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Numerous World Class Scientists Will Speak at an Upcoming Asbestos Litigation Conference

Posted on March 12, 2010 by **Kirk Hartley**

Here is the online agenda for a great new asbestos litigation conference on May 3 and 4.

Why great ? Because the conference format explicitly recognizes the importance of science to where the litigation has been, and where it will go. Thus, virtually all of the speakers are doctors and scientists, including several who are world class in anyone's book. The conference, sponsored by Perrin Conferences, is titled: A *Conference on Asbestos and Mesothelioma*.

Science alone of course does not result in lawsuits. Accordingly, lawyers are involved to a degree. The conference chairs are two lawyers with reputations for knowing and enjoying the science side of litigation. They are plaintiff's counsel Shep Hoffman, founder of The Law Offices of Shepard A. Hoffman, Dallas, and defense counsel, Robert Rich, a partner of Gordon Rees, San Francisco.

The scientist are listed below - this is by far the best overall assembled group of doctors and scientists focused on asbestos. Part of the power of this group is that it includes speakers with diverging views. And, for anyone interested in the global spread of asbestos disease, and thus some spread of the litigation, do not miss the chance to hear from Dr. Julian Peto, who is at the forefront of those looking all the way around the world.

It will be interesting to see the level of attendance, the manner in which this conference is conducted, and whether this approach is repeated for asbestos and replicated for other areas of mass tort litigation. In the past, most asbestos conferences that included much science were conferences sponsored by one side or the other. Thus, for many, many years, Al Parnell and the Defense Research Institue have held an annual Asbestos Medicine conference that usually included severals doctros and scientists. The conference usually also was attended by a few plaintiff's lawyers. And, likewise, the plaintiff's bar holds periodic meetings, but typically they do not allow defense lawyers to attend.

Jerrold L. Abraham, MD, Professor of Pathology, SUNY Upstate Medical University, Syracuse, NY
D. Wayne Berman, Ph.D., researcher in asbestos exposure and risk and President of

Samuel Hammar, MD, Director of Diagnostic Specialty Laboratories, Bremerton, WA
Douglas W. Henderson, MB, BS, FRCPA. FRCPath, FHKCPath, Professor of Anatomical

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Aeolus, Inc.,
San Francisco, CA

David Bernstein, Ph.D., Consultant in Toxicology, Geneva, Switzerland

Arnold R. Brody, Ph.D., Department of Molecular Biomedical Sciences, North Carolina State University,
Raleigh, NC

Andrew Churg, MD, Professor of Pathology, University of British Columbia,
Vancouver, BC

David Egilman, MD, MPH, Clinical Associate Professor, Department of Community Health, Brown University,
Providence, RI

Murray Finkelstein, Ph.D., MD, Associate Professor, Program in Occupational Health and Environmental Medicine, McMaster University and Department of Family Medicine, University of Toronto,
Hamilton, Ontario and Toronto, Ontario

Allen Gibbs, MD, Consultant of Histopathologist for the National Health Service, University Hospital Llandough,
Penarth, South Wales UK

Graham W. Gibbs, MSc Ph.D., MRSC, ROH, President, Safety Health Environment International Consultants Corp. & Adjunct Professor, Department of Medicine, University of Alberta, Alberta, Canada

Pathology, Flinders University
Adelaide, South Australia

Gunnar Hillerdal, MD, Ph.D., Assistant Professor, Department of Lung Medicine, Karolinska Institute and University Hospital, Stockholm, Sweden

Howard M. Kipen, MD, MPH, Professor and Interim Chair, Department of Environmental & Occupational Medicine
Chief, Clinical Research & Occupational Medicine Division, UMDNJ-Robert Wood Johnson Medical School
Piscataway, New Jersey

Eugene J. Mark, MD, Professor of Pathology, Massachusetts General Hospital, Harvard Medical School,
Boston, MA

Corbett McDonald, MD, FRCP, Emeritus Professor (Epidemiology), McGill University; Emeritus Professor (Occupational Medicine), University of London,
London, England

