What an honor it has been to serve as LCJ’s Executive Director and get to celebrate with you LCJ’s 30th Anniversary. During those 30 years, LCJ has provided a sharp contrast to those vested in preserving the status quo and achieved important reforms that lower the costs and burdens of civil litigation, including:

- the 2015 amendments to the Federal Rules of Civil Procedure establishing a new “proportionality” standard for the scope of discovery and a uniform rule governing sanctions for loss of ESI;
- Rule of Evidence 502 clarifying privilege waiver;
- a strengthened Rule 56 standard for summary judgment; and
- improved standards for expert evidence aimed at keeping “junk science” out of the courtroom.

I have had the privilege of getting to know the LCJ members who were the driving forces behind these achievements. Leaders of LCJ, private practitioners like Mary Massaron, Partner, Plunkett Cooney, and Robert Levy, Counsel, Exxon Mobil, are preeminent lawyers who are intimately familiar with courtroom practice and procedure. These experts shape LCJ’s formal comments and public testimony, and provide compelling reasons for judges, Congress and rule makers to give serious consideration to meaningful reform. LCJ would not be as effective without their willingness to volunteer their time and effort to further our mission. This inaugural annual report is dedicated to them and intended to showcase their efforts.

Since its inception, LCJ has fought for the lofty goal outlined in Rule 1 of the Federal Rules and with your help and support, we are confident LCJ will continue to shape the future of litigation and preserve the rule of law.

CELEBRATING 30 YEARS

"LCJ is a highly effective advocate for meaningful rule reform. Working closely with LCJ on its efforts to reduce the costs and burdens of civil discovery, I have seen firsthand how LCJ’s thoughtful and high-quality advocacy is delivering real results for the corporate community and defense bar.

-Jon Kyl
Senior Of Counsel, Covington & Burling LLP

Educating policy makers and advocating for sensible improvements means challenging firmly entrenched ideas. It also involves confronting a determined and well-funded opposition that fiercely defends some of the most inefficient litigation practices. Finding time to engage in this effort is difficult given the pressures of today’s legal practice.

But during my five years working with LCJ, I have heard from many of our colleagues that the work they’ve done with LCJ is among the most enjoyable and fulfilling of their careers. Just ask any of the LCJ award winners featured in this annual report. The experience of contributing to LCJ’s success means working side-by-side with talented in-house counsel from America’s most respected corporations, experienced trial advocates, renowned legal scholars and effective public policy organizations.

On this 30th anniversary, LCJ is looking to those who will become tomorrow’s giants of legal reform as we work together to shape the future.
The leadership of the organized defense bar – DRI – Voice of the Defense Bar, the Federation of Defense & Corporate Counsel, and the International Association of Defense Counsel - formed LCJ in 1987 with the financial support of several “Fortune 500” companies. The purpose of the organization was to develop a network of broad, national support for ongoing legal reform initiatives. Today, LCJ’s Board of Directors represents leaders from each of these defense bar organizations and LCJ’s corporate membership.

Mary Massaron is the first woman president of Lawyers for Civil Justice, and chairs its Class Action, Mass Torts, and MDLs Committee, which focuses on reform of rules governing class action and multi-district litigation.

Ms. Massaron’s appellate advocacy is widely known. She has won numerous victories before the Michigan Supreme Court for clients in both the public and private sector, overturning multi-million dollar judgments and establishing new legal principles. She has also handled appellate matters before the Alabama, Indiana, New York and Ohio Supreme Courts, the Michigan Court of Appeals, the California Court of Appeals, the Indiana Court of Appeals and federal circuit courts of appeal, including the Second, Third, Sixth, Seventh and Ninth. She has handled over 100 appeals in the Sixth Circuit Court of Appeals where she is well-known to court staff and judges.

She is also a past president of DRI and a member of the American Law Institute. Ms. Massaron has been inducted as a Fellow of the American Academy of Appellate Lawyers, chaired the Appellate Practice Section of the State Bar of Michigan and is a past chair of the DRI’s Appellate Advocacy Committee. She served as chair of the American Bar Association Standing Committee on Amicus Curiae Briefs, the five-member committee that oversees preparation of ABA briefs for filing in the United States Supreme Court and other courts, and she chaired the ABA Council of Appellate Lawyers, a division of the Appellate Judges Conference. In recognition of her professional accomplishments, Ms. Massaron was invited to join the International Association of Defense Counsel and the Association of Defense Trial Attorneys, both peer-review membership organizations.

