




American Conference Institute's 2<sup>nd</sup> Annual Forum on Defending and Managing

# AVIATION LITIGATION

The essential defense counsel forum that will shape the future of personal injury & wrongful death strategies for leading outside and in-house counsel for manufacturers, carriers, users/owners/operators, maintenance facilities and insurers

June 22-23, 2010 – Hyatt Regency Boston – Boston, MA


A unique opportunity to hear how judges interpret evidence and arguments in the aviation context  
*Hear effective theories & defenses from:*

 *Hon. John C. Coughenour*  
U.S. Dist. Ct., D. Wash.

 *Hon. Richard P. Mills*  
U.S. Dist. Ct., C.D. Ill.

 *Hon. Stephen J. Murphy, III*  
U.S. Dist. Ct., E.D. Mich.

 *Hon. James P. O'Hara*  
U.S. Dist. Ct., D. Kan.

 *Hon. Louisa S. Porter*  
U.S. Dist. Ct., S.D. Calif.

 *Hon. Mildred E. Methvin*  
Satori ADR

*Distinguished Conference Co-Chairs:*

*Erin K. Sweeney*  
General Counsel, USA  
Swiss International  
Air Lines Ltd.

*David J. Harrington*  
Partner  
Condon & Forsyth LLP

*Leading outside counsel, in-house professionals and renowned jurists will provide you with up-to-the minute practical information on:*

- » **Forum Non Conveniens** and the increase in U.S. cases brought by foreign plaintiffs arising from overseas crashes and incidents
- » **Dealing with the evidence: investigation, spoliation, inspection, "other incidents," and NTSB/FAA reports**
- » The new issues surrounding **choice of law**, including in **foreign crashes/incidents**
- » **Fault apportionment** and other sources of liability: **Airport Liability, Cargo Claims, Air Traffic Control Liability and Beyond**
- » Incorporating new developments with **GARA** and **federal preemption** into your litigation strategy
- » Special nuances in the **selection of experts**, strategically preparing & **defending Daubert challenges**, and debunking junk science
- » Novel approaches to **trial and case management**
- » The latest litigation trends involving **passenger rights**
- » **Document and e-discovery**: formulating a compliant plan that **reduces the overwhelming costs** and burdens of voluminous requests
- » **Jury communication & advocacy**: using **demonstrative evidence** and themes, and telling a detailed story
- » **Risk management issues** and developments in **insurance coverage** for the aviation market

Plus, register for the Post-Conference Procedural Master Class:  
*The Current MDL Practice Landscape: What Is and Isn't Working for Defendants?*  
June 23, 2010; 3:00 p.m. - 5:00 p.m.

*With In-House Insights From:*

*Michael Carbone*  
Director-Litigation  
JetBlue Airways

*Fabio Ferreira Cunha*  
U.S. Counsel  
Embraer Aircraft Holding, Inc.

*Richard Fiore*  
Senior Counsel - Litigation  
& Regulatory  
United Airlines, Inc.

*David J. A. Hayes III*  
Vice-President & General Counsel  
Trans States Holdings, Inc.

*Curtis Landherr*  
Assistant General Counsel  
Garmin International, Inc.

*Tracy Seabaugh*  
Sr. Manager, Claims and  
Litigation  
US Airways Risk Management

*Christopher Watkins*  
Claims Officer  
Chartis Aerospace

*Connie Lewis Lensing*  
Vice President – Litigation  
FedEx Express

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*The premier aviation conference devoted entirely to the defense of claims, led by an unparalleled faculty of the most experienced in-house counsel & claims officers from manufacturers, carriers & insurers, the top law firms, and renowned federal judges*

The complexities surrounding aviation litigation continue to change with ever evolving theories of liability, multifaceted choice of law and jurisdictional issues, the admissibility of other incidents and overwhelming natural sympathy for plaintiffs. There has never been a more important time in the industry to *convene and trade valuable pointers and insights on the most current strategies and techniques for defending and managing aviation litigation.*

In response, American Conference Institute is proud to announce the second installment of the *essential defense counsel forum that shapes the future of personal injury and wrongful death strategies for leading outside counsel litigators and in-house counsel for manufacturers, carriers, users/owners/operators, maintenance facilities and insurers: **Defending and Managing AVIATION LITIGATION.*** Through a faculty of **distinguished in-house counsel from JetBlue, Embraer, United, Trans States, Garmin, Chartis Aerospace, FedEx, and many others**, as well as the leading outside defense counsel in the industry and **6 renowned federal jurists**, this conference will provide even the most seasoned aviation lawyers with clarity and certainty with respect to today's key issues crucial to mounting a rigorous and complete defense.

