

American Conference Institute's Advanced Forum on

# LPL/LEGAL MALPRACTICE CLAIMS AND LITIGATION

May 31–June 1, 2012 • Flatotel • New York, NY

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No other legal malpractice event has ever had a judicial presence like this one. Attend and hone your skills by hearing from 7 esteemed judges in the area:



Hon. Daniel E. Knowles, III  
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U.S. Dist. Ct., N.D.Ga.



Hon. Jeanne E. Scott  
U.S. Dist. Ct., C.D.Ill.



Hon. Anthony J. Mohr  
Super. Ct., Los Angeles Co.



Hon. Robert B. Freedman  
Super. Ct., Alameda Co.



Hon. Sandra Mazer Moss  
Ct. of C.P., Philadelphia



Hon. Juan Ramirez, Jr.  
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## Unique expert advice and strategies on how to:

- Limit exposure to emergent cyber liability involving client data, cloud computing and social media
- Get up to speed on the latest in claims, coverage and underwriting in the LPL market
- Defend malpractice allegations related to Ponzi Schemes, FDIC bank failure claims, and FDCPA debt collection claims
- Manage increased LPL claims arising out of real estate transactions
- Defend against claims by bankruptcy trustees and receivers for contributing to underlying business failures
- Work through existing, emergent or potential conflicts of interest
- Successfully respond to claims by non-clients
- Understand the interplay of ethics complaints and LPL claims and protect against damage from companion ethics cases

## Plus, register for the In-Depth Focus Sessions

- A** Defeating the Unknown Factor: A Hands-On Examination of the Specific Risks and Claims for 2012, What They Mean for the LPL/Legal Malpractice Practice and Their Impact on the Litigation Landscape
- B** A Practical Due Diligence Checklist on Preventing the Most Common Attorney Errors in Civil Litigation



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Join an unparalleled faculty of leading insurance professionals, counsel specializing in LPL, law firm risk managers and renowned jurists to ensure that you are fully protected against emerging risks and prepared to defend against the latest legal malpractice claims.

Continuing fallout from the implosion of the real estate market, the wave of bankruptcies and Ponzi schemes and the broader state of the economy has led to increasing lawsuits against attorneys by frustrated clients. Additionally, the use of electronic communication, cloud computing and social media brings new retention, network security and privacy risks. **Attorneys and law firms must stay ahead of the curve to avoid unnecessary exposure to risk and successfully defend against the newest deluge of legal malpractice claims.**

ACI's **Advanced Forum on LPL/Legal Malpractice Claims and Litigation** is designed to offer insurers, brokers, attorneys and other risk management professionals valuable insight into how to prevent, manage and defend against the most current legal malpractice claims. Get the inside scoop from judges on the latest malpractice claims brought against attorneys as well as from leaders in the insurance industry, including in-house professionals from: **CNA Insurance, Swiss Re America Holding Corp., Willis Group, ECC Insurance Brokers, OneBeacon Professional Insurance, Marsh USA, Endurance Service Ltd., Ahern Insurance, Aspen Specialty Insurance Co., Allied World National Assurance Co. and many more.**

By attending the conference, you will:

- Gain valuable strategies from major corporations as they provide insight into the changing relationship between companies and their outside counsel
- Hear directly from 7 federal and state judges, and get their views on the most common legal malpractice claims they are seeing and how to improve your litigation strategy
- Ensure protection against emerging areas of risk and understand the latest trends in claims, coverage and underwriting from a panel of expert insurance professionals

Plus, maximize your attendance by also registering for the pre/post-conference in depth focus sessions

- A Defeating the Unknown Factor: A Hands-On Examination of the Specific Risks and Claims for 2012, What They Mean for the LPL/Legal Malpractice Practice and Their Impact on the Litigation Landscape**
- B A Practical Due Diligence Checklist on Preventing the Most Common Attorney Errors in Civil Litigation**

