

# Oil in the Gulf-Litigation and Insurance Coverage

June 24-25, 2010 | Ritz-Carlton Hotel, Atlanta

## CONFERENCE CHAIRS:

Richard Faulk, Esq., Gardere Wynne Sewell LLP, Houston

Lorelie Masters, Esq., Jenner & Block LLP, Washington, D.C.

Mike Papantonio, Esq., Levin Papantonio Thomas Mitchell Echsner Rafferty & Proctor, P.A., Pensacola, FL

Philip Silverberg, Esq., Mound Cotton Wollan & Greengrass, New York

Perry Weitz, Esq., Weitz & Luxenberg, New York



<b>June 24, 2010</b>		<b>12:15</b>	<b>Lunch and Keynote Address</b> Robert F. Kennedy, Jr., Esq., Kennedy & Madonna LLP, Hurley, NY
<b>8:00</b>	<b>Morning Registration &amp; Continental Breakfast</b> Sponsored by Cozen O'Connor	<b>1:30</b>	<b>Understanding the Intersection of Maritime Law, the Jones Act and Oil Pollution Act</b> • Oil Pollution Act of 1990 (OPA) • OCSLA • General maritime law considerations • Potential for limitation of liability • Choice of law considerations • Wrongful death claims under DOHSA and general maritime law • The role of common law • Crude oil-potential liability limitations for offshore drilling disasters <b>Robert McKee, Esq., Krupnick Campbell Malone Buser Slama Hancock Liberman &amp; McKee, P.A., Fort Lauderdale, FL</b> <b>Christopher Kende, Esq., Cozen O'Connor, New York</b> <b>Richard Faulk, Esq., Gardere Wynne Sewell LLP, Houston</b>
<b>8:30</b>	<b>Introductory Remarks</b>	<b>2:30</b>	<b>Natural Resource Damages &amp; Remediation Efforts</b> • What is the right NRD model for the gulf oil spill? • Administration issues and appropriate compensation • Coordinating beach front community clean up and government clean up efforts <b>Allan Kanner, Esq., Kanner &amp; Whiteley, L.L.C., New Orleans</b> <b>Christopher Marraro, Esq., Howrey, LLP, Washington, D.C.</b> <b>Ira Gottlieb, Esq., McCarter &amp; English, LLP, New York</b> Additional speakers to be announced.
<b>8:45</b>	<b>Factual Overview-Who Knew What and When and the Extent of Damage Today</b> • What caused the explosion and subsequent spill? • When did BP know of the potential hazards the explosion and spill • Understanding and identifying the key players in the potential liability scheme • The Governments' role in the lease, emergency response plan and clean up • When will the spill be contained and when will the full extent of damage be known • Comparison of this spill to Exxon Valdez -Extent of damage and time of clean up -Legal claims & damage potential -Likely influence, if any, of Valdez' Supreme Court rulings <b>Mike Papantonio, Esq., Levin Papantonio Thomas Mitchell Echsner Rafferty &amp; Proctor, P.A., Pensacola, FL</b> <b>Perry Weitz, Esq., Weitz &amp; Luxenberg, New York</b> <b>Robert (Buzz) Hines, Esq., Farella Braun + Martel LLP, San Francisco</b>	<b>3:30</b>	<b>Afternoon Break</b>
<b>10:00</b>	<b>Doing the Deep Dive with the Experts</b> • Description of the damage today vs. tomorrow, to the marine ecosystem • Wildlife particularly susceptible to injury • Analysis of water contamination • What will it take to rebuild the systems lost? • The industries impacted and how: fisheries, canneries, tourism, rental properties, etc. • Advising clients today on evidence on loss and special concerns for certain industries now in federal court regarding economic loss proofs <b>Glenn Swetman, Esq., Swetman Baxter Massenburg, LLC, New Orleans</b> Additional speakers to be announced.	<b>3:45</b>	<b>Case Selection: Personal Injury and Economic Loss Cases</b> • The likelihood of more personal injury claims and how to screen these clients • What kind of economic loss can we anticipate from this spill, when will they be ripe for filing, and what kind of evidence will you need from your client • What kind of economic loss is anticipated from this spill, when will claims be ripe, and what evidence is required? • Viable theories of liability • Business interruption • Electronic discovery issues • Client intake and screening process oConducting internal investigations oConflicts of interest in representing multiple clients with competing interests • Understanding the corporate culture of defendants like BP and how it impacts your case development • Public relation campaigns and communications of big defendants-effects and strategies to address them <b>Brent Coon, Esq., Brent Coon &amp; Associates, Beaumont, TX</b> <b>Eric Lasker, Esq., Hollingsworth LLP, Washington, DC</b>
<b>11:00</b>	<b>Morning Break</b>	<b>4:45</b>	<b>National Survey of Cases Filed to Date &amp; Coordinating State and Federal Cases</b> • The number of lawsuits filed to date, where and MDL update • The anticipated placement of the MDL in the Eastern District of Louisiana and its impact <b>Christopher Seeger, Esq., Seeger Weiss LLP, New York</b> <b>Scott Summy, Esq., Baron &amp; Budd, P.C., Dallas</b>
<b>11:15</b>	<b>Filing Claims Against BP vs. Filing a Claim with the Oil Spill Liability Trust Fund</b> • How does filing a claim with the OSLTF work? What are the limitations? • Can you file a claim with the OSLTF and also file suit against BP? • Are any monies being paid out initially by BP to claimants the full and final settlement with those claimants, or will they still have the option to file suit later on? Is BP having claimants sign releases? <b>Vance Andrus, Esq., Andrus • Boudreaux, P.L.C., Denver</b>	<b>5:45</b>	<b>Networking Reception</b>
<b>11:45</b>	<b>Understanding the Valuation Issues</b> • Valuing the losses of private property appurtenant to the natural resources • Valuing the losses to business dependent on impacted natural resources • Use and enjoyment losses by impacted property owners-how to value and prove them • Fiscal losses suffered by taxing authorities (e.g. – property taxes, business taxes, tourism, etc.) <b>John Kilpatrick, PhD, Chief Executive Officer, Greenfield Advisors, Seattle</b> <b>Chip Merlin, President, Merlin Law Group, P.A., Tampa, FL</b>		