Mary Massaron, Plunkett Cooney
PRESIDENT

“...I have been particularly impressed with LCJ’s network of defense bar leaders who are not afraid to take on the plaintiffs’ bar in both the legislative and judicial arenas. LCJ represents a true partnership of corporate defense counsel and defense trial lawyers. I believe this program deserves our full support.”

-Michael Harrington
Sr. Vice President and General Counsel, Eli Lilly and Company

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* Denotes membership of Executive Committee.
Today’s system undermines the fact-finding purpose in a significant fraction of cases, instead with the party in the best position to limit those costs – the requesting party.

Such a “requester pays” rule would preserve the purpose of discovery and force parties to settle claims for reasons other than the merits. “Requester pays” rules would provide a mechanism for undue economic pressure that can overwhelm the search for truth—while aligning well-proven economic incentives with the reality of modern litigation.

INTRODUCE COST ALLOCATION TO LITIGATION

Committee Chair: John O’Tuel, Assistant General Counsel, GlaxoSmithKline

LCJ strongly supports amending the FRCP to require parties to pay some or all of the costs of the discovery they seek. Such a “requester pays” rule would preserve the purpose of discovery—to provide access to information that will enable fact finders to determine the outcome of civil litigation—while aligning well-proven economic incentives with the reality of modern litigation. Today’s system undermines the fact-finding purpose in a significant fraction of cases, instead providing a mechanism for undue economic pressure that can overwhelm the search for truth and force parties to settle claims for reasons other than the merits. “Requester pays” rules would be self-executing restraints against runaway discovery requests, placing the cost-benefit decision working with our defense bar partners to educate practitioners on the changes to discovery to ensure excessive and unnecessary discovery practice is curbed as intended.

DISCLOSE THIRD PARTY LITIGATION FUNDERS

Committee Chair: Mark Behrens, Partner, Shook, Hardy, & Bacon

LCJ is urging the Civil Rules Advisory Committee to adopt an amendment to Rule 26(a)(6) to require disclosure of third-party investments in litigation (“TPLF”) at the outset of a lawsuit. TPLF occurs when a person or entity with no other connection to a lawsuit acquires a right to any proceeds produced by the case. Courts and parties should know who the real parties in interest are, particularly when a third party has power over settlement or the appropriate disposition of the case.

“For nearly three decades, LCJ has led the fight for better rules in the federal court system. Particularly in the area of discovery, the rules changes spearheaded by LCJ have had a positive impact on the nation’s courts. The organization is a major asset to the civil justice reform movement, and ILR looks forward to working with LCJ for many years to come.”

-Lisa A. Rickard
President, U.S. Chamber Institute for Legal Reform (ILR)

REDUCE BURdensOME DISCOVERY

Committee Chair: Robert Levy, Counsel, Exxon Mobil Corporation

LCJ successfully led the corporate and defense bar efforts on discovery reform that culminated in the 2015 Amendments to the Federal Rules of Civil Procedure. Our advocacy began in 2010, when LCJ produced a white paper arguing for (1) a rule requiring that discovery be proportional to the needs of the case; (2) a uniform federal preservation standard that disallows sanctions for negligent losses of information; and (3) a “requester pays” default rule for discovery. LCJ galvanized support for these reforms and the 2015 Amendments are a major improvement to discovery in civil litigation. LCJ is vigilantly monitoring case law interpretations of the 2015 Amendments, filing amicus briefs where appropriate to ensure the new rules are appropriately adopted by courts, and working with our defense bar partners to educate practitioners on the changes to discovery to ensure excessive and unnecessary discovery practice is curbed as intended.

IMPROVE RULE 23: CLASS ACTIONS

Committee Chair: Mary Massaron, Partner, Plunkett Cooney

LCJ is committed to achieving class action reforms. To that end, the LCJ Class Actions Committee submitted four comments to the Rule 23 Subcommittee and three comments to the Civil Rules Advisory Committee during their development of proposed Rule 23 amendments.

