

**Minutes – ABA Mass Torts LITIGATION Committee**  
**Notes of October 9, 2012 Conference Call**

**Call Participants:** Andrew J. Scholz; Brooke C. Tigchelaar; Cheryl M. Woodin; David A. Lester; David Elman; Deborah Elsasser; Eric Hudson; James M. Beck; Karen Woodward; Laurie Novion; Matthew A. Moeller; Paul V. Majkowski; Paul Rheingold; Stuart Fraenkel; David Schwan; Catherine Riegle; Beatty O'Donnell

**New Format:** Monthly calls are going to be open to all members.

**News:** We are adding three (3) new co-chairs.

**Leadership Conference:** St. Louis, MO. Several committee members attended. Spent almost a full day going over what was done in past and direction for future for the ABA Mass Torts Committee.

- Decided to open up conference calls
- Decided to bring on more subcommittee co-chairs
- Going to take on book assignment (pre-caption) subject matter  
→ taking volunteers
- Podcasts (10 min) for ABA to post “Sound Advice” – Practical Tips – see sample CD and see ABA website – Committed to doing at least three (3) of these
- Case Reports – new agenda for conference calls
- Two (2) minute introductions

**Chemical Products CLE Seminar Update:** October 29 – NY. E-Blast coming soon.

- Judge Hellerstein will be a speaker
- St. Johns University School of Management = location
- St. John’s School of Law = co-sponsor
- Working on publicity
- Registration fee is very reasonable
- Any assistance in getting attendees will be appreciated.

**Updates Other – CLE:**

**Regional CLE:** Products Pharmaceutical CLE November 16, 2012 – just outside of Boston, MA (day before Women and Product Liability Seminar)

- Should attend both
- Brochure just about done
- Always sells out so register early

**Joint CLE Update:** Steamboat, Co – Ski – in / Ski – out Program. Theme – Increased Regulation. January 31 – February 2, 2013.

- Speaker letters are out

- Working on more sponsors
- Still trying to finalize an insurance representative and judge for a Mass Torts Panel – please send suggestions
- Co-sponsored with Products and Environmental Committees

## Case Reports

### **National Union v. American Eurocopter – Deb Elsasser**

- Helicopter crash in Hawaii
- Claimed Mechanical failure
- Insurer for Heli USA (HI entity) settled passenger injury and death cases and sought contribution from parts manufacturers in HI state court
- Parts mfgers removed and filed Motion to Dismiss for lack of jurisdiction
- Court found no jurisdiction of parts suppliers
- Denied jurisdiction discovery
- Case transferred to N. District, TX
- Insurer added Eurocopter USA / French Eurocopter and these defendants moved to dismiss on claim no right of contribution under TX law
- TX Court agreed
- 5th Circuit reviewed De Novo
- Choice Law = TX because Pts supplier located in TX, and had a TX choice of law clause in supply agreement...
- Court chastised National Union. Need to consider jurisdiction, contribution laws and choice of law issues before settle cases with plaintiffs and seek contribution from non-settling co-defendants

### **Glazer v. Whirlpool – Cheryl Woodin**

- Class Certification allegations – Negligence, etc.
- Front Loading washing machines
- Accumulate mold, mildew and smell – defect allegations
- IL-(2011) denied cert of class action
- looked at expert evidence –
- (on appeal) supporting Whirlpool’s contention that design changes over time – could not determine commonality
- DRI Filed Amicus
- OH – found design changes not an issue and found predominance of issues
- (request for rehearing) – CT Appeals (2012) – upheld decision
- Ontario Canada – m/ certify Class Dismissed
- Cannot sue for shoddy, but non-dangerous damages
- Law does not recognize this type of tort
- Currently being appealed

**Two (2) Min Intro:** Eric Hudson – been on committee for quite some time. Enjoys committee and group of people. Mass Torts Practice – Pharma (Past – Chemical / Toxic Torts and Product Liability) and dabbles in Patent / I.P. Practice is keeping him busy. Married 3 kids. Defense lawyer.

**Adding Members:** Catherine Reigle - Looking for someone to go to AAA Section of Litigation – Young Lawyer Program – in Charleston, SC (October 18, 19, 2012) to recruit. TIPS sends folks to recruit – this is good opportunity for us to recruit.

**MISC:** Jim Beck – Short one Article for next issue of Newsletter – Needs the article from Shook Hardy – Ina Chang