- 7:30 Continental Breakfast**
- 7:30 Filing a Claim for Business Interruption, Property Damage or Other Economic Losses**
- Step-by-step process for filing these claims in a timely manner
  - Policy provisions affecting submission of claims
  - Liability and first-party property insurance claims, including notice, proof of loss, examinations and contractual limitations periods
  - What you need to do to prepare your claim
  - Gathering documents and the right information
- Gary Mason, Esq., Mason LLP, Washington, D.C.**  
**Matthew Schlesinger, Reed Smith LLP, Washington, D.C.**  
**Nancy Sher Cohen, Esq., Proskauer Rose LLP, Los Angeles**
- 8:30 Insurance Coverage Issues for Losses Due to the Oil Rig Explosion in the Gulf of Mexico**
- First party property insurance
  - Direct physical loss or damage coverage - pollution/ environmental based claims, sue and labor, potential exclusions and limitations
  - Time element coverages - business interruption and contingent business interruption, extra expense, ingress/egress, civil authority, and market condition impact
- Selena Linde, Esq., Dickstein Shapiro, Washington, D.C.**  
**Kali Bracey, Esq., Jenner & Block LLP, Washington, D.C.**  
**Thomas Brown, Esq., Gibbons P.C., Philadelphia**  
**Philip Silverberg, Esq., Mound Cotton Wollan & Greengrass, New York**
- 9:30 Insurance Coverage Issues for Losses Due to the Oil Rig Explosion in the Gulf of Mexico - Part Two**
- Other Coverages
  - Off-shore/oil rig
  - CGL
  - Environmental
  - Trade disruption
  - Event cancellation
  - Possible insurer defenses to coverage
- Selena Linde, Esq., Dickstein Shapiro, Washington, D.C.**  
**Kali Bracey, Esq., Jenner & Block LLP, Washington, D.C.**  
**Thomas Brown, Esq., Gibbons P.C., Philadelphia**  
**Philip Silverberg, Esq., Mound Cotton Wollan & Greengrass, New York**
- 10:30 Morning Break**
- 10:45 Advanced Insurance Discussion**
- D & O/Fiduciary liability insurance
  - E & O insurance
  - Criminal liability
  - Specialized insurance
  - Coverage for criminal liability
  - First-party issues, including valuation and appraisal
  - Additional insureds or "Other People's Insurance"
- Lorelie Masters, Esq., Jenner & Block LLP, Washington, D.C.**  
**John Shugrue, Esq., Reed Smith LLP, Chicago**  
**David Topol, Esq., Wiley Rein LLP, Washington, D.C.**  
**Scott Seaman, Esq., Meckler Bulger Tilson Marick & Pearson LLP, Chicago**
- 11:45 Reinsurer Concerns**
- Types of covers implicated by the loss
  - Exclusions
  - Follow the settlements and other issues with a captive cedent
  - Choice of law
  - Association
  - Occurrence definition
  - Allocation of uninsured liability
- Carey Child, Esq., Chadbourne & Parke LLP, Washington, D.C.**  
**Rick Rosenblum, Esq., Akin Gump Strauss Hauer & Feld LLP, San Antonio**
- 12:45 Adjourn**

