

## Product & Mass Torts Summit 2022: Key Takeaways

JULY 18, 2022

### **UNSTACKING THE DECK: BUILDING DEFENSE WINS IN A PLAINTIFF-FRIENDLY PRODUCTS AND MASS TORT WORLD**

Winston & Strawn held its second-annual [Product & Mass Torts Summit](#) on June 7, 2022. The Summit harnessed the collective experience of Winston's Product Liability & Mass Torts group, as well as of esteemed in-house counsel guest speakers, to explore effective strategies to capitalize on the changing legal landscape and combat common plaintiff tactics. The Summit included six panels with topics ranging from understanding regulatory and compliance changes, developing scientific and epidemiological defenses, managing plaintiff maneuvers in MDLs, preparing corporate witnesses for trial, maximizing appellate success, and understanding how outside counsel can partner with clients to defend against mass tort litigation. In case you missed it, below are our key takeaways from the Summit.

#### **How EPA, FDA, and Federal Regulation Drive Mass Tort Litigation**

Federal regulatory agencies, such as the EPA and FDA, are assessing the health and safety risks associated with chemicals and products in many commonly used industrial, consumer, and food applications. These assessments are generating private-party mass tort and product liability litigation. Companies should understand what these agencies are doing, how proposed regulatory changes may impact them, and what steps to take to minimize and mitigate mass tort and product liability exposure.

#### **Challenges and Opportunities in Developing a Scientific Defense to Causation**

Epidemiological evidence typically plays an important role in product liability and toxic tort proceedings. Properly analyzing the strengths and weaknesses of relevant epidemiological evidence is often a key aspect of asserting a robust causation defense.

#### **Strategies for Addressing Plaintiff Evolving Tactics in MDLs: Public Nuisance and Beyond**

Plaintiffs seek to extract settlements from defendants by filing a large number of cases where there are low barriers to entry. Defense counsel should look for opportunities to highlight plaintiffs' weaknesses, ensure credibility with

the court, and communicate frequently with their clients to define success in a challenging landscape.

### **Preparing and Presenting Corporate Witnesses at Trial**

Properly preparing and presenting corporate witnesses for trial is critical to successfully defending the corporate client. This requires ensuring enough time is set aside in advance to thoroughly prepare the witness by mock direct and cross-examinations based on the key facts, documents, deposition testimony, and other relevant trial issues.

### **Appeals and Critical Motions: Laying the Groundwork for a Successful Outcome**

To maximize the chances of ultimately succeeding on appeal, it is essential to identify and preserve legal issues from the very outset of litigation. One way to do that is to have appellate attorneys work with trial attorneys to draft dispositive motions, motions in limine, and proposed jury instructions.

### **The Realities of Mass Torts: In-House Perspectives**

The responsibilities of in-house counsel for product liability and mass tort litigation go far beyond supervising wins and losses in the courtroom and extend to partnering with the business to defend against brand attacks, crisis management, media and public relations activities, enlisting third-party allies in a global defense, and considering the impact of litigation on regulators and the business. Our distinguished in-house panel explained how the best outside counsel will be a strategic and business partner advising on all these aspects of mass tort litigation.

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### **YOUR WINSTON CONTACTS**

Please do not hesitate to reach out to the following Winston & Strawn speakers with any questions, comments, or suggestions for future programming on product liability and mass tort litigation.

**HOW EPA, FDA, AND FEDERAL REGULATION DRIVES MASS TORT  
LITIGATION**  
[JONATHAN BRIGHTBILL](#)  
[TERRENCE DEE](#)  
[MADALYN BROWN](#)

**CHALLENGES AND OPPORTUNITIES IN DEVELOPING A SCIENTIFIC  
DEFENSE TO CAUSATION**  
[MATT CAMPBELL](#)  
[RAND BROTHERS](#)  
[MATT SAXON](#)

**STRATEGIES FOR ADDRESSING PLAINTIFF EVOLVING TACTICS IN MDLS:  
PUBLIC NUISANCE AND BEYOND**  
[SHARON DESH](#)  
[LUKE CONNELLY](#)  
[CHRIS ESSIG](#)  
[CHRISTOPHER MURPHY](#)  
[SCOTT AHMAD](#)

**PREPARING AND PRESENTING CORPORATE WITNESSES AT TRIAL**  
[SANDRA EDWARDS](#)

SAMUEL MENDENHALL  
MICHAEL MURPHY

APPEALS AND CRITICAL MOTIONS: LAYING THE GROUNDWORK FOR A  
SUCCESSFUL OUTCOME

ANDY TAUBER  
SEAN SUBER

THE REALITIES OF MASS TORTS: IN-HOUSE PERSPECTIVES

BRYCE COOPER  
LINDA COBERLY

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## Author

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## Related Locations

Chicago

Washington, DC

## Related Topics

Product Liability

Mass Torts

## Related Capabilities

Product Liability & Mass Torts

## Related Regions

North America

## Related Professionals



Matthew Saxon

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