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IMPORTANT DATES

2018 Annual Meeting
April 12-14, 2018
Omni Royal Orleans
New Orleans, LA

2019 Annual Meeting
April 11-13, 2019
Omni Chicago Hotel
Chicago, IL

Message from the President



Edgar C. Gentle III
ACAM President
Gentle, Turner, Sexton
& Harbison LLC

Thank you for the great honor and privilege of allowing me to serve as your president. I truly look forward to working with members and leadership during the next year.

I would like to take this opportunity to give a heartfelt thank you to my immediate predecessor, Cary Ichter, who worked above and beyond to serve two consecutive years as president. I pledge to continue the positive momentum established by Cary, and to build upon the successes that were generated during his tenure.

2017 ACAM Annual Meeting Overview

Immediate past president Cary Ichter sent ACAM west to San Diego. The annual conference was held at the Omni San Diego hotel located in the Gaslamp Quarter in downtown San Diego, adjacent to PETCO Park. Twenty-five

members attended with eight guests. The facilities were perfect, a good time was had by all, and Lynn Turner did her usual job of organizing the meeting and ensuring that its execution was flawless.

On March 30, the meeting opened with a convocation of the board. We discussed our goals and efforts to maintain and expand membership and decided to appoint Cary as chairman of the Membership Committee for life. There are still 28 states that have no members. Each of you is invited to help us fill in the gaps.

The board reviewed our financials, which remain sound. Finally, the 2017-2019 board and officers were elected: President Ed Gentle, President-Elect Carlos Gonzales, Secretary David Tenner, Treasurer David Ferleger, Immediate Past President Cary Ichter, and Directors David Cohen, Roger Haydock, Cathy Yanni, Richard Levie, John Leopold, Peter Vogel, and Deborah Greenspan. ■

President's Dinner

The evening before the meeting began, we had dinner for the board, committee chairs, sponsors, and guest speakers. The dinner took place at Baci Ristorante. This is an ongoing tradition with ACAM.

Meetings and Speakers

Hats off to the Planning Committee for convening the best and brightest in the world of Special Masters. Robert S. Mueller III, former director of the FBI and now special prosecutor with respect to the Trump campaign and Russia, discussed the Volkswagen case settlement. The organization and speed of the settlement and the relatively modest class counsel fee were among the highlights. Merrill Hirsh then addressed the work of the Special Masters Committee of the ABA Judicial Division Lawyers Conference, as Merrill continues to advocate for the use of Special Masters.

Mark C. Zauderer of New York then explained the challenges he has faced as Special Master in connection with the dissolution of a major law firm, which included sex, lies, and videotape.

Our lunch speaker Dorothea Bozicolona-Volpe, explained the use of social media to grow your business.

Two of ACAM's founders and luminaries, Kenneth R. Feinberg and Francis McGovern, then recalled their varied experiences, and both focused on serving as pro bono Special Master. Professor David Faigman gave a fascinating presentation on using science in legal decision-making. There was also a presentation by one of our lead sponsors, the Garden City Group.

At the annual dinner, the first ACAM Pro Bono Award was made to Ken Feinberg for his selfless gifts of time and talent to assist victims in catastrophes. Also awarded was the ACAM Civil Justice Award, given to Merrill Hirsh, who has made significant contributions to the civil justice system, and the Francis McGovern Writing Award, presented to David Herr for his significant scholarly writings respecting Special Masters.

The conference concluded with Judge Wiley Daniel describing how he solved the challenges of the Detroit Bankruptcy Settlement and John Welsh and Richard Burkee presenting an interactive ethics workshop tailored to situations faced by Special Masters, which was suggested by our members.

All members are encouraged to become involved in leadership positions and to contribute their time and talents.

If you are interested in becoming a board member or officer, please reach out to Ed Gentle at egentle@gtdandslaw.com or Carlos Gonzalez at cag@gonzales-law.com.



1. President-Elect Ed Gentle thanking President Cary Ichter for his two years of service.
2. Guest speakers Dorothea Bozicolona-Volpe with Social Espionage and former FBI Director Robert S. Mueller, III
3. David Herr - recipient of Francis McGovern Writing Award..
4. Kenneth Feinberg - recipient of Kenneth Feinberg Pro Bono Award.
5. Merrill Hirsh - recipient of ACAM Civil Justice Award.

Notable Special Master Cases

James J. Kozuch, ACAM Fellow
Caesar Rivise, PC

In 1992, James Kozuch served as a Special Master for Judge Franklin S. Van Antwerpen (then a U.S. District Court Judge) in *BIEC International, Inc. v. Global Steel Services, Ltd.* et al., 791 F. Supp. 489 (E.D. Pa. 1992). At issue in the complex trade secrets case was each party's right to provide world steel-makers with information and services related to 55% aluminum-zinc coated sheet steel. The purpose of the coating was to protect the steel. Four longtime executives of BIEC International, after being terminated without cause, started their own company, Global Steel Services, to provide technical services in the area of 55% aluminum-zinc coatings. BIEC sought to enjoin the defendants from competing against it in this area, and in particular sought to enjoin the defendants from using BIEC's trade secrets, trademark, and logo, and from conspiring to interfere with BIEC's contractual relations and corporate opportunities.

