

9TH ANNUAL
INSURANCE LAW INSTITUTE

Earn up to 14.00 Hours of Credit Including 1.00 Hour of Ethics Credit

Specialization expected for: Civil Trial Law, Consumer Law, Personal Injury Trial Law, Real Estate



November 10*, 11-12, 2004

**Optional Wednesday Presentation: "Dinner with the Experts"*

Hilton Americas-Houston
Houston, Texas

INSURANCE LAW INSTITUTE

November 10, 11-12, 2004 • Hilton Americas-Houston • Houston, Texas

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WEDNESDAY EVENING, NOV. 10, 2004

"DINNER WITH THE EXPERTS"

Please select on registration form.

6:00 p.m. Dinner Presentation .75 hour

Show Me the Money: A Guide to the Latest, Greatest Strategies, Pleadings and Case Law Developments and How to Use Them to Maximum Benefit in Your Insurance Cases

A leading panel of experts from the plaintiff and defense side share their most effective strategies for pursuing and defending commercial claims with insurance coverage. In addition, the panel will discuss audience questions and issues. (Email your issues in advance to utcle@mail.law.utexas.edu.)

Moderator: Karen Keltz, Dallas
 Kevin Keith, Dallas
 Mark L. Kincaid, Austin
 Brian S. Martin, Houston
 Charles R. Shaddox, San Antonio
 Mark A. Ticer, Dallas
 John C. Tollefson, Dallas

6:45 p.m. Break

7:00 p.m. 0.75 hour

Show Me the Money continues followed by Questions and Answers

7:45 p.m. Adjourn

THURSDAY MORNING, NOV. 11, 2004

Presiding Officer:
 J. Mark Lawless, Austin

8:00 a.m. Registration Opens

Includes continental breakfast.

8:50 a.m. Opening Remarks

Michael W. Huddleston, Dallas

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 14.00 hours, of which 1.00 credit hours will apply to legal ethics/professional responsibility credit.

THE HANDLING OF LIABILITY
INSURANCE CLAIMS

9:00 a.m. .50 hour

Keeping the Cover—A Policyholder's Perspective on Dealing With Liability Claims

From intake to resolution, a guide to dealing with liability claims from the policyholder's perspective: Breaches of conditions, reservation of rights letters, choosing counsel, dealing with *Tilley* counsel, anticipating and dealing with insolvency, *Matagorda* agreements, communicating with the claimant regarding coverage, defending declaratory actions, handling issues when there is a coverage dispute, considering the business and practical impact of settlement, and navigating the route to resolution via *Gandy*. Includes sample forms for use in representing the policyholder.

Michael W. Huddleston, Dallas

9:30 a.m. .50 hour

Averting Disaster and Seeking to Uncover—A Carrier's Perspective on the Handling of Liability Claims

A discussion of the distinct perspective and relevant strategies of the carrier from intake to resolution of liability claims. Includes drafting reservation of rights letters, responding to demands for unqualified defense and/or independent counsel, navigating *Tilley* issues, evaluating claims and coverage, use of coverage opinions, drafting of coverage opinions, the decision to seek and pursuing declaratory actions, *Matagorda* agreements, dealing with and responding to *Stowers* demands, settlement of partially covered claims, special problems for excess coverage, negotiating multiple claimant/*Soriano* problems and dealing with post-verdict issues where all or part of the claim may not be covered. A special emphasis will be placed on sample forms for use in representing the carrier.

Veronica Bates, Dallas

10:00 a.m. .50 hour

Casting the Claim for Coverage and Making It Stick—Claimant Concerns in Coverage Disputes

A discussion of strategies and tactics for claimant's counsel in dealing with liability cases with coverage conflicts. Considering issues such as analyzing coverage before drafting the pleadings, acquiring information about coverage issues, developing and altering the underlying claim, pleadings, evidence and jury charge to maximize coverage, deciding what to do with declaratory actions and how to exploit them for discovery, making a *Stowers* offer that will stick, handling liens, investigating the possibility of an assigned claim, avoiding the *Gandy* triangle—can you settle, "just say no" to agreed judgments and what is "fully adversarial," and dealing with post-verdict issues such as the use of turn-overs to acquire extra-contractual rights against the carrier.

