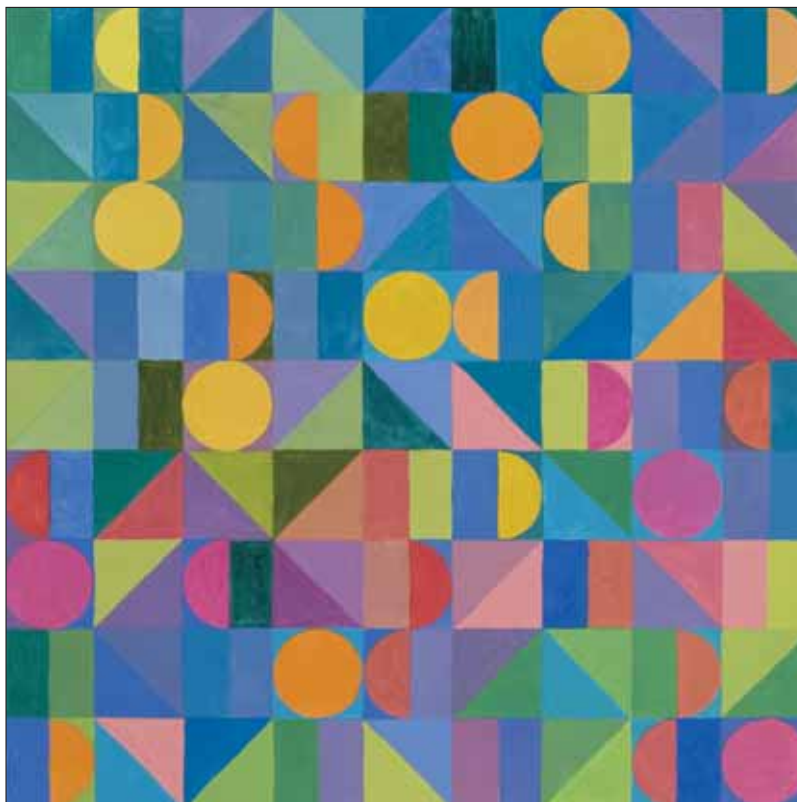


THE INSURANCE LAW SECTION OF THE STATE BAR OF TEXAS  
*and* THE UNIVERSITY OF TEXAS SCHOOL OF LAW

15<sup>TH</sup> ANNUAL  
INSURANCE LAW INSTITUTE



October 14–15, 2010

InterContinental Stephen F. Austin Hotel ▪ Austin, Texas

---

Earn up to 14.25 Hours of Credit including 2.75 Hours of Ethics Credit  
Specialization Credit Approved for Civil Trial Law, Personal Injury Trial Law,  
and Workers' Compensation Law

Qualifying Course for TDI Continuing Education Credit

[www.utcle.org](http://www.utcle.org) ▪ 512-475-6700

# 15<sup>TH</sup> ANNUAL INSURANCE LAW INSTITUTE

October 14–15, 2010 ▪ InterContinental Stephen F. Austin Hotel ▪ Austin, Texas

Earn up to 14.25 Hours of Credit including 2.75 Hours of Ethics Credit

Specialization Credit Approved for Civil Trial Law, Personal Injury Trial Law, and Workers' Compensation Law

Qualifying Course for TDI Continuing Education Credit

THE SEMINAR WILL COVER A BROAD RANGE OF INSURANCE LAW TOPICS. To focus on practical application, some of the presentations will use a common hypothetical as a guide. The presentations, however, will not be limited by the hypothetical. The working hypothetical is based on a construction defect case involving an allegedly defective roof. The carrier denied any duty to defend or indemnify. The underlying pleadings are silent regarding numerous key facts, such as the impact of the *Montrose* language in the insuring agreement, known loss, "property damage"/trigger, applicable exclusions and exceptions to exclusions. Extrinsic facts known to the insured and provided to the carrier suggest answers to some of these coverage questions. The hypothetical will present issues as to whether extrinsic evidence can be used to bring the case within or without coverage, who has the burden of presenting it and when it must be presented. The facts will suggest potential collusion as to the pleading of the case. The hypothetical also will involve a multi-year event with damages in various portions of the building that is the subject of litigation, starting and stopping at various points throughout the numerous years of coverage and multiple policies (primary and excess). The underlying "trial" was held without participation by defense counsel since the insured claimed to be too poor to employ counsel. The facts presented at trial did not clearly resolve all key questions necessary to invoke coverage, allocate between covered and uncovered claims, and determine when damage actually was sustained.

