

THE INSURANCE LAW SECTION OF THE STATE BAR OF TEXAS
and THE UNIVERSITY OF TEXAS SCHOOL OF LAW

14TH ANNUAL
INSURANCE LAW INSTITUTE



October 15–16, 2009

Hyatt Regency Hill Country Resort and Spa ▪ San Antonio, Texas

Earn up to 14.00 Hours of Credit including 2.00 Hours of Ethics Credit
Specialization Credit Approved for Civil Trial Law, Consumer and Commercial Law,
Personal Injury Law, and Worker's Compensation Law

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THURSDAY MORNING, OCT. 15, 2009

Presiding Officer:

Stephen E. Walraven, San Antonio, TX

8:00 a.m. Registration Opens
Includes continental breakfast.

9:00 a.m. .50 hr

***Ruttiger v. Texas Mutual* and the Viability of *Aranda* in the Workers' Compensation "Bad Faith" Context**

This topic examines the *Ruttiger v. Texas Mutual* decision from the Houston Court of Appeals as well as the arguments and briefing now pending before the Texas Supreme Court. Both Plaintiff and Defense perspectives are addressed regarding the implications of *Ruttiger* for "bad faith" jurisprudence in the workers' compensation context and for other insurance cases. Issues addressed include the historical context of *Ruttiger* and the continued viability of the tort duty of good faith and fair dealing in the workers' compensation context, the requirement of "independent injury" under *Aranda*, *Ruttiger*, and other cases, as well as the "exhaustion of remedies" requirement for workers' compensation cases.

David L. Plaut, Austin, TX

Jeffrey L. Raizner, Houston, TX

9:30 a.m. .50 hr

The Case Law Catch-All: What Else Happened?

A review of "new" cases, cases that are in the pipeline, and hot issues that are working their way through the courts.

Lee H. Shidlofsky, Austin, TX

10:00 a.m. Break

10:15 a.m. .50 hr including .25 hr ethics

Guide to Writing Stowers Letters

A practical guide that provides instructions based on the cases with actual examples of both good and bad letters. The guide covers recent decisions that have changed Stowers, and the ethical obligations that arise in the Stowers context.

Jamie Penton Cooper, Houston, TX

10:45 a.m. .50 hr

OCIPs and CCIPs

CIPs: Solution or part of the problem? Ongoing efforts to define, clarify and regulate controlled insurance programs on construction projects.

Patrick J. Wielinski, Arlington, TX

11:15 a.m. .50 hr

Update on Contractual Indemnity Agreements

How does a carrier determine if the agreement containing the indemnity agreement is an "insured contract"? Is a defense owed to the insured's indemnitee? What does a carrier do if the contractual obligations are broader than the coverage provided? Does the carrier have to defend for the indemnitee's own negligence? Find out the answers to these questions and more.

Sandra Cockran Liser, Fort Worth, TX

THURSDAY AFTERNOON

Presiding Officer:

Sandra Cockran Liser, Fort Worth, TX

Insolvency Issues

LUNCHEON PRESENTATION

11:45 a.m. Pick up Box Lunch

Included in conference registration fee.

12:00 p.m. .50 hr

Thieves in the Night: London Market Solvent Schemes of Arrangement

From its humble beginnings insuring ships and cargoes at Lloyd's Coffee House to its payment of Great San Francisco Fire claims without documentation, the London Insurance Market had a proud and honorable tradition. Yet now, with help from the UK courts, U.S. policyholders and reinsured U.S. carriers are having their occurrence-based coverages unilaterally cancelled at a cost of \$100s of millions. How is this possible and who are these Thieves in the Night?

D. Christopher Heckman, Irving, TX

12:30 p.m. Break

12:45 p.m. .75 hr

When the Policyholder Goes Belly Up

What is the effect of a policyholder's bankruptcy on its insurance coverage? The panel examines both substantive and procedural implications of a policyholder's bankruptcy, including the impact on tort claimants and the role of the Bankruptcy Court.

R. Glen Ayers Jr., San Antonio, TX

J. Mark Lawless, Austin, TX

Brian Scott Martin, Houston, TX

1:30 p.m. .50 hr

What You Should Know About Insurance Company Receiverships

Looking at the key issues, from the claimant, policyholder and carrier perspectives.

James Kennedy, Austin, TX

Amy Jeanne Welton, Dripping Springs, TX

2:00 p.m. .50 hr

D&O Directors and Officers Coverage in a Time of Economic Crisis

As a result of the economic crisis, the conduct of many companies, officers and directors has been under increased scrutiny by governmental authorities, shareholders, and Plaintiffs' counsel. With litigation mounting, D&O insureds more than ever must be sensitive to the advantages and pitfalls of D&O coverage. This topic explores trends and key coverage disputes involving the D&O policy in light of the current economic crisis.