Plus, be sure to also register for the Post-Conference Procedural Master Class:

*The Current MDL Practice Landscape: What Is and Isn't Working for Defendants?*

June 23, 2010; 3:00 p.m.-5:00 p.m.

Now in its second year, this conference offers unique opportunities for law firm litigators to learn from some of the best in the industry and for in-house counsel to gain expertise in evaluating litigation tactics and approaches and providing valuable input to the legal department. It offers tremendous networking opportunities with senior practitioners in the field.

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

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Wendy Tyler

Head of Sales, American Conference Institute | Tel: 212-352-3220 x242 | Fax: 212-220-4281 | [w.tyler@AmericanConference.com](mailto:w.tyler@AmericanConference.com)

## Who You Will Meet

- ✈ In-House Litigation Counsel for aviation manufacturers, carriers, users/owners/operators, and maintenance facilities
- ✈ Insurance Claims Officers
- ✈ Law Firm Attorneys Specializing in the management and defense of:
  - Product Liability Claims
  - Complex Litigation
  - Class Actions
  - Multidistrict Litigation
  - Mass Torts

## 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.

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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.

Questions about CLE credits for your state? Visit our online CLE Help Center at [www.americanconference.com/CLE](http://www.americanconference.com/CLE)

## DAY ONE: Tuesday, June 22, 2010

### 7:30 Registration and Continental Breakfast

### 8:15 Co-Chairs' Welcoming Remarks

*Erin K. Sweeney*

General Counsel, USA  
Swiss International Air Lines Ltd.  
(East Meadow, NY)

*David J. Harrington*

Condon & Forsyth LLP  
(New York, NY)

### 8:30 In-House (Moderated) Panel Discussion on Managing Litigation, Containing Costs, and Formulating Defense Strategy

*Michael Carbone*

Director-Litigation  
JetBlue Airways  
(Forest Hills, NY)

*Fabio Ferreira Cunha*

U.S. Counsel  
Embraer Aircraft  
Holding, Inc.  
(Ft. Lauderdale, FL)

*Richard Fiore*

Senior Counsel  
United Airlines, Inc.  
(Chicago, IL)

*David J. A. Hayes III*

Vice-President &  
General Counsel  
Trans States Holdings, Inc.  
(St. Louis, MO)

*Curtis Landherr*

Assistant General Counsel  
Garmin International, Inc.  
(Olathe, KS)

*Erin K. Sweeney*

General Counsel, USA  
Swiss International  
Air Lines Ltd.  
(East Meadow, NY)

*Christopher Watkins*

Claims Officer  
Chartis Aerospace  
(Atlanta, GA)

*Tracy Seabaugh*

Sr. Manager, Claims  
and Litigation  
US Airways Risk Management  
(Phoenix, AZ)

#### Co-Moderators:



*Brian C. Dalrymple*  
Nixon Peadody LLP  
(San Francisco, CA)



*Mark C. Fava*  
Nelson Mullins Riley  
& Scarborough LLP  
(Charleston, SC)

#### Expertise and Coordination with Outside Counsel

- Handling the defense more efficiently and effectively through national/regional counsel and experts who have specialized expertise in a subject area
- Hiring dilemmas: when to stay in-house and when to go with outside counsel immediately; if the latter, balancing the difficulty of finding quality counsel with costs
- Determining which factors to consider when hiring outside counsel and how those factors will be weighed: when is it cost-effective to use national counsel?
- Coordinating, both inside and outside the company, when handling pattern cases to fend off the emerging coordination and technological sophistication of the plaintiff's bar

#### Managing Legal Costs, Including Outside Counsel Fees

- Managing the exorbitant cost of defending cases that require retention of 3-5 expert witnesses and expense of obtaining the testimony required by *Daubert* rulings

- Budgeting the overall expense in taking a case through trial yet keeping the case resolvable at a reasonable level without the need for trial
- How to avoid the sheer volume of these suits placing a financial burden on legal resources
- Controlling costs by keeping routine, pattern litigation under control
- Managing outside counsel through realistic and accurate budgets
- Do flat fees really exist? What alternative billing arrangements are out there and have people been successful in using them?