**Insurance Law Institute Presiding Officer:**  
**Lee H. Shidlofsky, Visser Shidlofsky LLP,**  
**Austin, TX**

## THURSDAY MORNING, OCT. 14, 2010

**8:00 a.m.** Registration Opens

Includes continental breakfast.

**8:50 a.m.** Welcoming Remarks

**9:00 a.m.** .75 hr including .25 hr ethics

### Coverage Opinion

When insurers face uncertainty, confusion, contradictory evidence, a lack of clarity as to whether there is coverage, or obscure and/or unknown legal points, the prudent insurer should request a coverage opinion from one or more outside lawyers. Such communiqués have a lot of characteristics—some formal and virtually prescribed and some informal and various. This presentation sets forth the strategies behind the characteristics of a thoughtfully drafted coverage opinion letter.

Michael Sean Quinn, Quinn Hayes & Quinn, Austin, TX  
Leah Kimberly Steele, Sedgwick, Detert, Moran & Arnold, Dallas, TX

**9:45 a.m.** .75 hr including .25 hr ethics

### You Can't Handle the Truth! Pleading and Duty to Defend

The duty to defend, the eight corners rule, the true and actual facts vs. facts alleged, and the current state of Texas law on when extrinsic evidence beyond the pleadings can and cannot be considered to resolve liability coverage issues. When is a silent petition sufficient to trigger the duty to defend? What role does the burden of proof have in deciding if the duty has been triggered? What substantive coverage issues are outside of the scope of the eight corners rule? Is the eight corners rule viable? Is it a rule of evidence or policy construction? Is it *Erie*-procedural? This presentation utilizes a realistic pleading scenario in a typical construction defect case to examine all of these issues.

David J. Schubert, Schubert & Evans PC, Dallas, TX  
John C. Tollefson, Tollefson Bradley Ball & Mitchell, LLP, Dallas, TX

**10:30 a.m.** Break

**10:45 a.m.**

1.00 hr

### Allocation and Exhaustion

A focus on the rules governing how covered losses are divided among multiple insurers. Topics include allocation of defense costs and indemnity amounts, all sums vs. pro rata, horizontal and vertical exhaustion, what constitutes exhaustion, and subrogation rights among insurers. Theoretical and practical problems relating to the separation of covered and non-covered damages are also discussed.

J. Mark Lawless, Nickens Keeton Lawless Farrell & Flack LLP, Austin, TX  
Aaron Mitchell, Tollefson Bradley Ball & Mitchell, LLP, Dallas, TX

## THURSDAY AFTERNOON

### LUNCHEON PRESENTATION

**11:45 a.m.** Pick up Box Lunch

Included in conference registration fee.

**12:00 p.m.** 1.00 hr ethics

### Ethics Buffet

A smorgasbord of saucy, spicy and hot-off-the-stove ethics issues. All you care to eat. Antacids available.

Jeffrey R. Jury, Burns Anderson Jury & Brenner, Austin, TX

**1:00 p.m.** Break

**1:15 p.m.** **1.00 hr**

### **Trial of the Duty to Indemnify**

This session focuses on the peculiar issues that come up in coverage litigation over indemnity that follows either a trial of the underlying suit or settlement of that suit. Examined are the types of evidence, such as historical facts, discovered facts, actual facts and new facts that may or may not be used to prove indemnity and allocation. Also discussed are underlying verdicts that are incomplete or which do not directly address the contested coverage issues, and verdicts in cases involving concurrent causation and/or allocation questions, along with application of collateral estoppel in determining the binding effect, if any, the trial and judgment in the underlying suit may have on the insured and the insurer. The session addresses the impact of a judgment that is not the result of a fully adversarial trial and the continuing validity of the Gandy decision. Issues regarding which party has the burden of proof on what issues, including allocation, are covered. Finally, there is discussion of when expert testimony may be allowed, when it is required and the type of expert testimony that may be utilized.

R. Brent Cooper, Cooper & Scully, P.C., Dallas, TX  
Michael W. Huddleston, Shannon, Gracey, Ratliff & Miller LLP, Dallas, TX

**2:15 p.m.** **.50 hr**

### **Other Insurance and Priority of Payment**

When multiple carriers are offering to pay the claim, which one pays what share? The legal and practical effect of multiple insureds, multiple years of coverage, contractual indemnity obligations and competing "other insurance" clauses on payment of settlements and judgments.