Russell H. McMains, Corpus Christi

10:30 a.m. Break

10:45 a.m. .50 hour

Declaratory Judgments—The Three Fallacies of *Griffin* and More

Does Texas law constitutionally permit a determination of indemnity prior to resolution of the tort suit if there is a duty to defend? Is the duty to defend really always broader than the duty to indemnify? When if ever does the underlying action really determine the coverage questions?

David J. Schubert, Dallas

11:15 a.m. 1.00 hour

***Gandy*—What Practitioners Would Really Like to Tell the Supreme Court About This Decision, Its Reasoning and Its Future**

R. Brent Cooper, Dallas
 Mark L. Kincaid, Austin
 John Sullivan, Houston

12:15 p.m. Luncheon Presentation

Please select on registration form.

The 75th Birthday of *Stowers*—Unearthing the Curious History of A Jazz Age Doctrine

Vincent E. Morgan, Houston
 Michael Sean Quinn, Austin

THURSDAY AFTERNOON

Presiding Officer:
 Michael W. Huddleston, Dallas

FIRST-PARTY PROPERTY COVERAGE

1:30 p.m. .50 hour

Serious Conditions—Problems in Making and Keeping a First-Party Property Claim

Analyzing the varied pitfalls and speed-bumps along the path to property coverage recovery, such as proofs of loss, the failure to mitigate, late notice, the failure to supply requested documentary proof, whether prejudice is required for breaches of conditions and what is prejudice, special problems presented by examinations under oath, including document requests, privileges, waiver and involvement of defense counsel, and deciding whether the loss manifested during the HOB policy period.

David D. Disiere, Houston

2:00 p.m. .50 hour

Be Careful What You Ask For—Dealing With Appraisal

A discussion of the limited authority dealing with this critical tool, including the proper scope of appraisal, taking proper action to preserve scope, causation and coverage issues, avoiding waiver, appointing appraisers, dealing with biased, conflicted and/or unqualified appraisers, communications with appraisers, umpire selection, the form of the award, distinguishing arbitration, contesting appraisals, and enforcing the award.

Mark A. Ticer, Dallas

2:30 p.m. 1.00 hour

How To Try a Property Case

A detailed discussion of how to try a property case from both the insured and insurer perspectives. Considering developing a theme, conducting voir dire, use of experts, presentation of documentary evidence, witness preparation, and preparation of the jury charge.

William J. Chriss, Corpus Christi
Christopher W. Martin, Houston

3:30 p.m. Break

LIABILITY RULES OF DECISION

3:45 p.m. 1.00 hour

Completing the Unfinished Picture—Soriano and the Problem of Having So Many Claims and So Little Coverage

Discussion of a number of factual scenarios involving settlement problems presented by multiple claimants facing small limits left unresolved by the Supreme Court decision in *Soriano*.

Beth D. Bradley, Dallas
Philip K. Maxwell, Austin
Jeffrey L. Raizner, Houston
James W. Walker, Dallas
Mark S. Werbner, Dallas

4:45 p.m. .75 hour

The Duty to Defend in Transition—A Mock Summary Judgment Argument

A mock summary judgment argument regarding (a) whether the burden of proof affects application of the duty to defend and (b) the use or abuse of extrinsic evidence. Addressing a factual scenario similar to *Azrock*.

Hon. Catharina Haynes, Dallas
Brian S. Martin, Houston
Lee H. Shidlofsky, Austin

5:30 p.m. Adjourn

FRIDAY MORNING, NOV. 12, 2004

Presiding Officer:
Michael Sean Quinn, Austin

COVERAGE LITIGATION

8:30 a.m. .75 hour

What Gets Out and What Gets In?—Evidentiary and Discovery Issues In Coverage Cases

A review of the relevant scope of discovery and admissible evidence in coverage cases, including consideration of the use of procedural devices to separate the coverage case from the bad faith case. Also a detailed analysis of critical issues such as the use of lawyer and claims experts, extrinsic evidence to resolve ambiguity and the admissibility and discoverability of other coverage positions taken by the carrier in other cases, reinsurance information, underwriting files, seminar and training materials, and coverage advice. Including consideration of relevant privileges and objections that might be raised regarding discovery in insurance cases.