Register now by calling 888-224-2480 or faxing your registration form to 877-927-1563. You can also register online at [www.AmericanConference.com/LPL](http://www.AmericanConference.com/LPL)

## MUST-ATTEND EVENT FOR:

- LPL Insurance Professionals, including:
  - Underwriters, Claims Managers, Product Managers, Corporate Counsel, Risk Managers and Brokers
- Law Firm General Counsel and Managing Partners
- Private Practice Attorneys Specializing in:
  - Legal Malpractice Litigation
  - Lawyers' Professional Liability
  - Insurance Coverage Litigation
  - Professional Responsibility and Ethics

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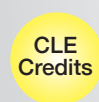
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You are required to bring your state bar number to complete the appropriate state forms during the conference. CLE credits are processed in 4-8 weeks after a conference is held.

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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: THURSDAY, MAY 31, 2012

9:45 Main Conference Registration and Coffee Served

### 10:05 Co-Chairs' Welcoming Remarks

*Dennis R. McCoy*  
Partner  
Hiscock & Barclay, LLP

*Jay S. Rothman*  
General Counsel  
Marshall, Dennehey, Warner, Coleman & Goggin

### 10:10 In-House Think Tank: The Changing Relationship Between Insurance Companies and Their Outside Counsel, and How Outside Litigators Can Manage Expectations and Adapt Their Strategies in Response

*Scott Barabash*  
Claim Manager – Professional Program Claims  
Zurich American Insurance Company

*Gary Schmidt*  
Vice President – Financial Services & MPL Claims  
Aspen Specialty Insurance Company

*Charles A. Lynch*  
Senior Claims Analyst, Professional E&O Claims  
Allied World National Assurance Company

*John C. Minett*  
SVP and Counsel- Professional Liability Claims Manager  
Endurance Services Ltd.

*Susan Kilano*  
Vice President  
Ahern Insurance Brokerage

*Susan Dufresne*  
VP and Underwriter, Professional Lines  
Aspen Specialty Insurance Company

#### Moderator:

*Jay S. Rothman*  
General Counsel  
Marshall, Dennehey, Warner, Coleman & Goggin

- Working with outside counsel
  - Communication between outside counsel and the insurance carrier's representative
  - Breakdown of the "gentleman's agreement"
  - Achieving efficient and cost effective coordination of responsibilities
  - Setting realistic expectations
- Tips for outside counsel in managing and meeting client expectations
  - Case strategy, case assessment and resolution planning
  - The "tripartite" relationship: challenges of managing litigation and working with insurer appointed counsel
- Preventing fee disputes
  - Establishing fee formula even in an ongoing relationship
  - Tensions between insured, carrier and appointed counsel
    - An insured's demand for a "scorched earth" defense
    - A carrier's fiduciary obligation to its insured
    - Appointed counsel's responsibility to maintain judgment and independence in the defense of the client

### 11:20 Control of Client Materials and Information: Limiting Exposure to Emergent Cyber Liability Involving Client Data, Cloud Computing and Social Media

*Kim G. Quarles*  
Senior Vice President, Law Firm Industry Leader  
Willis Group

*Brian J. Dusek*  
Partner  
McCullough, Campbell & Lane LLP

*Barry Temkin*  
Partner  
Mound Cotton Wollan & Greengrass  
Adjunct Professor, Fordham University School of Law

*Margaret A. Reetz*  
Partner  
Kerns Frost & Pearlman, LLC

#### Moderator:

*Carl E. Metzger*  
Partner  
Goodwin Procter, LLP

### Managing Client Data and Maintaining Attorney-Client Privilege in the Age of Electronic Communication

- Determining who has control of client materials
  - Ensuring sensitive information is secure
  - Managing client documents when attorneys leave or join
  - Ensuring retention policies are followed
- Electronic communications with client
  - Law firm server security
  - Networks owned by client's employer
  - Discoverable communications
- Enterprise control of firm-used mobile devices, laptops and USB storage devices
- ABA proposed rules and state ethics opinions on confidentiality and E-matters