Stephen A. Melendi, Tollefson Bradley Ball & Mitchell, LLP, Dallas, TX  
Stephen E. Walraven, Langley & Banack, Inc., San Antonio, TX

**2:45 p.m.** **Break**

**3:00 p.m.** **.50 hr including .25 hr ethics**

### **Coverage Mediations: Backing Away from the Brink**

Lessons from a coverage mediator and attorney including how to effectively prepare for mediation, negotiate coverage resolutions and deal with coverage issues during the pendency of underlying cases.

Paul J. Van Osselaer, Van Osselaer & Buchanan LLP, Austin, TX

**3:30 p.m.** **.75 hr**

### **Pay Me Now! Strategies to Promote and Resist Payment of Defense Costs under Claims-Made Policies**

This session addresses Texas law on defense costs issues under various types of claims-made policies (e.g., Directors and Officers, Errors and Omissions, Employment Practices Liability, etc.). Also included is a discussion of the rules of construction that apply

to typical claims-made payment-of-defense-costs provisions, the timing of payment by the insurer, exclusions that apply only after "full adjudication" or an "in fact" determination, whether an insurer may recoup defense costs paid to its policyholder or apportion some costs to uncovered claims, the impact of wasting limits policy and practical strategy considerations.

Jamie Rohde Carsey, Thompson, Coe, Cousins & Irons, L.L.P., Houston, TX  
J. James Cooper, Gardere Wynne Sewell LLP, Houston, TX

**4:15 p.m.** **.75 hr**

### **Certificates of Insurance: Are They Worth the Paper They're Written On?**

The limitations on certificates of insurance, the pitfalls in accepting or providing a certificate and the potential liability of the brokers who issue them.

Sandra Cockran Liser, Naman Howell Smith & Lee, PLLC, Fort Worth, TX  
Bob Roberts, The Law Offices of Bob Roberts, Austin, TX

**5:00 p.m.** **.50 hr**

### **What's in the Pipeline: Attorney/Client Issues**

Sharing information is essential to the insurance business. Policyholders and insurance carriers need to be able to exchange information and freely communicate for proper claims handling. When coverage disputes arise, however, the parties who were once working toward a common goal become adversaries. This situation brings with it a host of privilege issues. It is therefore in both policyholders' and insurance carriers' best interests to find the means to preserve the free flow of information without waiving privilege in the event a coverage dispute arises in the future.

Erika Lea Blomquist, Haynes and Boone, LLP, Dallas, TX

**5:30 p.m.** **Adjourn**

## **FRIDAY MORNING, OCT. 15, 2010**

**8:00 a.m.** **Conference Room Opens**

Includes continental breakfast.

**8:30 a.m.** **.75 hr**

### **Additional Insured and Contractual Indemnity Coverage: Which Is Better?**

There is a difference between coverage afforded to additional insureds as opposed to coverage for contractual indemnity that many professionals do not understand. These differences and how they impact a claim as well as the policy limits are analyzed.

Veronica M. Bates, Hermes Sargent Bates, LLP, Dallas, TX

**9:15 a.m.** **.75 hr**

### **Lies, Liens and Offsets**

Overview of liens and other interests that impact settlements and payments of claims. Interests and liens to be addressed include Medicare, ERISA, state-law liens and other pecuniary creatures.

Jamie Penton Cooper, Martin, Disiere, Jefferson & Wisdom, L.L.P., Houston, TX  
Meloney Cargill Perry, Meckler Bulger Tilson Marick & Pearson LLP, Dallas, TX

**10:00 a.m.** **Break**

**10:15 a.m.** **.75 hr**

### **"Bad Faith" Update**

A detailed review of what is and isn't "bad faith," the standards for deciding, proof and insufficient proof, and tactical decisions to be made.

Veronica Carmona Czuchna, Clark Thomas & Winters, P.C., Austin, TX  
Mark L. Kincaid, Kincaid & Horton L.L.P., Austin, TX

**11:00 a.m.** **.75 hr**

### **Appraisal**

*State Farm Lloyds v. Johnson*: What happened?

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

**Panelists:**  
Scott A. Brister, Andrews Kurth LLP, Austin, TX  
Mark A. Ticer, Law Office of Mark A. Ticer, Dallas, TX

## **FRIDAY AFTERNOON**

### **LUNCHEON PRESENTATION**

**11:45 a.m.** **Pick up Box Lunch**

Included in conference registration fee.

