

2010

FUNDAMENTALS OF INSURANCE

A Guide to the Claims Process for Commercial Litigators,
Business Lawyers, Brokers and New Coverage Counsel



July 29–30, 2010
Belo Mansion ▪ Dallas, Texas

August 12–13, 2010
Norris Conference Center – CityCentre ▪ Houston, Texas

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THURSDAY MORNING

Presiding Officer:

**Stephanie Rennell Tippit, Westmoreland
Hall, P.C., Houston, TX**

8:00 a.m. Registration Opens

Includes continental breakfast.

8:50 a.m. Welcoming Remarks

9:00 a.m. 1.00 hr

The Structure and Context of Insurance Contracts: How to Read and Interpret the Policy

Insurance policies come in many different forms, but they typically have the same key structural elements. Understanding those elements is the first step in understanding the coverage. This session examines the anatomy of an insurance contract, including: 1) declarations, 2) insuring agreement(s), 3) definitions, 4) conditions and duties, 5) exclusions and 6) endorsements.

The session also highlights some basic concepts for those new to insurance, including the differences between first-party and third-party coverage; the special interpretive rules for insurance contracts; the duties explicitly contained in the policy versus those found in statute or common law; insurance documents and agreements found outside the policy, such as certificates of insurance; and the differences between primary, excess and umbrella insurance policies.

Vincent E. Morgan, Pillsbury Winthrop Shaw
Pittman LLP, Houston, TX

10:00 a.m. .75 hr

Understanding the Players: Who Are They? What Are Their Roles? How Do They Operate in Practice?

Insurance disputes can involve a number of players, whose roles and classification are important in determining the discoverability of their work, their potential status as parties, their duties and liability, and whether their actions fall under the Texas Insurance Code or DTPA. The goal of this session is to leave you not only with a good understanding of the players, but also a practical knowledge of how such parties are typically involved in real-world disputes.

The most commonly encountered players in insurance disputes include: insurance carriers, which may include primary, excess and umbrella carriers; underwriters, who operate within insurance companies to design, price and sometimes advise on the meaning of languages in policies; adjusters, who may be in-house or independent, and are generally the first line of contact for claims investigation and determination and are often target defendants; and third-party insurance brokers and agents, who are frequently retained to assist individuals and companies in obtaining coverage, and can also sometimes be defendants in insurance litigation.

Stephanie Rennell Tippit, Westmoreland Hall, P.C.,
Houston, TX

10:45 a.m. Break

11:00 a.m. .25 hr

Eyes on the Rules: The Critical Importance of the Texas Insurance Code for Deadlines, Process and Liability

You can manage or litigate insurance disputes more effectively once you become friends with the Texas Insurance Code, which includes specific rules on deadlines, claims handling procedures and liability. This session advises you on where to look and highlights some critical differences with general civil trial rules.

Mark L. Kincaid, Kincaid & Horton, L.L.P., Austin, TX

The Claims Handling Process

11:15 a.m. 1.00 hr

Preparing and Making a Claim: A Practical Guide to the Issues, Pitfalls and Best Practices

Providing notice of a claim and proof of loss to the insurer is typically a prerequisite to obtaining proceeds under the applicable policy or policies. This session provides practical guidance, including sample checklists and descriptions of documents and information that should be gathered and reviewed before making a claim. It also addresses strategies and options to maximize potential coverage and benefits, as well as the critical importance of understanding and following the notice provisions of the policy and the effective drafting of proof of loss documents, including avoiding common errors.

This session also covers how to evaluate and make claims against policies held by others, and the major—and often overlooked—impact of indemnity agreements in other contracts on the rights of insured parties to policy proceeds. The session concludes with a discussion of the various responses a company might make to a claim, e.g., acceptance, denial, reservation of rights, request for more information, etc., and the possible options of an insured to those responses.

Mark L. Kincaid, Kincaid & Horton, L.L.P., Austin, TX

THURSDAY AFTERNOON

Presiding Officer:

**David H. Timmins, Gardere Wynne
Sewell LLP, Dallas, TX**

LUNCHEON PRESENTATION

12:15 p.m. Pick up Box Lunch

Included in conference registration.

12:30 p.m. .75 hr ethics

The Tripartite Relationship and Tilley Obligations

The Texas Supreme Court's 1973 *Tilley* decision defined the obligations of the defense counsel hired by insurance companies to defend insureds, but those relationships continue to be a source of friction and confusion. This session examines the ethical obligations of so-called "*Tilley* counsel," the impact on the attorney-client relationship and privilege, and the question of who has the right to choose counsel.

