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# BRAIN INJURY LITIGATION

March 29–30, 2012 | The Union League | Philadelphia, PA

## Hear from and network with:

Richard P. Kidwell

University of Pittsburgh Medical Center

Cheryl M. DeKleine, Esq.

Coverys

Richard Henderson, CPCU, AIC, ARM, AUI

Transatlantic Reinsurance

Olga Kats-Chalfant

Conventis InterInsurance Exchange

Molly L. Farrell

MGIS Property and

Casualty Insurance Services, Inc.

Stephen Pavkovic, RN, MPH, JD

Northwestern Memorial HealthCare

Pamela A. Johnson

Minnesota Medical Insurance Exchange

Michael D. Anderson

Medical Insurance Exchange of California

Jennifer Green

Fireman's Fund Insurance Company

Linda Quirk, RN

Carolina Health Care System

Keith Rospond

MHA Insurance Company

James S. Adams, CPCU

Zurich North America

John S. Moore

Swiss Reinsurance Americas Corporation

Crystal Strader, AIC, CPHRM

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Kenneth J. Appleby

Detroit Medical Center

Kathleen Stillwell, MPA/HSA, RN, CPHRM

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## Gain key strategies and updates from top in-house counsel, outside counsel, claim specialists, risk managers, neuropsychologists and neurologists on:

- **Closed head brain injury:** Creating the right strategy at the outset to prove your case and establishing alternative causation theories
- **Jury communication and advocacy:** Telling the story, deconstructing complex medical terms and using cutting edge technology for demonstrative evidence
- **Using expert and lay witnesses** to effectively support your case on causation and maximize the strength of your case
- **First observation at the scene: Diagnosing a mild to moderate TBI,** understanding the subtle nuances, and identifying the appropriate treatment
- **Using neuroimaging tests on the brain to detect areas of damage** and determining admissibility under *Daubert/Frye*
- **Using neuropsychology tests to quantify mild to moderate TBI:** Determining the baseline and wading through the multitude of tests
- **Assessing monetary value of a brain injury case** and calculating pre-trial costs
- **Childbirth brain injury:** Causes, prevention and the standard of care

## Featuring unparalleled medical insights from:

T. Walter Harrell, Ph.D., ABPP

MediSys Rehabilitation, Inc.

Brian D. Greenwald, MD

Mount Sinai School of Medicine

David Ross, MD

Virginia Institute of Neuropsychiatry

M. Mike Kreidie M.D. FAAN

University of California at Irvine

## Obtain insight as to the perspectives from the Bench. Hear from:



Hon. Warren Eginton  
U.S. Dist. Ct., D. Conn.



Hon. C. Ashley Royal  
U.S. Dist. Ct., M.D. Ga.



Hon. Robert B. Collings  
U.S. Dist. Ct., D. Mass.



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



Hon. Richard Kramer  
Super. Ct. of Calif., San Francisco Co.

## Don't Forget to Also Register for the Post-Conference Strategy Sessions on the Intersection of Law & Science:

- A** Successfully Litigating a Brain Injury Case from Start to Finish
- B** Sound Discovery Practices Related to Depositions, Social Media, Expert Witnesses and Lay Witnesses

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## Be a part of the nation's premier brain injury conference and gain key updates on current and emerging litigation trends and the standard of care while networking with insurance and hospital professionals

Jury verdicts for brain injury litigation claims are on the rise and multi-million dollar verdicts are being handed down at a record pace. With so much at stake, it is essential for both plaintiff and defense attorneys and in-house insurance and hospital professionals to remain abreast of all that is happening in the brain injury litigation landscape.

Attend ACI's **Premier Summit on Brain Injury Litigation** and hear from an unparalleled medical and legal faculty that will provide new tips and strategies for establishing causation/alternative causation theories and developing a solid case from the very beginning stages of litigation. Learn how to craft courtroom strategies for effective jury communication, use cutting edge technology for demonstrative evidence, interview engaging and knowledgeable medical expert witnesses, and assess the monetary value of your case.