#### Case Evaluation

- Early case assessment: Evaluating the cost of defense versus chronic settlement of unmeritorious claims and the precedential value of a settlement
- Controlling future litigation: identifying trends to ward off future lawsuits; knowing when to resolve a case for economic reasons and when to pay significantly more to defend a suit
- How to reach an early and cost-effective resolution of class action claims that will not result in payment of attorney fees that are disproportionately large in relation to the amount that will benefit or can be achieved by individual plaintiffs participating in a class action

### 10:00 Morning Coffee Break

## INTERNATIONAL FOCUS: DEFENSE CONCERNS FOR AVIATION LITIGATION IN A GLOBAL CONTEXT

### 10:15 Forum Non Conveniens and the Increase in U.S. Cases Brought by Foreign Plaintiffs Arising from Overseas Crashes and Incidents



*Thad T. Dameris*  
Hogan & Hartson LLP  
(Houston, TX)



*Andrew Harakas*  
Clyde & Co LLP  
(New York, NY)



*David P. Herman*  
Murray, Morin & Herman, P.A.  
(Coral Gables, FL)

- How to challenge the plaintiffs' choice of a state court forum
- Navigating the complex jurisdictional issues presented in these cases
- Forum Non Conveniens –
  - obtaining dismissal of cases involving foreign incidents – when is a motion to dismiss advisable?
  - Using the FNC doctrine to ensuring that the court declines jurisdiction for a foreign aviation case filed in a U.S. court
  - State-by-state particularities for FNC:
    - Florida
    - New York
    - California
    - Texas
- Countering plaintiffs attempt to evade a FNC dismissal in the US by invoking and then attacking the foreign court's jurisdiction over their claims
- Best advocacy practices and clear, persuasive briefing to guide courts through difficult, multijurisdictional factual and legal analyses
- The issue of venue choice and punitive damages

11:15 **Specific Jurisdiction: The Issues Surrounding Choice of Law, Including in Foreign Crashes/ Incidents**



*Dana Baiocco*  
Jones Day  
(Pittsburg, PA)



*Ann Thornton Field*  
Cozen O'Connor  
(Philadelphia, PA)



*Kenneth P. Quinn*  
Pillsbury Winthrop Shaw Pitman LLP  
(Washington, DC)

- International commercial flights: adequately reviewing the appropriateness of plaintiff's choice of forum under the Warsaw and Montreal conventions
  - coach sharing: international differences
  - the meaning of "contracting carrier"
  - liability for travel agents or charters
- Citizenship at issue: How airlines determine nationality
- Determining what law applies to the claim (choice of law)
  - evaluating a claim that has the damages law of another country applying vs. one where domestic law applies
  - wrongful death nuances in this regard
- Adequately performing a choice of law analysis at the outset of a case
- Challenging the plaintiffs choice of law: How to counter the fact the plaintiffs will seek to apply the liability and damage laws that maximize the chance of liability and high damage awards
- Application of choice of law rules when an action is governed by FSIA or Warsaw convention
- Best practices on conflict of law analysis, for both liability and damages
- Choice of law motions: best practices to determine the applicable law on liability and damages issues at an early stage of the litigation, to foster meaningful settlement negotiations
- How to influence the threshold decision on which choice of law rule will control the court's choice of law analysis
- How the NTSB, foreign governments, domestic and international manufacturers are forced to work together
- Criminalization of aviation accidents and incidents

12:30 **Networking Lunch for Speakers and Delegates**

1:30 **Dealing with the Evidence: Investigation, Spoliation, Inspection, "Other Incidents," NTSB/FAA Reports and Beyond**



*Jonathan R. Friedman*  
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
(Atlanta, GA)



*Kathryn J. Humphrey*  
Dykema Gossett PLLC  
(Detroit, Michigan)