### Cloud Computing

- Network security and privacy
  - Who controls the server?
  - Protection of law firm databases
  - Preservation of confidential material
  - Leased and temporary electronic equipment
  - Chain of custody and authentication
- Loss prevention policies and backing up data
- Document retention policies for data in "the cloud"
  - Law lagging behind practice; differing standards

### Social Media Liability

- Understanding the risks associated with recruiting clients using social media
- Social media as a more open means of communication
  - Controlling discussion of client matters and confidential information
  - Ensuring new associates and younger attorneys understand the risks
  - Putting a policy in place
- Discoverability of social media communications

- Lawyer monitoring of juror social media; juror surveillance
- Precautions to prevent unilateral confidential information from prospective clients

### Virtual Law Practice and Multijurisdictional Practice

- Can lawyers practice “virtually” in jurisdictions in which they are not admitted?
- The effect of multijurisdictional practice under revised ABA Model Rule 5.5
- Lawyers complying with non-US regulations when dealing with foreign clients

## 12:30 Networking Luncheon for Speakers and Delegates

### 1:35 Insurance Marketplace Update: Trends in Claims, Coverage and Underwriting in the LPL Market

*David Finz*

Senior Vice President, FINPRO Claims Advocacy  
Marsh USA

*Scott Ammer*

Vice President  
ECC Insurance Brokers, Inc.

*Kimberly Noble*

Senior Vice President, Lawyers’ and Real Estate  
Professional Liability  
OneBeacon Professional Insurance

*Stephen S. van Wert*

Program Manager, LawyerGuard  
Willis Group

Moderator:

*John D. Bouchard*

President  
Polestar Executive Management  
(A division of Brown & Brown Insurance)

### Emerging Claims, New Products and Potential Causes of Action

- What to expect moving forward
- Evaluating new products coming to the market
- Areas where attorneys and law firms are hesitant to spend money on new policy additions, and why
- Employed Lawyers Coverage
  - Extent and limitations of coverage
  - Interface with D&O liability coverage
  - Integrating coverage with LPL coverage of outside counsel

### Recent Trends in Underwriting

- Risk management policies underwriters look for at large firms
  - Ensuring confidentiality among partners
  - Managing claims and assessing risks when an attorney or group of attorneys leaves the firm
- Red flags for heightened risk of LPL claims
  - Remaining competitive without being exposed to excess risk
- Challenging areas, including IP, real estate and securities
- Special considerations for international firms
  - What insurance and retention policies control?

- Under what circumstances is the London Market competitive, and are there any coverage grants or restrictions unique to London?
- Market Trends
  - Recent pricing trends for LPL Insurance and Predictions
  - Factors behind changes in pricing

### Self-Insured Retentions

- Range for small, midsize and large firms
- Factors besides size of firm:
  - Practice and location; lost history
  - Areas of concentration and/or specialization
- How high does SIR need to be before a major effect on premium?

## LEGAL MALPRACTICE SUITS ARISING OUT OF THE ECONOMIC CRISIS

### 2:50 Defending Allegations Related to Ponzi Schemes, FDIC Bank Failure Claims, FDCPA Debt Collection Claims and Beyond

*Shauna Reeder*

Assistant Vice President  
CNA Insurance

*Brian Braden*

Vice President  
Crum & Forster

*Richard A. Simpson*

Partner  
Wiley Rein LLP

*Brett A. Scher*

Partner  
Kaufman Dolowich Voluck & Gonzo LLP

- Defending against LPL claims relating to Ponzi and other fraudulent schemes
  - Determining which parties have standing to bring claims
  - In pari delicto: status and effectiveness of this defense
- FDIC bank failure claims
  - “Professional Liability Program”
    - The results of investigations of failed banks and auditors, accountants and lawyers involved
    - Effect on larger law firms
  - Status of malpractice suits based on the FDIC
- Debt collection claims based on FDCPA violations
  - Erosion of protection for lawyers in this area
  - Establishing a defense
  - Protection for debt collection firms
    - Computerized collection tracking system
    - Ensuring collection letters don’t overshadow or contradict required validation notice
- Non-mortgage related securities claims
  - Claims arising from flaws in security agreements
  - Claims related to negligently prepared securities offerings