Furthermore, there has also been a surge in mild to moderate traumatic brain injury litigation. Because of this shift in focus, it is essential for outside counsel to learn how to detect mild to moderate traumatic brain injury, understand subtle nuances and wade through sophisticated medical terminology. Our panel of leading medical and legal experts will guide you through the complex medical terms associated with mild to moderate traumatic brain injury. No longer is the MRI/CAT scan the only game in town in detecting and imaging a brain injury. Experts in the field will explain the science behind the current and emerging neuroimaging tests to detect mild to moderate TBI that are shaking the industry and creating controversy. Outside counsel will benefit from a thorough review of these neuroimaging tests and determine which are worth spending the cost up front and which are "junk science."

Furthermore, pre-trial costs can reach in the six figures making it vital for outside counsel to have the necessary tools to assess the monetary value of the case beforehand in order to maximize the strength of the case. Telling the jury the extent of the brain injury through use of demonstrative evidence such as 3D animation and brain slicing video has become the norm. This costly method can be effective and useful if the right medical expert witness can testify, deconstruct complex medical terms and engage with the jury. Attend this pivotal event and learn how to wade through the myriad of choices out there in terms of demonstrative evidence and which will add value to your case.

**PLUS, add value to your attendance by also registering for the Post-Conference Strategy Sessions on the Intersection of Law & Science:**

- A Successfully Litigating a Brain Injury Case from Start to Finish
- B Sound Discovery Practices Related to Depositions, Social Media, Expert Witnesses and Lay Witnesses

This event is a premier, must-attend event for outside counsel, medical professionals, and insurance professionals involved with brain injury litigation cases. You will not want to miss this unparalleled opportunity to obtain up-to-the-minute information and critical advice from the nation's leading medical and legal experts. Register now by calling 1-888-224-2480 or by faxing your registration form to 1-877-927-1563. You can also register online at [www.AmericanConference.com/BrainInjury](http://www.AmericanConference.com/BrainInjury)

### Who You Will Meet

- Lawyers, both plaintiff and defense, who litigate brain injury cases attending in order to get a solid grounding on the latest medical issues upon which cases are based. Our faculty of medical and legal experts from around the nation will provide you with the **information and strategies that are essential to achieve the best outcomes for your clients**
- Insurance professionals attending in order to obtain valuable insights and strategies for **assessing brain injury claims and to better understand litigation strategies and hospital risk management techniques**
- Doctors, nurses and hospital risk/quality assurance managers attending to **benchmark their current practices and procedures and develop a deeper understanding of the current state of brain injury litigation**

### Continuing Legal Education Credits



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ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of 12.5 hours. An additional 2.0 credit hours will apply to each workshop participation.

ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 10.75 hours. An additional 2.0 credit hours will apply to each workshop participation.

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)

### About The Venue



The Union League, which occupies an entire city block in the center of Philadelphia's commercial and cultural district, is a shining jewel of history in a city defined by such treasure. Founded in 1862 as a patriotic society to support the policies of President Abraham Lincoln, The Union League has hosted U.S. presidents, heads of state, industrialists, entertainers and visiting dignitaries from around the globe. The classic French Renaissance-styled League House, with its brick and brownstone façade and dramatic twin circular staircases leading to the main entrance, is listed in the National Historic Register, and dates back to 1865, when the Broad Street building was completed. Adorning the walls and hallways is the League's distinguished art collection, artifacts imbued with the heritage and culture of its membership. The collection is a rich, historical chronicle of Philadelphia's unique imprint upon the American landscape from the nineteenth century to today.

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7:30 Continental Breakfast and Registration

8:00 Co-Chairs' Welcoming Remarks

**J. Hunter Craft**  
Capital Partner  
Watts Guerra Craft LLP

**Jenna Wright**  
Principal  
Kitch Drutchas Wagner Valitutti & Sherbrook

8:05 In-House Corporate and Insurer Panel on Brain Injury Financial and Legal Decisions, Managing Claims, and Settlement Negotiations