After receiving considerable input from LCJ and others, the Rule 23 Subcommittee is proceeding with rule amendments on the following topics:

- Broadening the means of notice to unnamed class members
- Handling objections to proposed settlements

If everything proceeds according to schedule, the amendments will take effect on December 1, 2018.

RATIONALIZE RULE 30(B)(6)

Committee Chair: Brittany Schultz, Counsel, Ford Motor Company

The Civil Rules Advisory Committee is reviewing Rule 30(b)(6), the rule that provides a mechanism for discovering “information known or reasonably available to an organization.” Rule 30(b)(6) has proven controversial and complicated since it was added to the FRCP in 1970. It requires organizations such as corporations to designate people to testify on their behalf about specific matters raised in litigation. LCJ submitted a comment to the Rule 30(b)(6) Subcommittee of the Civil Rules Advisory Committee recommending the following rule changes:

- Requiring that Rule 30(b)(6) notices be included in Rule 26(f) party conferences and addressed in Rule 16 pretrial conferences and schedule orders
- Amending Rule 26(e) to allow supplementation of 30(b)(6) depositions
- Requiring that Rule 30(b)(6)e notices be expressly subject to the scope of discovery defined by Rule 26(b)(1), including the principles of proportionality: this includes a presumptive limit on the number of topics and an express acknowledgment that depositions may not be necessary where other evidence exists

Shape LCJ’s Civil Justice Agenda: Join a Committee

Lawyers who participate in LCJ’s advocacy committees get more from the experience than they put into it. That’s because working side-by-side with the nation’s top in-house and outside counsel is a rewarding way to make a meaningful difference in the American civil justice system while also developing important professional relationships. Contribute your ideas, experience and leadership to LCJ’s highly respected advocacy efforts on issues that are critical to the corporate and defense bars. Signing up is simple: email Kristie Jones kjones@lfcj.com with the names and e-mail addresses of anyone in your organization who would like to serve on any of these committees.
AWARD RECIPIENTS

AL CORTESE AWARD

The AL Cortese Award recognizes outstanding contributions to the promotion of excellence and fairness in the United States civil justice system, to secure the just, speedy and inexpensive determination of civil cases. The award is given in honor of Alfred W. Cortese, Jr., whose tenacious pursuit of balance and fairness in the civil justice system made a lasting contribution to the way in which civil justice is administered in the United States.

LCJ’s Executive Committee selected Tom Allman to receive the award in 2016 due to his zealous efforts to change preservation standards and prolific and pithy legal research and writing. During the 2006 Amendment cycle, he served as Chair of the Lawyers for Civil Justice E-Discovery Committee, and was an early advocate of what became current Rule 37(e) in December of 2015. Tom is a retired General Counsel who currently serves as an Adjunct Professor of Law at the University Of Cincinnati College Of Law. He practiced commercial litigation as a partner in Taft, Stettinius & Hollister prior to becoming Senior Vice President, Chief Compliance Officer, and General Counsel of BASF Corporation in the early 1990s. Tom is also Chair Emeritus of The Sedona Conference Working Group 1 on Electronic Document Retention and Production (WG1), and was a Member of the E-Discovery Panel at the 2010 Duke Litigation Conference. He closely follows e-discovery rulemaking in state and federal courts and has published widely on the topic.

OUTSTANDING CONTRIBUTOR AWARD

LCJ’s success depends upon LCJ member litigation experts who contribute ideas, experience and leadership to LCJ’s highly respected advocacy efforts on issues that are critical to the corporate and defense bars. Each December, LCJ recognizes the efforts of those members who shaped LCJ’s formal comments and public testimony, and provided compelling reasons for judges, Congress and rule makers to give serious consideration to meaningful reform.

LCJ would like to acknowledge these individuals and thank them for their invaluable contributions in 2016.