David H. Timmins, Gardere Wynne Sewell LLP,
Dallas, TX

1:15 p.m. Break

1:30 p.m. .25 hr

General Obligations of the Insured: The Role of Policy Provisions, Statutes and Case Law

The duties under an insurance policy are not a one-way street. An insured also has several obligations that must be observed, and the failure to do so can have a significant effect on coverage. This session examines the insured's obligations, including notice, cooperation and obtaining the insurer's consent.

Vincent E. Morgan, Pillsbury Winthrop Shaw Pittman LLP, Houston, TX

1:45 p.m. 1.00 hr including .25 hr ethics

The Insurer's Response to a Claim: Reservation of Rights

What is a reservation of rights? What rights does an insurer have to reserve? What must always be included? When should a reservation be issued? When should the insured respond to a reservation of rights?

This session addresses the purpose of reservation of rights, how they may affect the rights of the insurer and the insured, and what to do when you receive one. We'll look at sample correspondence and talk about strategic decisions prompted by reservations.

Michael Sean Quinn, Quinn Hayes & Quinn, Austin, TX

Commentator:

Vincent E. Morgan, Pillsbury Winthrop Shaw Pittman LLP, Houston, TX

2:45 p.m. 1.00 hr

Insurer's Duty to Settle: Understanding and Working with Stowers Issues

The Stowers doctrine, which addresses when an insurer is obligated to settle a claim against its insured, was born more than 80 years ago but continues to be the subject of heated disputes among policyholders, insurers and claimants. Stowers now refers to an ever-growing body of case law, and knowing what is meant by "Stowerize" is critical to anyone involved in litigation.

This session briefly explores the fascinating history behind this landmark case, introduces you to the duty to settle by addressing the circumstances that trigger it (and those that don't), examines strategic considerations for the policyholder and the insurer in dealing with settlement demands, and applies the Stowers doctrine to more complicated scenarios involving multiple claimants, multiple insureds or multiple policies.

James Cooper, Gardere Wynne Sewell LLP, Houston, TX

David H. Timmins, Gardere Wynne Sewell LLP, Dallas, TX

3:45 p.m. Break

The Litigation and Settlement Process

4:00 p.m. 1.00 hr including .25 hr ethics

Litigating Insurance Claims, Part I: Jurisdiction, Parties and Pleadings

When it's time to file suit, a host of strategic considerations must be considered. This session identifies the available and proper forums for litigation, whether by contract or statute, and examines the option whether to concede to the forum or challenge it.

Having reviewed earlier in the day the players in insurance disputes, this session looks at those entities involved in insurance disputes as potential parties to litigation and at theories of their possible liability; examines how to plead and prove issues in insurance disputes; and introduces the use of declaratory judgments and other mechanisms to obtain early coverage determinations.

Stephanie Rennell Tippit, Westmoreland Hall, P.C., Houston, TX

5:00 p.m. .50 hr

Q&A Session

The speakers from the day's sessions are available to answer questions.

5:30 p.m. Adjourn

FRIDAY MORNING

Presiding Officer:

Vincent E. Morgan, Pillsbury Winthrop Shaw Pittman LLP, Houston, TX

7:45 a.m. Conference Room Opens

Includes continental breakfast.

The Litigation and Settlement Process (continued)

8:30 a.m. 1.00 hr

Litigating Insurance Claims, Part II: Damages, Fees and Penalties

This session discusses the remedies available in insurance litigation, including pleading and calculating amounts recoverable under common law, the Texas Insurance Code or the DTPA, and addresses how to collect attorney fees.

Vincent E. Morgan, Pillsbury Winthrop Shaw Pittman LLP, Houston, TX

9:30 a.m. .75 hr ethics

Key Discoverability and Privilege Issues Involving Insurance Disputes

Can I have the adjuster's file? If a lawyer conducts the investigation, can I get her file? Can the lawyer communicate with the insured and the insurer without waiving privilege? These questions are frequent issues in insurance litigation.

Michael Sean Quinn, Quinn Hayes & Quinn, Austin, TX

10:15 a.m. Break

10:30 a.m. .67 hr

The Critical Role of Summary Judgment Motions and Rules of Construction in Insurance Litigation

The majority of insurance litigation is resolved on summary judgment. This session addresses how it works, when it's available and how to oppose it.