Julian Peto, DSc FMedSci, Cancer Research UK Chair of Epidemiology, London School of Hygiene & Tropical Medicine
London, England

Victor L. Roggli, MD, Professor of Pathology, Duke University Medical Center,
Durham, NC

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Google Executives Suffer Criminal Convictions In Italy for Internet Publishing

Posted on March 12, 2010 by **Kirk Hartley**

In Italy, criminal prosecutions are fairly often used for situations that likely would not be treated as criminal law issues in the US. For example, here is a brief post from Brian Leiter that links to an NYT article regarding criminal convictions suffered in Italy by three Google executives. The convictions arose from invasion of priviacy issues aring from a videoe posted online. Accoridng to the NYT article,

One can debate whether the uses of criminal law are or are not good policy. Judging by the article exceprts below, however, one can infer that complaints fron police attract especially quick attention at Google.

"A spokesman for Google, Bill Echikson, called the ruling "astonishing" and said the company would appeal. In its blog***, Google added that the ruling "attacks the very principles of freedom on which the Internet is built."***

Prosecutors said Google waited to remove the video until after complaints to the police by Vivi Down, an Italian group representing people with Down syndrome, whose name was mentioned by the boys in the video.

Google said it removed the video within two hours of receiving a formal complaint from the Italian police, two months after the video was first posted.

The boys, all minors, were not charged by prosecutors, but were sentenced by a different judge to community service. Prosecutors named the Google executives because Italian law holds corporate executives responsible for a company's actions."

TAGS: **Criminal Law and Torts**

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"Be Careful What You Wish For In Litigation" - Might that Rule Apply to the Iqbal/Twombly Pleading Standard ?

Posted on March 10, 2010 by **Kirk Hartley**

At a recent asbestos litigation conference, one of the speakers reminded everyone of the old maxim to " be careful what you wish for" in litigation. In that vein, consider the current US legislative battles about the Iqbal/Twombly pleading standard that makes it materially harder for plaintiff's to allege a complain that withstands a motion to dismiss. In this dawning age of global litigation, choice of venue and law issues are increasingly important due to global financial markets. Within that realm, consider the importance of the pleading standards as applied to, for example, the fact pattern set out in the text below from this interesting article about an investigation into an investigation by the SEC, with both investigations related to a sudden plunge in the price of a biotech stock.

Suppose the report referred to below is made public, with or without full facts being disclosed in the report ,

Under the new Iqbal/Twombly pleading standards in the US, would incorporation of the report be enough for a complaint to survive a motion to dismiss ? If not, are US firms going to find themselves facing class actions in Europe, Australia or other venues where pleaidng standards are now or may be less demanding than the Iqbal/Twombly standard ? Will suits seek out countries where class action laws exits and litigation funding is far more accepted than it is in the US ? If that happens to one degree or another, will US defendants be more or less happy than they were under the old Conley v. Gibson pleading standard ?

I'm not sure how this all turns out. But I am starting to wonder if the Iqbal/Twombly standard will end up being one of those wishes that it is later regretted by US industry. In short, it seems to me the wish for the higher pleading standard could end as a wish that ultimately accelerates litigating tort claims outside the US, . Outside the US, defendants certainly will have work to do to try to obtain the benefit of the Daubert standard so much loved by defendants.

Dendreon stock mauling probed by regulators
Tue, Mar 9 2010
By Matthew Goldstein

NEW YORK (Reuters) - A lightening fast sell-off of shares of biotech company Dendreon <DNDN.O> last April is drawing scrutiny from U.S. securities regulators and the independent monitor assigned to keep tabs on those regulators, said people familiar with the matter.

They said an investigation by the Securities and Exchange Commission into the still unexplained trading event, during which shares of Dendreon plunged more than 69 percent in 70 seconds, is ongoing.

It is not clear if the SEC inquiry into the incident, which some academics and investors have blamed on a combination of short-sellers and high-frequency trading programs, will lead to an enforcement action, said these same sources.

SEC spokesman John Nester declined to comment.

The SEC investigation partially overlapped with an inquiry conducted last summer by SEC Inspector General H. David Kotz to determine whether securities regulators were paying enough attention to the matter.

In December, Kotz submitted a confidential report on the results of his inquiry to SEC Enforcement Director Robert Khuzami, the sources said.

The SEC is considering a Freedom of Information request from Reuters to release the inspector general's report. But a person familiar with the situation said regulators will likely deny the request on the grounds that the report discusses an ongoing probe.

HEAD-SCRATCHING

The SEC cited a similar reason for rejecting an earlier FOIA request from Reuters, seeking information about any complaints filed by investors over the April 28 incident.

It is unusual for the SEC's inspector general to conduct an inquiry into the agency's handling of an ongoing investigation. Kotz's office initiated the investigation at the request of an investor and Sen. Charles Grassley, according to sources and the inspector general's semiannual

report.

Grassley spokeswoman Beth Levine said his office had not received a copy of Kotz's completed report.

The Iowa Republican has had a history of taking issue with the pace of SEC investigations and asking

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Kotz's office to review the agency's handling of enforcement matters.

A Dendreon spokeswoman declined to comment on the investigations.

Last April, the $16 plunge in shares of the Seattle-based biotech generated a good deal of head-scratching on Wall Street. That's because in little over a minute, the equivalent of an entire day's worth of trading activity in Dendreon shares took place before Nasdaq Stock Market officials halted the stock.

Stock market officials initially suspected the rapid-fire selling was sparked by a so-called fat finger trade, or a broker putting in an erroneous order to sell too many shares. But Nasdaq officials, without issuing any comment, did not void any of the trades.

STOP-LOSS ORDERS

The April 28 plunge of Dendreon shares coincided with speculation in the market that the company was going to report poor test results that afternoon for its prostate cancer drug Provenge. In fact, the opposite occurred, and the company reported generally positive test results.

Once trading was allowed to resume, the stock quickly regained all of its losses. But the freak sell-off resulted in losses for retail investors who had so-called stop-loss orders with their brokers to sell shares at a predetermined price.

When a stock plunges quickly, it can trigger a stop-loss order, a sale at a previously designated price intended to limit losses. A stop-loss order can cause an investor's shares to be sold at price lower than the one he wanted.

Reuters reported in October that many investors with stop-loss orders lost money in the sell-off and some complained to regulators and asked them to look into the matter.

There have been numerous theories for the unusual trading event.

Some investors have blamed the sell-off on a so-called bear raid by short-sellers looking to profit from a precipitous decline in a stock. Others attribute the ferociousness of the selling to computer-driven high-frequency trading programs that scan the markets looking to take advantage of trading trends.

James Angel, a professor at Georgetown University's McDonough School of Business, previously told Reuters that high-frequency trading programs may have exacerbated the plunge when the algorithms these trading firms use all glommed onto the same trend.

(Reporting by Matthew Goldstein; Editing by Steve Orlofsky)

TAGS: Comparative Law, Global Tort Choice of Law Issues, Litigation Funding. Litigation Industry

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Madoff Litigation - Feeder Fund Rulings - Luxemborg and Florida

Posted on March 10, 2010 by **Kirk Hartley**

Kevin LaCroix at the D & O Diary blog recently provided this post highlighting two recent rulings on "feeder fund" claims arising from the Madoff fraud. Those claims are where money will be gathered, or not.

A Florida opinion allowed the claim to survive a motion to dismiss, but a Luxemborg opinion dismissed the claim. Kevin also provides a link to his list collecting Madoff litigation citations and case numbers.