Panel 1 8:05 – 9:05	Panel 2 9:05 – 10:05 (break 10:05-10:20)
<p><b>Richard P. Kidwell</b> Senior Associate Counsel/Vice President of Risk Management University of Pittsburgh Medical Center</p> <p><b>Richard Henderson, CPCU, AIC, ARM, AUI</b> Vice President Transatlantic Reinsurance</p> <p><b>Olga Kats-Chalfant</b> Attorney Conventis InterInsurance Exchange</p> <p><b>Molly L. Farrell</b> Account Executive Independent Insurance Consultant MGIS Property and Casualty Insurance Services, Inc.</p> <p><b>James S. Adams, CPCU</b> Sr. Claims Specialist Zurich North America</p> <p><b>Crystal Strader, AIC, CPHRM</b> Senior Area Claims Manager Trinity Health</p> <p><b>Kenneth J. Appleby</b> Corporate Vice President Risk Management Detroit Medical Center</p>	<p><b>Michael D. Anderson</b> Senior Claims Representative Medical Insurance Exchange of California</p> <p><b>Jennifer Green</b> Claims Specialist Fireman's Fund Insurance Company</p> <p><b>Linda Quirk, RN</b> Risk Manager Corporate Risk Management Carolina Health Care System</p> <p><b>Keith Rospond</b> Claims Manager MHA Insurance Company</p> <p><b>Stephen Pavkovic, RN, MPH, JD</b> Risk Manager Northwestern Memorial HealthCare</p> <p><b>Pamela A. Johnson</b> Senior Claim Analyst MMIC Group Minnesota Medical Insurance Exchange</p> <p><b>Mary Brennan</b> Senior Claims Specialist ProAssurance Companies</p> <p><b>Kathleen Stillwell, MPA/HSA, RN, CPHRM</b> Patient Safety/Risk Management Account Executive The Doctors Company</p>
<p><b>Panel 1 &amp; 2 Moderator</b></p> <p><b>John Hall, Jr.</b> Partner Hall Booth Smith &amp; Slover, P.C.</p>	

10:20 **The State of Brain Injury Litigation: Litigation Trends, New Theories of Liability, Emerging Defenses, Evolving Standards of Care, and More**

**J. Hunter Craft**  
Capital Partner  
Watts Guerra Craft LLP

**David R. Johnson**  
Shareholder/President  
Thomson, Rhodes & Cowie, P.C.

**Bruce H. Stern**  
Shareholder  
Stark & Stark

- Evaluating the new wave of mild to moderate TBI litigation
  - Determining the factors that impacted the surge of mild to moderate TBI litigation
  - Whether the medical research and the literature supports the new surge of mild to moderate TBI litigation
- The trend of initiating lawsuits against the NFL and NCAA and how it will impact the litigation landscape

- Making the connection between the on-field injury and debilitating symptoms developed later in life
- Examining the class action lawsuit against the NCAA for injuries suffered by college football players
- Whether the surge in litigation will create remedies and preventative measures to help protect athletes from suffering concussions in contact sports
- Examining the wave of medical science supporting the theory that soldiers in the military are more likely to suffer brain injury
- Assessing the scientific literature that will support your case
  - Evaluating scientific studies with ratings (1,2,3 and 4); assessing the difficulty in getting a grading in brain injury studies
  - Identifying which neuroimaging techniques are cutting edge
- New and emerging trial strategies that work best for your case
  - Exploring the use of demonstrative evidence: a trend or a fading fad; predicting the value of damages, determining whether to raise issue of liability



11:30 **Closed Head Brain Injury: Creating the Right Strategy at the Outset to Prove Your Case and Establishing Alternative Causation Theories**

*Samuel A. Coffey*  
Partner  
Abramowitz, Pomerantz  
& Coffey, P.A.

*Matthew B.F. Biren*  
Founding Partner  
Biren Katzman Trial Lawyers

*John Hall, Jr.*  
Partner  
Hall Booth Smith & Slover, P.C

Causation

- Evaluating the severity of the trauma to the head
- Assessing whether a clinical evaluation is necessary and whether a battery of neuropsychology testing should be implemented
- Determining whether a soft tissue brain injury was caused chemically, metabolically or post concussion
- Whether science has advanced enough to say that a mental condition such as a post traumatic stress disorder is in fact due to the change in the brain chemistry brought on by the mental stimulus that would qualify as a physical injury
- How soon after the accident should a neuropsychiatric evaluation be implemented for a mild to moderate TBI?
- The difficulty when a TBI is not documented properly
- Correlating the facts with medical observations/testing
- Evaluating the appropriate testing needed to pinpoint the mild to moderate TBI where the MRI/CAT scan fail
- Establishing causation of mild to moderate brain injury through family members, close friends, relatives and people who observed your client through the years

Alternative Causation

- Determining whether something else caused the brain injury – especially in mild to moderate brain injury cases
- How to overcome the lack of evidence where the plaintiff is acting strange and there appears to be no brain injury
- Preexisting conditions in mild to moderate brain injury
- Whether the mental injury is a result of the physical injury
- Determining the Plaintiff's pre-morbid level of function; whether the Plaintiff was employed in a position that requires them to be educated and/or have advanced degrees; comparing deficits pre and post accident
- Determining when the plaintiff is faking: writing, blogging and using Facebook, using clean and sharp sentences before and after the accident; ability to solve complex math problems post-injury with TBI
- Certain indications of a head injury: forgetfulness, depression or the inability to concentrate; indentifying the cause of these symptoms and determining whether it is related to the head injury and the original accident

12:30 **Networking Luncheon for Speakers and Delegates**

1:30 **Childbirth Brain Injury: Causes, Prevention and the Standard of Care**

*Suzanne M. Bachovin*  
Shareholder  
Chistie, Pabarue,  
Mortensen & Young

*Jenna Wright*  
Principal  
Kitch Drutchas Wagner  
Valitutti & Sherbrook

Childbirth Brain Injury

- Identifying causes/factors of in-utero brain injury

- Whether timing of delivery makes a difference in all cases? What are the smoking guns? Requiring the pediatric neurologist or neuroradiologist to properly interpret the CT, US, and MRI and timing of same, and using the placenta to look at etiology and timing
- Requiring the obstetrician or pediatric neurologist to properly read CAT scans/MRI of the brain; using the services of a placental pathologists who can pick apart the placenta
- Reviewing and analyzing the individual doctor's qualifications
- Analysis of the rising problem of injury at the pre-natal level
- Identifying whether the brain injury is due to oxygen deprivation or trauma caused through forceps, vacuum and birthing process
- Evaluating abnormalities of a different type on fetal heart tracing called late deceleration
- Analysis of fetal monitor strips: importance of variability, and subjective interpretations of everything in between
- Evaluating damages in birth injury cases
- Assessing ACOG standards for neonatal cerebral insult

Alternative Causation Theories in Childbirth Brain Injury

- The defendant's perspective: admitting oxygen deprivation but firmly standing by the position that no action should have been taken weeks prior to the delivery; plaintiff's perspective: earlier delivery by c-section would have made a difference in outcome and not contributed to existing injury
- Assessing the viability of alternative causes: oxygen deprivation, genetic or metabolic infection, fetal inflammatory response syndrome, and issues and problems associated with the placenta; identifying whether brain injury is due to hypoxia or trauma; identifying timing of hypoxia and correlation with what is seen in hindsight versus prospectively in labor and delivery records
- Failure to communicate between the doctors/nurses and the pre-natal doctor
- What standards of care apply? Reviewing the individual doctor's/ care providers qualifications; who's on first base? Who was involved with the delivery and how is this attacked/defended; failure to communicate and the era of EMR
- Whether the mother arriving earlier at the labor/emergency center makes a difference in the end
- Loss of variability and how much fetal heart rate is taking place between contraction; the obstetrician's argument that this shows a problem which worsened during labor
- Whether a brain biopsy is the only accurate method to prove what caused the brain injury

2:30 **Afternoon Break**

2:45 **Jury Communication and Advocacy: Telling the Story, Deconstructing Complex Medical Terms and Using Cutting Edge Technology for Demonstrative Evidence**

*Joseph A. Fried*  
Partner  
Fried Rogers Goldberg LLC

*Francis J. Klemensic*  
Shareholder  
Knox McLaughlin Gornall  
& Sennett, P.C.

Jury Communication

- Visualizing the brain injury the same way an X-ray does
- Explaining Plaintiff's recovery phase to the jury
- Educating your jury in complex medical terminology, medicine, anatomy, etc.
- The difficulties associated with understanding neurology
- Educating the jury on failing to function post injury
- Emphasis on art of persuasion in causation



- Establishing ways to overcome jury skepticism
- Whether a low impact accident makes it more difficult to convey information to the jury on the significance of the brain injury
- Linking what the person cannot do and the area of the brain associated with that function

#### Demonstrative Evidence

- Using physical illustrations to show the nature of the brain and location of the brain in order to educate the jury; providing tools to understand terms in a complex and abstract field
- Using technology and evaluating the associated costs
- Placing value on the high cost associated with using animation
- Analyzing the effectiveness of the brain slicer video
- Evaluating the critical thinking skills needed to persuade the jury
- Using demonstrative evidence to understand what areas of the body controls the thought processes

### 3:45 Using Expert and Lay Witnesses to Effectively Support Your Case on Causation and Maximize the Strength of Your Case

**Kenneth B. Goldblatt, Esq.**  
Founding Partner  
Goldblatt & Associates, P.C.

**Michael Sacopulos**  
Partner  
Sacopulos, Johnson  
& Sacopulos

**John S. Moore**  
Vice President  
Claims Accounting and  
Liability Management  
Swiss Reinsurance Americas Corporation

**Chloe E. Dallaire**  
Taylor English Duma LLP

#### Medical Experts

- Using experts to prove/establish injury
- Assessing the problem with the limited pool of experts depending on which state you are litigating your case
- Overcoming the problem when most primary care physicians do not understand the complexities and nuances of brain injury; failure to focus on the symptoms
- Battle of the experts: the primary care physician v. medical experts; jury preference for the primary care physician; paid testimony of the medical expert; the disparity of the opinions of the primary care physician v. the medical experts; impeaching the primary care physician and questioning their motive and commitment to the plaintiff
- Using expert medical witnesses and tailoring their particular expertise to your case; defense counsel's practice of using the most conservative witness for its case (and vice versa)
- Researching expert witnesses and asking for referrals; reviewing deposition transcripts to find the appropriate expert witness for your case; reviewing the expert's CV
- Effectively explaining the test results to a jury
- Familiarizing yourself and your expert with professional societies codes of conduct/ethics for testifying.
- Evaluating testimony of neurologist as paid consultant for the insurance company
- Post accident follow up: whether to use different MRI/DTI

#### Lay Witnesses

- Using lay witnesses who know the Plaintiff and can attest to the ability pre and post accident

### 5:00 Conference Adjourns

## DAY TWO – FRIDAY, MARCH 30, 2012

### 7:30 Continental Breakfast

### 8:00 The View From the Bench: Federal and State Judicial Perspectives on Brain Injury Litigation Trends Present and Future

**The Honorable Warren Eginton**  
U.S. District Court, District of Connecticut

**The Honorable C. Ashley Royal**  
U. S. District Court, Middle District of Georgia

**The Honorable Robert B. Collings**  
U.S. District Court, District of Massachusetts

**The Honorable Richard Kramer**  
San Francisco Superior Court

**The Honorable Robert B. Freedman**  
Superior Court of California, County of Alameda

**Moderator TBD**

### 9:15 Morning Coffee Break

### 9:25 First Observation at the Scene: Diagnosing a Mild to Moderate TBI, Understanding the Subtle Nuances, and Identifying the Appropriate Treatment

**Brian D. Greenwald, MD**  
Medical Director of Brain Injury Rehabilitation  
Mount Sinai Hospital  
Assistant Professor, Department of Rehabilitation Medicine  
Mount Sinai School of Medicine

**M. Mike Kreidie M.D. FAAN**  
Clinical Professor of Neurology  
University of California, Irvine  
Neurology Medical Center

- Failing to see TBI as an emerging problem
- The diagnosis spectrum is wide – the doctor's inability to pinpoint the TBI when the symptoms are not present at the initial stages of the injury
- Recognizing the subtle symptoms of TBI
- The failure to evaluate the brain in a targeted organ approach
- Examining the skull with brain together rather than separately
- Closing the gap when communication is not clear; how can you make the doctor aware of mild to moderate TBI?
- How do you pinpoint the subtle nuances of a mild to moderate TBI?
- Society's Perception of TBI – how do you change the practice and implement changes that will help the patient receive proper care?
- Educating medical professionals to be well tuned to the subtleties of TBI
- Dealing with the difficulty of understanding the subtle components of neurology
- Providing proper follow up care/instructions to patient
- Assessing biomechanical components at time of incident; location, position of victim; velocity of impact, etc.
  - Determining pathophysiological and biochemical changes
  - Evaluating electrophysiological and imaging assessment
  - Creating a treatment plan for mild to moderate TBI
  - Determining prognosis and factors affecting recovery



10:20 **Assessing the Monetary Value of Your Case and Calculating the Pre-Trial Costs**

*Cheryl M. DeKleine, Esq.*      *Anthony J. Monaco*  
Claim Manager                  Partner  
Coverys                          Swanson, Martin & Bell, LLP

- Assessing and evaluating the medical malpractice case; screening the case and the client; using expert consultations during case assessment; deciding on what costs are reasonable to prove the case
- Utilizing a whole battery of experts (neurologists, vocational rehabilitation experts, etc.); averaging 8-10 experts on your side of the case
- Convincing your client to spend the money during the discovery phase to take more depositions than normal in cases where expert and lay testimony is critical
- Evaluating the cost of using experts: how many medical specialties are necessary? whether to use vocational rehabilitation, life care planners, and economists; evaluating agreements on expert fees; producing experts via videotape versus live testimony for discovery and/or trial testimony
- Assessing and litigating the case: evaluating the cost of taking discovery depositions; determining whether to arbitrate, mediate, settle or litigate
- Other discovery costs associated with surveillance, independent medical examinations, IDEX requests on experts, ISO searches on plaintiffs, and day in the life videos

11:00 **Using Neuroimaging Tests on the Brain to Detect Areas of Damage and Determining Admissibility Under *Daubert/Frye***

*Michael Flomenhaft*                  *David Ross, MD*  
The Flomenhaft Law Firm, PLLC      Director  
*Michael Bee*                          Virginia Institute of  
Partner                                  Neuropsychiatry  
Hill, Peterson, Carper, Bee & Deitzler, PLLC

Imaging

- Determining whether imaging tests are readily available and evaluating the associated costs
- The accessibility of imaging tests when the scanning that is currently available is high tech and really expensive
- Whether health insurance will cover the image scanning tests

NeuroQuant®:

- Gaining approval by the FDA for measurement of brain volume in human subjects
- Evaluating the efficiency of the computer-automated analysis completed in 20 minutes
- Reviewing the support of its methodology by the FDA and by several peer-reviewed publications
- Assessing its high clinical availability

DTI

- DTI as a method to look at the brain's white matter, which supplies connectivity
- The availability and limitations of DTI; the many components of DTI; analyzing the optimal technique for detecting white matter injury

Functional MRI

- The usability of functional MRI to prove severe pain from brain activation
- The resting phase of the functional MRI that evaluates the activity in various brain networks
- Mapping out brain activity

QEEG

- Using a computerized analysis of the brain's electrical activity to profile brain's function
- Interpreting how the QEEG illustrates the electrical functioning of the brain and shows how the brain works and communicates
- How can the QEEG show illustrate white matter damage when there is real disruption; whether the QEEG can show the different types of brain frequency
- Whether the argument to oppose the use of QEEG is valid

PET Scan

- Evaluating glucose metabolism
- When parts of the brain use too much or too little energy – whether this shows the brain is not functioning properly

MRI

- The failure of the MRI to image the white matter of the brain when most brain injury involves trauma
- Failing to have magnification to see by product of trauma; seeing fine details of injury
- Evaluating the MRI as scan of choice for chronic settings
- SWI (susceptibility weighted imaging)

CAT scan

- Whether there is more to the CAT scan other than to show bleeding of the brain; evaluating the scan of choice in acute settings; quick and convenient test and assessment of whether to operate; limitations in chronic settings; analyzing lower resolution when compared to MRI; determining progression of atrophy

The Admissibility of Neuroimaging Tests Under *Daubert/Frye*

- Ensuring new image scanning technology meets standards in the scientific community
- Challenges for the proponent of the evidence – overcoming opposition to evidence and showing the evidence is reliable
- The admissibility aspect of neuroimaging tests – what stage/level is the neuroimaging test in?
- Whether the fact that neuroimaging tests are currently in clinical and research use poses a problem
- Neuroimaging tests show the white matter of the brain the MRI/CAT scan fail to pick up – how does this add value to your case? What are you going to do with the result?