Stephanie Rennell Tippit, Westmoreland Hall, P.C., Houston, TX

11:10 a.m. .67 hr including .25 hr ethics

Expert Witnesses in Insurance Cases

Disputes with insurance companies frequently require the use of expert witnesses. The insured may need experts to prove the validity of the claim where it involves scientific, medical or engineering evidence, or to address financial, legal or organizational matters. In Stowers cases, experts may be needed to establish the reasonableness of the plaintiff's settlement demand. The insured frequently hires an expert to testify that the insurer's handling of the claim was unreasonable or untimely. Of course, the insurer itself may need expert witnesses on each of these topics in rebuttal. All of those experts may be the subject of Daubert challenges. This session addresses the circumstances when experts may be necessary, and the Daubert and other considerations involved in using them.

Michael Sean Quinn, Quinn Hayes & Quinn, Austin, TX

11:50 a.m. .67 hr

Mother Nature and Insurance: Current Law and Strategies for Texas Storm Litigation

An overview of coverage issues arising out of extreme weather events, such as floods, hurricanes, tornadoes and hail storms. The presentation explores the core coverages, that are implicated by those events, such as property damage, business interruption and extra expense, as well as extensions of coverage, and examines cutting-edge litigation topics, including causation, cosmetic versus structural damage, and other frequent areas of dispute.

Vincent E. Morgan, Pillsbury Winthrop Shaw Pittman LLP, Houston, TX

Michael Sean Quinn, Quinn Hayes & Quinn, Austin, TX

12:30 p.m. .33 hr

Q&A Session

The speakers from the day's sessions are available to answer questions.

12:50 p.m. Adjourn

James Cooper is the co-chair of Gardere Wynne Sewell's policyholder insurance coverage practice group in Houston, Texas. He handles a wide range of insurance coverage matters, and has been involved in high profile coverage cases before Texas courts of appeals and the Texas Supreme Court. Mr. Cooper has been selected by his peers as a Texas Super Lawyer in the area of insurance coverage, and recognized as one of the nation's top insurance coverage lawyers by Chambers USA. He was awarded the highest rating (AV) from the prestigious Martindale-Hubbell Peer Review Rating System. He has authored insurance coverage articles for the *Journal of Texas Insurance Law* and *University of Houston International Law Journal*. He also co-authored a chapter on handling complex insurance coverage matters in *Inside the Minds: Legal Strategies for the Insurance Industry*. Mr. Cooper received his B.A. from Wabash College and his J.D. (*cum laude*) from Tulane University Law School.

Mark L. Kincaid is a partner with Kincaid & Horton, L.L.P. in Austin, Texas. He is board-certified in Civil Trial Law, Consumer and Commercial Law, and Civil Appellate Law. Mr. Kincaid has extensive experience representing consumers and businesses in insurance disputes, and in a broad array of civil litigation. He has represented insureds and claimants in cases involving liability insurance, life insurance, errors and omissions, directors and officers liability, homeowners, commercial property, automobile, commercial automobile, health, disability, employment practices, workers' compensation, title, excess, and reinsurance. Mr. Kincaid, who is co-author of the *Texas Practice Guide: Insurance Litigation*, also teaches insurance litigation as an adjunct professor at the University of Texas School of Law. Mr. Kincaid received his B.B.A. with honors and J.D. with honors from the University of Texas at Austin.

Vince Morgan practices with Pillsbury Winthrop Shaw Pittman's litigation group in Houston, Texas, representing corporate policyholders in connection with insurance law and risk management issues. He currently serves as an officer of the Insurance Law Section of the State Bar of Texas and as a member of the editorial board of West Publishing's *Insurance Litigation Reporter*. He is a co-author of West's *CAT Claims: Insurance Coverage for Natural and Man-Made Disasters* and of LexisNexis' *Texas Annotated Insurance Code*. Mr. Morgan has been selected for inclusion in such publications as *The Best Lawyers in America*, *Chambers USA—America's Leading Lawyers for Business*, *Texas Super Lawyers—Rising Stars*, and *Euromoney's Guide to the World's Leading Insurance and Reinsurance Lawyers*. Mr. Morgan received his B.A. from the University of Texas at Dallas (*summa cum laude*) and his J.D. from the University of Texas School of Law.