After granting Plaintiff's Motion for Preliminary Injunction on May 5, 1992, Judge Van Antwerpen appointed Mr. Kozuch Special Master, where his task was to determine whether the plaintiff maintains as trade secrets any information not previously set forth in

or embodied by a fair reading of the court's decision and order of May 5, 1992, related to the manufacture, production, and/or application processes for 55% aluminum-zinc coatings.

After an initial meeting with Judge Van Antwerpen, Mr. Kozuch spent a number of days in judge's chambers reviewing the voluminous technical materials and other documents needed to perform his duties as a Special Master. On one or more occasions, Mr. Kozuch ruled on disputes brought to him by parties' counsel regarding expert witnesses and reports. To prepare his report setting forth findings and recommendations, he scheduled hearings to obtain testimony and evidence from various witnesses. However, just as Mr. Kozuch was to begin the hearings, the case settled and was closed on September 17, 1992.

James Kozuch litigates intellectual property and commercial matters and has been lead counsel in jury trials, bench trials, and hearings in cases involving patent and trademark infringement, misappropriation of trade secrets, breach of non-compete agreements, and breach of contracts. He also counsels clients on intellectual property law; prepares and prosecutes U.S. and international patent applications; and provides opinions on patentability, infringement, and validity. He is an arbitrator for the American Arbitration

Association and the International Centre for Dispute Resolution, a member of the Academy of Court-Appointed Masters, and is a Licensed Professional Engineer. He served on the board of commissioners for Salisbury Township and on the board of commissioners for Lehigh County and currently serves as a delegate to the Pennsylvania Bar Association House of Delegates. Mr. Kozuch also plays an active role on the board of directors of the Bar Association of Lehigh County, where he serves as vice president. Mr. Kozuch earned his MBA from Lehigh University and his J.D. from Temple University School of Law.

J. Gregory Whitehair, Esq., ACAM Fellow
IP Resolution Co., LLC

J. Gregory Whitehair served as Special Master to the *Virtela Tech Serv Inc. v. Funk* case in the Denver District Court. The case alleged misappropriation of trade secrets, spoliation, and violation of noncompete/nondisclosure. Given the extensive electronically stored information across multiple platforms, trade secret material and complicated privilege and privacy concerns were the primary reasons behind Mr. Whitehair's appointment as Special Master.

What made the case most notable for Mr. Whitehair, were the six formal hearings held

over several months, the parties struggle to cooperate given the feared scope of the breach. Additionally, he had to review over thousands of lines of extracted code and data from tens of thousands of emails and 10+ cloud storage sites. Finally, after going through a couple of e-vendors and holding several emergency hearings with the judge, they ultimately made it to the scheduled trial date.

***J. Gregory Whitehair, Esq.,** is a mediator and e-discovery Special Master focusing on patent, IP, and trade secret disputes, and is a frequent lecturer and instructor in ADR. Prior to forming IP Resolution Co., Mr. Whitehair served as an assistant U.S. attorney for five years and was a private practitioner with 30+ years of first-chair trial experience with several of Denver's largest firms. He is past chair of the Colorado Bar Association's ADR Section and just completed service as chair of the IP Section; he now represents that section on the board of governors. Mr. Whitehair was appointed by the chief justice to the Mediator Credentialing Task Force, as well as to the ODRAC and the Civil Rules Committee. He has a B.A. from the University of Colorado-Boulder undergraduate and holds a law degree from the University of Michigan Law School. He is Straus/Pepperdine trained as a commercial litigation mediator.*

Benjamin F. Wilson, ACAM Fellow *Beveridge & Diamond, P.C.*

Benjamin Wilson currently serves as the court-appointed monitor in *U.S. v. Duke Energy* (5:15-CR-67-H-3) before Senior Judge Malcolm J. Howard in the Eastern District of North Carolina. In this role, he is monitoring, through 2020, the implementation of a criminal plea agreement by Duke Energy relating to a major coal ash spill. The estimated cost of the cleanup/coal ash basin closure program is \$3.4 billion. The civil penalties in the case totaled \$102 million.

Mr. Wilson also serves as deputy corporate monitor for environment and emissions in the Volkswagen diesel emissions fraud case before U.S. District Judge Sean F. Cox in the Eastern District of Michigan (*U.S. v. Volkswagen*, 16-CR-20394). In this role, Mr. Wilson works with part of a team under former Deputy U.S. Attorney General Larry Thompson, independent corporate compliance monitor, to oversee Volkswagen's implementation of corporate compliance and governance reforms pursuant to a criminal plea agreement through 2019. Similar to the Duke Energy case above, Mr. Wilson

was selected for this role in light of his and his firm's focus on environmental law and related compliance issues. This matter is particularly interesting, as it relates to a non-U.S. company.

