

ANNUAL CONFERENCE

prop.65clearinghouse

MONDAY, SEPTEMBER 23, 2019

JULIA MORGAN BALLROOM

1:45 to 2:45

Pitfalls to Avoid when Testing Products or Relying on Previous Consent Judgments

Moderator: **James Wheaton**, President, Environmental Law Foundation

Panel: **Sarah Esmaili**, Partner, Arnold & Porter
Renee Kalmes, Principal, Exponent
Leslie Krasny, Partner, Keller & Heckman
Stan Landfair, Partner, Dentons

Bios

James Wheaton

President, Environmental Law Foundation

James Wheaton is Senior Counsel for the First Amendment Project, which he founded in 1991. He has more than 30 years of experience practicing public interest, civil rights, constitutional, and related areas of law.

Jim assisted in authoring California's pioneering anti-SLAPP law ("Strategic Lawsuits Against Public Participation"), California Code of Civil Procedure section 425.16, and all of the amendments thereto. He continues to litigate anti-SLAPP cases, as well as a variety of matters concerning access, freedom of the press, and media law issues.

Jim teaches First Amendment and Media Law at the Stanford Graduate School of Communications and U.C. Berkeley's Graduate School of Journalism.

Over his career, Jim has been recognized with several awards and honors, including the California Lawyer of the Year Award in 2008, 2013, and 2015; the Playboy Foundation's National First Amendment Award in Law in 2001; and the Society of Professional Journalists' (Northern California Chapter) James Madison Freedom of Information Award in 1993 and 2001.

He is a graduate of Brown University and the University of California, Berkeley.

Jim is also the President and Legal Director of the Environmental Law Foundation in Oakland.

James Wheaton is also President of the Board of Directors and Legal Director of the Environmental Law Foundation and Senior Counsel for the First Amendment Project. He teaches Journalism Law at the Graduate Schools of Journalism at both Stanford and UC Berkeley.

He has been honored for his work with awards by California Lawyer as Attorney of the Year, the

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Daily Journal as one of its Top 100 Lawyers in California, the Playboy Foundation, the Society of Professional Journalists Northern California Chapter, and the Ecology Law Quarterly.

His political work includes writing and running or chairing campaigns for statewide initiatives in the last 25 years on topics such as insurance regulation, campaign finance and political reform, marijuana legalization, old growth forestry, consumer privacy, and litigation reform.

As a volunteer he is an advisor to the California State Bar's Environment Section Executive Committee and chaired its Yosemite Environmental Institute. He is a trustee of River Network, and past-President of Friends of the River. He has served as a City of Oakland Public Ethics Commissioner, as Executive Director of California Common Cause, and as chair of the Society of Professional Journalists (NorCal) FOI Committee.

He is a graduate of Brown University and Berkeley Law School. He is a white water rafter and kayaker, trains whitewater guides, skips a sailboat on San Francisco Bay, and canoes. He has recently retired from seven years of coaching Little League baseball, and still umpires. He has been noted for his work in the San Francisco Bay Guardian, California Lawyer, Playboy, Outside, and Rolling Stone magazines.

Sarah Esmaili

Partner, Arnold & Porter

Sarah Esmaili focuses on litigation defending clients in California Proposition 65, consumer protection, and class action cases. She has represented companies in failure to warn claims involving a wide range of consumer product and service industries. She often handles cases involving newly emerging chemical exposure claims where she works with experts in the fields of toxicology and epidemiology. She has experience in joint representation of companies in cases that concern issues of industry-wide significance and has represented industry groups as plaintiffs in litigation that challenges regulations. She has expertise in developing creative settlement solutions that are tailored to business objectives. Ms. Esmaili's practice also includes counseling companies with respect to a variety of regulatory product safety laws.

Ms. Esmaili has experience in all phases of litigation. She participated in the San Francisco District Attorney's volunteer program where she successfully prosecuted several jury trials.

Ms. Esmaili has handled significant pro bono matters. Her experience includes developing and preparing a petition for habeas corpus in a death penalty case where she managed a team of attorneys and which resulted in the California Supreme Court issuing an order for further proceedings based on juror misconduct claims. She has also successfully handled political asylum cases. She's the recipient of the Keta Taylor Colby Pro Bono Award.

Renee Kalmes

Principal, Exponent

Ms. Kalmes is a certified industrial hygienist with over 25 years of experience. In this role, she is responsible for designing, conducting, and managing technical studies addressing community, occupational and consumer exposure to chemical agents including asbestos, benzene, beryllium, chlorine, formaldehyde, lead and other heavy metals, pesticides, styrene, sulfides and chlorinated hydrocarbons.

Ms. Kalmes has prepared over 200 regulatory human health risk assessments for various properties, including former landfills, industrial, residential, recreational, and agricultural properties and schools, including Brownfields Sites addressing potential chemical exposure in air, soil, and groundwater. She has communicated risk results to a variety of stakeholders, including neighborhood, worker, and community groups. Ms. Kalmes has evaluated residential and commercial soil vapor intrusion issues through use of soil vapor modeling and air monitoring tools.

Ms. Kalmes also specializes in conducting and directing studies to assess potential exposure to consumer and personal care products including evaluation of lead, phthalates, silica, asbestos, benzene, toluene, cadmium, arsenic, ethyl benzene, formaldehyde, bisphenol A and flame retardants. She has developed sampling protocols to evaluate FDA, CPSC and Proposition 65 claims, specifically addressing dermal contact and incidental ingestion associated with hand-to-mouth activities, as well as naturally occurring lead claims in food

products. She has provided exposure assessment and toxicology support for consumer product recall claims. Ms. Kalmes has assisted numerous companies in establishing compliance programs for CPSIA, as well as developing programs to address Proposition 65 compliance, restricted chemical listings, and green chemistry initiatives. Additionally, she has designed and directed studies to simulate and reconstruct chemical exposures associated with use and handling of consumer products in residential and occupational settings. She has also sampled and reconstructed historical exposure to a variety of volatile chemicals in residential and workplace settings.

Ms. Kalmes has taught numerous courses on risk assessment, industrial hygiene and toxicology at the University of California Extension Program and has developed and conducted more than 100 worker training programs. Ms. Kalmes has been an invited speaker at numerous professional conferences is frequently invited to speak and lecture on exposure assessment methods. Ms. Kalmes often interacts with local and state regulatory agencies and has testified as an expert in the area of industrial hygiene, Proposition 65 and exposure and human health risk assessment.

Leslie Krasny

Partner, Keller & Heckman

Leslie Krasny has focused her remarkable 30-year career within the food and drug industry with particular emphasis on issues relating to food safety, food labeling and claims, ingredient evaluations, GRAS/food additive/color additive submissions, and California's Proposition 65. She joined Keller and Heckman as a partner in 2001, opening the firm's San Francisco office and leading that office through 2018. Beginning in 2019, Ms. Krasny assumed the role of senior counsel, in which she will continue to provide high level strategic advice on the broad range of issues on which she is a recognized expert.

Prior to joining Keller and Heckman, Ms. Krasny was Vice President and General Counsel of Dole Packaged Foods Company and also specialized in food and drug law in private practice. She was a member of the Board of Directors of the Food and Drug Law Institute, serves on the Editorial Advisory Board of Food Processing magazine, and is a frequent speaker and writer on food law topics.

Education: University of Wisconsin-Madison (B.A.); San Francisco State University (M.A.); Hastings College of the Law, University of California (J.D.).

Admissions: California

Memberships: American Bar Association

Stan Landfair

Partner, Dentons

Stanley W. Landfair counsels and represents companies in the chemicals, aerospace, electronics and other manufacturing industries on environmental compliance matters and represents them in environmental enforcement proceedings and other litigation matters. He has represented clients before administrative forums, state and federal trial and appellate courts and the US Supreme Court.

Mr. Landfair is known for his experience in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and counterpart laws in California that regulate the manufacture, distribution, sale and use of pesticides. He counsels clients regarding their requirements under these laws, and has defended numerous federal and state enforcement actions against manufacturers and distributors. Mr. Landfair also is known for his vigorous defense of intellectual property rights of companies that submit trade secret health and safety testing data to federal and state agencies under FIFRA and state laws.

Mr. Landfair is similarly well-known for his experience in the Toxic Substances Control Act (TSCA) and similar laws in other countries that regulate the manufacture, distribution and use of chemicals in the United States and around the world. He has defended manufacturers of chemical, petroleum, aerospace and electronic products in TSCA enforcement actions.

In California, Mr. Landfair is a recognized authority on "Proposition 65," the State's Safe Drinking Water and Toxic Enforcement Act of 1986. He has defended over a thousand companies against "failure to warn" claims under the Act, arising from the sale and use of products such as asphalt roofing materials, orthodontic de-

vices, intravenous feeding devices, dental amalgam, firearms and bullets, cookware, pipe nipples, smoking cessation devices, dry cleaning fluid, tobacco smoke, bulk chemicals, paints, and spray paints. Mr. Landfair won landmark victories in the case of *As You Sow v. Shell Oil Company*, resulting in a ruling Proposition 65 cannot be enforced against out-of-state manufacturers of workplace chemical products; and *Consumer Defense Group v. ARCO*, resulting in a ruling that the Proposition 65 “discharge prohibition” does not give rise to claims for the “passive migration” of chemicals after a discharge occurs.

Mr. Landfair also advises and represents companies and industry task forces in preventing the unwarranted listing of chemicals under Proposition 65. He has appeared numerous times before the Cancer Identification and Developmental and Reproductive Toxicant Identification Committees, regarding chemicals such as PFOA, Bisphenol-A, PFOS, Chlorpyrifos, and others.

J.D. from the College of William and Mary, Marshall-Wythe School of Law in 1991, and her B.S. from James Madison University in 1988 magna cum laude with distinction.