, VA  
 John M. Sylvester, Esq., K&L Gates LLP, Pittsburgh, PA

4:15 First-party Property Coverage Claims for Single Family & Condominiums Residents

- Covered risks
  - Covered property
  - Exclusions
  - Ensuing loss exception
  - Causation
  - Valuation of covered loss
  - Burdens of proof
  - Insurance policy interpretation and construction principles
  - Recent decisions
- Edward Eshoo, Jr., Esq., Childress Duffy Goldblatt, Ltd., Chicago

5:15 Adjourn & Cocktail Reception

Tuesday, October 26, 2010

CHAIRS

8:30 Continental Breakfast

9:00 Insurance Coverage, Proper Forums, and Choice of Law

- Is Virginia going to replace Florida as the favored forum for insurance carrier declaratory judgment actions?

- Why is the JPML denying the transfer of coverage cases to the MDL?

- The JPML's June 15, 2010 decision to deny transfer to three Florida-based actions

- The single coverage case to have been transferred to the MDL -- Auto-Owners (Alabama)

- How will Judge Fallon deal with the coverage issues, and when?

Ryan Hilton, Esq., Butler Pappas Weihmuller Katz Craig LLP, Tampa

Barry Buchman, Esq., Gilbert LLP, Washington, DC

10:00 Arbitration or Mediation for CDW Insurance Coverage Cases

- Which is the best vehicle to resolve these cases?

- Will they work?

- Legal issues

- Fact issues

- Three-way mediations including plaintiffs' counsel

- Is it too early to discuss mediation or arbitration?

Laura Foggan, Esq., Wiley Rein LLP, Washington, DC

Daniel Weiner, Esq., Jenner & Block LLP, Washington, DC

John Bickerman, Esq., Bickerman Dispute Resolution, PLLC, Washington, DC

11:00 Morning Break

11:15 Ethical Hurdles CDW Attorneys May Need to Clear

- Attorney advertising 101-Model Rules 7.1-7.6

- Special advertising requirements for out-of-state attorneys-what you need to know about them and are they appropriate?

- Social mediums: Facebook, MySpace, Blogs, Twitter, etc.

- Dealing with multiple parties and class actions:

- Managing communication with class members while maintaining privilege, Model Rule 1.6

- Communications with potential plaintiffs and determining the scope of privilege pre-certification, Model Rules 4.1-4.4

- Strategies for protecting privileged information as a co-defendant in a class action

- Joint Defense Privilege Theory

- Confidentiality agreements

- Theories of fiduciary duties for co-defendants

- Determining the scope of privilege with a corporate client's present and former constituents, Model Rules 1.6 & 1.13

Benjamin Rajotte, Assistant Professor of Law, Florida

Coastal School of Law, Jacksonville, FL

12:15 Adjourn

Matthew Jacobs is a partner in Jenner & Block's Washington, DC office. He is a member of the Firm's Litigation Department and its Insurance Litigation and Counseling, Reinsurance, Antitrust Litigation and International Arbitration Practices. Mr. Jacobs is AV Peer Review Rated, Martindale Hubbell's highest recognition for ethical standards and legal ability. Mr. Jacobs is responsible for complex, multi-party insurance coverage litigation matters in state and federal courts, and he regularly advises corporations on the availability of insurance coverage for a wide variety of claims, including those related to directors and officers liability, errors and omissions, mortgage lending practices, mold and water damage, business interruption losses, product liability, mutual fund late-trading and market timing lawsuits and regulatory investigations and environmental matters. He was lead counsel for the plaintiffs in *Inspiration Consolidated Copper Co. and Phelps Dodge Miami Inc. v. American Ins. Co.*, et al. Case No. CV98-00530 (Maricopa Cty., Ariz.), a coverage action resulting in trial and arising from the cleanup of a 100-year old mine site outside of Phoenix, Arizona. He has litigated environmental insurance coverage matters for the past 21 years on behalf of Fortune 100 companies. He regularly counsels corporate boards on issues related to directors and officers' exposures and indemnification. Selected reported cases in which he has appeared as counsel include: *United States Fire Ins. Co. v. National Gypsum Co.*, et al., 101 F.3d 813 (2d Cir. 1996); *Reliance Ins. Co. v. Armstrong World Ind.*, 678 A.2d 1152 (N.J. App. Div. 1996) (amicus); *SCA Services, Inc. v. Transportation Ins. Co.*, 646 N.E.2d 394 (Mass. 1995); *National Union Fire Ins. Co., et al. v. Stauffer Chemical Co.*, 558 A.2d 1091 (Del. Super Ct. 1989); and *Broadwell Realty Services, Inc. v. Fidelity & Casualty Co.*, et al., 528 A.2d 76 (N.J. App. Div. 1987) (amicus). Prior to joining Jenner & Block, Mr. Jacobs spent 18 years at K&L Gates, where he led the Insurance Practice Group in the Washington, DC office. He also served as law clerk to John W. Kern, III of the District of Columbia Court of Appeals (1981-1982) and worked for five and one-half years as an associate at Covington & Burling.

Michael J. Ryan is a partner with the firm of Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee in Fort Lauderdale, Florida. He attended George Washington University, where he received a degree in Business Administration in 1986. Following graduation, he became a Federal Bank Examiner. Thereafter, he attended law school at Case Western Reserve University School of Law in Cleveland, Ohio, graduating summa cum laude in 1992. In 1997, Mr. Ryan joined the Krupnick Campbell Malone firm. During just his first three years, Mr. Ryan was trial counsel and assisted in obtaining over \$30 million in trial verdicts and settlements. In 1999, he was honored as one of ten national nominees for Trial Lawyers of the Year by the Trial Lawyers for Public Justice. Mr. Ryan's nomination was based on his role as trial counsel and the ultimate settlement in the landmark \$17.9 million verdict against the State of Florida for a man suffering from a traumatic brain injury who had been mistreated and abused in state hospitals. In 2002, Mr. Ryan became a partner with the firm. Mr. Ryan specializes in medical malpractice, pharmaceutical litigation, and "mass tort" litigation. In addition to his trial practice in South Florida, Mr. Ryan has participated in multiple MDL Plaintiffs' Steering Committees in pharmaceutical and product defect litigation. His work on behalf of clients has been the subject of local, national and international news. Mr. Ryan speaks and teaches nationwide on issues of electronic discovery, pharmaceutical litigation and defective drywall claims. In the area of defective drywall litigation, Mr. Ryan's work on behalf of homeowners throughout Florida has also received local, state and national media attention. He has submitted testimony in the hearing on "Health and Product Safety Issues Associated with Imported Drywall" before the Senate Sub-Committee on Consumer Protection, Product Safety and Insurance on May 21, 2009 is available as part of the United States Senate record. Mr. Ryan has also been appointed by Florida's Seventeenth Judicial Circuit as Plaintiffs' Liaison Counsel for the Broward County Chinese Drywall Litigation.