***Benjamin Wilson** is chair of Beveridge & Diamond, P.C., a 100-lawyer firm focused on environmental litigation. He has served as lead counsel in several complex litigation matters for major corporations and developers. He also represents cities and local government agencies on Clean Water Act enforcement, wetlands development, Superfund, and environmental justice matters.*

Mr. Wilson serves as chair of the Environmental Law Institute and also serves on the board of directors of the Northwestern Mutual Life Insurance Company, the board of trustees of Dartmouth College, and the board of governors of the District of Columbia Bar Association.

For over 11 years, he has been an adjunct professor of environmental law at the Howard University School of Law. He received his undergraduate degree from Dartmouth College, magna cum laude, and his J.D. From Harvard Law School. ■

What Does It Take to Be a Good Community Mass Tort Settlement Administrator?

By Edgar C. Gentle III, ACAM Fellow

The toughest peacemaker challenges and the greatest rewards I've experienced have come in creating and administering Community Mass Tort Settlements: a PCB plant, a couple of zinc smelters, a medical monitoring plan resulting from coal slurry contamination of a water supply, two train wrecks, and a factory fire. The most daunting challenges occur when the case is settled for a sum certain without a settlement structure, and the administrator is left with the task of figuring out what to do with it.

You are the peacemaker for 5 to 30 years. The key to being a good administrator in this context is empathy and grit.

Empathy

Kenny Feinberg got it right: in mass tort settlement administration, consistency is fairness. But the deal must be created, sold and carried out as a part of the community infrastructure. The administrator, like the cheese in the farmer in the dell, often stands alone. The lawyers are down the road and you are the claimants' only settlement reference,

for good or bad. In a real sense, they are pro se and you are like a judge with a courtroom full of them. You've got to befriend them; there's no other path.

Ideally, the claimants design the deal. If you aren't accepted, you fail. Example: there was a 25% opt out rate in the Blackwell, Oklahoma, smelter settlement until we opened a claims office and joined the town, winning back half the exiles. Early on, listening to the claimants' concerns at town meetings is a good beginning. Counterintuitively, creating a claimants committee with the loudest critics works well. They usually welcome the leadership role and often become your biggest fans. Then spend time in the town, just as a good fisherman spends lots of time on the water. A local office staffed with locals is a must. Social events, where everyone is treated as an equal, work well. I'm "Santa" in three deals right now.

Over time, you bond with the community and the committee. You then continue to meet with them and thus have a sounding board to assist you in resolving the tough "tweener" issues and

to counter negative gossip with positive answers. You can thereby build consensus in settlement design and implementation.

In my Anniston PCB settlement, I had six written death threats but made some of my best friends. We had two or three annual fishing parties at my house.

You can't fake empathy. In the Anniston case, Judge U.W. Clemon hired me at Thanksgiving and asked me to be Monsanto Claus: all 18,000 claimants to have a check in December. Impossible was not an answer. Our firm didn't have a Christmas that year, but the claimants did. When there was griping, I took my folks to the Anniston bank to see our impoverished claimants wrapped around the block cashing their advance checks. "This is Christmas, now let's go finish our work."

Grit

I define grit as Johnny Football and the Black Knight in Monty Python: fully improvise within the rules and you can lose a few limbs in the

process, no sweat. The grit comes in when you are faced with a settlement crisis or squeaky wheel claimant and have to creatively problem solve without violating the above Feinberg principle. An example of resolution is having a town meeting to decide whether to use a \$2 million settlement surplus to pay everyone \$100 or extend the life of the settlement medical clinic a year to help those most in need, and then convincing the group to do the right thing without bloodshed, emergency advance payments, paying the elderly first, or calming an uproar by arranging a defendant appearance at a town meeting to give a de facto apology for the past while not calling it that.

By the way...

Major problems in long term deal administration are lack of claimant interest over time and plaintiffs' counsel moving on while the defendant stays and advocates. On-the-ground, claimant outreach to explain the benefits of the settlement, such as we've undertaken in the two 30-year medical monitoring plans I administer in West Virginia, is the key to keeping a deal alive. The ideal settlement plaintiff's lawyer must adopt the claimants and actively participate on the ground to keep administration of the settlement balanced. ■

Thank you to our sponsor, Garden City Group.



SAVE THE DATE!

2018 ACAM Annual Meeting

Academy of Court Appointed Masters

April 12-14, 2018
Omni Royal Orleans Hotel
New Orleans, LA

The poster features a brass band performing on a balcony in front of a historic building with a 'Bourbon' street sign. The text is overlaid on a dark banner at the top.



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