### 3:50 Afternoon Refreshment Break

#### 4:00 **Defending and Managing Increased LPL Claims Arising Out of Real Estate Transactions**

*Gawain Charlton-Perrin*

Risk Control Consulting Director  
CNA Lawyer's Professional Liability

*Jett Hanna*

Senior Vice President  
Texas Lawyers' Insurance Exchange

*Mark K. Anesh*

Partner  
Lewis Brisbois Bisgaard & Smith LLP

- Potential liability involved in failed property dealings
  - Attorneys being held liable for bad business deals
- Specific issues for attorneys handling mortgage foreclosures
  - Foreclosure rescue scams
- Claims related to mortgage backed securities transactions
- Claims trends relating to law firm real estate practices
  - Title claims
    - Title searches
    - Title transfer
    - Failure to secure title
  - Real estate closings
  - Promissory notes for the repayment of loans
- Ensuring proper recording
- Conflict of interest issues in real estate transactions
- Risk management techniques for managing the risk

#### 5:00 **Advising Clients in Bankruptcy Matters and Defending Claims by Bankruptcy Trustees and Receivers Against Firms for Contributing to Underlying Business Failures**

*Diana C. Manning*

Shareholder  
Bressler, Amery & Ross, P.C.

*James R. Kahn*

Partner  
Margolis Edelstein

*Kevin S. Rosen*

Partner  
Gibson, Dunn & Crutcher LLP

- Potential liability issues when advising clients in bankruptcy matters
  - Issues to keep in mind when advising large companies
- Defending against malpractice suits brought by bankruptcy trustees and receivers
  - Who owns the malpractice suit and who has standing to bring claims
  - What impact will the bankruptcy have on the LPL case?
  - Defense strategies (procedural and substantive?)
  - Accounting for investor and other related claims
  - The effect of filing of plan of confirmation on LPL claim
- The impact on attorney client privilege when the lawsuit is brought by a bankruptcy trustee or receiver
  - Who holds the privilege when a bankruptcy trustee or receiver brings a suit against outside counsel

- Settlement of a bankruptcy claim
  - Does this bar or limit a subsequent malpractice claim?
  - Does this bar or limit claims by investors and other third parties?
  - Releases; how recovery is distributed

6:00 **Conference Adjourns**

### DAY TWO: FRIDAY, JUNE 1, 2012

7:30 **Continental Breakfast**

#### 8:00 **View from the Bench: An Unparalleled Opportunity to Hear How Judges Interpret Arguments in the LPL/Legal Malpractice Context**

*The Honorable Timothy C. Batten, Sr.*

District Court Judge  
United States District Court, Northern District of Georgia

*The Honorable Jeanne E. Scott*

District Court Judge (retired)  
United States District Court, Central District of Illinois

*The Honorable Daniel E. Knowles, III*

Magistrate Judge  
United States District Court, Eastern District of Louisiana

*The Honorable Juan Ramirez, Jr.*

Appellate Court Judge  
Florida Third District Court of Appeal

*The Honorable Robert B. Freedman*

Superior Court Judge  
Alameda County Superior Court

*The Honorable Sandra Mazer Moss*

Coordinating Judge  
Philadelphia Court of Common Pleas

*The Honorable Anthony J. Mohr*

Superior Court Judge  
Los Angeles County Superior Court

#### Moderator:

*A. Michael Furman*

Partner  
Furman Kornfeld & Brennan LLP

9:30 **Morning Coffee Break**

#### 9:45 **Communication Methods that Minimize the Risk of Malpractice Claims: Effective Engagement, Disengagement & Fee Procedures and How to Work Through Existing, Emergent or Potential Conflicts of Interest**

