



SHAPING THE FUTURE OF LITIGATION



2017 | ANNUAL REPORT

AWARD RECIPIENTS

AL CORTESE AWARD ANDREW TRASK | McGuire Woods



The Al Cortese Award recognizes outstanding contributions to the promotion of excellence and fairness in the United States civil justice system, to secure the just, speedy and inexpensive determination of civil cases. The award is given in honor of Alfred W. Cortese, Jr., whose tenacious pursuit of balance and fairness in the civil justice system made a lasting contribution to the way in which civil justice is administered in the United States.

LCJ's Executive Committee selected Andrew Trask to receive the award in 2017 due to his zealous efforts and legal research and writing related to reforming Rule 23. Andrew has defended more than 100 class actions, involving all stages of the litigation process. While his work has concentrated on products liability and consumer fraud cases, he has also defended class actions involving telecommunications products, business contracts, securities, ERISA, the U.S. antitrust laws and environmental claims, among others.

McGUIREWOODS

In addition to his class action practice, he has defended mass tort cases involving financial regulations, patent misuse cases, and government investigations into allegations of automotive defects and breach of privacy regulations.

He maintains the Class Action Countermeasures blog, which discusses the strategic considerations involved in class action defense. He also provides daily updates of class action related news at twitter.com/ClassStrategist.

OUTSTANDING CONTRIBUTOR AWARDS

LCJ's success depends upon LCJ member litigation experts who contribute ideas, experience and leadership to LCJ's highly respected advocacy efforts on issues that are critical to the corporate and defense bars. Each December, LCJ recognizes the efforts of those members who shaped LCJ's formal comments and public testimony, and provided compelling reasons for judges, Congress and rule makers to give serious consideration to meaningful reform.

LCJ would like to acknowledge these individuals and thank them for their invaluable contributions in 2017.



BRITTANY SCHULTZ | Ford Motor Company

Brittany Schultz is an attorney in Ford Motor Company's Office of the General Counsel. She joined Ford in 2014 after a 13 year career as a trial lawyer defending large corporations in product liability and commercial matters. She also had an extensive discovery practice while in private practice. At Ford, she works in the litigation and regulatory group with a focus on discovery and government investigations. She earned her Bachelors of Arts degree from the University of Michigan and her law degree from Wayne State University. She was recently appointed as the Chair of the LCJ Rule 30(b)(6) Committee.



MARY NOVACHECK & SUSAN BURNETT | Bowman and Brooke LLP

A leader of Bowman and Brooke's Discovery Coordination and eDiscovery Practice, Mary Novacheck has served as National Discovery Counsel and document counsel for automotive, pharmaceutical and medical device clients involved in complex product liability litigation including mass torts, class actions and multidistrict litigation. Mary frequently appears in court to defend clients on vexatious and hotly contested discovery issues, and has litigated ESI issues related to preservation, spoliation, keyword searching, collection methods, backup tapes and computer assisted review. She is a member of Lawyers for Civil Justice, the Sedona Conference ESI Working Group, and is a regular lecturer and author on eDiscovery issues.



Bowman and Brooke LLP

Susan Burnett is a partner with more than 24 years of experience primarily in the defense of medical device and pharmaceutical product liability litigation, including multiple mass torts and various toxic torts claims. Susan's versatile experience includes serving as co-counsel in an appeal before the Fifth Circuit involving a national, no-injury class of consumers and insurers in a pharmaceutical product liability case, as well as arguing and defending in the Fifth Circuit a summary judgment based on the national Vaccine Act in a case alleging brain injury to a child. She has been instrumental in defending numerous cases involving class action allegations and complex Daubert issues, in removing a variety of types of cases to federal court and is well-versed in appellate and error preservation issues. Along with an AV Preeminent rating by Martindale-Hubbell, Susan is admitted in Texas, including every federal district court in Texas, as well as the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court and is a member of Sidley's Electronic Discovery Task Force.



LEE MICKUS | Taylor | Anderson LLP

Lee Mickus defends manufacturers and other business interests in product liability and tort lawsuits around the country. He has successfully tried cases to juries in Colorado, Texas, California, Montana, New York, Florida and several other states. In his litigation practice, Lee has worked with a wide range of products and industries, including automobiles, pharmaceuticals, medical devices, industrial machinery, recreational equipment and financial planning.

Lee also draws upon his courtroom experience to identify and develop legislative reforms that end abusive practices and bring common sense to the litigation process. He has testified before several state legislatures on bills affecting a wide range of civil justice issues, such as product liability, seat belt evidence, punitive and compensatory damages, and prejudgment interest. He also has submitted numerous amicus briefs on behalf of business interests and civil justice groups in cases that threaten to expand liability unreasonably.



JULIE YAP | Seyfarth Shaw LLP

Julie Yap is a partner in Seyfarth Shaw's Labor & Employment department based in the Sacramento office. Her practice focuses on employment litigation and includes the defense of class and multi-plaintiff actions arising out of alleged violations of federal and state statutes prohibiting discrimination and harassment in employment, as well as the defense of class and collective actions arising out of alleged violations of federal and state wage and hour laws. Prior to joining Seyfarth, Ms. Yap was a Supreme Court Fellow in the Court's Administrative Office of the United States Courts where she researched and drafted memoranda on proposed amendments to Federal Rules. Additionally, Ms. Yap was a career judicial clerk for the Honorable Frank C. Damrell, Jr., of the United States District Courts for the Eastern District of California, where she also provided research and assistance to Judge Damrell with his work as a member of the Judicial Panel on Multidistrict Litigation. Ms. Yap is also an adjunct professor at the University of the Pacific, McGeorge School of Law.



INITIATIVES CONT'D



DISCLOSE THIRD PARTY LITIGATION FUNDERS

COMMITTEE CHAIR: Mark Behrens, Partner, Shook, Hardy, & Bacon

LCJ has urged the Civil Rules Advisory Committee to adopt an amendment to Rule 26(a)(1)(A) to require disclosure of third-party investments in litigation ("TPLF") at the outset of a lawsuit. TPLF occurs when a person or entity with no other connection to a lawsuit (usually a specialized investment company) acquires a right to an outcome-contingent payment from any proceeds produced by the case. Typically, the TPLF investor obtains that right by paying money to the plaintiff (or plaintiff's counsel). In many instances, that money is used to finance prosecution of the case (e.g., discovery costs, attorneys' fees, expert witness expenses). Often, plaintiff's counsel takes the lead in securing the third-party investment; in addition, they sometimes receive the money and agree to make the specified outcome-contingent payment to the TPLF investor from their fee recovery.

LCJ has supported and partnered with the U.S. Chamber Institute for Legal Reform, a leader on this issue, to ensure that the federal rules require that TPLF be transparent.

In November of 2017, the Advisory Committee on Civil Rules voted to form a subcommittee to examine the need for disclosure of TPLF agreements. The Committee's decision is an important step forward. This was the third time the Committee considered a TPLF disclosure requirement proposal, and on both previous occasions the Committee tabled the proposal. It is important that the new subcommittee will gather information about TPLF in conjunction with its effort to understand the ways in which amendments to the FRCP could provide the same protections to parties to MDL cases that the FRCP provide in all other cases.

SHAPE LCJ'S CIVIL JUSTICE AGENDA: JOIN A COMMITTEE

Lawyers who participate in LCJ's advocacy committees get more from the experience than they put into it. That's because working side-by-side with the nation's top in-house and outside counsel is a rewarding way to make a meaningful difference in the American civil justice system while also developing important professional relationships. Contribute your ideas, experience and leadership to LCJ's highly respected advocacy efforts on issues that are critical to the corporate and defense bars. Signing up is simple: email Kristie Jones kjones@lfcj.com with the names and e-mail addresses of anyone in your organization who would like to serve on any of these committees.

SHOOK
HARDY & BACON

AMICUS BRIEFS

LCJ has advocated for reforms of procedural rules in order to: (1) promote balance and fairness in the civil justice system, (2) reduce the burdens associated with litigation, and (3) advance predictability and efficiency in litigation for 30 years. LCJ files briefs as an amicus curiae on behalf of our membership in cases of interest to advance these objectives. Given LCJ's history, experience, and expertise on civil procedure, LCJ is particularly focused on cases interpreting those rules.



Mary Novacheck



Rob Wise



Susan Burnett



Wendy Lumish

LCJ submitted an amicus brief on an appeal of several very burdensome discovery orders entered in a federal district case entitled *LaBrier v. State Farm Insurance*. The special master in the case entered two discovery orders against State Farm, requiring it to pull broad potential individual class member information from several different data sources and to give it to plaintiffs even though State Farm said it could not be done and was neither proportional to the needs of the case or appropriate prior to class certification. On September 25, 2017, the 8th Circuit held it was inappropriate to certify this class of plaintiffs and also said the discovery was "premature" and the issue moot.

This order will have national implications for State Farm and other insurance companies as these valuation cases are pending throughout the country. Special thanks to **LCJ Member Bowman & Brooke** for their work on the brief.



Bowman and Brooke is a nationally recognized trial firm with one of the largest product liability practices in the country. In 2018 the firm was recognized for the eighth time as a Law360 Product Liability Practice Group of the Year. The firm's attorneys defend a variety of corporate clients, including many Global 500 companies, in widely publicized catastrophic injury and wrongful death matters and other complex litigation throughout all 50 states. The firm has offices in Minneapolis, Phoenix, Detroit, San Jose, Los Angeles, Richmond, Columbia, Dallas, Austin, San Diego, Miami, Orlando and New Brunswick. For more information please visit www.bowmanandbrooke.com.