ELIZABETH CHIARELLO | Partner, Sidley

Elizabeth is a partner in the firm’s Chicago office, focusing on the defense of companies in class action, products liability and mass tort, and other complex litigation matters. Beth has successfully defended class actions on behalf of Fortune 500 companies in a variety of industries, including clients in the electronics, financial services, transportation, cosmetics, food, nutritional supplements, pharmaceutical, and medical device industries. Beth has extensive experience with multi-district litigation and has served as national coordinating counsel in a variety of putative nationwide class actions filed in federal and state courts across the country. In 2015 and 2016, The Legal 500 US recommended Beth in the categories of Product Liability and Mass Tort defense: Automotive/Transport, as well as in Consumer Products.

Beth has extensive experience at all stages of class litigation, including motions to dismiss, summary judgment, handling all facets of discovery (including international discovery issues), working with class and merits experts, Daubert motions, motions for class certification, and interlocutory appeals. Beth frequently advises and advocates on behalf of clients in matters related to the governance, preservation, and discovery of electronically stored information and is a member of Sidley’s Electronic Discovery Task Force.

BREE KELLY | e-DAY V Lawyer, K&L Gates

Bree is a lawyer in the e-Discovery Analysis and Technology (e-DAT) group and advises clients of all sizes on a variety of information governance and electronic discovery issues.

Bree frequently counsels clients regarding best practices in information governance and litigation readiness, including drafting relevant policies and procedures and providing related training. Bree also counsels clients regarding a broad range of electronic discovery issues, from preservation obligations to production. Since September 2008, Bree has served as the editor and primary author of K&L Gates’ Electronic Discovery Law blog (www.ediscoverylaw.com) and is a frequent writer and speaker on e-discovery and information governance.

MAJA EATON | Partner, Sidley

Maja is a member of Sidley’s Executive Committee and a global leader for the Products Liability and Mass Torts practice. She has defended and tried a wide variety of products liability cases, ranging from the defense of toxic tort litigation to cases and mass tort litigation involving pharmaceutical drugs and medical devices. Maja’s background in the sciences lends itself well to this practice area, and she has substantial experience in the development of trial themes, expert witnesses and company defenses involving a variety of scientific and medical disciplines.

Maja’s work has garnered significant attention from leading legal industry publications. She was awarded “Top Female Litigator of the Year” for the Midwest by Benchmark Litigation at their inaugural Awards event in January 2013. This publication has also named her to their list of the Top 250 Women in Litigation (2013–2017), the Top 10 Female Litigators (2013–2014), as well as the Top 100 Trial Lawyers (2015–2018).

JULIANNA THOMAS MCCABE | Shareholder, Carlton Fields

Ms. McCabe has represented clients at arbitration, and has litigated the enforceability of contractual arbitration clauses under the Federal Arbitration Act. She has also successfully mediated and favorably settled numerous complex cases on behalf of the Firm’s financial services clients. Ms. McCabe is licensed to practice in all Florida state and federal courts and in the U.S. Courts of Appeal for the Fifth, Sixth, and Eleventh Circuits. Ms. McCabe is the national class actions practice group leader.

ANDREW J. TRASH | Senior Counsel, McGuireWoods LLP

Andrew has defended more than 100 class actions, involving all stages of the litigation process. While his work has concentrated on products liability and consumer fraud cases, he has also defended class actions involving telecommunications products, business contracts, securities, ERISA, the U.S. antitrust laws and environmental claims, among others.

In addition to his class action practice, he has defended mass tort cases involving financial regulations, patent misuse cases, and government investigations into allegations of automotive defects and breach of privacy regulations. He maintains the Class Action Countermeasures blog, which discusses the strategic considerations involved in class action defense. He also provides daily updates of class action related news at twitter.com/ClassStrategist.
In late 2016, LCJ filed an amicus brief in a Texas Supreme Court case involving State Farm prepared by John Atkins, Richard Phillips and Jennifer Henry at Thompson & Knight. The key issue was whether the responding party must provide ESI in the format chosen by the requester. The brief referred to the merits brief but also made the broader policy arguments about the use of discovery as economic pressure. In May of 2017, the Texas Supreme Court held that “Under our discovery rules, neither party may dictate the form of electronic discovery. The requesting party must specify the desired form of production, but all discovery is subject to the proportionality overlay embedded in our discovery rules . . .” Unless ordered otherwise, however, “the responding party need only produce the data reasonably available in the ordinary course of business in reasonably usable form.”

