

**Commercial and Intellectual Property Litigation Symposium – *Litigating the Financial Meltdown, and Protecting Your Intellectual Property***

**April 22-24, 2009**

**Wyndham Chicago**

**Chicago, Illinois**

*Presented by Commercial Litigation Committee*

Businesses and commercial litigators today face an ever-broadening array of challenges and opportunities. Whether as a result of the financial, banking, and credit crises; trademark, patent, and other intellectual property disputes; class action and business tort claims; or other commercial litigation, success (and in some cases, survival) require that large and small businesses and their lawyers be well-versed and current in many rapidly developing areas of law.

At the DRI Commercial and Intellectual Property Litigation 2009 Symposium, you will hear from leaders in their fields about developing issues in business and intellectual property litigation. Beginning with a focus on litigation issues arising from disruption in the financial and credit markets, this three-day program will include in-depth discussions about a broad range of business and intellectual property litigation issues. Day One will focus on business litigation and credit crisis issues. Day Three will concentrate on cutting edge intellectual property issues, including in the areas of patent and trademark litigation. Day Two includes discussions and presentations of critical interest to both business and intellectual property litigators, allowing them to share insights and address issues and techniques of import to counsel representing businesses in a wide array of disputes.

Throughout the program, segments will be offered in such areas as business torts, class action litigation, and patent litigation to allow an even-greater focus on areas of especial interest. Tracks designed for newer practitioners will include both practical business-generating skills, and foundational discussions about business litigation topics. An in-house counsel only segment will offer clients a chance to exchange ideas and concerns. Finally, networking opportunities will abound, including our annual Women's and Diversity Reception.

Join us for a unique program in a phenomenal location.

**Who Should Attend**

- Business litigators and clients involved or interested in matters arising from the financial and credit crisis.
- Class action litigators.
- Patent, trademark and other intellectual property litigators.
- Outside counsel involved in business disputes.
- Companies and insurance professionals facing and bringing commercial and intellectual property claims.
- Young lawyers involved in business litigation.
- Trial counsel interested in transitioning to a more commercial practice.

## What You Will Learn

- Insight from industry, government and legal leaders regarding the status and future of business litigation
- Current Trends and Theories in Litigation arising from the financial and credit crises.
- The status of business torts and related claims in commercial disputes.
- Bankruptcy and business reorganization as a solution to the business downturn.
- How to handle criminal and ethical issues arising in business litigation.
- The ever growing realm of technology-related disputes.
- How to litigate cutting edge intellectual property disputes, including in patent and trademark litigation.
- Practical litigation skills, including the use of experts, protective orders, and arbitration.
- In addition, each morning five attendees will have the opportunity to introduce themselves in a one-minute "elevator speech."

*James L. Gale, Co - Program Chair*

*Theresa Gillis, Co - Program Chair*

*Joseph G. Fortner, Jr., Committee Chair*

*Paul M. Lavelle, Law Institute*

## WEDNESDAY, April 22

7:00 a.m.      **Registration**

7:00 a.m.      **Continental Breakfast**  
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7:00 a.m.      **First-Time Attendees Breakfast**

8:00 a.m.      **Welcome and Introduction**  
**Paul M. Lavelle, *Abbott Simses, New Orleans, Louisiana***  
**Joseph G. Fortner, Jr., *Halloran & Sage LLP, Hartford, Connecticut***  
**James L. Gale, *Smith Moore Leatherwood, Raleigh, North Carolina***

8:15 a.m.      **Perspectives on the Credit Crisis: Factors, Features, and Forecasts**  
The roots of the credit crisis were broader and deeper than just subprime mortgages. As the credit crisis unfolded, the solvency and liquidity risks of financial institutions became intertwined. Those risks were part of the reason for the breadth and depth of the credit crisis. The adverse consequences of the credit crisis on the economy were also broad and deep. TARP I probably helped and might be improved to help the economy more yet. The credit crisis and the economy's ensuing recession

present unprecedented challenges (and opportunities) to the Obama Administration and the Federal Reserve, for 2009 and many years hence.

**Professor James A. Wilcox, Former Chief Economist, Office of Comptroller of the Currency University of California, Berkeley, California**

- 9:00 a.m.      **The View From The Trenches: The Credit and Financial crisis As Seen from The Inside**  
Mr. Hale, Counsel at HSBC, was and is “on the inside” during the tumultuous events that occurred in 2008 in the financial services industry. He will discuss what he and his clients experienced, what kinds of claims have been brought, and what counsel should be looking for as these cases develop over the coming years.  
**Robert V. Hale II, Vice President and Senior Counsel, HSBC card Services, San Francisco, California**
- 9:45 a.m.      **Plaintiff’s Perspective: Holding Financial Institutions Accountable**  
Every day, new and varied claims are brought against financial institutions, advisors and others by investors, lenders and pension plans. Mr. Gair is at the forefront of bringing such claims. He will discuss how claimants view the financial meltdown, what kind of claims have been brought and what plaintiffs in business litigation are considering in the future.  
**Chris Gair, Jenner & Block, LLP, Chicago, Illinois**
- 10:30 a.m.      **Refreshment Break**  
*Sponsored by*
- 10:45 a.m.      **Current Theories and Trends in Business Litigation Reflecting the Crisis in Financial Services, Investments and Credit Markets.**  
Litigation of various kinds and stripes has arisen from the financial and credit crisis, and has hit not just Wall Street and Wall Street lawyers, but litigators and their clients in a wide range of forums and claims. In this program you will hear about the kinds of claims that are being asserted (and defended) as a result of the unrest in the business sector.  
**Paul R. Wood, Moye White, LLP, Denver, Colorado**
- 11:30 a.m.      **Creative Solutions to Intramural Business Strife: When Dad leaves the business to Cain and Abel.**  
Closely held corporation disputes and disagreeable partnerships are the commercial litigator’s brand of domestic law, and finding ways to resolve those disputes amicably and without destroying the company is often just as challenging as dissolving a marriage while protecting the family. Judge John Leo Wagner is a former judge and experienced commercial mediator and has an outstanding reputation as a mediator/neutral. He will share practical advice on finding creative resolutions.  
**Judge John Leo Wagner, United States Magistrate Judge (Ret.), Wagner ADR Mediation & Arbitration, San Juan Capistrano, California**
- 12:15 p.m.      **Lunch (on your own)**

1:30 p.m. **The Criminalization of Business Litigation: Prosecutions, Investigations and Protective Actions**

More and more frequently, corporate clients, directors and officers are the subject of white collar crime investigation and prosecutions. Based upon his experience as prosecutor, judge and outside counsel, Judge Wilkins will discuss the kinds of charges which business clients are facing, and suggest means to best protect clients in the event that they are the potential subject of criminal proceedings.

**William W. “Billy” Wilkins, former Chief Judge of the U.S. Court of Appeals for the Fourth Circuit, Nexsen Pruet, Greenville, South Carolina**

**TRACKS I AND II RUN CONCURRENTLY FROM 2:15 – 5:30 P.M.**

<b>Financial Crisis Track I</b>	<b>Business Torts Track II</b>
<p>2:15 p.m. <b>The Increasing Zone of Liability for In-House Counsel, Directors &amp; Officers &amp; Outside Counsel in Business Litigation</b>            With increasing frequency, business-related lawsuits seek recovery not just from the underlying stakeholder, but often from directors, officers, and professionals who played any role in the facts surrounding the claim. As a result, professional liability claims are frequently part of many commercial litigations. Mr. Kinser will discuss these claims from the standpoint of defending such professionals, and provide guidance regarding how to address such lawsuits proactively.  <b>Henry E. Kinser, Wyatt Tarrant and Combs, LLP</b>  <b>Lexington, Kentucky</b></p>	<p>2:15 p.m. <b>Effective Use of Proximate Cause To Contain Liability for Claims Based On RICO And Similar State Business Torts Statutes.</b>            RICO has seen a recent resurgence. RICO claims are often coupled with claims based on UDAP statutes in those states that allow such private causes of action. As case law granting the statute’s liberal construction has eliminated certain defenses such as lack of reliance, defendants must explore expanded use of the doctrine of proximate cause to contain the expansive liability these statutes otherwise threaten. This session will focus on legal and practical aspects of emphasizing proximate cause to contain liability.  <b>Russell B. Morgan, Boulton Cummings, Conners &amp; Berry, LLP Nashville, Tennessee</b></p>
<p>3:00 p.m. <b>Insurance Coverage for Businesses and Professionals In Claims Resulting From Financial and Investment Losses</b>            The whirlwind swirling through Wall Street and corporate America created new exposures and liabilities for directors and officers and other professionals, both for failing to foresee or avert the financial downturn, and for collateral losses to investments, businesses, and properties. Will D&amp;O or E&amp;O policies cover these claims? What are the defenses that insurers are raising to these new claims and what strategies have policyholders employed to gain a defense or coverage? A leading insurance company advocate will discuss</p>	<p>3:00 p.m. <b>Creative Legal Theories For a Business Dispute: Use of State's Consumer Protection Act in a Business to Business Dispute.</b>            Is a state’s Consumer Protection Act a sword or shield in a business to business commercial litigation matter? Learn which states have allowed businesses to step into the shoes of the consumer for the purpose of claims against other companies, which have not, and the defenses which can be utilized to thwart these claims.  <b>Heidi G. Goebel, Christensen &amp; Jensen, P.C., Salt Lake City, Utah</b></p>

the current landscape of insurance claims and spotlight the key coverage issues.  
**Ommid C. Farashahi, Bates & Carey LLP, Chicago, Illinois**

**3:45 p.m. Refreshment Break**  
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<b><u>Financial Crisis Track II</u></b>	<b><u>Class Actions</u></b>
<p><b>4:00 p.m. Restructuring and Reorganizing As A Result of the Financial Meltdown</b>            The media regularly report that financial institutions, Fortune 100 companies, and businesses small and large are seeking bankruptcy court protection to address their financial and credit distress. As the plight of the “Big Three” automakers has shown, however, sometimes the “cure” of bankruptcy may be so severe as to be unworkable. Janet Henderson will discuss how bankruptcy is being used, and will be used in the future, in connection with the financial crisis, including what issues it can – and cannot – ameliorate. She will also discuss the role of business litigators in such proceedings.  <b>Janet E. Henderson, Sidley Austin, LLP, Chicago, Illinois</b></p>	<p><b>4:00 p.m. Avoiding the Big Inning - Strategies for the Early Mitigation of Class Action Claim</b>            Class action plaintiffs are increasingly seeking to avoid problems with proof of damages and causation through the use of “aggregate” theories which, if successful, can result in verdicts that can drastically impact businesses. In this presentation, in-house and trial counsel will discuss successful strategies which can rebuff those theories long before trial.  <b>Kathleen A. Lang, Dickinson Wright, LLC, Detroit, Michigan</b>  <b>Brian Brooks, O’Melveny &amp; Myers, LLP, Washington, DC</b></p>
<p><b>4:45 p.m. Panel Discussion Regarding Future Course of Financial Crisis Litigation</b>            Messrs. Hale and Gair, and Judges Wilkins and Wagner will provide their different perspectives on litigation arising from the financial crises.            Moderator: <b>Henry M. Sneath, Picadio, Sneath, Miller &amp; Norton, P.C., Pittsburgh, Pennsylvania</b></p>	<p><b>4:45 p.m. Lassoing the Wind: Selected Issues in Managing a Class or Collective Action Defense</b>            This presentation will cover the issues of opt-in/opt-out plaintiffs, discovery of named and unnamed class members; communicating with putative class members; strategy and decisions before and after certification; e-document retention; and strategy regarding who and how many plaintiffs should be deposed.  <b>Alan L. Rupe, Kutak Rock, LLP, Wichita, Kansas</b></p>

**5:30 p.m. Women’s Networking Reception**

**6:15 p.m. Networking Reception**  
*Sponsored by Matson Driscoll & Damico*

**THURSDAY, APRIL 23**

- 7:00 a.m.      **Registration**
- 7:00 a.m.      **Specialized Litigation Group Meetings**  
Business Torts & Class Actions.  
Intellectual Property.  
Financial Institutions & Creditors Rights.  
E&O/D&O  
Anti-trust and Trade Regulation
- 7:00 a.m.      **Continental Breakfast**  
*Sponsored by Shook Hardy Bacon LLP*
- 8:00 a.m.      **Announcements**  
**Program Co -Chair James L. Gale, Smith Moore Leatherwood, Raleigh, North Carolina**  
**Program Co - Chair Theresa Gillis, Howrey, New York, N.Y.**
- 8:15 a.m.      **The Effective Use of Financial Experts in Business Litigation**  
Business litigation regularly requires that qualified financial experts render opinions on issues such as valuation, damages, and causation. In this presentation, Mr. Rojas and Mr. Johnson will provide their perspectives as trial counsel and expert about how to best utilize a financial expert, as well as practical strategies used in a successful cross-examination.  
**Jose I. Rojas, Rojas Law Firm, LLP, Miami, Florida**  
**R. Larry Johnson, Veris Consulting LLC, Reston, Virginia**
- 9:00 a.m.      **Internet Defamation**  
The Internet has allowed an unprecedented ability for persons to offer opinions and viewpoints, often anonymously, in ways that can impact businesses and individuals. Addressing these issues raises a large number of issues, including First Amendment implications, CDA Immunity, jurisdictional issues, and addressing the activities of anonymous defendants. Kourtney Mulcahy offers insight into how these issues are developing in this growing area of law.  
**Kourtney A. Mulcahy, Hinshaw & Culbertson, LLP, Chicago, Illinois**
- 9:45 a.m.      **Refreshment Break**  
*Sponsored by Habif Arogeti & Wynne LLP*
- 10:00 a.m.     **Data Breaches**  
Rarely a week goes by without the media reporting that some business has either lost private or confidential customer information or had it stolen from them. What happens if the day comes when you are that unlucky business? What notification obligations do you have? What claims are you likely to face and from whom? What are your defenses? Should you

hire a public relations or crisis management firm to help with damage control? Do you have any insurance coverage for the claims being made against you and/or the costs you're incurring? Craig Marvinney will address these issues so that you can be prepared if a data breach happens to you.

**Craig A. Marvinney, Brouse McDowell, Cleveland, Ohio**

11:00 a.m. **Ethics: Maintaining the Privilege During Internal Investigations**  
 Both plaintiffs and defendants rely on the protection of the common use privilege in multi-party litigation. Often, that privilege can be at risk because of internal investigations triggered by business and intellectual property litigation, or governmental inquiries. This program will examine the impact upon the attorney/client investigation and the work product doctrine from internal investigations, and offer suggestions to allow open internal examination, while at the same time protecting privileges.

**Charles F. Smith, Skadden, Arps, Slate, Meagher & Flom, LLP, Chicago, Illinois**

12:00 p.m. **Networking Luncheon - The Future of Litigation**

*(\$40.00 fee, check box on registration form)*

*Sponsored by RGL Forensics*

The fiscal and financial crisis, and its impact on businesses, has drastically altered the landscape for commercial litigators and their clients. With institutional clients at risk, and corporations and shareholders examining the causes for their distress, litigators are finding that the focus of their practices is changing, sometimes on a weekly basis. Mr. Sterling, partner in one of the leading strategic management boutiques catering to law firms and other service providers, will discuss the current and future course of litigation.

**John Sterling, Smock♦Sterling Strategic Management Consultants, Lake Bluff, Illinois**

**TRACKS I AND II RUN CONCURRENTLY FROM 1:45 – 5:00 P.M.**

<b>Business Litigation</b>	<b>IP Litigation Track</b>
<p>1:45 p.m. <b>Arbitration – Know What You're Getting</b>            For years, proponents of Alternative Dispute Resolution have urged arbitration as a more efficient and cost effective means of avoiding litigation. Recently, some have begun to question those assumptions. Should mandatory arbitration provisions be included in contracts? During his time in private practice, Don Carley obtained extensive experience as an arbitrator and advocate in a wide-range of commercial</p>	<p>1:45 p.m. <b>What IP Lawyers Need To Know About Commercial Litigation Counterclaims</b>            Your client has been sued for patent and trade secret misappropriation and wants to fight back. What counterclaims are available? Find out in this presentation.  <b>JoAnna Esty, Venable, LLP, Los Angeles, California</b></p>

<p>arbitration proceedings. He also has extensive litigation management experience.  <b>Donald M. Carley, Associate General Counsel, State Farm Insurance Companies, Bloomington, Illinois</b></p>	
<p>2:30 p.m. <b>Potential Pitfalls in the Negotiation of Agreed Protective Orders:</b>  The Agreed Protective Order that governs discovery in a case can sometimes be the most important Order entered by the presiding judge. While some provisions have become standard, every protective order, like every case, is different and is accompanied by its own set of risks. This discussion will provide practitioners with practical advice on the negotiation of protective orders, including the implications of multijurisdictional litigation, state Attorney General involvement, trade secret disclosure and attorney-client privilege waiver.  <b>Peter M. Cummins, Frost Brown Todd, LLC, Louisville, Kentucky</b></p>	<p>2:30 p.m. <b>Patent Damages Esoterica</b>  If it is about the money, learn how patent holders try to make a damages award the maximum and accused infringers try to keep it to a minimum. Unpack key patent damages concepts that arise frequently in patent litigation, including the entire market value rule and apportionment, the Book of Wisdom (events after the hypothetical negotiation), secondary considerations of non-obviousness, and the "Rule of Thumb" and the starting point for calculating reasonable royalty rates).  <b>Sharon R. Barner, Foley &amp; Lardner LLP, Chicago, Illinois</b></p>

3:15 p.m. **Refreshment Break**  
*Sponsored by Habif Arogeti & Wynne LLP*

<p>3:30 p.m. <b>Surfing The Web For Your Best Defense</b>  The advent of websites such as MySpace and Facebook are making it easier to investigate plaintiffs and defend your case at every stage of litigation. Find out how you can use the web to gather evidence and complement your current discovery strategies. In addition, find out how courts across the country are handling the admissibility of this evidence at trial.  <b>Christine Mennen, Halleland Lewis Nilan &amp; Johnson, P.A., Minneapolis, Minnesota</b></p>	<p>3:30 p.m. <b>Corporate Counsel Meeting (in-house and clients only)</b>  Round-table discussion of in-house counsel and clients covering best practices for in-house counsel and other topics of interest to clients. Participation is limited to in-house lawyers and clients to ensure an atmosphere for candid discussions.</p>
<p>4:15 p.m. <b>Theme Weaver: Developing Discovery with Trial Themes in mind in business litigation cases, from the beginning.</b>  Business litigation demands that the advocate present an effective, persuasive "story line." That in turn demands that the trial advocate have that trial theme in mind before beginning the course of discovery and</p>	

pre-trial practices upon which that theme will depend. Using his extensive trial experience and his proven track record as a teacher of trial advocacy, Gerald Ivey will discuss how the successful trial attorney appreciates early-on themes upon which the successful case depends and how those themes are built and woven into the course of case development. <b>Gerald F. Ivey, Finnegan, Henderson, Farabow, Garrett &amp; Dunner, LLP, Washington, DC</b>	
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5:15 p.m.      **Committee Meeting** (*open to all*)

6:00 p.m.      **Networking Reception**  
*Sponsored by Picadio Sneath Miller & Norton PC  
Smith Moore Leatherwood LLP*

7:30 p.m.      **Dine-Arounds**  
Join colleagues and friends at selected restaurants for dinner (*on your own*).  
*More details on-site.*

**FRIDAY, APRIL 24**

7:00 a.m.      **Registration**

7:00 a.m.      **Continental Breakfast**  
*Sponsored by*

8:00 a.m.      **Announcements**  
**Program Co - Chair James L. Gale, Smith Moore Leatherwood, Raleigh, North Carolina**  
**Program Co - Chair Theresa Gillis, Howrey, New York, N.Y.**

8:15 a.m.      **Trademark: Defending Confusion - A Fresh Look. Lessons from a Defense Win in the Face of Identical Marks in the Same Industry.**  
Frequently businesses receive cease and desist letters or are sued for allegedly infringing another's trademark. The knee-jerk reaction, particularly when the competing marks are similar and in the same industry, is to negotiate a settlement in which the junior user ceases use of the trademark. But consumer confusion, the bedrock of trademark litigation, is not that simple. Jeffrey Kass will provide a fresh look at how the confusion analysis can bring about a defense victory even in the face of difficult facts.  
**Jeffrey H. Kass, Gallop Johnson & Neuman, L.C., St. Louis, Missouri**

9:00 a.m.      **Website Issues for Businesses**  
Businesses continue to grapple with a myriad of website issues, including gripe sites, Digital Millennium Copyright Act, misuse of marks by websites, and protecting your domain name or mark against multiple

infringers. Russ Jones will prepare you to respond when your client calls with these common web issues for businesses.

**Russell Jones, Polsinelli Shughart, Kansas City, Missouri**

9:45 a.m. **Refreshment Break**

*Sponsored by*

10:00 a.m. **eBay and Its Aftermath – What is the Fall-Out?**

In 2006, the Supreme Court changed the requirements to obtain injunctive relief in patent cases. In the nearly three years since that decision, how have courts implemented those requirements? How have the courts determined monetary damages in the absence of injunctive relief? Ms. Weil will discuss these issues, as well as how litigators and their clients can prepare and respond to requests for post-verdict injunctive and monetary relief.

**Karen Vogel Weil, Knobbe, Martens, Olson & Bear, LLP, Los Angeles, California**

10:45 a.m. **When an Injunction is “The” Fight**

Many cases of commercial litigation involve different forms of equitable relief, and these issues are becoming of increasing importance to IP litigators. The fight over that relief may be case determinative, and that determination may be crucial for your client. How do you limit the exposure from the injunctive relief when you are opposing, how do you increase the pressure on the defendant when you are seeking the injunction, and how should IP litigators adjust to changing requirements for the issuance of injunctions, are some of the many questions that will be discussed in this session.

**William Ireland, Haight Brown & Bonesteel, LLP, Los Angeles, California**

11:30 a.m. **The Credit Crisis as a Prelude to Intellectual Property Litigation**

The credit crisis has changed the financial sector's landscape forever. In what may be a big surprise to general counsel, litigators and managers, the fair value disclosures of historic stock price declines will not be limited to just financial companies and their financial assets and liabilities. Intellectual property assets will be subject to periodic fair value evaluation. Inevitably, lawsuits will follow. Dr. Dharan will explore the risks, attendant with these startling developments and offer suggestions on how to avoid or defend against the litigation which is sure to follow.

**Bala Dharan, CRA International, Boston, Massachusetts**

12:15 p.m. **Lunch (on your own)**

**TRACKS I AND II RUN CONCURRENTLY FROM 1:15 – 3:30 P.M.**

<b>Patent and IP Track</b>	<b>Non-Patent/Young Lawyers Track</b>
<p data-bbox="235 281 690 352"><b>1:15 p.m. " Design Around" As A Defense In Patent Infringement</b></p> <p data-bbox="235 386 792 634">Just about every patent infringement defendant says, "I could have been [a design around] contender." At the same time, they've litigated to trial, paid more in attorneys' fees than they say it would have cost to design around and still have the risk of an adverse verdict hanging overhead.</p> <p data-bbox="235 642 792 819">This presentation will give you the tools to prove design around as a defense to patent infringement, including suggestions to counter plaintiff's claim that you did not, the use of surveys and the use of tests runs.</p> <p data-bbox="235 827 792 898"><b>David B. Kelley, Ford Global Technologies, LLC, Dearborn, Michigan</b></p>	<p data-bbox="826 273 1364 344"><b>1:15 p.m. Sports Licensing Agreements: A Winning Bid.</b></p> <p data-bbox="826 352 1383 1037">The use of licensing trademarks for business purposes in the sports industry is at an all-time high. Consumers are buying more licensed products and brand names than ever before. From Tiger Woods to the NBA, from EA Sports' Madden video game empire to the ongoing issues between the New York Rangers and the NHL- sports licensing agreements are increasingly prevalent in today's billion dollar sports and entertainment industry. This session will take an in-depth look at what a sports licensing agreement is and the variety of industries- music, food and beverage, television and sports- in which they are used. We will also discuss the advantages of licensing for licensors and the pitfalls to avoid so your licensing agreement does not end up in the national headlines.</p> <p data-bbox="826 1045 1323 1108"><b>Joseph M. Hanna, Goldberg Segalla, LLP, Buffalo, New York</b></p>
<p data-bbox="235 1117 706 1146"><b>2:00 p.m. Insurance for IP Claims</b></p> <p data-bbox="235 1155 795 1621">The scope of IP coverage provided by a traditional CGL policy was limited to begin with and, due to policy changes, has become even more so in recent years. The good news is that carriers are now writing new products that provide broader coverage for IP claims, particularly those arising out of alleged copyright, trademark and trade dress violations. What do these new products cover? What do they exclude? Learn who should be purchasing these new policies and where they can find them.</p> <p data-bbox="235 1629 755 1692"><b>Karen I. Johnson, Travelers, St. Paul, Minnesota</b></p>	<p data-bbox="826 1117 1339 1222"><b>2:00 p.m. Regulating Your Client's Business: Antitrust Issues in Business and Consumer Litigation</b></p> <p data-bbox="826 1230 1383 1478">Antitrust issues permeate the business world and the potential for antitrust liability is ever-present for many businesses whether they know it or not. Mr. Beckett will discuss recent antitrust trends and the issues that face commercial litigators in business and consumer litigation.</p> <p data-bbox="826 1486 1356 1549"><b>P. Ryan Beckett, Butler Snow O'Mara, PLLC, Jackson, Mississippi</b></p>

2:45p.m. ***KSR v. Teleflex - Is Hindsight 20/20?***

*KSR v. Teleflex* has radically altered the landscape for patent owners and accused infringers. In striking down the Federal Circuit’s application of the teaching, suggestion or motivation test as too rigid, the Court has made it significantly easier to challenge patent validity. This decision simplifies the task of combining the contributions from different references even where those references are directed to solving problems different than those addressed by the claimed invention. And *KSR* allows a challenger to rely on what a skilled artisan would have understood as a matter of “common sense.” But courts run the risk that the common sense they apply may be influenced by a hindsight view of the prior art based on the claimed invention and the state of the art years after the date of the invention. The Federal Circuit and the district courts are grappling with obviousness in the wake of *KSR*. This presentation will look at cases from the Federal Circuit and district courts since *KSR* and discuss how it has been interpreted. An emphasis will be on strategies for patentees to address obviousness challenges.

**Stephen J. Lieb, Frommer, Lawrence & Haug, LLP, New York, New York**

2:45 p.m. **Grow Your Practice in a Shrinking Economy:** Regardless of the label you attach to it, the economy over the last year has been a significant challenge for businesses and, as a result, the attorneys who defend them in litigation. With challenges come opportunities, however, and in this session you will learn how best to exploit the business development opportunities that economic downturns present.

**Kerry McInerney, Sirote & Permutt, P.C., Birmingham, Alabama**

3:30 p.m **Adjourn**