**Richard Faulk** chairs Gardere's Litigation Department and the Firm's Environmental Practice Group. He concentrates his practice in complex toxic tort and environmental litigation, including class actions and other "mass tort" cases involving multiple plaintiffs and defendants. He has significant expertise in cases with international implications and comparative mass tort procedures. Mr. Faulk also leads Gardere's Climate Change Task Force. He and his partner, John Gray, have authored one of the major scholarly papers in the area, "Stormy Weather ahead: The Legal Environment of Global Climate Change." This comprehensive article has been presented at conferences of the United States Chamber of Commerce, in media events at the Washington Legal Foundation, at various Professional Development seminars for lawyers, engineers, and businessmen.

**Lorelie Masters** is a partner in Jenner & Block's Washington, DC office. She is a member of the Firm's Litigation Department and Climate and Clean Technology Law and Insurance Litigation and Counseling Practices. Ms. Masters was recognized in the 2007, 2008, 2009 and 2010 editions of Washington DC Super Lawyers for Insurance Coverage Litigation, and by The Best Lawyers in America for Insurance Law in 2008, 2009 and 2010. Since 2005, Chambers & Partners USA has named Ms. Masters one of the country's leading lawyers in Insurance Law. Since 1983, she has advised and represented companies and individuals seeking to enforce insurance coverage under general liability, directors & officers, first-party property, health, and other types of insurance. Ms. Masters also has extensive experience in e-commerce issues and related records-management and electronic-discovery issues that arise from the increasing reliance on technology and computers. Ms. Masters has handled, tried, and settled cases in state and federal trial and appellate courts across the country and, more recently, in arbitrations in the United States and abroad. At issue in these cases typically have been millions of dollars of insurance coverage for products liability and directors and officers claims.

**Mike Papantonio, Esq.,** is a Partner of Levin Papantonio Thomas Mitchell Echsner Rafferty & Proctor, P.A. in Pensacola, FL. He practices Mass Torts, Product Liability, Mesothelioma, Personal Injury/Wrongful Death and Environmental Law.

**Philip Silverberg, Esq.,** is a Partner of Mound Cotton Wollan & Greengrass in New York. He has more than twenty-five years of experience in insurance coverage and reinsurance litigation, as well as commercial, tort and corporate litigation. His practice has included trials, arbitrations, and appeals involving insurance coverage disputes, third-party defense, environmental claims, subrogation, reinsurance, broker liability, property and casualty losses, and fraud claims. Mr. Silverberg has litigated in state and federal courts throughout the United States. He has served as national coverage counsel to insurers on a number of catastrophes, including 9/11 and Katrina. Chambers & Partners USA has named Mr. Silverberg as a leading lawyer in insurance and he also was recognized in the Guide to the World's Leading Insurance and Reinsurance Lawyers. Mr. Silverberg also has lectured on insurance coverage and claims-handling practices and has published in numerous publications on these topics.

**Perry Weitz, Esq.,** pioneered asbestos litigation in New York City and throughout New York State. He is liaison counsel in both State and Federal Court. Mr. Weitz tried some of the most significant cases in the New York Asbestos Litigation. He was lead counsel in the first major consolidated trials, and has obtained some of the largest verdicts in the country. Mr. Weitz has led Weitz & Luxenberg in successfully obtaining asbestos verdicts approaching a billion dollars. He was the first lawyer in the state of New York to get punitive damages verdicts against Celotex Corporation and Keene Corporation. Mr. Weitz has settled thousands of asbestos cases under his Privatization Theory, and has spearheaded the National Settlement Program of Owens Corning/Fibreboard negotiating the first settlement and implementing his theory on Privatization. Mr. Weitz, as chairman of the Haliburton Bankruptcy Committee, negotiated a \$5.1 billion settlement for present and future claimants. He is on the Trust Advisory Committee for more than a dozen Asbestos Bankruptcy defendants.

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