TAGS: Global Tort Litigation

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Class Action Law Arriving in Hungary

Posted on March 9, 2010 by **Kirk Hartley**

Kevin LaCroix at the D & O Diary blog included this recent brief post mentioning class action law arriving in Hungary. The post states:

"Class Act on the Danube: Here at *The D&O Diary*, we scour the globe looking of interest for our readers. By way of example, we refer readers to the article that appeared in the March 8, 2010 issue of the *Budapest Business Journal* (here), in which it is reported that "a revision to the standing civil code will shortly introduce class action lawsuits to the Hungarian legal system and already has a number of nongovernmental interest groups revving up to start the proceedings."

The prospects for class litigation outside the U.S. apparently continue to spread. Everyone here will remain vigilant."

TAGS: Class Actions

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Media and the Litigation Industry - Examples

Posted on March 8, 2010 by **Kirk Hartley**

Part of the llitigation industry today consists of vast amounts of media items to raise awareness of "issues." On that subject, Levick Communications explains:

"Central to any comprehensive litigation strategy is a communications plan deployed early in the process. Thus, fact-gathering, amicus briefs, media statements, regulatory outreach, employee messaging, and even jury arguments are skillfully planned and orchestrated for maximum public impact and effectiveness.

Plaintiffs and prosecutors have long used mass media to tell their side to the public. But their increased strategic use of digital and social media, as well as Search Engine Optimization, Internet blogs, and social networking sites has raised the stakes – intensifying their power to influence journalists, juries, regulators, analysts, lawmakers, potential litigants, and even judges. In today's environment, ensuring effective management of the Court of Public Opinion has become a critical component of any litigation strategy."

Examples? Insurers generate news stories from websites on "insurance fraud" and time and again issue

Workers' Compensation
inductive fallacy
nanotubes
Archives

LINKS
International Ban Asbestos Secretariat

BLOGS
Nudge blog
Risk Management Monitor
Schneier on Security
The Epicurian Dealmaker

papers and announcements about "insurance' fraud" and "fraud in claiming." While there surely have been some frauds, the problems are often overblown. But constantly raising the topic creates awareness.

On another side of the litigation industry, the plaintiff side, much ink is devoted to keeping "asbestos" and "health" out in front of people. A new example popped up this week, and is set out below. Note the consistent focus on raising awareness:

ADAO Praises Senate for Introduction of Sixth Annual Resolution that Establishes “National Asbestos Awareness Week”

March 03, 2010 02:44 PM Eastern Time

WASHINGTON–(EON: Enhanced Online News)–The Asbestos Disease Awareness Organization (ADAO), the leading organization serving as the voice of asbestos victims, today applauds Senator Max Baucus (D-MT) and cosponsors for introducing a resolution that declares the first week of April as “National Asbestos Awareness Week” and seeks to “raise public awareness about the prevalence of asbestos-related diseases and the dangers of asbestos exposure.”

Additional cosponsors and key supporters include: Senator Barbara Boxer (D-CA), Senator Richard Durbin (D-IL), Senator Dianne Feinstein (D-CA), Senator Johnny Isakson (R-GA), Senator Patrick Leahy (D-VT), Senator Patty Murray (D-WA), Senator Harry Reid (D-NV), and Senator Jon Tester (D-MT).

“We are grateful to the U.S. Senate to have the opportunity to help raise the level of public awareness about the prolific dangers of asbestos and further unite doctors, scientists, and public health advocates during National Asbestos Awareness Week for this important effort. During the past six years, ADAO has seen the progress and indeed, this confirms what Americans deserve and want, we know asbestos prevention and education will save lives and dollars,” said Linda Reinstein, Executive Director and Co-Founder of the Asbestos Disease Awareness Organization.

Asbestos is a known human carcinogen and exposure can cause asbestos-related diseases, including mesothelioma, lung cancer and asbestosis. Studies estimate that during the next decade, 100,000 workers around the world will die of an asbestos related disease – equaling 30 deaths per day.

ADAO will hold its Sixth Annual International Asbestos Conference on April 10, 2010 in Chicago, Illinois.

