

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<b>IN RE:</b>	§	
	§	<b>CASE NO. 00-CV-00005</b>
<b>DOW CORNING CORPORATION,</b>	§	<b>(Settlement Facility Matters)</b>
	§	
<b>REORGANIZED DEBTOR</b>	§	<b>Hon. Denise Page Hood</b>

**STATE OF NEW YORK        )**  
**)**  
**COUNTY OF NEW YORK     )**

**DECLARATION OF PAUL J. HINTON**

**February 10, 2017**

PAUL J. HINTON, being duly sworn, deposes and says:

**I. QUALIFICATIONS**

1. I am a Principal at The Brattle Group, where I have been employed since 2013. Prior to that time, I was a Vice President of National Economic Research Associates, Inc (NERA) since, where I was employed since 1994. I earned a B.A. in Engineering Science in 1988 from New College, Oxford University, and a Masters in Public Policy in 1994 from the John F. Kennedy School of Government at Harvard University where my studies included economics, statistics and finance. My practice and professional experience has focused to a significant extent on the forecasting of products liability claims and analysis of product liability risk exposures. More specifically, for over 15 years, I have developed product liability analyses to assist corporate risk managers and in the context of mass litigation, settlements, bankruptcy proceedings and legislative reform initiatives. These analyses have formed a basis of expert opinion and testimony in five bankruptcy confirmation proceedings. I have testified on funding adequacy for a proposed program to monitor the development of possible future personal injuries due to ground water contamination. I have also testified before Congress on the costs of the liability system. These assignments have involved analysis of product liability claims related to future personal injuries allegedly caused by asbestos, tobacco, manganese, crude oil, pharmaceutical products, and medical devices, in addition to property damage allegedly caused by product defects in automobile tires and building defects.
2. My curriculum vitae is attached as Attachment 1 hereto. I have estimated future liabilities for mass tort claims in the context of bankruptcy cases, insurance risk analysis, setting reserves and SEC disclosures. In my capacity as an expert, I have studied the literature, case law, court determinations, insurance industry risk analysis and the analyses prepared by other experts.
3. I am familiar with issues involving Second Priority Payments under the Dow Corning Corporation Plan of Reorganization, and previously submitted declarations in this

matter. I submit this Declaration in conjunction with the Opposition of Dow Corning Corporation (“Dow Corning”) and the Debtors’ Representatives to the Finance Committee’s Recommendation and Motion for Authorization to Make Second Priority Payments.

4. In forming the opinions set forth in this Declaration, I have considered the following:
  - Amended Joint Plan of Reorganization, dated February 4, 1999 (as updated June 1, 2004) (“Plan”);
  - The Settlement Facility and Fund Distribution Agreement, dated February 4, 1999, Effective Date June 1, 2004 (“SFA”);
  - *In re Settlement Facility Dow Corning Trust*, 592 Fed. Appx. 473 (6<sup>th</sup> Cir. 2015);
  - The Report of Independent Assessor End of Second Quarter 2016 (Oct. 18, 2016) (“IA Report”);
  - *In re Owens Corning*, 322 B. R. 719 (Bankr. D. Del. 2005);
  - *In re Federal-Mogul Global Inc.*, 330 B.R. 133 (D. Del. 2005);
  - *In re Armstrong World Industries, Inc.*, 348 B.R. 111 (D. Del. 2006);
  - The Finance Committee’s Recommendation and Motion for Authorization to Make Second Priority Payments (“Motion”);
  - Frederick D. Dunbar, Denise Martin, and Phoebus J. Dhrymes, “Estimating Future Claims: Case Studies from Mass Tort and Product Liability,” Andrews Publications, May 1, 1996.

## II. BACKGROUND AND SUMMARY

5. I have reviewed the Motion of the Finance Committee in which the Finance Committee recommends the distribution of 50% of Second Priority Payments. The Motion attaches the IA Report as an exhibit and indicates that under one interpretation of the standard governing distribution of Second Priority Payments, that IA Report might be interpreted to provide a basis to conclude that Second Priority Payments could be made.

6. The IA Report contains an estimate of the cost of paying unknown future claims. The IA Report subtracts that estimated cost from the assets that can be paid into the Settlement Fund under the Plan and suggests that there could be a surplus of assets. This estimated surplus presumably provides the basis for the Finance Committee's suggestion that the IA Report could potentially be used to support payment of Second Priority Payments.
7. As I understand from review of the Sixth Circuit's decision and the SFA, the payment of higher priority payments must be virtually guaranteed before payment of Second Priority Payments can be made under the Dow Corning Plan.
8. For the reasons I explain below, in my opinion, the estimate in the IA Report cannot be used to support any determination that payment of First Priority Payments is virtually guaranteed.

### **III. INDUSTRY PRACTICE IN ESTIMATING CLAIMS**

#### **A. WIDELY ACCEPTED METHODS OF ESTIMATION ARE DONE IN CASES WHERE PROJECTIONS DO NOT NEED TO VIRTUALLY GUARANTEE A RESULT AND THE UNCERTAINTY OF ESTIMATION IS RECOGNIZED.**

9. Although mass tort forecasts are common, I am not aware of any such forecasts that have been accepted for the purpose of determining whether the payment of certain yet to be filed claims is "assured" or virtually guaranteed.
10. Estimates of mass tort claims are generally used in the context of setting reserves. In the context of setting reserves, the standard explicitly recognizes the uncertainty and all such reserve analyses are conducted based on the assumption that the liability is uncertain and that the reserve cannot be virtually guaranteed.
11. The nature and extent of uncertainty in mass tort personal injury claims estimates is illustrated by forecasts developed in connection with asbestos claims related bankruptcy estimation hearings. In each case, the debtor had an extensive claims history that formed the basis for future claims estimation and valuation. In each case

multiple adverse parties retained experts to estimate the claims liability of the debtor and had the same underlying data available to them to do so. Their forecasts differed dramatically from one another due to different modeling assumptions each made.

12. In the Owens Corning case, different assumptions applied by the experts included the incidence of disease used for the projections of future claims, how claims with unknown diseases were allocated, whether and how a surge in claims was included, whether segment filings by age were applied, the propensity to claim, and whether propensities to claim were adjusted for age. The different assumptions resulted in a range of liability estimates from \$2.1 billion to \$11.1 billion.
13. Claims forecasts developed in the Federal Mogul bankruptcy and the Armstrong World Industries bankruptcy also ranged widely based on the assumptions applied by the experts.

**Figure 1: Uncertainty in Asbestos Claims Liability Estimates**

(in billions)	Non-Asbestos Creditors	Debtor	Futures Rep	Claimants Committee
Owens Corning	\$2.1	\$6.5-\$6.8	\$8.15	\$11.1
Federal Mogul	\$2.5			\$8.2-\$11.1
Armstrong	\$1.96		\$4.5	\$6.12

Sources: *In re Owens Corning*, 322 B.R. 719 (Bankr. D. Del. 2005); *In re Federal-Mogul Global Inc.*, 330 B.R. 133 (D. Del. 2005); *In re Armstrong World Industries, Inc.*, 348 B.R. 111 (D. Del. 2006)

14. As these examples illustrate, estimations using the same data and similar methodologies vary tremendously in outcome solely because of the particular assumptions applied. In each case, each expert argued that the assumptions he or she applied were the best assumptions. The extremely wide range in outcome demonstrates how differences in assumptions result in significant variation in the outcome of the calculations. Indeed, nearly all forecasts conducted in the context of asbestos litigation have proven to be wrong and payments have had to be adjusted as a result.

**B. SOURCES OF UNCERTAINTY IN TORT CLAIMS ESTIMATION**

15. The nature of human behavior, epidemiology and decision making, such as the decision by a claimant or lawyer to file a claim, results in inherent uncertainty in the incidence and estimation of future claims.
16. Such uncertainty is found in many factors. Relevant characteristics and circumstances of the population that affect incidence and prevalence of conditions and of disabilities may not be the same in the future claimant population as they were in the population of claimants in the model's calibration period used for the extrapolation. The impact of such differences is uncertain.
17. Uncertainty is also found in factors that affect the economic incentives that influence claimant behavior. Claiming rates are not inherently stable and so extrapolation, without modeling underlying sources of uncertainty, cannot provide claim estimates with precise measures of uncertainty. Claimant outreach, notice, and the approach of claiming deadlines are some of the many factors that would impact an individual's behavior and choices and contribute to uncertainty. For example, a claims surge at the end of the program triggered by claimant reaction to plan expiration would not follow historical patterns of claim activity.

**IV. RELEVANCE OF WIDELY ACCEPTED ESTIMATION METHODS TO THE IA REPORT AND THE REQUIREMENT OF A VIRTUALLY GUARANTEED STANDARD**

**A. EPIDEMIOLOGY AND DECISION MAKING.**

18. I am not aware of any accepted estimation of personal injury mass tort claims like that in the IA Report that simply extrapolated the claimant filings over a certain period without regard to epidemiology and the demographics, exposure, injury incidence, or economic behavior of claimants and lawyers.
19. The most widely accepted method for making mass tort forecasts incorporates an epidemiology component with several steps – in which there is an analysis of risk

exposure in an underlying population from which injuries arise, and an analysis of the injury incidence rate in that population based on the characteristics of the population.<sup>1</sup>

**B. THE IA REPORT CANNOT MEET THE VIRTUALLY GUARANTEED STANDARD REQUIRED IN THIS CASE.**

20. The estimation performed in the IA Report uses the existing pattern of claim filings over time and across claim characteristics to project forward assuming the same patterns will continue. This methodology is agnostic as to the underlying phenomena that drive claims activity. Consequently the IA Report cannot predict how a new pattern of claims might result due to changes in factors that affect the underlying drivers of incidence and incentives to claim.
21. The Dow Corning settlement process is not a stable environment since claimant behavior and decision making, outreach actions, and procedures can change.
22. There is no scientific basis to support a conclusion that a surplus of projected funds as calculated by the IA's forecast's assumptions provides assurance to justify a "virtual guarantee." The IA model is a simple extrapolation of what could happen if future claims arise at the same rate as in the past<sup>2</sup> and that claimants would behave in the same way.
23. The IA Report does not quantify uncertainty inherent in its projections, and cannot measure uncertainty in estimates arising from underlying drivers of claims not modeled in its methodology.

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<sup>1</sup> See e.g. Frederick D. Dunbar, Denise Martin, and Phoebus J. Dhrymes, "Estimating Future Claims: Case Studies from Mass Tort and Product Liability," Andrews Publications, May 1, 1996.

<sup>2</sup> The IA Report also considers arbitrary "constant" and lower "decay" rates based on alternative modeling assumptions.



24. Consequently, the IA Report does not and cannot provide a reliable basis for a finding that First Priority Payments would be “virtually guaranteed” if additional Second Priority Payments were made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 10, 2017.



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Paul J. Hinton

## ATTACHMENT 1

### PAUL J. HINTON

#### Product Liability Expertise

**Paul Hinton** is a Principal at *The Brattle Group* located in the New York office. He has over 20 years of experience in litigation consulting directing projects and providing expert testimony in product liability estimation, finance and commercial disputes. He has testified at trial and in deposition, international arbitration, and before legislative committees. Mr. Hinton has published and presented at professional meetings on asbestos liability estimation and other product liability issues.

Mr. Hinton has assisted US and multinational industrial companies and insurers in estimating and modeling their asbestos personal injury liabilities. This work has involved advisory projects, M&A due diligence, insurance coverage disputes and commutations, bankruptcy fairness hearings and mass tort litigation. Mr. Hinton has also been involved in past congressional tort reform efforts. His most recent work includes:

- Developing a critique of actuarial estimates of US direct action asbestos claim liabilities in connection with a UK scheme of arrangement.
- Assisting an insurer in estimating the asbestos claim liabilities associated with negotiation of a coverage-in-place agreement with an insured.
- Developing an IBNR estimate for an insurer related to future latent product liability hazards for which no claims history was available to use traditional actuarial methods.
- Advising Ace Insurance on asbestos liability estimation methodology to improve their internal estimates of their liabilities;

Mr. Hinton was also engaged in asbestos claims liability estimation on behalf of many of the major asbestos defendants that choose to use bankruptcy restructuring to resolve asbestos personal injury claims against them. These asbestos-related bankruptcies included: W.R. Grace & Co.; Owens Corning; Combustion Engineering; Armstrong World Industries; Federal Mogul. He was also involved in the litigation brought by the Manville Trust against tobacco companies for contributing to asbestos-related lung cancers.

Mr. Hinton's specific experience in asbestos product liability matters includes modeling claims and costs expected by personal injury settlement trusts and medical monitoring facilities; estimating of pharmaceutical mass tort event risk; developing estimates of the effects of tort reforms and no-fault alternatives to litigation.

Mr. Hinton received his BA in engineering science from Oxford University in the UK and his MA in public policy from the John F. Kennedy School of Government at Harvard University, where his studies included economics, statistics and finance.

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### CONSULTING ENGAGEMENTS

Asbestos liability estimation and insurance coverage analysis in connection with coverage-in-place negotiations on behalf of an insurer of a flooring company, November 2013.

Adequacy of actuarially estimated IBNR provisions for direct action claims and the uncertainty associated with this source of emerging liability. Consulting for ING Insurance N.V. on the potential exposure from future mass tort claims in connection with run-off of its UK insurance subsidiary OIC Run-Off Limited, July 2013.

Benchmarking Study on the number and average size of product liability losses in excess of \$100 million for large US and European pharmaceutical companies in relation to their level of US sales, September 2010.

Advisory work for Ace Group to develop a national forecast of mesothelioma incidence that accounts for SEER to assess background rates and develop a critique of the Stallard and Manton methodology, 2006.

Due diligence advisory work to value liability exposures from asbestos personal injury claims in Australia, South Africa, U.S. and Europe. May 2005.

Due diligence advisory work to value potential liability exposure from Manganese personal injury claims, December 2007.

Advisory engagement on behalf of pharmaceutical companies, analyzing product liability costs in the tort system compared to costs estimated under proposed liability reform legislation, 2003-2005.

Advisory engagement on behalf of Velsicol Chemical Corporation concerning the valuation product liability insurance rights, 2003.

Advisory engagement In re Federal-Mogul Global, Inc., et al., regarding asbestos liabilities, 2001.

### EXPERT EVIDENCE

Trial testimony on behalf of United States, on mechanics of a financial fraud, matched trading and tracing of proceeds, United States of America v. Jason Galanis, John Galanis, Jared Galanis, Gary Hirst, Derek Galanis, Ymer Shahini, and Gavin Hamels, United States District Court, SDNY, 15 Crim, 643, September 2016.

Deposition testimony on behalf of Williams Capital, In re Lehman Brothers Securities and ERISA Litigation, The California Public Employees' Retirement System vs. Richard S. Fuld, Jr., Christopher

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M. O'Meara, Erin M. Callan, Michael L. Ainslie, John F. Akers, Roger S. Berlind, Et Al., U.S. District Court SDNY, No. 09-md-02017-LAK. May 2014.

Testimony before a tribunal in a FINRA arbitration concerning the suitability and alleged misrepresentation of exposure to MBS and commodities by an actively managed portfolio of mutual funds, December 2013 – April 2014 (selected days).

Testimony before the Committee on the Judiciary Subcommittee on the Constitution United States House of Representatives, Hearing on: Excessive Litigation's Impact on America's Global Competitiveness, March 5, 2013.

Declaration, In re: Dow Corning Corporation (United States District Court for the Eastern District of Michigan Southern Division), to provide an economic expert opinion on uncertainty in personal injury claims forecasts for the Breast Implant Product Liability Settlement Trust, November 2011.

Testimony before the United States House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Hearing on: Can We Sue Our Way to Prosperity? Litigation's Effect on America's Global Competitiveness. May 2011.

Deposition and Expert report filed in the matter of Harmon, et al. v. Atlantic Richfield, et al., No. 08-LL-0005, regarding the estimation and funding of future medical monitoring costs accounting for inflation and typical participation rates, March 2011.

Declaration, In re: Dow Corning Corporation (United States District Court for the Eastern District of Michigan Southern Division), to provide an economic expert opinion as to the calculation of Time Value Credits and adjustment of Annual Payment Ceilings in determining Dow Corning's ongoing payment obligations to the Breast Implant Product Liability Settlement Trust, January 2010.

Report for ING Insurance N.V. on the potential exposure from future mass tort claims in connection with run-off of its UK insurance subsidiary and development of IBNR reserves, In re. An Amending Scheme of Arrangement, between OIC Run-Off Limited, The London and Overseas Insurance Company Limited, and their Scheme Creditors, July 2008.

Witness statement (with Faten Sabry) In re: Kerr-McGee Chemical Worldwide LLC et al. v. Kemira Pigments OY et al., Arbitration No. 3439, on valuation of asbestos liabilities. December 2005.

### **LITIGATION CONSULTING AND BANKRUPTCY PROCEEDING LIABILITY ESTIMATION**

Insurance allocation of future asbestos claims in connection with determining the liability of an insurance carrier defendant in Wallace & Gale bankruptcy, 2007-2009.

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Economic consulting in connection with In re: W.R. Grace & Co. et. Al. (United States Bankruptcy Court for the District of Delaware), concerning the estimation of future allowable asbestos claim liabilities, 2007-2008.

Economic consulting in connection with In re: Owens Corning, et al. (United States Bankruptcy Court for the District of Delaware), concerning the estimation of future allowable asbestos claim liabilities, 2004.

Economic consulting in connection with trial in Kelly Moore v. Union Carbide regarding alleged commercial damages arising from asbestos liability, 2004.

Economic consulting in connection with In re: LTV Steel Corporation, Inc., et al., Oil States International, Inc., et al. v. The LTV Corporation (U.S. Bankruptcy Court for the Northern District of Ohio – Youngstown Division), on trends in asbestos litigation, 2003.

Economic consulting in connection with In re: Combustion Engineering, et al. (United States Bankruptcy Court for the District of Delaware), concerning the indeterminacy in the estimation of future asbestos claim liabilities, 2003.

Economic consulting in connection with In re: Armstrong World Industries Corning, et al. (United States Bankruptcy Court for the District of Delaware), concerning the estimation of future allowable asbestos claim liabilities, 2002.

Economic consulting in connection with Ezell Thomas and Owens Corning v. R.J. Reynolds Tobacco Company, et al. (Circuit Court of Jefferson County, Mississippi) concerning damages arising from asbestos related diseases, 2000.

Economic consulting in connection with In re: Dow Corning Corporation (United States Bankruptcy Court for the Eastern District of Michigan Northern Division), concerning the administrative and indemnity cost of liquidating personal injury claims allegedly caused by breast implants in the Dow Corning Plan of Reorganization, 1999.

### PUBLICATIONS

“The Focus On Event Studies In Class Certification,” with Torben Voetmann and Matthew Aharonian, Law360, December 22, 2015.

“D.C. Circuit Clarifies that SEC Need Not Show Market Impact in Manipulation Cases,” with Shaun Ledgerwood, ABA Litigation Section, Securities Litigation Journal, December 9, 2015.

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“Equity Market Microstructure and the Challenge of Regulating HFT,” Paul Hinton and Michael Cragg, *Financier Worldwide*, January 2015.

“FSA Calendar Year-End Update 2012,” with Robert Patton, and Zachary Slabotsky, *NERA Report*, January 2, 2013.

Study of the Tort Liability Costs of Small Businesses commissioned by US Chamber Institute for Legal Reform, May 2010.

“Use of Sample Surveys in Product Liability Litigation” (contributing author with Kent van Liere and Frances Barlas) in *Global Legal Group, The International Comparative Legal Guide to: Product Liability 2007*.

“Tort Liability Costs for Small Business” (with Judyth W. Pendell) in conjunction with the US Chamber of Commerce Institute for Legal Reform, May 2007.

“Where are Mesothelioma Claims Heading?” (with Frederick C. Dunbar, Ronald Miller and Faten Sabry, November 13, 2006), *NERA paper for Mealey’s Asbestos Conference*, December 2006.

“Forecasting Asbestos Liability After Recent Bankruptcy Decisions: How Forecasts Must Adjust for Changes in the Tort System” (with Frederick C. Dunbar and Faten Sabry), *NERA paper for Mealey’s Asbestos Bankruptcy Conference*, June 2006.

“Forecasting Product Liability by Understanding the Driving Forces” (with Lucy Allen, Denise Martin, Simona Heumann, and Faten Sabry) in *Global Legal Group, The International Comparative Legal Guide to Product Liability 2006: A Practical Insight to Cross-Border Product Liability Work*, *NERA Paper*, June 2006.

United States Senate Committee on the Judiciary, Hearing on Recent Developments in Assessing Future Asbestos Claims Under the Fair Act, work on behalf of National Association of Manufacturers. November 2005.

“Construction Defect Disputes: Getting to Yes without Going to Court” in conjunction with the National Association of Home Builders, June 2005.

“Costs of Asbestos Litigation and Benefits of Reform” (with Denise Martin, Faten Sabry, Ron Miller and Stephanie Plancich), prepared for National Association of Manufacturers Asbestos Alliance, April 25, 2005.

“Non-Malignant Dose Response Models: A Basis for Forecasting Asbestos Related Non-Malignant Disease,” in conjunction with Lexis-Nexis Wall Street Forum: Asbestos, New York, New York, February 2005.

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“Liability Costs for Small Business” (with Judyth W. Pendell) in conjunction with the US Chamber of Commerce Institute for Legal Reform, June 2004.

### PRESENTATIONS

“CDW, the Numbers and the Impact on All Parties,” panel discussion (with Katherine Cahill and Bruce Hallock) on quantifying the extent of liability exposure and the design of hazard studies needed to identify risk factors, delivered at the Chinese Drywall Litigation & Insurance Coverage Update Conference, hosted by HB Litigation Conferences, New Orleans, LA, November 11, 2009.

“The Value of Active Risk Evaluation and Mitigation Strategies for Products Liability Exposures,” panel discussion at the American Bar Association’s Section of Litigation “Third Annual Biotech Institute and Regional CLE Workshop,” Rockville, MD, October 8, 2008.

Delivered opening remarks on the economics of product recalls, as Co-Chair of the Mealey’s Product Recall Conference: Made in China and Beyond, Washington, DC, December 10-11, 2007.

“Drug and Medical Device Litigation: Understanding Liability Risk Management and Strategy” on the benefits of active liability risk assessment, delivered at the IQPC Drug & Medical Device Litigation conference, New York, NY, October 25, 2007.

“Drug and Medical Device Litigation: Scientific Evidence in the Courtroom in Mass Tort Cases,” on signal detection, risk assessment and liability valuation, delivered at the IQPC Drug & Medical Device Litigation conference, New York, NY, March 27-28, 2007.

“Asbestos Bankruptcies: Past, Present, and Future,” on the effects of changes in the tort system to estimations of debtors’ liabilities. Panel discussion at the ALI-ABA Asbestos Litigation in the 21st Century, New Orleans, LA, November 30, 2006.

“Estimating Future Asbestos Claims: Lessons from Owens Corning,” on how the outcome of the estimation hearing may affect future cases, at the Mealey’s Asbestos Bankruptcy Conference, Chicago, IL, June 9, 2005.

“Where Are the Asbestos Claims Going?” on current trends and forecasts of future asbestos personal injury claims, at the Lexis-Nexis Wall Street Forum: Asbestos, New York, NY, February 28, 2005.

“Building Defect Litigation: The Case for Reform,” on the empirical results of a series of case studies that showed a decline in litigation following enactment of Notice and Opportunity to Repair legislation, at the National Association of Home Builders’ Conference, Biloxi, MI, November 4, 2004.

“Recent Trends in Shareholder Litigation,” on shareholder class action litigation including the impact of the Sarbanes-Oxley Public Company Accounting Reform and Investor Protection Act, online audio webcast at the SEC Historical Society, Washington, DC, July 27, 2004.

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“Managed Care Organization Class Actions by Providers and Subscribers: Lessons from other Industries’ Mass Tort Litigation,” panel discussion at the Marsh HealthCare Forum, Colorado Springs, CO, September 7-9, 2003.

“Electromagnetic Fields -- Risks and Responses,” workshop on mobile phone radiation health risks at the Marsh Technology & Telecommunications Summit, San Francisco, CA, August 18-20, 2003.

“How to Avoid Expert Spoliation,” NERA Finance Law & Economics Seminar, Deer Valley Utah, July 4-5, 2003.

“Cell Phone Radio Frequency Hazards: The Potential for Mass Tort Litigation,” at the Marsh Telecom Forum, Dallas, TX, October 16-17, 2002.