*Investigation, Evidence Preservation/Spoliation, Inspection, and Collecting Data and Documents in a Way That Avoids Business Interruption*

- Securing, preserving and getting access to the physical evidence and conducting effective forensic investigation

- Managing the wreckage: Preservation of evidence (and for that matter, location of evidence) and inspection issues, to determine what really went wrong and comparative fault
- Strategies for Defending Cases Built on Circumstantial Evidence
- Gathering the information (documents and witnesses) needed to defend the suit in a way that minimizes potential for discovery issues and accusations of document destruction/hiding and maximizes the ability of the manufacturer to tell its story
  - staffing the information gathering team, brainstorming where the relevant information is likely to be found, and then gathering it
- Spoliation: what are the courts doing and what abuses are still being experienced?; how to adequately explain the destruction of documents
- Retrieving "old" design and testing information where non US entities are involved since data retention policies can be much different than for US companies in the aerospace industry.

*Disputing a Plaintiffs' Claim of Parts Malfunction*

- Similar incidents: Admissibility of "other incidents": keeping out evidence of accidents in which third parties suffered injury as a result of the alleged same defect
- Widely differing applications and interpretations of the "substantial similarity" doctrine and its impact on the analysis
- When the defense sees the same evidence in every case: countering a well organized plaintiffs' bar

*Admissibility and Use of NTSB and FAA Reports*

- Why issues surrounding the NTSB report tends to complicate matters because of its reliability but inadmissibility
- Determining whether the NTSB report is advantageous to your client; determining the likelihood that portions of an NTSB or FAA report will be admissible at trial

2:30 **Fault Apportionment and Other Sources of Liability: Airport Liability, Cargo Claims, Air Traffic Control Liability and Beyond**



*S. Brad Brown*  
Jackson Walker L.L.P.  
(Dallas, TX)



*Kathleen Guilfoyle*  
Campbell Campbell Edwards & Conroy  
(Boston, MA)

*Air Traffic Control*

- Negligence of Federal Air Traffic Controllers
  - litigation strategies
  - duty to warn
- What is the role of FAA?
- What are practical strategies involving the Federal Tort Claims Act?

*Airport Liability*

- Fleshing out the entire airport liability picture
  - Environmental issues at airports
- Actions that caused, or contributed to the cause of an incident
- Why is this becoming a litigation hotspot?
  - The Amsterdam example
  - Airport security vs. intervening security measures

### Cargo Claims

- Focusing on the applicability of Montreal convention limits
- Litigation involving customs monitors
- Allocating fault
  - what is the interplay between cargo claims and other claims?

### Causation/percentage of fault

- Evaluation of additional parties
  - Commencing a 3rd-party action against non-parties for contribution and other reasons
  - How to successfully implead third-parties in the early stages of the case (such as mechanics, maintenance facilities, weather briefers, aircraft user/owner)
  - deploying legal strategies to shift the burden of liability to a party other than your client
- Apportionment nuances with regard to negligence, strict liability, and breach of warranty
- Ensuring that the “deep pocket dilemma” doesn’t harm your client: what you now need to know about joint and several liability
- Carefully drafted disclaimers in purchase agreements: examining their effect on apportioning liability between the user and manufacturer

## 3:30 Afternoon Refreshment Break

Hosted by: 

## 3:45 A Focus on Expert Testimony: Special Nuances in the Selection of Experts, Strategically Preparing & Defending *Daubert* Challenges, and Debunking Junk Science



James W. Hunt  
Mendes & Mount, LLP  
(Los Angeles, CA)



Elizabeth B. Wright  
Thompson Hine LLP  
(Cleveland, OH)

### Causation: Did the design or manufacture of the aircraft or part play into the cause of the accident?

- Admissibility of expert testimony under the Rule 702 framework: the past year’s *Daubert* cases regarding general causation for the aviation industry
  - rulings, tactics, successes, and jurisdictional differences in standards and procedures
- Foundational requirements for experts, specific to the aviation industry
- Laying the groundwork for *Daubert* motion and being prepared to deal with a *Daubert* challenge to your expert witness testimony
- Using your own experts effectively: preparing them to testify and communicate with and educate jurors
- Admissibility of “junk science” and coping with judges who give lip service to *Daubert* and are unwilling to exclude junk science
  - What forums most often have the judge serve as a proper gatekeeper to allowing expert testimony, and what forums have judges who allow the jury to hear testimony from an expert whose opinion is not properly formed or substantiated?
- Excluding plaintiff’s causation experts and debunking junk science vis-a-vis unqualified experts