*Elizabeth Whitney*

Loss Prevention Consultant  
Swiss Re Corporate Solutions

*Steven Carpenter*

Claims Attorney  
Oregon State Bar Professional Liability Fund

*Douglas L. Hendricks*  
Partner  
Morrison & Foerster LLP

*Dennis R. McCoy*  
Partner  
Hiscock & Barclay, LLP

Moderator:

*Joseph A. Starr*  
Partner  
Starr, Butler, Alexopoulos & Stoner, PLLC

- Recognizing and avoiding potential conflicts before they arise
  - Utilizing proper intake and evaluation procedures and methods for recruiting new clients
  - Being up front with a client or potential client
  - Attorney involvement in a business transaction with a client
- Instituting client intake and termination procedures to minimize the risk of malpractice claims
  - Establishing representation and fees
  - Best practices for drafting engagement and disengagement letters
  - Post-termination conduct to avoid
  - The distinction between former clients and current clients
- Limiting conflict waiver
  - Monitoring and limiting the practice of clients routinely waiving conflicts
  - The use of a “no conflict” agreement in place of a waiver
- Ensuring proper waiver
  - In writing
  - Complete and advised
  - Providing adequate disclosures

11:00 **View from the Plaintiff’s Bar: Adapting Your Claims and Litigation Strategies to New and Innovative Theories Being Brought by Your Adversaries**

*Amianna Stovall*  
Partner  
Constantine Cannon LLP

*Andrew Lavoott Bluestone*  
Member  
Bluestone Law Firm

*Jefferey O. Katz*  
Partner  
Spellmire Law Firm LLC

*Chaim J. Woolf*  
Partner  
Law Offices of Chaim J. Woolf

- Emerging theories of liability
  - Recent trends in legal malpractice claims
  - Common conflicts of interest that lead to malpractice claims
  - Engagement and retainer agreements and duties to prospective clients
  - Non-client claims
  - Professional responsibility issues related to modern technology
- Claims other than legal malpractice, including Defamation, Negligent Misrepresentation and Breach of Fiduciary Duty
- Who makes a viable plaintiff and defendant
- The case within a case in the context of a transactional legal malpractice action

- The use of expert witnesses at trial
- How plaintiff attorneys gauge a defense attorney’s intention in settlement
- Alternative remedies to LPL suits

12:00 **Proven Tactics for Successfully Responding to Claims by Non-Clients**

*Anthony P. Colavita*  
Partner  
L’Abbate, Balkan, Colavita & Contini, LLP

*Joseph S. Berman*  
Partner  
Looney & Grossman LLP

- Assessing and defending against “aiding and abetting breach of fiduciary duty” claims
  - Claims brought by a client’s fiduciaries
  - Claims brought by non-client beneficiaries and other third parties
  - Likelihood that claims will be upheld, and how to defend against them
  - “Aiding and abetting” liability in the securities litigation area
- Counterclaims
  - By defendants against the client and the attorney
  - By clients in response to a suit to recover legal fees
  - Insurance coverage for “aiding and abetting” claims
- Malicious prosecution claims
  - The rise of Anti-SLAPP statutes
  - New case law in this area
  - Immunity defense and litigation privileges

12:45 **Understanding the Interplay of Ethics Complaints and LPL Claims: Protecting Against Damage from Companion Ethics Cases**

*Lisa L. Shrewsberry*  
Partner  
Traub Lieberman Straus & Shrewsberry LLP

*David L. Brandon*  
Partner  
Morris Polich & Purdy LLP

*Jonathan A. Kocienda*  
Principal  
Danaher Lagnese, PC

- The relationship between an ethics complaint and a legal malpractice claim
  - Fiduciary breach as an increasing impetus for a legal malpractice claim
- The impact of a companion ethics case on a legal malpractice claim
  - Disclosure of documents
  - Admissibility of evidence from a companion ethics case in a malpractice case
  - Ethics case as an information source for a complaining party
  - Settlement issues
- Use of ethics opinions and rules in the litigation of legal malpractice claims