About Asbestos Disease Awareness Organization
Asbestos Disease Awareness Organization (ADAO) was founded by asbestos victims and their families in 2004. ADAO seeks to give asbestos victims and concerned citizens a united voice to raise public awareness about the dangers of asbestos exposure. ADAO is the largest independent organization dedicated to preventing asbestos-related diseases through education and legislation. ADAO’s mission includes supporting global advocacy and advancing asbestos awareness, prevention, early detection, treatment, and resources for asbestos-related disease. For more information visit www.asbestosdiseaseawareness.org.

TAGS: Litigation Industry

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Banks Sued Six Months After the The Cubs Were Cleansed in Chapter 11

Posted on March 7, 2010 by **Kirk Hartley**

Remember that Crain's reported that the the solvent Chicago Cubs would made a quick trip last fall through chapter 11 for a cleansing bath and chapter 11 injunction to make the entity easier to sell, and my former partner's query whether the Cubs would need bankruptcy court approval to put on the take sign in a key game that could effect the value of the franchise ? Perhaps one of the reason was anticipation of a suit filed last week by Tribune bondholders challenging bonds sold prior to Sam Zell buying the Tribune in a massive leveraged buyout that ended in Chapter 11. Set out below are some excerpts from an article by Randal Chase regarding the allegations.

By RANDALL CHASE (AP) – 1 day ago

"DOVER, Del. — Bondholders in the Tribune Co.'s Chapter 11 bankruptcy case are suing the banks that financed the media company's 2007 leveraged buyout, claiming they knew that the resulting debt load would leave Tribune insolvent.

The lawsuit was filed in U.S. Bankruptcy Court in Wilmington by Wilmington Trust Co., agent for holders of $1.2 billion in bonds sold by the company before real estate mogul Sam Zell led Tribune's $8.2 billion buyout.

The bondholders argue that the deal was fraudulent because it loaded up the company with too much new debt that was used to cash out Tribune stockholders. They want a bankruptcy judge overseeing Tribune's Chapter 11 case to reject the banks' secured claims, or at least have them paid only after the bondholders' unsecured claims are satisfied. Typically, secured claims get higher priority.

Defendants in the lawsuit include JPMorgan Chase, Citigroup, Bank of America and its Merrill Lynch subsidiary, the lead banks involved in the leveraged buyout, or LBO. Representatives of Tribune and the banks declined to comment Friday."

TAGS: Bankruptcy

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Disability Rights - Conference on the United Nations Convention on the Rights of Persons with Disabilities

Posted on March 7, 2010 by **Kirk Hartley**

Disability rights and international aw are coming together in an upcoming seminar. "The Disability Rights Legal Center, along with Loyola Law School Los Angeles is hosting the International and Comparative Law Review Symposium on the significance of the United Nations Convention on the Rights of Persons with Disabilities. The event will take place from 10:00 AM - 5:00 PM, Friday, March 19, 2010 at Loyola Law School Los Angeles." Go here to register or for more details.

TAGS: Comparative Law

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Some State Court Asbestos Trial Judges Moving Forward To Account for Billions in Asbestos Bankuptcy Trusts

Posted on March 4, 2010 by **Kirk Hartley**

As explained before in many posts categorized under "asbestos bankruptcy," the situation in the US today is that we have two different compensation systems for persons suffering from asbestos-related disease. They are the tort system and the bankruptcy trust system. The two have been operating largely independently, but real change is starting to bring the two systems together.

Specifically, two recent orders from state court "asbestos docket judges" mark meaningful and much needed progress in accounting for the billions of dollars that are being paid out annually through asbestos bankruptcy trusts. Both orders are part of "Case Management Orders" (CMOs) that are used by trial judges to streamline case management by providing one set of rules applicable to all (or most) cases on an asbestos docket in a particular county or state (Texas has a statewide asbestos MDL).

In short, both of these recent orders require disclosure of claims submitted to trusts by asbestos claimants. This is an important first step. The order from West Virginia is especially important because it goes on to include several additional terms that are much needed to create an intersection between the two now separate systems. The following provides a summary.

- In Pennsylvania, the Court of Common Pleas of Montgomery County issued a February 22, 2010, CMO requiring plaintiffs to disclose all bankruptcy trust claims at least 120 days prior to trial. See paragraph 10.

- In West Virginia, the Kanawha County Circuit Court, issued a March 3, 2010 CMO order that adds a lengthy new paragraph 22 to deal with asbestos trusts . Like the February 22 order in Pennsylvania, this order require plaintiffs to disclose all existing bankruptcy trust claims at least 120 days prior to trial. The West Virginia order also goes much further, and appropriately orders plaintiffs and their counsel to take several other affirmative steps to ensure that tort system defendants are fully aware of and benefit from future recoveries in the trust system. Specifically:

1. Section 22(A)(2) requires counsel to disclose whether any claims to trusts have been submitted to a trust but deferred or delayed, This provision is pertinent because delays and deferrals are permitted by the terms of some trusts and/or their Trust Distribution Procedures (TDPs, as they are known). Defense counsel typically view such terms as having been crafted to allow gaming the two systems by allowing the plaintiff to bring and resolve state law tort claims before pursuing trust claims. Plaintiff's counsel are of course free to argue a plausible alternative reason for allowing plaintiff's to delay or defer submitting claims until after the tort claim is over

2. Section 22(A)(2) requires a good faith investigation of potential claims against trusts and requires an affidivait from plaintiff or plaintiff's counsel to affirm the good faith investigation of potential claims against trusts.

3. Section 22(C) addresses trial use of the claim forms and ancillary documents. Among other things, Section 22(C) precludes plaintiff from arguing privilege or confidentiality to try to keep the claims out of evidence.

4. Section 22(D) explicitly allows underlying case co-defendants to pursue discovery against asbestos trusts (subject to federal law limits, if there are any that apply in this setting), and explicitly requires plaintiff to provide any consents or permissions that any trust may request.

5. Section 22(E) specifies that defendants that lose a trial judgment to a plaintiff are entitled to offsets for

liquidated amounts paid by trusts, and requires related disclosure of the total amounts recovered or "reasonably expected to be recovered" from bankruptcy proceedings or settlements with tort system defendants.

7. Section 22(E) further provides that if a plaintiff obtains a judgment against a defendant, then the plaintiff must assign to the judgment defendant the right to all future asbestos trust payments.

TAGS: Asbestos Bankruptcy

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Substances Causing Disease in Multiple Generations ?

Posted on March 1, 2010 by **Kirk Hartley**

Remember the issues regarding DES daughters and sons said to be suffering additional diseases, and a class action settlement in the Netherlands ? More recently, There are some new indicators that some chemicals inflict some epigentic changes that will or may cause multigenerational disease issues.

For a 2006 nonscience article, see this *Vanity Fair* article on claims that Agent Orange is causing horrible deformities in third-generation descendants of persons exposed to Agent Orange. For more science, here is a new ScienceDaily article on BPA exposure during pregnancy.

"Taylor and colleagues made this discovery by exposing fetal mice to BPA during pregnancy and examining gene expression and DNA in the uteruses of female fetuses. Results showed that BPA exposure permanently affected the uterus by decreasing regulation of gene expression. These epigenetic changes caused the mice to over-respond to estrogen throughout adulthood, long after the BPA exposure. This suggests that early exposure to BPA genetically "programmed" the uterus to be hyper-responsive to estrogen. Extreme estrogen sensitivity can lead to fertility problems, advanced puberty, altered mammary development and reproductive function, as well as a variety of hormone-related cancers. BPA has been widely used in plastics and other materials. Examples include use in water bottles, baby bottles, epoxy resins used to coat food cans, and dental sealants.

"The BPA baby bottle scare may be only the tip of the iceberg." said Gerald Weissmann, M.D., Editor-in-Chief of The FASEB Journal. "Remember how diethylstilbestrol (DES) caused birth defects and cancers in young women whose mothers were given such hormones during pregnancy. We'd better watch out for BPA, which seems to carry similar epigenetic risks across the generations. "

TAGS: Science

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