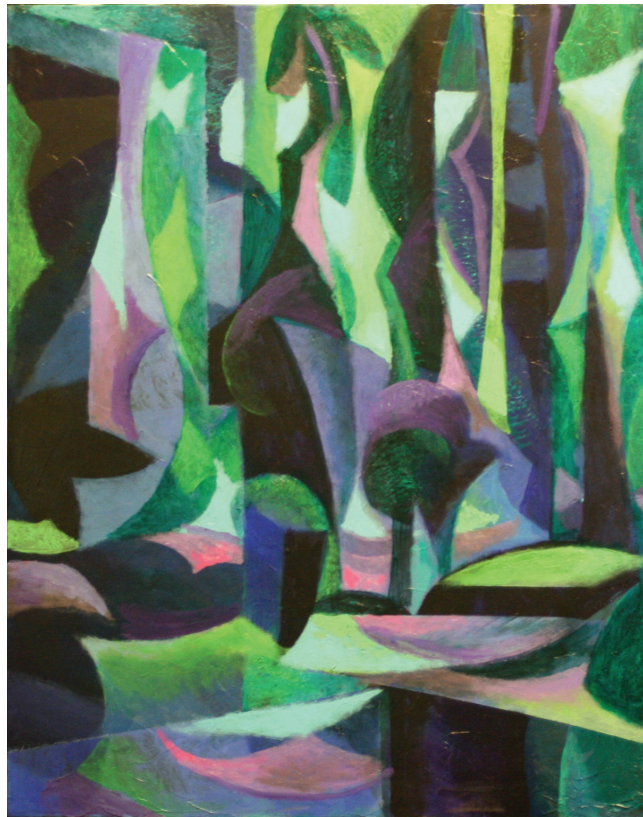


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October 22*, 23-24, 2008

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*Wednesday Evening Session:
Looking Forward and Looking Back: Reserving Rights,
Reviewing Outcomes and Planning for Both

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WEDNESDAY EVENING, OCT. 22, 2008

Presiding Officer:

Vincent E. Morgan, Houston, TX

Looking Forward and Looking Back:
Reserving Rights, Reviewing Outcomes
and Planning for Both

6:00 p.m. .75 hr

Restaurant Tables, Hotel Rooms and Insurer Rights: How Common Mistakes Result in No Reservations

Common mistakes and their consequences in the drafting of reservation of rights letters, and the building blocks for effective letters with sample types and wordings.

Karen Klaas Milhollin, Houston, TX

6:45 p.m. Break

An Hour of Stowers: Exploring an
Insurer's Liability for Failing to Settle
within Policy Limits

7:00 p.m. .50 hr

Part One: What are the Odds?

An examination of results from Stowers cases at trial and on appeal.

Vincent E. Morgan, Houston, TX

7:30 p.m. .50 hr

Part Two: What are My Theories?

Complications, convolutions and new developments in legal issues concerning the application of Stowers and insurer responsibility for settlement issues, including a theoretical examination of legal creativity.

Robert J. Cunningham, Houston, TX

8:00 p.m. Q&A For Wednesday Night Speakers

8:15 p.m. Adjourn

THURSDAY MORNING, OCT. 23, 2008

Presiding Officer:

Veronica C. Czuchna, Austin, TX

8:00 a.m. Registration Opens

Includes continental breakfast.

9:00 a.m. 1.00 hr

The New Carrier-Insured-Carrier Relationship: The Problem of Multiple Carrier Sharing After *Mid-Continent*

The ever complicated relationship between carriers and their insureds has become yet more confused following the Texas Supreme Court's controversial decision in *Mid-Continent v. Liberty Mutual*. This discussion attempts to sort out the problems raised and consider its practical implications, while also answering the question, "Is this one of the most difficult insurance cases ever?"

Moderator: Lee H. Shidlofsky, Austin, TX
Brian S. Martin, Houston, TX
Ernest Martin Jr., Dallas, TX

10:00 a.m. .50 hr

Pending Coverage Cases at the Supreme Court of Texas and Fifth Circuit Court of Appeals

A discussion of the "hot" cases pending before the Supreme Court of Texas and the Fifth Circuit Court of Appeals and their potential impact to insureds and insurers.

Lee H. Shidlofsky, Austin, TX

10:30 a.m. Break

10:45 a.m. .75 hr

You Get What You Pay For: Additional Insured Issues

The speakers will address the evolving quagmire of additional insured issues, including new cases, new forms, the obligations of the additional insured, interaction with indemnity obligations, the juxtaposition of extrinsic contracts and the complaint allegation rule, and the significance (or not) of certificates of insurance. Or, how things should be, how things go wrong, and what can be done.