Michael Sean Quinn of Quinn Hayes & Quinn, Austin, Texas, is a fellow of the College of the State Bar of Texas and past chair of the Insurance Section of the State Bar of Texas. His principal areas of practice include insurance law and litigation, business litigation and attorney malpractice. Mr. Quinn has served as an adjunct professor at The University of Texas School of Law, Southern Methodist University, University of Houston and St. Edward's University. He is a recipient of the Outstanding Law Journal Award presented by the Texas Bar Foundation, and in 2005, the Governing Board of the Insurance Section of the Texas State Bar unanimously elected Quinn the first "Legend of Insurance Law" for the State of Texas. He was awarded the highest rating (AV) from the prestigious Martindale-Hubbell Peer Review Rating System. Mr. Quinn was admitted to the Texas State Bar in 1980 and is admitted to practice before the U.S. Court of Appeals for the Fifth Circuit and the U.S. District Courts for the Northern, Southern, Eastern and Western Districts of Texas. Mr. Quinn received his B.A. from the University of Texas at Austin, his Ph.D. from the University of Pittsburgh and his J.D. from the University of Missouri-Kansas City School of Law.

David Timmins is a partner at Gardere Wynne Sewell LLP in Dallas, Texas. Mr. Timmins is a trial lawyer practicing commercial and personal injury litigation, with an emphasis on insurance coverage litigation. He represents clients in suits involving claims for fraud, bad faith, violations of the Texas Insurance Code, and deceptive trade practices. He regularly advises clients on risk allocation devices, such as contractual indemnity and insurance arrangements. He received his B.A. from the University of Texas at Austin and his J.D. from Washington and Lee University School of Law, where he served as a member and editor of the *Washington and Lee Law Review*.

Stephanie Rennell Tippit is an associate with Westmoreland Hall, P.C. in Houston, Texas. Ms. Tippit concentrates her practice in litigation of insurance risks involving the oilfield, energy and marine industries. She frequently represents London underwriters, London market insurance companies, and domestic insurance companies in multi-million dollar insurance coverage matters. Ms. Tippit's practice also focuses on other general commercial matters, including breach of contract, premises liability, products liability, and toxic torts, as well as professional errors and omissions claims. Ms. Tippit received her B.A. (*cum laude*) from the University of Utah and her J.D. from Tulane University School of Law.

HOW TO REGISTER

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P.O. Box 7759
Austin, TX 78713-7759

Or fax to:
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Or register online:
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REGISTRATION

Includes Course Binder and Thursday Luncheon Presentation

DALLAS: JULY 29–30, 2010

- ☐ Early Registration Fee due by Wednesday, July 21, 2010\$435
☐ Registration Fee after Wednesday, July 21, 2010\$485

HOUSTON: AUGUST 12–13, 2010

- ☐ Early Registration Fee due by Wednesday, August 4, 2010\$435
☐ Registration Fee after Wednesday, August 4, 2010\$485

CONFERENCE PUBLICATIONS AND MEDIA

Allow 3–5 weeks from the conference date for delivery.

- ☐ Course Binder WITHOUT Conference Registration\$225
Note: Conference registration includes Course Binder.
- ☐ Audio CD Set\$200
- ☐ Audio MP3 Speeches on CD\$130
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(\$225 purchased alone, \$50 with registration or purchase of Course Binder or Audio CD Set or Audio MP3 Speeches on CD)

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DALLAS

JULY 29–30, 2010

CONFERENCE LOCATION



Belo Mansion

2101 Ross Avenue

Dallas, TX 75201

214-220-0239

Parking:

\$3 per day for Dallas Bar members;

\$10 per day for non-Dallas Bar members

(subject to change)

KEY DATES

July 21, 2010, 5 p.m.

last day for early registration

add \$50 for registrations received after this time

July 23, 2010, 5 p.m.

last day for full refund

July 26, 2010, 5 p.m.

last day for partial refunds

\$50 processing fee applied

July 29, 2010, 9 a.m.

conference begins

HOUSTON

AUGUST 12–13, 2010

CONFERENCE LOCATION



Norris Conference Center – CityCentre

803 Town and Country Blvd.

Houston, TX 77024

713-590-0950

Parking:

Complimentary

(subject to change)

KEY DATES

August 4, 2010, 5 p.m.

last day for early registration

add \$50 for registrations received after this time

August 6, 2010, 5 p.m.

last day for full refund

August 9, 2010, 5 p.m.

last day for partial refunds

\$50 processing fee applied

August 12, 2010, 9 a.m.

conference begins

M
C
L
E

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 11.50 hours, of which 2.25 credit hours will apply to legal ethics/professional responsibility credit. The University of Texas School of Law is a State Bar of California approved MCLE provider (#1944).