

14th Annual Insurance Law Institute
October 15-16, 2009 • Hyatt Regency Hill Country Resort and Spa • San Antonio, TX

Thursday Morning, Oct. 15, 2009

Presiding Officer:

Stephen E. Walraven, Langley & Banack, Inc. - San Antonio, TX

8:00 am	Registration Opens Includes continental breakfast.
9:00 am 0.50 hr	<i>Ruttiger v. Texas Mutual</i> and the Viability of <i>Aranda</i> in the Workers' Compensation "Bad Faith" Context This topic examines the <i>Ruttiger v. Texas Mutual</i> 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 <i>Ruttiger</i> for "bad faith" jurisprudence in the workers' compensation context and for other insurance cases. Issues addressed include the historical context of <i>Ruttiger</i> 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 <i>Aranda</i> , <i>Ruttiger</i> , and other cases, as well as the "exhaustion of remedies" requirement for workers' compensation cases. Catherine L. Hanna, Hanna & Plaut, LLP - Austin, TX Jeffrey L. Raizner, Doyle Raizner LLP - Houston, TX
9:30 am 0.50 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, Visser Shidlofsky LLP - Austin, TX
10:00 am	Break
10:15 am 0.50 hr 0.25 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, Martin, Disiere, Jefferson, & Wisdom, L.L.P. - Houston, TX
10:45 am 0.50 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, Cokinos, Bosien & Young, P.C. - Arlington, TX

11:15 am
0.50 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, Curran Tomko Tarski LLP - Dallas, TX

Thursday Afternoon, Oct. 15, 2009

Presiding Officer:

Robert D. Allen, Dallas, TX

11:45 am

Pick up Box Lunch

Included in conference registration fee.

LUNCHEON PRESENTATION

12:00 pm
0.50 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, US policyholders and reinsured US 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, Exxon Mobil Corporation - Irving, TX

Insolvency Issues

12:30 pm

Break

12:45 pm
0.75 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. The 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., Zelle Hofmann Voelbel & Mason LLP - Dallas, TX
Vincent E. Morgan, Pillsbury Winthrop Shaw Pittman LLP - Houston, TX

1:30 pm
0.50 hr

What You Should Know About Insurance Company Receiverships

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

James Kennedy, Texas Department of Insurance - Austin, TX
Amy Jeanne Welton, Attorney at Law - Dripping Springs, TX

2:00 pm 0.50 hr	<p>D&O Directors and Officers Coverage in a Time of Economic Crisis</p> <p>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.</p> <p>Ernest Martin Jr., Haynes and Boone, LLP - Dallas, TX</p>
2:30 pm	<p>Break</p>
2:45 pm 0.50 hr ethics	<p>Reservation of Rights Letters: Contents, Consequences and Criticality</p> <p>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 <i>Ulico</i>. The presentation explores these issues.</p> <p>Ronald J. Restrepo, Doyle Restrepo Harvin & Robbins LLP - Houston, TX</p>
3:15 pm 1.00 hr	<p>Declaratory Judgments: Planning the Party</p> <p>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.)?</p> <p>David J. Schubert, Schubert & Evans PC - Dallas, TX Stephen E. Walraven, Langley & Banack, Inc. - San Antonio, TX</p>
4:15 pm 0.50 hr	<p>Builders Risk</p> <p>The "Builders Risk" (mostly, first party) property insurance policy is central to virtually all substantial constructions projects. The larger the project, the more important the policy is. It is frequently litigated and often not well understood. The purpose of this session is to make the policy understandable and understood. It's not that difficult, even though it does (usually) contain an "Appraisal Clause."</p> <p>Co-Author: Susan S. Hayes, Quinn Hayes & Quinn - Austin, TX Michael Sean Quinn, Quinn Hayes & Quinn - Austin, TX</p>
4:45 pm 0.75 hr	<p>Defective Construction—Interrelationship of the Property Damage Trigger, Montrose Language, and Particular Part Exclusions</p> <p>A mock oral argument dealing with the interconnection of trigger with the "particular part" exclusions and anti-Montrose language used in most CGL insuring agreements.</p> <p>Panelists: Veronica Martinsen Bates, Hermes Sargent Bates, LLP - Dallas, TX Panelists: Michael W. Huddleston, Shannon, Gracey, Ratliff & Miller LLP - Dallas, TX Panelists: Hon. Jim R. Jordan, 160th District Court - Dallas, TX</p>
5:30 pm	<p>Adjourn to Sponsored Reception</p> <p>Insurance Network of America; Nelson Architectural Engineers, Inc.; Nickens Keeton Lawless Farrell & Flack LLP; Shannon, Gracey, Ratliff & Miller LLP</p>

