

**13<sup>th</sup> Annual Insurance Law Institute**  
**October 22\*, 23-24, 2008 • InterContinental Stephen F. Austin Hotel • Austin, TX**

**Wednesday Evening, Oct. 22, 2008**

**Presiding Officer:**

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

	<b>Building Blocks: Introducing Control of Defense Litigation on Management</b>
6:00 pm 0.75 hr	<b>Restaurant Tables, Hotel Rooms and Insurer Rights: How Common Mistakes Result in No Reservations</b>  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, Westmoreland Hall PC - Houston, TX
6:45 pm	<b>Break</b>
	<b>An Hour of Stowers: Exploring an Insurer's Liability for Failing to Settle Within Policy Limits</b>
7:00 pm 0.50 hr	<b>Part One: What are the Odds?</b>  An examination of results from Stowers cases at trial and on appeal.  Vincent E. Morgan, Pillsbury Winthrop Shaw Pittman LLP - Houston, TX
7:30 pm 0.50 hr	<b>Part Two: What are My Theories?</b>  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, Roach & Newton, LLP - Houston, TX
8:00 pm	<b>Q&amp;A For Wednesday Night Speakers</b>
8:15 pm	<b>Adjourn</b>

**Thursday Morning, Oct. 23, 2008**

**Presiding Officer:**

**Veronica M. Carmona Czuchna**, Jordan & Carmona PC - Austin, TX

8:00 am	<b>Registration Opens</b>  Includes continental breakfast.
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9:00 am 1.00 hr	<p><b>The New Carrier-Insured-Carrier Relationship: The Problem of Multiple Carrier Sharing After <i>MidContinent</i></b></p> <p>The ever complicated relationship between carriers and their insureds has become yet more confused following the Texas Supreme Court's controversial decision in <i>MidContinent v. Liberty Mutual</i>. 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?"</p> <p>Brian Scott Martin, Thompson, Coe, Cousins &amp; Irons, L.L.P. - Houston, TX  Ernest Martin Jr., Haynes and Boone, LLP - Dallas, TX  Moderator:  Lee H. Shidlofsky, Visser Shidlofsky LLP - Austin, TX</p>
10:00 am 0.50 hr	<p><b>Pending Coverage Cases at the Supreme Court of Texas and Fifth Circuit Court of Appeals</b></p> <p>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.</p> <p>Lee H. Shidlofsky, Visser Shidlofsky LLP - Austin, TX</p>
10:30 am	<b>Break</b>
10:45 am 0.75 hr	<p><b>You Get What You Pay For: Additional Insured Issues</b></p> <p>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.</p> <p>Beth D. Bradley, Tollefson Bradley Ball &amp; Mitchell, LLP - Dallas, TX  Stephen E. Walraven, Langley &amp; Banack, Inc. - San Antonio, TX</p>
11:30 am 0.50 hr	<p><b>Liability of Insurance Intermediaries (Agents and Brokers)</b></p> <p>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.</p> <p>Michael Sean Quinn, Quinn Hayes &amp; Quinn - Austin, TX</p>

## Thursday Afternoon, Oct. 23, 2008

### Presiding Officer:

**Beth D. Bradley**, Tollefson Bradley Ball & Mitchell, LLP - Dallas, TX

	<b>LUNCHEON PRESENTATION</b>
12:00 pm	<p><b>Pick up Box Lunch</b></p> <p>Included in conference registration fee.</p>

12:15 pm 0.75 hr	<p><b>The Future of Climate Change Litigation--Will Things Heat Up in the Courtroom?</b></p> <p>Stephen D. Susman, Susman Godfrey LLP - New York, NY</p>
1:00 pm	<p><b>Break</b></p>
1:15 pm 0.50 hr	<p><b>Global Warming—An Inconvenient Truth for Insurance Carriers?</b></p> <p>Will general liability policies provide coverage for the enormous defense costs and possible massive damage awards arising from climate change lawsuits like <i>Native Village of Kivalina v. ExxonMobil</i>? Will directors and officers liability policies provide coverage for alleged failure to adequately disclose potential liabilities related to global warming?</p> <p>Pamella A. Hopper, Nickens Keeton Lawless Farrell &amp; Flack LLP - Austin, TX</p>
1:45 pm 0.50 hr	<p><b>Keep on Trucking: Insurance Issues Affecting the Industry</b></p> <p>Overview of critical issues including: Lessor/Lessee insured status; priority of coverages; MCS 90 endorsement; bobtail coverage; Form F; and regulatory requirements.</p> <p>Veronica Martinsen Bates, Hermes Sargent Bates, LLP - Dallas, TX</p>
2:15 pm 0.50 hr	<p><b>Seeking Solutions: Avoiding Mid-Continent Issues</b></p> <p>A discussion of the settlement issues created by the Mid-Continent opinion and analysis of potential solutions, including loan receipts and related "deals."</p> <p>Russell H. McMains, Attorney at Law - Corpus Christi, TX</p>
2:45 pm	<p><b>Break</b></p>
3:00 pm 0.50 hr	<p><b>"Unconditional Love"—Policy Conditions and Covenants</b></p> <p>Condition versus covenant? Prejudice required? Recent cases: PAJ, Crocker. What about "claims made" policies?</p> <p>David J. Schubert, Schubert &amp; Evans PC - Dallas, TX</p>
3:30 pm 0.50 hr	<p><b>To Be Bound or Not To Be Bound—What Is The Question?</b></p> <p>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 <i>Shand Morahan</i>, <i>Swicegood</i> and <i> AISLIC v. Res-Care</i>, and public policy rules such as <i>Gandy</i> and <i>Dorismond</i> after <i>Evanston v. ATOFINA</i>.</p> <p>Michael W. Huddleston, Shannon, Gracey, Ratliff &amp; Miller LLP - Dallas, TX</p>
4:00 pm 1.00 hr ethics	<p><b>Incongruence: Breach of Fiduciary Duty Under UPLC—How Far Will It Extend—and Will It Stop at 'Staff' Lawyers?</b></p> <p>What issues are raised by the Supreme Court's recent <i>American Home</i> opinion and what issues might lie ahead for staff counsel and their corporate employers?</p> <p>Joe K. Longley, Law Offices of Joe K. Longley - Austin, TX  Mark A. Ticer, Law Offices of Mark A. Ticer - Dallas, TX  James W. Walker, Walker Sewell LLP - Dallas, TX</p>

5:00 pm

**Adjourn**

## Friday Morning, Oct. 24, 2008

**Presiding Officer:**

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

8:30 am

### **Conference Room Opens**

Includes continental breakfast.

9:00 am  
0.50 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, Hanna & Plaut, LLP - Austin, TX

9:30 am  
0.50 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, Hanna & Plaut, LLP - Austin, TX

10:00 am  
0.50 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, Shannon, Gracey, Ratliff & Miller LLP - Dallas, TX

10:30 am

### **Break**

10:45 am  
0.50 hr

### **Choice of Law**

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

**Please note: This session has been moved to 2:30 pm Friday.**

David S. White, Thompson & Knight LLP - Dallas, TX

11:15 am  
0.50 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, Cooper & Scully, P.C. - Dallas, TX

## Friday Afternoon, Oct. 24, 2008

### Presiding Officer:

David L. Plaut, Hanna & Plaut, LLP - Austin, TX

	<b>LUNCHEON PRESENTATION</b>
11:45 am	<b>Pick up Box Lunch</b>  Included in conference registration fee.
12:00 pm 1.00 hr ethics	<b>What Constitutes an "Adequate Defense?"—Cadillacs, Chevrolets &amp; Yugos</b>  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, Nickens Keeton Lawless Farrell & Flack LLP - Austin, TX Mary J. Ibarra Myers, Liberty Mutual Insurance - San Antonio, TX
1:00 pm	<b>Break</b>
1:15 pm 0.75 hr	<b>The Texas Department of Insurance Complaint Process—Two Perspectives</b>  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.  Robert Fred Josey, Hanna & Plaut, L.L.P. - Austin, TX Sara Shiplet Waitt, Texas Department of Insurance - Austin, TX
2:00 pm 0.50 hr	<b>Jury Selection Issues in Insurance Cases</b>  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, Martin, Disiere, Jefferson, & Wisdom, L.L.P. - Houston, TX

2:30 pm  
0.50 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?

Please note: This session has been moved to 10:45 am Friday.

Robert D. Allen, Meckler Bulger Tilson Marick & Pearson LLP - Dallas, TX

3:00 pm

### **Adjourn**