Beth D. Bradley, Dallas, TX
Stephen E. Walraven, San Antonio, TX

11:30 a.m. .50 hr

Liability of Insurance Intermediaries (Agents and Brokers)

For a long time, insurance intermediaries in Texas have been fundamentally liable to purchasers of insurance for 1) failing to procure a policy or 2) procuring incorrect or inadequate coverage. Of course, there are many more complex

ways in which an intermediary might be liable to an insurer. The world has changed! There is a tendency toward a broader range of intermediary-to-customer liabilities, and they have many bases. Even Texas cases may be starting to change, although the Errors and Omissions insurers are—for obvious reasons—resisting this trend vigorously.

Michael Sean Quinn, Austin, TX

THURSDAY AFTERNOON

Presiding Officer:

Beth D. Bradley, Dallas, TX

LUNCHEON PRESENTATION

12:00 p.m. Pick up Box Lunch
Included in conference registration fee.

12:15 p.m. .75 hr

The Future of Climate Change Litigation—Will Things Heat Up in the Courtroom?

Stephen D. Susman, Houston, TX

1:00 p.m. Break

1:15 p.m. .50 hr

Global Warming—An Inconvenient Truth for Insurance Carriers?

Will general liability policies provide coverage for the enormous defense costs and possible massive damage awards arising from climate change lawsuits like *Native Village of Kivalina v. ExxonMobil*? Will directors' and officers' liability policies provide coverage for alleged failure to adequately disclose potential liabilities related to global warming?

Pamella A. Hopper, Austin, TX

1:45 p.m. .50 hr

Keep on Trucking: Insurance Issues Affecting the Industry

Overview of critical issues including: lessor/lessee insured status; priority of coverages; MCS-90 endorsement; bobtail coverage; Form F; and regulatory requirements.

Veronica M. Bates, Dallas, TX

2:15 p.m. .50 hr

Seeking Solutions: Avoiding *Mid-Continent* Issues

A discussion of the settlement issues created by the *Mid-Continent* opinion and analysis of potential solutions, including loan receipts and related "deals."

Russell H. McMains, Corpus Christi, TX

2:45 p.m. Break

3:00 p.m. .50 hr

"Unconditional Love"—Policy Conditions and Covenants

Condition versus covenant? Prejudice required? Recent cases: *PAJ*, *Crocker*. What about "claims made" policies?

David J. Schubert, Dallas, TX

3:30 p.m. .50 hr

To Be Bound or Not To Be Bound—What Is The Question?

Exploring the impact of rules that may bind a party as to the resolution of coverage issues and the duty to indemnify. Including examination of the doctrine of collateral estoppel in insurance cases, judicial estoppel, jurisprudential limitations regarding proof of indemnity facts under *Shand Morahan*, *Swicegood and AISLIC v. Res-Care*, and public policy rules such as *Gandy* and *Dorismond* after *Evanston v. ATOFINA*.

Michael W. Huddleston, Dallas, TX

4:00 p.m. 1.00 hr ethics

Incongruence: Breach of Fiduciary Duty Under *UPLC*—How Far Will It Extend—and Will It Stop at "Staff" Lawyers?

What issues are raised by the Supreme Court's recent *American Home* opinion and what issues might lie ahead for staff counsel and their corporate employers?

Joe K. Longley, Austin, TX
Mark A. Ticer, Dallas, TX
James W. Walker, Dallas, TX

5:00 p.m. Adjourn

FRIDAY MORNING, OCT. 24, 2008

Presiding Officer:

Michael Sean Quinn, Austin, TX

8:30 a.m. Conference Room Opens

Includes continental breakfast.

9:00 a.m. .50 hr

Subprime Primer: Where's the Primary Exposure?

An overview of the practices and players that contributed to the subprime mortgage crisis and an examination of the insurance coverage issues—policies, insureds, triggers, and exclusions—implicated by demands for defense and indemnity in the ensuing litigation.

Catherine L. Hanna, Austin, TX

9:30 a.m. .50 hr

The Insurability of Punitive Damages in Texas: *Fairfield Insurance v. Stephens Martin Paving* and Related Cases

This session examines the implications of *Fairfield* and its related cases in a variety of factual and hypothetical contexts.

David L. Plaut, Austin, TX

10:00 a.m. .50 hr

Because I Can! But Should I? Litigation Strategies and Tactics in Personal Lines Insurance Litigation

An analysis of options available under the insurance policies as well as under current case law in personal lines insurance litigation and why you might, or might not, want to exercise those options.