LCJ would like to thank Thompson & Knight for their efforts to secure the just, speedy and inexpensive determination of civil cases.

Established in 1887, Thompson & Knight is a full-service law firm with a long and distinguished tradition of exemplary service to our clients and communities around the world. Today, with offices in five countries, our tradition of exemplary performance executed with practical judgment, remains highly respected among our peers. Our reputation is our most valued asset. For more information, please visit www.tklaw.com.
LCJ holds meetings that turn information into action. Twice yearly, LCJ assembles nationally recognized policy makers and practitioners, including rule makers, members of Congress, distinguished judges and other opinion leaders, to discuss the latest developments in civil justice reform.

LCJ conducts dynamic interactive sessions where members identify priorities and develop strategies to promote litigation reform. Speakers from recent conferences have included former U.S. Supreme Court Justice John Paul Stevens; Attorneys General Eric Holder and Michael Mukasey; U.S. Senator Chuck Grassley; U.S. Senator Orrin Hatch; U.S. Senator John Cornyn; and several members of the U.S. Judicial Conference’s rule writing committees, including Judge John Bates, U.S. District Court (D.C.); Judge Jeffrey Sutton, U.S. Court of Appeals for the Sixth Circuit; Judge David Campbell, U.S. District Court (AZ), and Judge Amy St. Eve, U.S. District Court (N.D.I.L.)

Highlights from the 2016 meetings included:

- Howard Root, former CEO Vascular Solutions, describing his reaction to being acquitted by a federal jury in a criminal case alleging conspiracy to sell a medical device for off-label use. The case, which followed a civil whistleblower action based on similar allegations, cost his small medical products company $25 million to defend and win;

- The Honorable Eric H. Holder, Jr., 82nd Attorney General of the United States sharing frank assessments about political and civil justice reform topics of interest to LCJ members;

- A tribute to U.S. Supreme Court Justice Antonin Scalia by Paul Clement, Partner, Bancroft PLLC, 43rd Solicitor General to the United States and former clerk to the late Justice; and

- The Hon. Derek P. Pullan, Fourth District Court, Utah, predicting the possible impact of the 2015 discovery amendments.
WHAT’S NEXT

The leadership of the organized defense bar – DRI – Voice of the Defense Bar, the Federation of Defense & Corporate Counsel, and the International Association of Defense Counsel - formed LCJ in 1987 with the financial support of several “Fortune 500” companies. The purpose of the organization was to develop a network of broad, national support for ongoing legal reform initiatives.

Initial goals included:

- Increase public awareness of ever expanding size of damage awards
- Limit/eliminate punitive damages
- Limit unwarranted discovery
- Encourage the judiciary to take a more active role in case management
- Deliver quality legal services at a reasonable cost
- Limit or eliminate joint and several liability
- Eliminate the collateral source rule

LCJ now has a special focus: it is dedicated to ensuring the judiciary secures the just, speedy, and inexpensive determination of every action and proceeding as outlined in Rule 1.

LCJ is presently urging for:

1. improvements to MDLs, class action rules, and Rule 30(b)(6) deposition procedures,
2. disclosure of third party litigation funding,
3. making requesters pay some or all discovery costs, and
4. judicial independence.

Your combined membership funds enable the corporate and defense bar to efficiently advocate consensus positions.

Belonging to LCJ is the most economical way to support legal reform.

HOW TO JOIN

EVERYONE IS TALKING ABOUT LCJ. ARE YOU?

LCJ’s strength is our volunteer experts from our member companies and law firms. We continue to build a track record of successful advocacy only with the participation of leaders like you. But, there’s always room for improvement. Do you know of a colleague who might support our mission?

Please take a moment and provide the name and contact information of someone you think might be interested in becoming a corporate member.

We will work with you to extend an invitation to your colleague to attend the next LCJ membership meeting, at no cost.

Refer a colleague to join you at the next LCJ Membership Meeting ...FOR FREE.

CORPORATION:

NAME:

EMAIL:

TELEPHONE:

YOUR NAME:

YOUR EMAIL:

True freedom requires the rule of law and justice, and a judicial system in which the rights of some are not secured by the denial of rights to others.

-Jonathan Sacks

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YOUR NAME:

YOUR EMAIL: