



Atlantic Legal Foundation

2009 Annual Report

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The Year in Review

Atlantic Legal had an especially productive 2009, advancing on several fronts its advocacy of the rule of law and limited and efficient government.

The Foundation was privileged to represent the National Association of Manufacturers in an appeal where heavy-handed government regulation was particularly egregious. At issue is the federal EPA's use of "unilateral administrative orders" to compel cleanup of waste sites under CERCLA. Our friend of the court brief supports the proposition that use of UAOs in non-emergency situations without a hearing before a neutral decision-maker violates the due process rights of potentially responsible parties.

The Foundation also appeared in what may be the most important equal protection case in a decade — the closely watched *Ricci v. DeStefano*, involving questions surrounding testing for promotion of firefighters in New Haven, Connecticut. The Supreme Court, in an opinion by Justice Kennedy, held that New Haven had engaged in "express, race-based decision-making" when it declined to certify examination results because of the statistical disparity based on race, "i.e., how minority candidates had performed when compared to white candidates." The Foundation's *amicus* brief, on behalf of several respected academics, argued that non-minority firefighters did not need to show racial "animus" to make out a case for intentional discrimination under the Equal Protection Clause.

Our representation of a small white-male-owned entrepreneur denied the opportunity to bid on government contracts continued as cross-motions for summary judgment were denied. This case builds on the Foundation's earlier victory regarding New Jersey's unconstitutional bidding practices.

Several cases in which the Foundation participated were resolved favorably: the Ninth Circuit agreed that a company and its employees should not face *criminal* prosecution for violation of an ambiguous EPA regulation; and, an over-zealous EPA retreated from its initial efforts to hold a small entrepreneur in New Jersey responsible for damage done by others. Unfortunately, the California Supreme Court declined to review an asbestos case, leaving California law somewhat ambiguous, likely encouraging yet more asbestos litigation.

Our advocacy of sound science in judicial and regulatory proceedings and on behalf of charter schools continued. We are the only public interest law firm to concentrate on these important areas, where our roster of clients is particularly impressive. Our work on sound science and school choice issues is summarized elsewhere in this report. Of special note is the profile of our long-time advisor Richard Wilson, retired Harvard Professor of Physics, who has been the catalyst for so much of the Foundation's work in educating courts and regulators regarding the application of sound scientific principles.



Dan Fisk
Chairman

The Foundation ramped up its advocacy for adequate judicial compensation in New York where judges have not had an increase in pay for eleven years and rank last when compared with other states' judicial compensation. Newly minted lawyers at large firms, some not even admitted to practice, earn more than the state's chief judge. Our *amicus* brief in the Court of Appeals (where the New York judiciary is seeking salaries equal to federal district court judges), filed on behalf of the Partnership for New York City, the City's premier business association, and our own line-up of active and retired chief legal officers and corporate practitioners, argued that a judiciary skilled in complex commercial matters needs to be recruited and retained to maintain New York's status as the economic center of the United States.



Bill Slattery
President

The Foundation's roster of distinguished corporate and civic leaders we have been privileged to honor was enhanced at our twenty-second Annual Award Dinner as Chad Holliday, Chairman of the Board of DuPont, and Hon. Judith S. Kaye, former Chief Judge of the State of New York, accepted our Annual Award and Lifetime Achievement Award, respectively.

Our Board of Directors and Advisory Council continue to be among the Foundation's most important assets. Every case and project the Foundation is asked to take on receives Board review; and, in many instances Board and Advisory Council members lend their time and their firms' expertise on a *pro bono* basis. This past year, Jeffrey S. Sherman, Esq., Senior Vice President and General Counsel of Becton, Dickinson and Company, joined the Board and Michael X. McBride, Esq., Managing Partner of Connell Foley LLP, joined the Advisory Council. We welcome their participation.

The Foundation's work is more important than ever in this unsettled legal and economic environment, in which government intervention in the private sector has dramatically increased and in which government regulation is increasingly pervasive. We are grateful for the support of the many corporations, foundations, law firms and private citizens who believe in the Foundation's mission. We will continue to work to merit your trust.

In The Courts

In 2009, the Foundation took on several important new cases at the appellate level while several older cases were resolved, generally in a satisfactory fashion.

Constitutional Issues

Ricci v. DeStefano — Refusal to use validated promotion exam not justified by fear of litigation

A municipality's fear of a lawsuit alleging discrimination for failing to promote minority candidates was found to be an unconstitutional basis for refusing to give effect to a validated promotion examination. A group of white and Hispanic firefighters sued the City of New Haven for intentional race discrimination in violation of the Equal Protection Clause and Title VII of the Civil Rights Act of 1964. The plaintiffs were among a group of firefighters who passed a content-valid and race-neutral promotion exam, only to be refused promotions due them under city civil-service procedures because the City administration refused to promote anyone after it realized that no African Americans would be promoted. The City claimed that it acted out of fear of a possible discrimination lawsuit by unsuccessful candidates, even though there was strong evidence the tests were valid.

The Supreme Court held that New Haven had engaged in "express, race-based decision making" when it declined to certify the examination results because of the statistical disparity based on race, "i.e., how minority candidates had performed when compared to white candidates." Any permissible justifications for disparate treatment must be grounded in a strong basis in evidence. "[O]nce [a] process had been established and employers have made clear their selection criteria, they may not then invalidate the test results, thus upsetting an employee's legitimate expectation not to be judged on the basis of race. Doing so, absent a strong basis in evidence of an impermissible disparate impact, amounts to the sort of racial preference that Congress has disclaimed . . . and is antithetical to the notion of a workplace where individuals are guaranteed equal opportunity regardless of race."

The Court reasoned that mere "apprehension of, and desire to avoid, litigation could not excuse a race-based promotion decision that denied the successful candidates promotions they had earned." The City would have to "demonstrate a strong basis in evidence that, had it not taken the action, it would have been liable under the disparate-impact statute," and that New Haven cannot meet that threshold standard.

Commonwealth of Pennsylvania v. Janssen Pharmaceutical, Inc. — Contingent fee contract challenged as unconstitutional

Atlantic Legal filed an *amicus* brief in the Pennsylvania Supreme Court challenging a trial court's refusal to disqualify a Texas law firm from serving as counsel for the Commonwealth of Pennsylvania. The defendant pharmaceutical company raised constitutional objections to the Commonwealth's use of private contingent fee counsel. It argued that the contingent fee arrangement violated the Pennsylvania Constitution and the doctrine of separation of powers because it commits the Commonwealth to pay private counsel a portion of any recovery, without express authorization from the General Assembly, and that the contingent fee arrangement also violated the company's rights to due process under the United States and Pennsylvania constitutions, which guarantee that attorneys representing the Commonwealth, acting in its capacity as sovereign, have no direct financial interest in the outcome.

Moreover, in a significant deviation from previous contingent fee contracts executed on behalf of the Commonwealth, this contract does not include an express provision for “Control and Management of the Litigation.” It instead contains a “Consultation” paragraph that merely obligates the firm to “consult with” the Office of the General Counsel and to deal with the OGC as it would with any other client. The pharmaceutical company argues that OGC has delegated at least a substantial part of the “Control and Management” of this litigation to its outside contingent fee counsel.

Atlantic Legal’s brief argues that (i) due process requires that those who exercise the Commonwealth’s power in legal proceedings act impartially and without a financial stake in the outcome, and (ii) the Commonwealth did not need to retain private outside contingent fee counsel, because the OGC itself claims to be the “largest legal enterprise in the Commonwealth of Pennsylvania, employing approximately 500 attorneys.”

The Court has yet to rule.

***IMS Health v. Sorrell* —Constitutional free speech challenge to state law that restricts dissemination of information**

We filed an *amicus* brief in support of a challenge to the Vermont Prescription Restraint Law, teaming with New England Legal Foundation. That law prohibits pharmacies from selling prescribers’-identifiable data for commercial purposes without the prescribers’ (doctors’) consent. A patient’s privacy is not implicated because the prescription information that the pharmacies provide to IMS Health Incorporated and others contains no patient-identifiable information.

IMS Health, and the other publisher-plaintiffs, purchase, compile, and disseminate prescriber data for use by pharmaceutical companies, government agencies, and others. The pharmacies believe that compilation and dissemination of the data enables transparency and improvement in the provision of healthcare because the dissemination of prescriber-identifiable data enable pharmaceutical companies to determine which doctors should be informed

about new medications that may benefit their patients.

The case is awaiting decision in the United States Court of Appeals for the Second Circuit.

***Larabee v. Governor of the State of New York* —Practice of linkage distorts separation of powers**

The New York State Legislature is often said to be dysfunctional. A prime example is its refusal to award the state judiciary any increase in compensation for more than ten years, due to a practice termed “linkage”: the Legislature will not award judges an increase without an increase in their own pay. Two lawsuits filed on behalf of the judiciary challenged the use of linkage as a violation of the Separation of Powers Doctrine, among other theories. Intermediate appellate courts reached opposing conclusions as a matter of state constitutional law. Our motion to file an *amicus* brief was granted by the Court of Appeals.

Our brief pointed out the widespread agreement that compensation of New York State judges is critically inadequate. We argued that lack of judicial experience and expertise in commercial matters can have negative impact on the quality of decisions handed down in commercial cases, especially in complex litigation, and may increase the costs of litigation due to error, ap-

peals and delays. The business community needs an efficient, reliable judiciary to resolve controversies. Without an experienced, diverse and skilled judiciary, business activity will lose faith in the ability of the State’s judicial system to resolve lawsuits promptly and competently, and New York State’s economy will suffer.

In late February, 2010, the Court ruled that the Legislature had disregarded the Separation of Powers Doctrine and threatened the independence of the judiciary. However, the Court declined injunctive relief and the matter is back in the hands of the Legislature.

***General Electric v. Jackson* – Challenge to EPA practice of unilaterally imposing cleanup orders**

The Foundation filed an *amicus* brief in the United States Court of Appeals for the District of Columbia in support of a challenge by General Electric Co. to the widespread use by the Environmental Protection Agency of “Unilateral Administrative Orders”. UAOs are issued to compel “Potentially Responsible Parties” to clean up toxic waste sites under Section 106 of CERCLA. Our brief supports GE’s argument that EPA’s use of UAOs in non-emergency situations violates the due process rights of PRPs.

GE sued EPA, alleging that Section 106 violates due process, both on its face and as applied by EPA, because neither option affords a PRP with a pre-deprivation opportunity to challenge the UAO before a neutral decision-maker. The district court granted summary judgment to EPA.

The case raises important issues that could have wide impact on the power of the EPA. CERCLA authorizes EPA to issue UAOs requiring a PRP to conduct response actions at a contaminated site. Upon receipt of a UAO, a PRP has two options: (1) it may comply with the UAO, in which case it can only challenge the issuance of the UAO through a cost reimbursement action after the response action is completed, or (2) it may refuse to comply, in which case it is subject to penalties of \$32,500 per day and treble damages for any costs incurred by EPA in carrying out the response action; and, it cannot challenge the UAO until EPA brings an enforcement action.

On behalf of the National Association of Manufacturers, the Foundation argues that the district court’s findings of fact are inconsistent with its decision on the law that EPA is entitled to judgment. We also argue that due process requires that a person be afforded a hearing before a neutral decision-maker before he can be deprived of property or liberty, unless there are exigent circumstances. The district court found that there were no exigent circumstances and the court’s inquiry should have stopped at that point, and found for GE.

Charter School Advocacy

Charter schools, which only a few years ago were viewed with suspicion by many educators and energetically opposed by teachers’ unions, now have been accepted and celebrated in most states. There are now 5,043 charter schools in thirty-nine states and the District of Columbia, serving 1.5 million students and their families. Secretary of Education Duncan has been quoted as saying charters are “crucial in the fight to turn around failing schools.”

Charter schools are public schools funded by tax dollars that operate without many of the regulations that apply to traditional public schools. Most often, charters operate without teachers’ unions. The “charter” establishing the school is a contract between the school and an “authorizer,” usually a state agency or local school board, detailing the school’s program, goals, students served, and methods of assessment. Most charters are granted for three to five years. At the end of the term, the entity granting the charter may – or may not – renew the school’s charter. Failing charter schools can be closed before the charter term expires. These schools are accountable to their authorizer (and to parents) to produce positive academic results and adhere to the charter terms. The basic concept of charter schools is that they exercise increased autonomy in return for increased accountability.

Atlantic Legal has represented individual charter schools and charter advocacy groups in state and federal courts for more than ten years. The Foundation’s Charter School Advocacy Program is led by Senior Vice



President and Counsel Briscoe R. Smith. Central to its work has been publication of its *Leveling the Playing Field* series, “What Charter School Leaders Need to Know about Union Organizing,” prepared by national employment law experts at Jackson Lewis LLP. To date, six editions have been distributed to charter school administrators and leaders, most recently in California which has 809 charters – more than any other state. Publication of the Michigan guide came as affiliates of the AFT and NEA were active at three separate Michigan charters. The Mackinac Center, with which we collaborated, received numerous requests for extra copies from charter school activists.

Also, with Jackson Lewis’ assistance, the Foundation published a guide which sets forth best employment practices for charters in Colorado, New Mexico, Utah and Wyoming.

There is still opposition to charters in the ranks of those who resist change. For example, in Ohio the Department of Education has sued former officials of a defunct charter, claiming that these unpaid, private individuals serving a not-for-profit corporation running a charter school were “public officials” and thus strictly and personally liable for re-paying to the state funds that should not have been paid to the school in the course of its operation. The Foundation has filed an amicus brief in the Supreme Court of Ohio along with Imagine Charter Schools, an operator of more than seventy charters, and the Center for Education Reform, which for almost twenty years has promoted charter schools throughout the nation. Our brief endorses the intermediate appellate court’s holding that charter officials can assert, as officers of a not-for-profit corporation, the usual limitations on personal liability for corporate obligations.

Some charter authorizers’ renewal procedures have been infected with bureaucratic over-kill needlessly distracting charter administrators from a central focus on student achievement. At the request of the New York State Charter Schools Association, the Foundation undertook a study of New York charter renewal requirements and issued a report recommending changes to improve the process and to alleviate the regulatory burden. The Foundation’s recommendations, according to NYCSA President William Phillips, would streamline the renewal process in a way that provides the information necessary to make a proper renewal determination, while also benefiting charter school operators, authorizer staff, and ultimately the education of charter school students. Our recommendations are being considered by state officials and charter advocates.

Professor Richard Wilson

Atlantic Legal's Link to Science and the Law

Richard Wilson is Mallinckrodt Research Professor of Physics *Emeritus* at Harvard University and immediate past Director of the University's Regional Center for Global Environmental Change. He has been a key figure in Atlantic Legal's campaign against the use of junk science in court.

Professor Wilson is a past Chairman of the Department of Physics at Harvard and a past chairman and currently a member of the Cyclotron Operating Committee. He is a founder of the Society for Risk Analysis. He has been a consultant to the United States government and the governments of numerous foreign countries on matters of nuclear safety, toxicology, epidemiology, public health and safety, and risk assessment. Professor Wilson's areas of expertise include elementary particle physics, radiation physics, chemical carcinogens, air pollution, ground water pollution by arsenic, and human rights.

He is the author or co-author of more than 880 published papers and the recipient of numerous awards, including the Forum Award of the American Physical Society in 1990 and the Presidential Citation of the American Nuclear Society in 2008 for "[M]entoring students for over 50 years in nuclear science, engineering and technology and his tireless efforts promoting peaceful application of nuclear power." He was awarded the 2005 "Erice" prize for Science and Peace of the Ettore Majorana Institute of Scientific Culture in Erice, Italy. He is the President of the Arsenic Foundation, which is dedicated to helping to avoid the arsenic poisoning from drinking contaminated water supplies in Southeast Asia. Professor Wilson also serves on the Board of Directors of the Andrey Sakharov Foundation of New York which endeavors to continue the work of Andrey Sakharov in human rights and human progress.

Largely due to Dick Wilson's leadership and stature in the scientific and academic communities, Atlantic Legal is the nation's preeminent public interest law firm in advocating for the admissibility of sound medical and expert testimony in toxic tort, product liability and related litigation. In a leading case in the Supreme Court of the United States, *Daubert v. Merrell Dow Pharmaceuticals*, the majority opinion cited the Foundation's incisive friend of the court brief in its decision that set the evidentiary standard for expert scientific testimony in federal courts. Representing scores of noted scientists, including 16 Nobel laureates, the Foundation has successfully challenged bogus theories of medical causation in numerous federal and state cases over the last fifteen years.

As an enthusiastic member of the Foundation's Advisory Council, Dick Wilson has identified dozens of examples of distortion of scientific principles by "experts" trotted out before juries who are asked to award damages to plaintiffs and their attorneys, most often in cases where the cause of injury can only be determined by a disciplined scientific analysis. Importantly, he has identified and recruited some of the nation's leading scientists to join in *amicus curiae* briefs which he has produced together with Martin Kaufman, the Foundation's General Counsel.

Dick Wilson's skillful melding of the scientific method and legal analysis have been instrumental in demonstrating that exposure to minute amounts of possibly harmful substances, such as atomic radiation, electromagnetic fields and chemicals could not have been the cause of alleged injury.



2009 Annual Award to DuPont Chairman Chad Holliday



DuPont Chairman Chad Holliday

The Foundation presented its first Annual Award in 1988 to honor a person who exemplifies the ideals and principles of public service and private enterprise. On October 27th, at a sold-out dinner at the Harvard Club of New York City, the Foundation honored Chad Holliday with Atlantic Legal's Annual Award for 2009.

Chad Holliday has been chairman of the board of DuPont since January 1, 1999. He served as chief executive officer of DuPont from 1998 until his retirement in 2009.

In accepting the award, Mr. Holliday addressed "The Highest Ethical Standards," and related stories from his experiences around the world with DuPont during 40 years, stories which reflect DuPont's core ethical values. Excerpts of his remarks follow:

"What you create in your firm, your company, or your family radiates from the stories you tell... [I]f you want to make a difference in

ethics... it is in the stories you tell... how a human being telling a story that demonstrates the ethical values of your company can not only build good will for your company, but also influence the behavior of other companies and most importantly build public esteem for companies generally — at a time when the public is skeptical about companies and their ethical values.

"In the ethics arena, I've had to deal with many issues, and I've always used three tests. They are not original with me, but when I am faced with a decision, first I ask myself if I went back and told my manager or my supervisor would I be proud of it? Second, if I went home and told my family I did this, would I be proud of it? And third, if it was printed in the newspaper accurately, would I still be proud of it? What I find is that when I talk to people across multiple cultures, those three little tests transfer extremely well.

"In closing tonight, I would like to say more about the Atlantic Legal Foundation. It has an absolutely fantastic mission... I congratulate the Atlantic Legal Foundation for its contributions to [our] future. Its support for charter schools will assure that we have institutions where students will get superior educations in science... The mission of the Foundation has never been more pertinent. I'm glad that our general counsel Tom Sager and his team are so supportive. It is such a pleasure to accept your honor tonight. Thank you very much."

The Honorable Judith S. Kaye Receives Lifetime Achievement Award

Judith S. Kaye, former Chief Judge of the New York Court of Appeals, was honored as the recipient of the Foundation's second Lifetime Achievement Award on October 27, 2009. The Foundation's first Lifetime Achievement Award was presented in 2006 to the late Dr. Frederick Seitz, President *Emeritus* of The Rockefeller University and Director *Emeritus* of the Atlantic Legal Foundation.

Judith S. Kaye received her B.A. from Barnard College and her LL.B. degree from New York University School of Law in 1962, graduating *cum laude*.

In 1983, she was appointed by Governor Mario M. Cuomo to the highest court of the State of New York, the Court of Appeals, becoming the first woman to occupy that post. In 1993, Judge Kaye made history again when Governor Cuomo appointed her Chief Judge of the State of New York, the first woman to occupy that post, which added administrative/executive responsibility for the State courts to her judicial role. The only New York Chief Judge ever to complete a full 14-year term, Judge Kaye was re-appointed by Governor Eliot Spitzer in 2007, to a term that ended December 31, 2008, because of the state's mandatory retirement provisions. She is New York's longest-serving Chief Judge.

In her remarks accepting the award, entitled "Writing the Next Chapter: Reflections and Beyond," Chief Judge Kaye looked back at the "judge chapter" of her life and forward to the "lawyer chapter," her new life at Skadden Arps Slate Meagher & Flom. In the former, she focused on the collaboration of the business community and the judiciary which resulted in the establishment of the commercial division of the New York State Supreme Court and recognized the key role in that effort played by Foundation director Bob Haig.

Looking forward, Chief Judge Kaye emphasized her ongoing commitment to quality education for our school children:

"Do you know the three 'R's' for successful schools today? They are rigor (schools with high expectations and challenging coursework for all of their students), relevance (their curricula are highly engaging and keyed to students interests and aspirations) and relationships (all students get attention and support in a safe, respectful environment). I am so pleased, now as a director of Lincoln Center, to be involved in the founding of a charter school that includes these three 'R's.'"



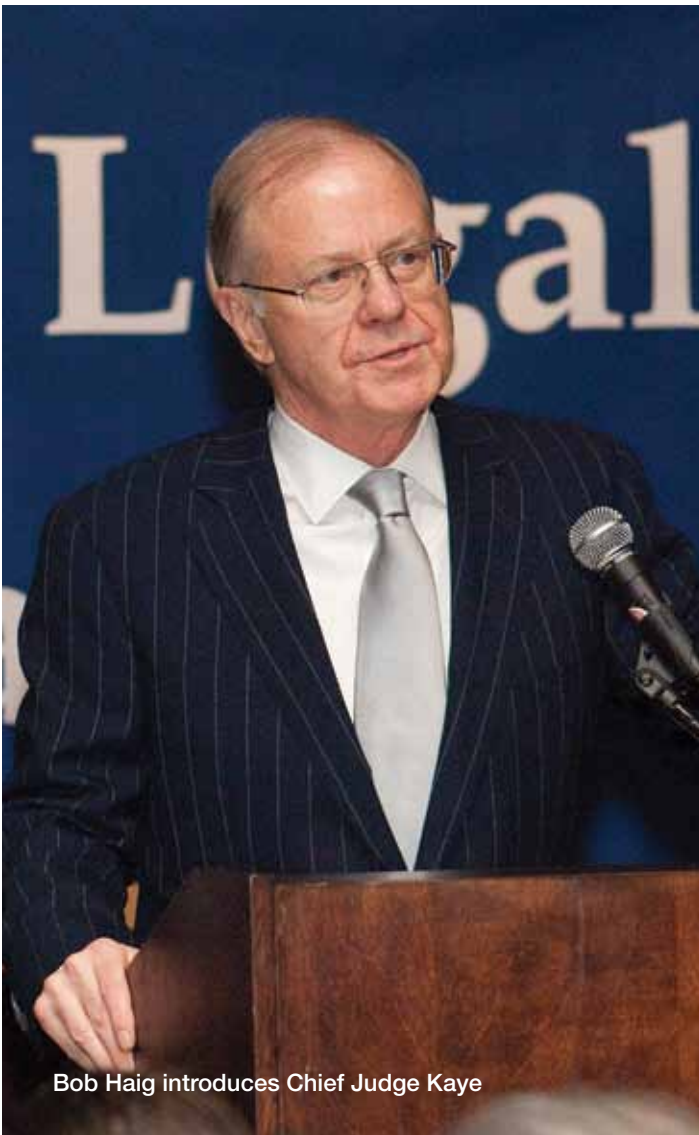
Chief Judge Kaye and Dan Fisk

Chief Judge Kaye thanked the Foundation for its efforts on the judicial compensation and court unification projects and closed by reserving the opportunity to re-qualify for the Foundation's Lifetime Achievement Award in the future:

"We surely have accomplished a great deal working together, but I cannot imagine — whether the subject is excellent business courts, or quality education for our nation's schoolchildren— that anyone would for a moment think we have fully and for all time accomplished our objectives. I look forward to a new lifetime of working together."

When Chief Judge Kaye's remarks at the Annual Award Dinner were published in the December 2009 issue of *The Metropolitan Corporate Counsel*, she added an author's note which we are pleased to republish here:

"Looking back, what most stands out for me about the evening of October 27 is a theme that, quite by coincidence, unified Mr. Holliday's remarks and mine: idealism, optimism and a belief in the good of people and organizations. In a time when so much of the news is negative, I left the Harvard Club feeling better, prouder, of what we do as businesses and the lawyers who serve them."



Bob Haig introduces Chief Judge Kaye



Foundation Director George Frazza and his wife, Marie.



Atlantic Legal Chairman Dan Fisk and his wife, Diane, Alison Harmelin, Foundation Director Robert Loneragan, Larry McMichael of Dilworth Paxson, Foundation Director Steve Harmelin.



Foundation Advisor Roger Kaplan, Foundation Director and Dinner Chairman Tom Sager, and Bill Slattery.





Foundation Director Bob Haig, Senior Vice President and General Counsel Martin Kaufman, and Sophia Gianacoplos, Executive Director of the New York County Lawyers Association.





Foundation Advisor Steve Whelan, Lou Kling of Skadden Arps Slate Meagher & Flom and Chief Judge Kaye.

Annual Award Recipients 1988-2009


2009  **Chad Holliday**
Chairman of the Board
DuPont


2008  **William C. Weldon**
Chairman of the Board and CEO
Johnson & Johnson


2007  **Hon. Fred F. Fielding**
Counsel to President George W. Bush
Former Counsel to President Ronald Reagan

2006  **Thomas J. Donohue**
President and CEO
U.S. Chamber of Commerce


2005  **Edward D. Breen**
Chairman and CEO
Tyco International Ltd.


2004  **Hon. George J. Mitchell**
Former United States Senator
Chairman, The Walt Disney Company
Partner, Piper Rudnick LLP

2003  **Maurice R. Greenberg**
Chairman and CEO
American International Group, Inc.

2002  **Henry A. McKinnell, Jr., Ph.D.**
Chairman and CEO
Pfizer Inc


2001  **Hon. William S. Cohen**
Former Secretary of Defense
and United States Senator


2000  **Norman R. Augustine**
Retired Chairman and CEO
Lockheed Martin Corporation

1999  **General P. X. Kelley**
Former Commandant of the Marine Corps


1998  **Hon. Rudolph Giuliani**
Mayor of New York City

1997  **Hon. Donald Rumsfeld**
Former Secretary of Defense

1996  **Bruce Atwater**
Retired Chairman and CEO
General Mills, Inc.

1995  **Alfred C. DeCrane, Jr.**
Chairman and CEO
Texaco Inc.


1994  **Malcolm S. Forbes**
Chairman and CEO
Forbes, Inc.

1993  **Amb. Carla Anderson Hills**
United States Trade Representative

1992  **Paul H. Henson**
Retired Chairman and CEO
Sprint Corporation

1991  **Walter B. Wriston**
Retired Chairman and CEO
Citicorp

1990  **Irving S. Shapiro**
Retired Chairman and CEO
DuPont

1989  **Edmund T. Pratt, Jr.**
Chairman and CEO
Pfizer Inc

1988  **Hon. William E. Simon**
Former Secretary of Treasury

New Board Member: Jeffrey S. Sherman, Esq.



Mr. Sherman is Senior Vice President and General Counsel of BD (Becton, Dickinson and Company). He is responsible for furnishing legal advice to the corporation's board of directors, CEO and other senior executives and is a member of the Office of the Chief Executive Officer.

Mr. Sherman joined BD from Wyeth, where he served most recently as Vice President and Associate General Counsel. He joined Wyeth in 1990 and held various legal positions of increasing responsibility during his tenure there, leading to his appointment as Associate General Counsel in 2001. Before joining Wyeth, Mr. Sherman was a partner with the New York City law firm of Shereff, Friedman, Hoffman & Goodman (now part of Dechert LLP).

Mr. Sherman also serves as the Chair of the Inside the Boardroom Subcommittee of the Committee on Corporate Governance of the American Bar Association Business Law Section. He received his B.A. degree *cum laude* from the State University of New York at Albany and his J.D. degree, *magna cum laude*, from Brooklyn Law School.

New Advisor: Michael X. McBride, Esq.



Mr. McBride is Managing Partner of Connell Foley LLP, Roseland, NJ. He maintains an extensive practice representing owners, developers, contractors and vendors in all aspects of the real estate development and construction business. Among his more notable projects are the large scale development of a data center, industrial tract and office developments, residential apartment and condominium projects and shopping center developments.

Mr. McBride a graduate of Stanford University and Georgetown University Law Center. Prior to joining Connell Foley, Mr. McBride served as Law Clerk to H.C. Meanor, United States District Judge, District of New Jersey. He is a Member of the Board of Directors of Covenant House New Jersey and a former Chairman of its Board of Directors. Mr. McBride is a member of Georgetown University's Board of Regents and has served as a Member of the Board of Directors for its College of Arts & Sciences. He is a Member of the Board of Directors of McBride Enterprises and the Frank A. McBride Company, Inc., and a Member of the Board of Trustees of the Delbarton School.

Worth Noting

Atlantic legal Advisory Council member Henry Butler, J.D., Ph.D, participated in the ABA's panel discussion of the Searle Civil Justice Institute Preliminary Report on State Consumer Protection Acts. Mr. Butler is the Executive Director of the Searle Center at Northwestern School of Law.

Ronald E. Gots, M.D., Ph.D, an Advisory Council member, delivered a paper "From Sick Buildings to 'Toxic Mold': The Scientific History of Indoor Environmental Claims and the Experts Who Promote Them" at the Defense Research Institute's Product Liability Conference.

General Counsel Martin S. Kaufman was a panelist discussing "*Frye-Reed* and *Daubert*" as part of a program of the Maryland Judicial Institute on "Sound Science in the Courtroom" for Maryland state court judges. The panel also included Judge Joseph F. Murphy, Jr. of the Maryland Court of Appeals, Professor Lynn McLain, University of Baltimore School of Law, and Robert S. Peck, President of the Center for Constitutional Litigation. The theme of Mr. Kaufman's remarks was that there has been a convergence of *Daubert* analysis and the application of the *Frye* test. State courts that nominally adhere to the *Frye* test are increasingly using elements of *Daubert's* flexible approach and focusing on reliability because it is more consistent with the general purpose of rules of evidence than *Frye's* narrow focus on general acceptance.

Chairman Hayward "Dan" Fisk was the keynote speaker at the 2009 annual Intermountain eDiscovery Conference in Salt Lake City, Utah. He presented over 60 slides addressing the unique challenges posed by eDiscovery: how the enemy will attack; new duties for counsel; best practices to implement; understanding the impact of changes in the U.S. Federal Rules of Civil Procedure; and consequential cost controls with particular focus on identifying new challenges and risks while employing best practices and cutting edge technology to control cascading costs.

Board Dinner Speakers



Michael Barone, Senior Writer for *U.S. News & World Report* and a Resident Fellow at the American Enterprise Institute discussed the current political landscape at a dinner in Washington in April for Atlantic Legal's Board and Council and guests.

Alan Murray addressed "The Future of Capitalism" at a dinner in New York City in June for Atlantic Legal's Board and Council and guests. Mr. Murray is a Deputy Managing Editor of *The Wall Street Journal* and Executive Editor for the *Journal Online*.



Atlantic Legal Foundation 2009 Contributors

Foundations

Anonymous, The Bradley Foundation, The Grey Family Foundation, F. M. Kirby Foundation, Inc., Sarah Scaife Foundation, Inc., The Vecellio Family Foundation.

Corporations

Becton, Dickinson and Company, The Boeing Company, Chelsea Partners, Contessa Premium Foods, Inc., Crane Co., DuPont Company, Exxon Mobil Corporation, Johnson & Johnson, Pfizer Inc., Unilever United States, Inc., U.S. Trust, Bank of America Private Wealth Management.

Law Firms

Alston & Bird LLP, Anderson Kill & Olick, P.C., Bartlit Beck Herman Palenchar & Scott LLP, Bingham McCutchen LLP, Boies, Schiller & Flexner LLP, Connell Foley, LLP, Cooper & Dunham LLP, Daffer McDaniel, LLP, Dewey & LeBoeuf LLP, Dickstein Shapiro LLP, Dilworth Paxson LLP, DLA Piper US LLP, Gonzalez Saggio & Harlan LLP, Greenberg Traurig, LLP, Haynsworth Sinkler Boyd, P.A., Hollingsworth LLP, Jackson Lewis LLP, K&L Gates LLP, Kelley Drye & Warren LLP, McDermott Will & Emery LLP, Morris James LLP, Saul Ewing LLP, Skadden, Arps, Slate, Meagher & Flom LLP.

Individuals

Henry N. Butler, Albert W. & Martha Driver, Augustus I. duPont, Hon. Fred F. Fielding, Hayward D. Fisk, Silas M. Ford, George S. Frazza, John W. Galbraith, Ronald Gots, William H. Graham, Donald M. Gray, Nat Handel, R. William Ide, III, Roger S. Kaplan, John J. Kenney, William B. Lytton, Frank H. Menaker, Jr., Sam Scott Miller, Ernest T. Patrikis, Roy L. Reardon, Paul C. Rooney, Jr., William Saller, H. Richard Schumacher, Clifford B. Storms, William J. Wagner, Joseph A. Wheelock, Stephen T. Whelan, Lance H. Wilson, James I. Wyer.

Board of Directors

As of December 31, 2009

Augustus I. duPont, Esq.
Vice President, General Counsel
and Secretary
Crane Co.

Hayward D. Fisk, Esq.
Chairman
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