Lisa A. Songy, Dallas, TX

10:30 a.m. Break

10:45 a.m. .50 hr

Choice of Law

Navigating the many routes to resolve difficult choice-of-law questions when interpreting insurance policies, including multi-state policies.

Scott P. Stolley, Dallas, TX

11:15 a.m. .50 hr

Duty Not to Settle

Much has been written on the duty of insurers to settle. This topic will focus on what duties insurers have to their insureds not to settle liability claims and what circumstances will give rise to that duty.

R. Brent Cooper, Dallas, TX

FRIDAY AFTERNOON

Presiding Officer:

David L. Plaut, Austin, TX

LUNCHEON PRESENTATION

11:45 a.m. Pick up Box Lunch

Included in conference registration fee.

12:00 p.m. .75 hr ethics

What Constitutes an "Adequate Defense?"—*Cadillacs, Chevrolets and Yugos*

What defense is an insured entitled to receive? This session explores the ethical issue of what constitutes an "adequate defense" under an insurer's duty to defend. The discussion will examine tensions that may arise in the tri-partite relationship, including the policyholder's desire for the "ultimate" defense, the insurer's desire to provide that defense within reasonable economic parameters in a competitive marketplace and the defense

counsel's ethical duty to render independent professional judgment to effectuate a zealous defense. This discussion will also examine remedies that may be available to a policyholder when Texas law does not recognize a cause of action for "negligent defense" by an insured against his insurer.

J. Mark Lawless, Austin, TX
Mary J. Ibarra Myers, San Antonio, TX

12:45 p.m. Break

1:00 p.m. 1.00 hr

The Texas Department of Insurance Complaint Process—Two Perspectives

The Texas Department of Insurance and an insurance industry representative discuss the TDI complaint process. This topic includes discussion of 1) the TIC, concerning the statutory provisions that require the Texas Department of Insurance to collect and distribute complaint information, 2) the TAC, concerning an insurer's complaint response requirements, complaint records and logs, as well as recent agency regulations, and 3) the DOUGH, concerning monetary recovery for consumers; market conduct examinations, and insurer fines and restitution payments. Insurers' responsibilities in the complaint process, tips for responding to complaints, and TDI complaint resources will be presented.

Elizabeth Ann Gilday, Dallas, TX
Audrey L. Selden, Austin, TX

2:00 p.m. .50 hr

Jury Selection Issues in Insurance Cases

Insurance cases are frequently won or lost in jury selection. How do you deal with inherent hostility to insurers? What do you do when most of the panel members experienced the event made the basis of the insurance claim? How do you make complex coverage issues simple enough for a jury? How can mock juries be more predictive? How can you maximize the chances of winning your insurance case in voir dire?

Christopher W. Martin, Houston, TX

2:30 p.m. .50 hr

Excess, Primary, and Self Insured

This topic will explore the latest developments in equitable subrogation excess v. primary suits, as well as the different issues arising when dealing with self insureds. Can an excess carrier compel a primary or self insured to tender their limits? What about control of a defense where, practically speaking, the majority of the exposure is that of the excess insurer? How do potentially uncovered punitive damages play into this situation?

Robert D. Allen, Dallas, TX

3:00 p.m. Adjourn

COMMENTS FROM PAST INSTITUTES

"Overall excellent program."

"The panel presentations were excellent and filled with the hot topics. Great job."

"Great idea to incorporate the box lunch presentations in the program!"

"Wednesday night's primer is very helpful."

"This is my first Insurance Law conference, and I will certainly be back."

"I do a lot of insurance coverage work and I found this seminar VERY useful."

"This is my third or fourth time to attend. Each year it is better than the year before. How you can top this one, I can't imagine, but I'll be here to find out."

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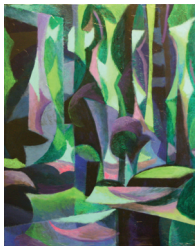
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Registration & Cancellation

October 15, 2008—5 p.m.

last day for early registration

add \$50 for registrations
received after this time

October 17, 2008—5 p.m.

last day for full refund

October 20, 2008—5 p.m.

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October 22, 2008—6 p.m.

Wednesday evening session begins

October 23, 2008—9 a.m.

conference begins

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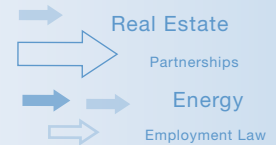
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