Ernest Martin Jr., Dallas, TX

2:30 p.m. Break

2:45 p.m. .50 hr ethics

Reservation of Rights Letters: Contents, Consequences and Criticality

The need for and possible effects of the reservations of rights letter need to be considered carefully. Although Texas Law is generally settled on what to include in such a commonplace letter, significant disputes remain regarding whether such a letter negates the contractual right to select counsel and whether the failure to send such a letter waives contractual indemnity defenses in light of *Ulico*. The presentation explores these issues.

Ronald J. Restrepo, Houston, TX

3:15 p.m. .50 hr

Health Insurance in a Downsizing World

Tough economic times create tough challenges for employers and others sponsoring employee health benefit plans and insurers, third party administrators, and brokers involved in the design, issuance and administration of those programs. This session explores common challenges that arise in the design, administration and defense of these health benefit arrangements.

Cynthia Marcotte Stamer, Dallas, TX

3:45 p.m. .50 hr including .25 hr ethics

Got Coverage? What Every Lawyer Needs to Know about Lawyers' Professional Liability Insurance

This presentation addresses E&O insurance coverage for lawyers, including what constitutes a "wrongful act," reporting and notice, construction and application of "innocent insured" provisions, disclosure of prior claims or acts, coverage for fee disputes, tail coverage, prior knowledge exclusions, dishonesty/crime/fraud exclusions, attempts to rescind lawyer E&O policies, and how the wrongdoing of a single lawyer might be imputed to the rest of the firm.

Veronica Carmona Czuchna, Austin, TX
James W. Walker, Dallas, TX

4:15 p.m. .50 hr

Builders Risk

The "Builders Risk" (mostly first party) property insurance policy is central to virtually all substantial construction projects. The larger the project, the more important the policy. It is frequently litigated and often not well understood. The purpose of this session is to make the policy understandable, even though it usually contains an "Appraisal Clause."

Michael Sean Quinn, Austin, TX

4:45 p.m. .75 hr

Defective Construction: Interrelationship of the Property Damage Trigger, Montrose Language, and Particular Part Exclusions

A mock oral argument dealing with the inter-connection of trigger with the "particular part" exclusions and anti-Montrose language used in most CGL insuring agreements.

Veronica Martinsen Bates, Dallas, TX
Michael W. Huddleston, Dallas, TX
Hon. Jim R. Jordan, Dallas, TX

5:30 p.m. Adjourn to Reception

FRIDAY MORNING, OCT. 16, 2009

Presiding Officer:
Michael W. Huddleston, Dallas, TX

8:00 a.m. Conference Room Opens
Includes continental breakfast.

Hurricane Issues: Lessons From Rita, Dolly and Ike

8:30 a.m. .75 hr

Advanced Business Interruption and Time Element Coverages

Business interruption losses are often the largest (and least understood) components of an insured's claim, frequently eclipsing amounts claimed for property damage. This discussion offers perspectives from both sides of the bar on the how these coverages work, and how to deal with problems that may arise.

Thomas H. Cook Jr., Dallas, TX
Vincent E. Morgan, Houston, TX

9:15 a.m. .75 hr

Hurricanes: Katrina, Ike, Dolly, and Hot Claims and Litigation Issues

An overview from prominent Plaintiff and Defense counsel handling these claims on the current status of hurricane litigation in Texas: latest court decisions, where the lawsuits are, where the coverage is, who's suing, who's paying, who's not, and why.

William J. Chriss, Austin, TX
Christopher W. Martin, Houston, TX

10:00 a.m. Break

10:15 a.m. .50 hr

The ABCs of SIRs

A general overview of self-insured retentions—including a comparison with other risk transfer vehicles such as deductibles and an analysis of various types of SIRs—as well as a discussion of practical issues, including manner and methods of exhaustion and claims-handling obligations inside a SIR.

Blake S. Evans, Dallas, TX

10:45 a.m. .50 hr

Making Lemonade: Your Client's Commercial Property Insurer Says That Your Client is Uninsured/Underinsured and They're Correct. What Can You Do?

Catastrophe strikes—fire, hurricane, flood, collapse. Your client presents a commercial property insurance claim and discovers that they are partially or totally "uninsured." How do you take "the lemons" (their uninsured claim) and "make lemonade" (turn their uninsured claim into a money recovery)? An overview of the complex issues and Texas law associated with working with your client's subrogating insurer, evaluating and pursuing a claim against your client's agent/broker, and pursuing claims for damages against responsible third parties without a subrogating insurer.

James K. LaRoe III, Dallas, TX

11:15 a.m. .50 hr

The Texas Offer of Settlement Practice: Know When To Hold Them and When To Fold Them

A discussion of the mechanics of making a fee-shifting offer of settlement as well as strategic considerations of when to invoke and when to avoid this tool.

Elaine A. Carlson, Houston, TX

FRIDAY AFTERNOON

Presiding Officer:
Robert D. Allen, Dallas, TX

LUNCHEON PRESENTATION

11:45 a.m. Pick up Box Lunch

Included in conference registration fee.

12:00 p.m. 1.00 hr ethics

Three's Company, or Is It? A Discussion of the Tripartite Relationship and its Practical Problems

A panel, made up of differing perspectives (such as policyholder, carrier, defense, and in-house counsel), addresses and considers the conflicts and problems inherent in the tripartite relationship. The presentation addresses practical concerns in an interactive discussion.

Moderator:
Brian Scott Martin, Houston, TX

Panelists:
David P. Benjamin, San Antonio, TX
Joe K. Longley, Austin, TX

1:00 p.m. Break

Good speakers; presentations. Timely subjects with practical implications.

1:15 p.m. .50 hr

Pollution: Coverage and Exclusions

Latest developments in “pollution” claims from the perspectives of the policyholder and the insurer, including the applicability of various pollution exclusions to both environmental and non-environmental claims.

Pamella A. Hopper, Austin, TX
Stephen Andrew Melendi, Dallas, TX

1:45 p.m. 1.00 hr

Declaratory Judgments: Planning the Party

Who to invite (claimants as well as insureds?), where to have it (venue, State v. Federal Court?), what to put on the menu (duty to defend, indemnity, insurance code claims, etc.?).

David J. Schubert, Dallas, TX
Stephen E. Walraven, San Antonio, TX

2:45 p.m. .50 hr

Conditions! What Are They Good For?

An analysis of conditions of coverage after PAJ.

Lisa A. Songy, Dallas, TX

3:15 p.m. .50 hr

Other Insurance: When Carriers Collide

When more than one policy applies, who pays, and in what order? This topic addresses the recent case law construing “other insurance” clauses, the types of clauses and the applicable principles. It also includes a discussion of practical implications and a note on the confusion created by *Mid-Continent Ins. Co. v. Liberty Mut. Ins. Co.*

Beth D. Bradley, Dallas, TX

3:45 p.m. Adjourn

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For more information, call 512-499-8357.*

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School of Law
Attn. CLE—IN09
P.O. Box 7759
Austin, TX 78713-7759

Or fax to:

512-475-6876

Or register online:

www.utcle.org

Questions? Call us at 512-475-6700

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Would your firm like to run an in-house version of this conference, with full participatory credit? Order In-House CLE and we'll accredit the course for you; we'll also provide an Audio CD Set for the group and a Course Binder for each participant.

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P.O. Box 7759, Austin, TX 78713-7759 or fax a copy to: (512) 475-6876

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Includes Course Binder and Thursday and Friday Box Lunch Presentations

☐ Early Registration Fee due by October 7, 2009 \$475.00

☐ Registration Fee after October 7, 2009 \$525.00

CONFERENCE PUBLICATIONS AND MEDIA

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

☐ Course Binder Without Conference Registration \$225.00
Note: Conference registration includes Course Binder.

☐ Audio CD Set \$200.00

☐ eBinder on CD (PDF format) \$225.00/\$50.00
(\$225 purchased alone, \$50 with registration or purchase of Course Binder or Audio CD Set)

IN-HOUSE CLE: Bring the conference in-house and learn at your convenience.

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

☐ In-House CLE for 2—Includes Audio CD Set and Course Binder \$800.00

_____ Add participants (includes Course Binder) for \$225 each \$ _____

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for more information

SAN ANTONIO

October 15–16, 2009

CONFERENCE LOCATION



Hyatt Regency Hill Country Resort and Spa

9800 Hyatt Resort Drive
San Antonio, TX 78251
210-647-1234

Special Room Rate: \$189
good through September 14, 2009
(subject to availability)

Parking: complimentary self-parking;
Valet \$8/day, \$15 overnight
(subject to change)

KEY DATES

October 7, 2009, 5 p.m.
last day for early registration
add \$50 for registrations
received after this time

October 9, 2009, 5 p.m.
last day for full refund

October 12, 2009, 5 p.m.
last day for partial refund
\$50 processing fee applied

October 15, 2009, 9 a.m.
conference begins



*Have a
little fun!*

The Hyatt Regency Hill Country Resort and Spa is a charming mix of authentic Texas hospitality blended perfectly with all the activities you could want—including 27 holes of championship golf, a world-class spa and a four-acre water park.



M
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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 2.00 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).