Friday Morning, Oct. 16, 2009

Presiding Officer:

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

8:00 am	Conference Room Opens Includes continental breakfast.
	Hurricane Issues: Lessons from Rita, Dolly and Ike
8:30 am 0.75 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., Langley & Banack, Inc. - San Antonio, TX J. Mark Lawless, Nickens Keeton Lawless Farrell & Flack LLP - Austin, TX Brian Scott Martin, Thompson, Coe, Cousins & Irons, L.L.P. - Houston, TX
9:15 am 0.75 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, of counsel to Gravely & Pearson, L.L.P. - Austin, TX Christopher W. Martin, Martin, Disiere, Jefferson, & Wisdom, L.L.P. - Houston, TX
10:00 am	Break
10:15 am 0.50 hr	The ABCs of SIRs An 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, Schubert & Evans PC - Dallas, TX
10:45 am 0.50 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, The Law Offices of James K. LaRoe, P.C. - Dallas, TX

11:15 am 0.50 hr	<p>The Texas Offer of Settlement Practice: Know When To Hold Them and When To Fold Them</p> <p>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.</p> <p>Elaine A. Carlson, South Texas College of Law - Houston, TX</p>
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Friday Afternoon, Oct. 16, 2009

Presiding Officer:

Sandra Cockran Liser, Naman Howell Smith & Lee, L.L.P. - Fort Worth, TX

11:45 am	<p>Pick up Box Lunch</p> <p>Included in conference registration fee.</p>
	LUNCHEON PRESENTATION
12:00 pm 1.00 hr ethics	<p>Three's Company, or Is It? A Discussion of the Tripartite Relationship and its Practical Problems</p> <p>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.</p> <p>Moderator: Brian Scott Martin, Thompson, Coe, Cousins & Irons, L.L.P. - Houston, TX</p> <p>Panelists: David P. Benjamin, O'Connell & Benjamin LLP - San Antonio, TX</p> <p>Panelists: Jamie Rohde Carsey, Thompson, Coe, Cousins & Irons, L.L.P. - Houston, TX</p> <p>Panelists: Joe K. Longley, Law Offices of Joe K. Longley - Austin, TX</p>
1:00 pm	Break
1:15 pm 0.50 hr	<p>Pollution: Coverage and Exclusions</p> <p>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.</p> <p>Pamella A. Hopper, Nickens Keeton Lawless Farrell & Flack LLP - Austin, TX Stephen Andrew Melendi, Tollefson Bradley Ball & Mitchell, LLP - Dallas, TX</p>
1:45 pm 0.50 hr	<p>Update on Contractual Indemnity Agreements</p> <p>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.</p> <p>Sandra Cockran Liser, Naman Howell Smith & Lee, L.L.P. - Fort Worth, TX</p>

2:15 pm 0.50 hr 0.25 hr ethics	<p>Got Coverage?—What Every Lawyer Needs to Know about Lawyers Professional Liability Insurance</p> <p>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.</p> <p>Veronica Carmona Czuchna, Clark Thomas & Winters, P.C. - Austin, TX</p>
2:45 pm 0.50 hr	<p>Conditions! What Are They Good For?</p> <p>An analysis of conditions of coverage after PAJ.</p> <p>Lisa A. Songy, Shannon, Gracey, Ratliff & Miller LLP - Dallas, TX</p>
3:15 pm 0.50 hr	<p>Other Insurance: When Carriers Collide</p> <p>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 <i>Mid-Continent Cas. Co. v. Liberty Mut. Ins. Co.</i></p> <p>Beth D. Bradley, Tollefson Bradley Ball & Mitchell, LLP - Dallas, TX</p>
3:45 pm	<p>Adjourn</p>