- successfully challenging the expert’s propositions, credentials, and credibility
- minimizing the opposing expert’s impact on your client’s case
- cross-examination at trial: shooting down the hired gun and destroying credibility
- Dealing with the difference in the use of experts in foreign air disasters

### Special Nuances in the Selection of Experts, Including Metallurgists, Aircraft Engine Maintenance Experts, and Economists

- Identification and retention of the appropriate experts: Because aviation cases so often involve many products, parts, or components, how do you identify and retain the right expert witnesses to assist with the technical side of the case?
- Locating and engaging competent and persuasive experts, often under extreme time pressure
- Finding and retaining qualified, reliable, and credible experts
  - selecting a witness with the most appropriate background, greatest level of expertise, and then preparing and showcasing that expert’s knowledge
- Selecting experts that provide meaningful assistance in the pretrial phase of the case – why and how the experts’ experience in the aviation industry and familiarity with the aircraft/engine/component is critical
- How to find those who provide depth to defense counsel’s understanding of the subject matter and allows defense counsel to zero in on key areas during discovery
- Background checks of your potential experts and: how to do it so that there is never a surprise at trial
- Background checks of the plaintiff’s experts: how to do it so that you can challenge qualifications and credibility at trial

## 4:30 Incorporating New Developments with GARA and Federal Preemption Into Your Litigation Strategy



Richard G. Grotch  
Coddington, Hicks & Danforth  
(Redwood City, CA)



William L. Maynard  
Beirne Maynard & Parsons, LLP  
(Houston, TX)

### Federal Preemption: The Current Viability of the Defense

- The scope of federal preemption on issues of aircraft design and manuals.
- Making a successful federal preemption argument
- Where the accident involves a domestic commercial flight, how do you simplify the preemption analysis so that plaintiff’s state law claims are preempted by federal law?
- Making an appropriate challenge to a plaintiff’s state law cause of action
- Carefully and promptly considering whether the plaintiff’s state law cause of action should be challenged on the basis of federal preemption
- Using preemption to remove a claim from state to federal court, establish controlling liability standards, or extinguish a party’s right to bring a claim
- The different types of litigation involved in the aviation context and how preemption may be applied in each of them

### General Aviation Revitalization Act (GARA)

- Knowing the age of the alleged defective part in order to ascertain if GARA applies and being prepared to address

plaintiff's attempt to circumvent this bar by establishing a knowing misrepresentation

- Adequately making the determination whether GARA provides a complete defense to the action
- The various uses of GARA's repose period and countering attempts to pierce the defense through the stated exceptions
- A manual as a part? What is the latest?
- What is the applicability of state statutes of repose?
- How to handle the conflicting circuit court approaches as to the appropriate standard in failure to warn cases

## 5:30 Day One Concludes

# DAY TWO: Wednesday, June 23, 2010

## 7:30 Continental Breakfast

## 8:15 Co-Chair's Recap and Remarks

## 8:30 A View From the Bench: Judges Speak out on Effective Theories and Defenses in Aviation Litigation



*The Honorable John C. Coughenour*  
U.S. Dist. Ct., D. Wash.



*The Honorable Richard Mills*  
U.S. Dist. Ct., C.D. Ill.



*The Honorable James P. O'Hara*  
U.S. Dist. Ct., D. Kan.



*The Honorable Stephen J. Murphy, III*  
U. S. Dist. Ct., E.D. Mich.



*The Honorable Louisa Porter*  
U.S. Dist. Ct., S.D. Calif.



*The Honorable Mildred E. Methvin*  
Satori ADR

### Co-Moderators:

*Jeffrey J. Ellis*  
Quirk and Bakalor, P.C.  
(New York, NY)

*Connie Lewis Lensing*  
Vice President - Litigation  
FedEx Express (Memphis)

### Renowned Jurists will provide their insights on:

- Early defense considerations (motions to dismiss, federal preemption, offers of judgment)
- Motion practice, manageability, trial plan, interlocutory appeals
- Summary judgment practice (timing, one-way intervention)
- Settlements (individual versus class, fairness hearings, CAFA)
- Conveying complex issues to fact-finders
- Novel approaches to trial and case management
- Judicial "pet peeves"

## 10:00 Morning Coffee Break

## 10:10 Document and E-Discovery: Formulating a Compliant Plan that Reduces the Overwhelming Costs and Burdens of Voluminous Requests



*David J. Harrington*  
Condon & Forsyth LLP  
(New York, NY)



*William D. Janicki*  
Morrison & Foerster LLP  
(San Diego, CA)

- Recent decisions from the Bench regarding e-discovery
  - Why attorneys and their clients need to take e-discovery seriously
- Crafting effective ESI Plans
  - Timing and scope of ESI Plans
  - Client and vendor input
  - Cooperation with plaintiffs
  - Expectations of the Court
- The scope of information that the defendants must turn over to the plaintiff
  - reducing the overwhelming cost and burdens of overly broad, voluminous discovery requests: coordinating consistent responses against a well-connected plaintiffs' bar
  - softening the economic blow of retaining, collecting and producing e-documents
  - electronic storage of information: striking a balance between plaintiffs' need for information and the burdens created by retrieval and processing
  - factoring in a defendant's technology, strategic priorities, and financial resources when formulating discovery plans
  - Metadata
  - Production format
- Discovery considerations in representing non-U.S. parties
  - what an attorney representing a foreign party in the U.S. faces in the context of discovery;
  - applicable laws in which your client resides and how to avoid legal or practical problems in seeking the discovery
  - educate your client as to the meaning and scope of discovery in the U.S.
- Managing discovery costs
  - Preparing for the demands of discovery before litigation becomes an issue
  - Assuring quality control in document coding without absorbing the costs of high paid associates
  - Cutting e-discovery costs
    - conducting metrics to determine the efficiency of vendors
    - in-sourcing e-discovery work
    - comparing the services of different vendors

## 11:00 Risk Management Issues and Developments in Insurance Coverage for the Aviation Market



*Roger W. Clark*  
Clark, Goldberg & Madruga  
(Los Angeles, CA)



*Edward Gladly, Jr.*  
Polsinelli Shughart PC  
(Phoenix, AZ)

- An overview of current trends and the implications on risk management
- Who is litigating insurance claims?
- The duty of good faith and settlement concerns
  - Evaluation timelines and settlement practices
- What companies are doing to protect themselves in the event of litigation
- How to protect your interests

- Looking for a causal connection
- Developments in the London Market
- Recent incidents and war risk exceptions
  - Product liability, battlefield liability and insured contractors working in war zones

## 11:45 The Latest Litigation Trends Involving Passenger Rights



*Judith R. Nemsick*  
Holland & Knight LLP  
(New York, NY)



*Douglas H. Amster*  
LeClair Ryan  
(Newark, NJ)



*Elizabeth Mireya Freidenberg*  
Freidenberg, Freidenberg & Lifsic  
(Buenos Aires, Argentina)

- Defending passenger discrimination, racial profiling, and civil rights claims
- New passenger protection regulations: airline responsibilities, fines, and the 3-hour limit
- Handling passenger and baggage delay claims
- Cabin fume exposure
- Dealing with in flight medical emergencies
- Pandemic scares: how far can or should airlines go with refusal to carry

## 12:45 Networking Lunch for Speakers and Delegates

### 1:45 Jury Communication & Advocacy: Using Demonstrative Evidence and Themes, and Telling a Detailed Story



*J. Denny Shupe*  
Schnader Harrison Segal & Lewis LLP  
(Philadelphia, PA)



*Christopher D. Brown*  
Wilson Elser Moskowitz Edelman & Dicker LLP  
(Miami, FL)

- Putting masses of complex information into an understandable context: Educating jurors concerning the facts of the case and leaving them with firm reasons to go into jury deliberations as advocates for your client
- Using a clear and concise presentation which conveys credibility while staying within legal limits
- Using themes to explain the details for the jury:
  - the technology that was in use at the time of manufacture
  - “behind the challenged design, there is a positive company story”
  - the notion that “failure” does not necessarily equal “defect”
  - jurors as “investigators of the truth” to counter plaintiff’s case done in an overly simplistic, broad brush manner
- Explaining (persuasively) very complex mechanical or electrical systems to a jury – Simplifying the critical issues for the jury: demystifying complicated engineering concepts, complex technical issues, and factual proof
- Overcoming overwhelming natural and understandable sympathy for plaintiffs

- establishing a theme of personal responsibility over deep pockets responsibility
- Explaining (persuasively) what is a reasonable risk of a design, and why an alternative design, although perhaps risk-reducing, is not feasible or desirable
- Overcoming juror bias against manufacturers, including:
  - intolerance of virtually any risk of harm or malfunction
  - the assumption that given advancements in safety features, any death or serious injury means that there must have been something wrong with the aircraft
  - the expectation that all product risks, no matter how minor/ unlikely, will be publicly disclosed
- Demonstrative Evidence nuances – using it to make the complex simple and persuade the jury
  - educating the jurors about complex evidence and convincing them to adopt a theory
  - using aids to the explanation of data and persuasion of the jury to provide accurate representations and debunk opposing theories
  - using technology to counter limited attention spans and meet the jury’s need for visual gratification

## 2:45 Conference Concludes Registration for Procedural Master Class

### Post-Conference Procedural Master Class June 23, 2010 3:00 p.m. - 5:00 p.m.

#### The Current MDL Practice Landscape: What Is and Isn’t Working for Defendants?



*Lory Barsdate Easton*  
Sidley Austin LLP  
(Washington, DC)



*Jonathan Stern*  
Schnader Harrison Segal & Lewis  
(Washington, DC)

#### *An invaluable 2-hour MDL drill down on:*

- It’s all about convenience: The standards that govern the Panel’s decisions whether to order consolidated or coordinated pretrial proceedings under § 1407
- Divide and conquer or assemble and conquer: Knowing if and when to seek or oppose MDL
- Who’s the better forum shopper: Selecting the district court in which such coordinated proceedings should occur and countering plaintiffs’ arguments for a particular jurisdiction
- What must we file when: Procedures for obtaining MDL coordination
- Can you get there from here: Interplay between MDL coordination and *forum non conveniens*
- Aviation MDLs: Post-transfer issues
- MDL trial considerations: *Lexecon* and its progeny, and the Multiparty, Multiforum Trial Jurisdiction Act

American Conference Institute's 2<sup>nd</sup> Annual Forum on Defending and Managing

# AVIATION LITIGATION

The essential defense counsel forum that will shape the future of personal injury & wrongful death strategies for leading outside and in-house counsel for manufacturers, carriers, users/owners/operators, maintenance facilities and insurers

June 22-23, 2010 – Hyatt Regency Boston – Boston, MA

Experienced faculty from:

JetBlue, Embraer, United, Trans States, Garmin, Chartis Aerospace, FedEx and many others

Hear from these renowned jurists:

Hon. John C Coughenour  
Hon. Richard Mills  
Hon. James P. O'Hara  
Hon. Stephen J. Murphy, III  
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Plus, be sure to also register for the Post-Conference Procedural Master Class: The Current MDL Practice Landscape: What Is and Isn't Working for Defendants?  
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YES! Please register the following delegate for **AVIATION LITIGATION**

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I would like to receive CLE accreditation for the following states: \_\_\_\_\_, See CLE details inside.

FEE PER DELEGATE	Register & Pay by Apr 30, 2010	Register & Pay by Jun 4, 2010	Register after June 4, 2010
<input type="checkbox"/> Conference Only	\$1895	\$1995	\$2195
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- I would like to add \_\_\_ copies of the conference documentation to my order – \$299 each
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**Registration Fee**

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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You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **American Conference Institute (ACI)** in writing up to 10 days prior to the conference date and a credit voucher valid for 1 year will be issued to you for the full amount paid, redeemable against any other ACI conference. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. **ACI reserves the right to cancel any conference it deems necessary or remove/restrict access to the ACI Alumni program and will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by ACI for changes in program date, content, speakers, venue or arising from the use or unavailability of the ACI Alumni program.**

**Hotel Information**

**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" conference to receive this rate:  
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