12:00 **Using Neuropsychology Tests to Quantify Mild to Moderate TBI: Determining the Baseline and Wading Through the Multitude of Tests**

*T. Walter Harrell, Ph.D., ABPP*      *Lynne Jones Blain*  
Clinical Neuropsychology/          Partner  
Rehabilitation Psychology          Harman Claytor  
MediSys Rehabilitation, Inc.      Corrigan Wellman

- Having a team of neurologists (objective testing from a physical standpoint) and neuropsychologists (intelligence and aptitude test) to evaluate the extent of the mild to moderate TBI
- Wading through the multitude of tests: identifying the strengths and weaknesses of each
- How do you obtain a baseline test for your client? Obtaining a baseline from medical institutions or psychologists and producing the raw data; whether there should be a law that requires hospitals/doctors to produce the raw data
- Interpreting raw data in different ways; relaying the information to the jury depends on the right expert witness
- Difference in tests for concussion v. traditional neurological psychiatric tests



- Evaluating the dispute surrounding the validity of neuropsychiatric tests when there is no baseline
- Comparing results of high v. low performer
- Evaluating the 6-8 hour battery of tests designed to measure various cognitive abilities of the patient

- HOLD Tests: predicting how the person would perform in the future; information learned over time not affected (such as vocabulary and knowledge of words); measuring and comparing the HOLD score with normative data

12:45 **Conference Ends – Lunch for Strategy Session Registrants**

## Post-Conference Strategy Sessions on the Intersection of Law and Science March 30, 2012

**A** 1:30 p.m. – 3:30 p.m.

### Successfully Litigating a Brain Injury Case from Start to Finish

*Kenneth B. Goldblatt, Esq.*  
Founding Partner  
Goldblatt & Associates

*Matthew B.F. Biren*  
Founding Partner  
Biren Katzman Trial Lawyers

*Michael Bee, Esq.*  
Partner  
Hill, Peterson, Carper, Bee & Deitzler, PLLC

Brain injury litigation cases are extremely difficult to litigate. The correct analysis must be made before implementing an agreement to represent a prospective client. Witnesses must be interviewed and complex medical records must be interpreted. In order to effectively examine and cross-examine the expert witnesses retained in these cases, you must understand the highly sophisticated medical jargon that is inherent in this field of medicine. Moreover, you must master the litigation techniques and strategies that are specific to brain injury litigation. This interactive session will provide you with the tools that you need to obtain the best results for your clients in these difficult cases. Topics include:

- Interviewing the prospective client and analyzing the case before an agreement is in place
- Creating a roundtable discussion and figuring out the evidence
- Understanding the needs of the family and figuring out which experts to retain
- What care or intervention is needed?

- Placing importance on advocacy; making sure the plaintiff has proper follow up care
- Making sure you have a viable defendant
- Making the decision to decline a case if there is no financial recovery
- The need for insurance coverage
- Determining whether there is an HMO or a defendant with deeper pockets
- Multiple defendants and “finger pointing” cases – when the hospital or the doctor is at fault; initiating a lawsuit against at least 1 defendant
- Putting together a credible story and helping to advance and support the medical aspect of your case
- Understanding the importance of the art of persuasion
- Creating focus groups: how the jury will react to the science; analyzing how the jury will deliberate; telling the shadow jury that there is a real case with real instructions and real verdict forms

**B** 3:30 p.m. – 5:30 p.m.

### Sound Discovery Practices Related to Depositions, Social Media, Expert Witnesses and Lay Witnesses: How to Counter Overly Aggressive Requests While Maintaining Compliance

*Michael Sacopulos*  
Partner  
Sacopulos, Johnson & Sacopulos

*Francis J. Klemensic*  
Shareholder  
Knox McLaughlin Gornall & Sennett, P.C.

In this interactive session, designed specifically for those involved with brain injury litigation, you will obtain detailed instruction on how to develop cost-effective and practical discovery strategies and tools. Learn how to manage discovery through social media and understand the scope of the court’s rulings on the admissibility of evidence. Outside counsel will benefit from detailed review of the scope of discovery including seeking discovery and managing overly broad requests. Topics include:

- Deposing expert witnesses: presenting the correct expert; obtaining clarity from the expert

- Understanding and portraying the medical and scientific facts and evidence
- Hitting a whole vein on discovery with social media; evaluating the variety of rulings on the admissibility of evidence found on social media sites; evaluating social media policies: what are they and who uses them?
- Compare and Contrast: presenting effective evidence of the effects on the plaintiff using the “Before and After”
- Understanding the medical/scientific aspect; reading literature: hiring nurse consultants to read the medical records

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# BRAIN INJURY LITIGATION

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Venue: The Union League of Philadelphia  
Address: 140 South Broad Street, Philadelphia, PA 19102  
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