

2004 Insurance Law Institute
November 10-12, 2004 • Hilton Americas • Houston, TX

Wednesday Evening, Nov. 10, 2004

6:00 pm
0.75 hr

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

Kevin James Keith, Kevin J. Keith, P.C. - Dallas, TX
Moderator:
Karen Keltz, Riddle And Williams PC - Dallas, TX
Mark L. Kincaid, Kincaid Horton & Smith - Austin, TX
Brian Scott Martin, Thompson, Coe, Cousins & Irons - Houston, TX
Charles R. Shaddox, San Antonio, TX
Mark A. Ticer, Dallas, TX
John C. Tollefson, Tollefson Bradley Ball & Mitchell, LLP - Dallas, TX

Thursday Morning, Nov. 11, 2004

Presiding Officer:

J. Mark Lawless, Nickens Keeton Lawless Farrell & Flack - Austin, TX

9:00 am
0.50 hr

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 Wallace Huddleston, Shannon Gracey Ratliff & Miller LLP - Dallas, TX

9:30 am
0.50 hr

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 Martinsen Bates, Hermes Sargent Bates, LLP - Dallas, TX

10:00 am 0.50 hr	<p>Casting the Claim for Coverage and Making It Stick - Claimant Concerns in Coverage Disputes</p> <p>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 turnovers to acquire extra-contractual rights against the carrier.</p> <p>Russell Hugh McMains, Law Ofc Of Russell H McMains - Corpus Christi, TX</p>
10:45 am 0.50 hr	<p>Declaratory Judgments - The Three Fallacies of <i>Griffin</i> and More</p> <p>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?</p> <p>David J. Schubert, Schubert Evans PC - Dallas, TX</p>
11:15 am 1.00 hr	<p><i>Gandy</i> - What Practitioners Would Really Like to Tell the Supreme Court about This Decision, Its Reasoning and Its Future</p> <p>R. Brent Cooper, Cooper & Scully PC - Dallas, TX Mark L. Kincaid, Kincaid Horton & Smith - Austin, TX John Francis Sullivan, Houston, TX</p>

Thursday Afternoon, Nov. 11, 2004

Presiding Officer:

Michael Wallace Huddleston, Shannon Gracey Ratliff & Miller LLP - Dallas, TX

12:15 pm 0.50 hr	<p>The 75th Birthday of <i>Stowers</i> - Unearthing the Curious History of a Jazz Age Doctrine</p> <p>Vincent Eugene Morgan, Pillsbury Winthrop Shaw Pittman LLP - Houston, TX Michael Sean Quinn, Quinn Hayes & Quinn - Austin, TX</p>
1:30 pm 0.50 hr	<p>Serious Conditions - Problems in Making and Keeping a First-Party Property Claim</p> <p>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.</p> <p>David D. Disiere, Martin Disiere Jefferson & Wisdom LLP - Houston, TX</p>

2:00 pm 0.50 hr	<p>Be Careful What You Ask For - Dealing with Appraisal</p> <p>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.</p> <p>Mark A. Ticer, Dallas, TX</p>
2:30 pm 1.00 hr	<p>How to Try a Property Case</p> <p>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.</p> <p>William John Chriss, Law Offices Of William J. Chriss, P.C. - Corpus Christi, TX Christopher Edward Martin, Law Office Of Christopher E. Martin - Fairfield, TX</p>
3:45 pm 1.00 hr	<p>Completing the Unfinished Picture - <i>Soriano</i> and the Problem of Having So Many Claims and So Little Coverage</p> <p>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 <i>Soriano</i>.</p> <p>Beth D. Bradley, Tollefon Bradley Ball & Mitchell, LLP - Dallas, TX Philip Kent Maxwell, Law Offices Of Philip K. Maxwell - Austin, TX Jeffrey L. Raizner, Doyle Raizner LLP - Houston, TX James W. Walker, Walker Sewell LLP - Dallas, TX Mark S. Werbner, Sayles Werbner P. C. - Dallas, TX</p>
4:45 pm 0.75 hr	<p>The Duty to Defend in Transition - A Mock Summary Judgment Argument</p> <p>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.</p> <p>Catharina J.H.D. Haynes, 191st District Court - Dallas, TX Brian Scott Martin, Thompson, Coe, Cousins & Irons - Houston, TX Lee Howard Shidlofsky, Nickens Keeton Lawless Farrell & Flack - Austin, TX</p>

Friday Morning, Nov. 12, 2004

Presiding Officer:

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

8:30 am 0.75 hr	<p>What Gets Out and What Gets In? - Evidentiary and Discovery Issues in Coverage Cases</p> <p>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.</p> <p>Daniel Trevor Mabery, Law Office Of Daniel T. Mabery - Dallas, TX Joseph Wilson Spence, Shannon Gracey Ratliff & Miller LLP - Fort Worth, TX</p>
9:15 am 0.50 hr	<p>Stemming the Tide - Severance, Abatement, and Separate Trials in</p> <p>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.</p> <p>James Craig Orr Jr., Heygood Orr Reyes & Bartolomei - Irving, TX</p>
9:45 am 0.50 hr	<p>Rewriting the Policy - Reservation of Rights - Proving Prejudice in Order to Establish Waiver and/or Estoppel</p> <p>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.</p> <p>Katherine Driscoll Julia, Julia Law Firm PLLC - Mcallen, TX</p>
10:30 am 0.50 hr	<p>Separating Wheat from Chaff - Explaining the Difference between a Mere Breach of Contract and Statutory Liability under the DTPA and the Insurance Code</p> <p>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.</p> <p>James H. Moody III, Quilling Selander Cummiskey & Lownds - Dallas, TX</p>
11:00 am 0.50 hr	<p>Establishing Extra-Contractual Liability outside of <i>Stowers-Head</i> after <i>Traver</i> and <i>Rocor</i></p> <p>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.</p> <p>Ernest Martin Jr., Haynes & Boone LLP - Dallas, TX</p>
11:30 am 0.50 hr	<p><i>Cumis</i> in Texas - The Tension between <i>Davalos</i> & <i>Traver</i></p> <p>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.</p> <p>John C. Tollefson, Tollefson Bradley Ball & Mitchell, LLP - Dallas, TX</p>

Friday Afternoon, Nov. 12, 2004

Presiding Officer:

Patrick J. Wielinski, Cokinos, Bosien & Young - Arlington, TX

12:00 pm 0.50 hr	<p>Proving and Holding onto Punitive / Treble Damages - The Standard of Appellate Review for Malice under a Clear and Convincing Burden of Proof</p> <p>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.</p> <p>Michael A. Hatchell, Locke Liddell & Sapp LLP - Austin, TX</p>
1:30 pm 0.50 hr	<p>Disability Coverage under Texas Law</p> <p>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.</p> <p>Michael Sean Quinn, Quinn Hayes & Quinn - Austin, TX</p>
2:00 pm 0.50 hr	<p>What Every Lawyer Should Know about Lawyer's Professional Liability Coverage</p> <p>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.</p> <p>Bob Roberts, The Law Offices of Bob Roberts - Austin, TX</p>
2:30 pm 0.00 hr 1.00 hr ethics	<p>Malpractice Exposure for Lawyers in Insurance Related Matters</p> <p>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.</p> <p>William D. Cobb Jr., Cowles & Thompson, P.C. - Dallas, TX Coyt Randal Johnston, Johnston Tobey, P.C. - Dallas, TX Moderator: Robert M. Roach Jr., Cook & Roach - Houston, TX Marshall M. Searcy Jr., Fort Worth, TX</p>