Daniel Mabery, Dallas
Joseph Spence, Fort Worth

9:15 a.m. .50 hour

Stemming the Tide—Severance, Abatement, and Separate Trials in “Bad Faith” Insurance Cases

Discussing how to obtain and how to resist these remedies in the “Bad Faith” insurance case, including a discussion of the most recent cases and analysis of the *Henson*’s effect on these issues. Also addressing participation at trial of the anonymous insurance lawyer and how the plaintiff’s lawyer can attempt to bring extra-contractual issues and evidence into the contractual trial of a severed case.

James C. Orr, Jr., Irving

9:45 a.m. .50 hour

Rewriting the Policy—Reservation of Rights—Proving Prejudice in Order to Establish Waiver and/or Estoppel

Focusing on methods of establishing prejudice in order to apply waiver and/or estoppel. Including a discussion of situations where *Tilley* may dictate prejudice established as a matter of law and a review of the case-law discussing situations where prejudice has been found to exist or not to exist.

Katherine Driscoll Julia, Edinburg

10:15 a.m. Break

EXTRA-CONTRACTUAL CLAIMS

10:30 a.m. .50 hour

Separating Wheat from Chaff—Explaining the Difference Between a Mere Breach of Contract and Statutory Liability Under the DTPA and the Insurance Code

Addressing the application of the rule that a mere breach of contract is not actionable by statute; distinguishing the difference between contract, tort, malicious and statutory claims; distinguishing between statutory malice for punitives and “knowingly” under the DTPA/Insurance Code; noting what forms of misrepresentation, pre-contracting or initiation and post-contracting, are actionable by statute; identifying the types of “actual damages” available for trebling under the DTPA and addressing whether contract or expectation damages may be trebled.

James H. Moody, III, Dallas

11:00 a.m. .50 hour

Establishing Extra-Contractual Liability Outside of *Stowers-Head After Traver and Rocor*

Addressing the question of whether torts or statutory claims establishing extra-contractual liability exist that are not subject to the *Stowers* elements in either a settlement, settlement related or non-settlement setting. Including consideration of claims under common law, 21.21 and 21.55 of the Tex. Ins. Code.

Ernest Martin, Jr., Dallas

11:30 a.m. .50 hour

Cumis in Texas—The Tension Between *Davalos & Traver*

A discussion of current issues regarding independent counsel. Including a discussion of *Davalos*, *Northland v. DHA*, and other pertinent case developments, along with consideration of limits on the cost and selection of independent counsel.

John C. Tollefson, Dallas

12:00 p.m. Luncheon Presentation .50 hour

Please select on registration form.

Proving and Holding Onto Punitive/ Treble Damages—The Standard of Appellate Review for Malice Under a Clear and Convincing Burden of Proof

Explaining the development of the appellate standard of review for malice and other similar findings in light of the application of the clear and convincing burden of proof. Also discussing the applicable standards for the award of punitive/treble damages, the differences among them, and providing examples of methods of proving and actual cases upholding such award.

Michael A. Hatchell, Austin

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Presiding Officer:
Patrick J. Wielinski, Arlington

FEAR FACTORS

1:30 p.m. .50 hour

Disability Coverage Under Texas Law

Discussing the various available coverages, exclusions and unique conditions. Also dealing with the relationship between disability and health policies and between disability policies and statutory provisions such as ERISA.

Michael Sean Quinn, Austin

2:00 p.m. .50 hour

What Every Lawyer Should Know About Lawyer's Professional Liability Coverage

A detailed discussion of the application of claims—made principals under Texas law, including the differences between "late notice" defenses and "claims-made" defenses, the use of retro dates, tail coverage, and the question of when a lawyer or firm knew or should have known a claim was likely to be made against them. Also including a discussion of other critical policy provisions and exclusions in professional liability policies for lawyers, such as provisions dealing with treble or punitive damages, unlawful or malicious acts, and the special problems presented by declining or collapsing limits policies. Finally, a discussion of other sources of coverage potentially available for lawyers, such as personal injury coverage under homeowners' policies.