ETHICS CREDITS

1:45 **Conference Ends –  
Lunch for Focus Session B Attendees**

## PRE AND POST-CONFERENCE IN-DEPTH FOCUS SESSIONS

Thursday, May 31, 2012 • 8:00-10:00

**A Defeating the Unknown Factor: A Hands-On Examination of the Specific Risks and Claims for 2012, What They Mean for the LPL/Legal Malpractice Practice and Their Impact on the Litigation Landscape***Brian Dusek*

Partner

McCullough Campbell &amp; Lane LLP

*Jay S. Rothman*

General Counsel

Marshall, Dennehey, Warner, Coleman &amp; Goggin

*Gawain Charlton-Perrin*

Risk Control Consulting Director

CNA Lawyer's Professional Liability

This session is designed to provide you with a comprehensive overview of the newest LPL claims and theories. Follow along as counsel well versed in the new developments over the past year engage you in an in-depth examination of their real-life impact on the LPL practice. **The state of the economy, increasing international practice, and the use of electronic communication, cloud computing and social media have all led to increasing lawsuits against attorneys by frustrated clients. Attorneys and law firms must stay ahead of the curve to protect and defend against the latest legal malpractice claims.** This in-depth 2-hour focus will set the stage for the main conference and provide an unparalleled opportunity to gain knowledge of the newest risks and claims as well as the current status of continuing legal malpractice claims, including:

- Cyber risks
- What are the greatest liabilities that companies are facing?
- To what extent are cyber risks covered under underlying legal malpractice insurance?

- Do firms need special coverage for these risks?
- Challenges in IP and patent law
- LPL claims after *Bilski v. Kappos*
- Failure to protect the mark
- Inadequate trademark discovery
  - Failure to find a competing mark
- Large firms practicing outside their comfort zone
  - Lack of substantive or procedural knowledge of patent issues
- International practice risks
- Understanding and managing international exposure risks and making sure your coverage adequately protects against those risks
  - Risk management protocols with the proliferation of firms doing business abroad
  - Synchronizing law firm branch operations and retention policies
- Recognizing gaps in coverage
  - Differing risk factors
  - Foreign governments that require insurance coverage to be purchased locally
- Check deposit fraud schemes
- How these increasingly common schemes work
- What to be on the lookout for
- What constitutes representation?
  - Is depositing a check a legal service?
- *U.S. Electronics, Inc. v. Sirius Satellite Radio, Inc.*

Friday, June 1, 2012 • 2:45-4:45

**B A Practical Due Diligence Checklist on Preventing the Most Common Attorney Errors in Civil Litigation***Dennis R. McCoy*

Partner

Hiscock &amp; Barclay, LLP

*Jefferey O. Katz*

Partner

Spellmire Law Firm LLC

*A. Michael Furman*

Partner

Furman Kornfeld &amp; Brennan LLP

Civil litigation is one of the most prevalent areas for legal malpractice claims, and attorneys must be especially careful to consider and analyze all aspects of representation. In order to **guard against errors and omissions in civil litigation**, attend this special session to **learn how to incorporate a proven practical checklist** on preventing the most malpractice claims related to:

- Protecting against a potential legal malpractice suit by guarding against errors and omissions related to:
  - Inadequate investigation
  - Statute of limitations and missed deadlines
  - Proper application and knowledge of the relevant law
  - Privileged communications
  - Expert witness disclosures
  - Missed settlement/defense opportunities
- Issues involving settlement
  - Inappropriate settlement or settlement without authority
  - Missed settlement
  - How do you settle a case while protecting against a future malpractice claim?
  - Confidentiality agreements in settlement

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### Plus hear from these 7 judges:

Hon. Daniel E. Knowles, III    Hon. Sandra Mazer Moss  
Hon. Robert B. Freedman    Hon. Jeanne E. Scott  
Hon. Timothy C. Batten, Sr.    Hon. Juan Ramirez, Jr.  
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