Bob Roberts, Austin

2:30 p.m. 1.00 hour ethics

Malpractice Exposure for Lawyers in Insurance Related Matters

A panel discussion exploring legal malpractice issues relevant to counsel representing parties in insurance related matters. Topics to be addressed include exposure for coverage attorneys, conflict of interest problems for Tilley counsel, malpractice traps for the plaintiffs' counsel in claims with coverage disputes, claims by excess carriers, involvement of defense and plaintiffs' counsel in Gandy or sweetheart deal agreements, and exposure of defense counsel for evaluation of exposure in underlying suit.

Moderator: Robert M. (Randy) Roach, Jr., Austin / Houston
William D. Cobb, Jr., Dallas
Coyt Randal "Randy" Johnston, Dallas
Marshall M. Searcy, Jr., Fort Worth

3:30 p.m. Adjourn

Mail this registration form to:
The University of Texas School of Law, attn. CLE-IN04
P.O. Box 7757, Austin, TX 78713-7759
or fax a copy to: (512) 475-6876

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Bar Card# TX Other State: N/A

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REGISTRATION Includes Course Binder.

- Early Registration Fee due by Wed., Nov. 3, 2004 \$395.00
Registration Fee after Wed., Nov. 3, 2004 \$445.00
Wed. "Dinner with the Experts" \$75.00
Thurs. Luncheon: The 75 Birthday of Stowers \$25.00
Fri. Luncheon with Michael A. Hatchell \$26.00

CONFERENCE PUBLICATIONS AND MEDIA Allow 2-3 weeks from conference date for delivery.

- Course Binder \$200.00
Audio CD Set \$175.00
eBinder on CD (PDF format) \$200.00/\$50.00 (\$200 purchased alone, \$50 with registration or purchase of Course Binder or Audio CD Set)

GROUP CLE: Bring the conference in-house and learn at your convenience. Allow 2-3 weeks from conference date for delivery.

- Group CLE for 2—Includes Audio CD Set and Course Binder \$750.00
Add participants (includes Course Binder) for \$200 each \$

TOTAL ENCLOSED \$

METHOD OF PAYMENT

- Check (make checks payable to: The University of Texas at Austin)
VISA or Mastercard (sorry, no AMEX or Discover)

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Authorized Signature Exp. Date (mm/yy)

ABOUT THE CONFERENCE

The Insurance Law Institute is cosponsored by the Insurance Law Section of the State Bar of Texas and The University of Texas School of Law; bringing together the leading insurance litigators, commercial litigators, judges, and insurance experts—from both plaintiff and defense.

This year's program is based around a superbly integrated series of presentations under the following headings:

- Handling of Insurance Liability Insurance Claims
- First-Party Property Coverage
- Liability Rules of Decision
- Coverage Litigation
- Extra-Contractual Claims
- Fear Factors
- New this year is "Dinner with the Experts," **Show Me the Money**, a Wednesday evening session where leading members of the plaintiff and defense sides share their most effective strategies for pursuing and defending commercial claims.

COMMENTS FROM PAST INSURANCE LAW INSTITUTE ATTENDEES

Enjoyed the panel discussions and "real world" presentations.

Great program—topics were relevant to my practice.

Loved the panel presentations and mock oral arguments.

The whole program was well-done, especially the panels.

Excellent format. Going in-depth keeps it interesting.

Faculty was clearly superbly qualified and represented the highest level of competence in the topics presented.

One of the best conferences I've ever attended.

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Nov. 10, 11-12, 2004

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1600 Lamar
Houston, TX 77010
(713) 739-8000

\$129 single or double special group rate (subject to availability) good through **Oct. 11, 2004**

Parking: \$12

KEY DATES

Registration and Cancellation

November 3, 2004, 5 p.m.

• **last day for early registration**
add \$50 for registrations received after this time

November 5, 2004, 5 p.m.

• **last day for full refund**

November 8, 2004, 5 p.m.

(Monday before conference)
• **last day for partial refunds**
\$50 processing fee applied

November 10, 2004, 6 p.m.

• **"Dinner with the Experts" begins**

November 11, 2004, 9 a.m.

• **conference begins**



ABOUT THE COVER

"A Rare Decay of a Lambda into a Muon, a Proton, and Three Lemons," oil on wood panel, by Pablo Taboada. Mr. Taboada's work may be seen at Artamici Gallery in Austin, 512-457-0171 or artamici@yahoo.com.

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