**12:00 p.m.** **1.00 hr including .25 hr ethics**

### **Insurance Legend: Lessons to Be Learned from the Life of Rusty McMains**

Douglas W. Alexander, Alexander Dubose & Townsend LLP, Austin, TX  
William J. Chriss, of counsel to Gravely & Pearson, L.L.P., Austin, TX

**1:00 p.m.** **Break**

**1:15 p.m.** **.75 hr ethics**

### **Lawyers and the Business of Insurance**

*Tilley to Traver to Perez*: A dangerous combination within the insurance defense tripartite relationship.

Robert D. Allen, Meckler Bulger Tilson Marick & Pearson LLP, Dallas, TX  
Joe K. Longley, Law Offices of Joe K. Longley, Austin, TX

2:00 p.m. .75 hr

### Successor Liability and Anti-Assignment

This session explores the state of Texas law regarding the rights of a successor entity to a predecessor's insurance coverage and the factors affecting those rights, including: form of the corporate transaction transferring the underlying liability; contractual and "operation of law" theories of insurance coverage assignment; definition of a "chose in action" and interplay with occurrence "triggers"; and the validity and scope of insurance policy anti-assignment clauses.

Catherine L. Hanna, Hanna & Plaut, LLP, Austin, TX  
Pamella A. Hopper, Nickens Keeton Lawless Farrell & Flack LLP, Austin, TX

2:45 p.m. .50 hr

### Top Ten Commercial Hurricane Damage Claims Disputes: A Texas Perspective

To assist the Texas practitioner whose client is one of the many businesses facing a commercial property hurricane damage claim/dispute, this session provides a brief overview of Texas law on ten of the most prevalent areas of dispute in commercial hurricane damage claims, as identified by some of the nation's most experienced large loss insurance company adjusters, national public adjusters and commercial property brokers.

Jim LaRoe, The Law Offices of James K. LaRoe, P.C., Dallas, TX

3:15 p.m. .75 hr

### Ask the Experts: Structured Q&A

All of your questions answered! Submit your questions at the registration desk throughout the program.

#### Moderator:

Lee H. Shidlofsky, Visser Shidlofsky LLP, Austin, TX

#### Panelists:

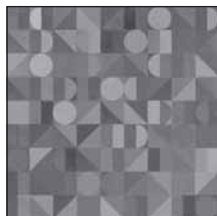
Brian S. Martin, Thompson, Coe, Cousins & Irons, L.L.P., Houston, TX

Christopher W. Martin, Martin, Disiere, Jefferson, & Wisdom, L.L.P., Houston, TX

Ernest Martin Jr., Haynes and Boone, LLP, Dallas, TX

4:00 p.m. Adjourn

## ABOUT THE COVER



*Sudoku #16*, 14" x 14", ink on paper, is by Susan Barnett. For more information, visit [www.conduitgallery.com](http://www.conduitgallery.com) or call 214-939-0064. Image acquisition by Sandra Gregor, art consultant, 512-477-2827.

## CONFERENCE FACULTY AND PLANNING COMMITTEE

LEE H. SHIDLOFSKY—CHAIR\*  
Visser Shidlofsky LLP  
Austin, TX

DOUGLAS W. ALEXANDER  
Alexander Dubose & Townsend LLP  
Austin, TX

ROBERT D. ALLEN\*  
Meckler Bulger Tilson Marick & Pearson LLP  
Dallas, TX

VERONICA M. BATES\*  
Hermes Sargent Bates, LLP  
Dallas, TX

ERIKA LEA BLOMQUIST\*  
Haynes and Boone, LLP  
Dallas, TX

BETH D. BRADLEY\*  
Tollefson Bradley Ball & Mitchell, LLP  
Dallas, TX

SCOTT A. BRISTER  
Andrews Kurth LLP  
Austin, TX

JAMIE ROHDE CARSEY\*  
Thompson, Coe, Cousins & Irons, L.L.P.  
Houston, TX

WILLIAM J. CHRISS\*  
of counsel to Gravely & Pearson, L.L.P.  
Austin, TX

J. JAMES COOPER\*  
Gardere Wynne Sewell LLP  
Houston, TX

JAMIE PENTON COOPER\*  
Martin, Disiere, Jefferson & Wisdom, L.L.P.  
Houston, TX

R. BRENT COOPER\*  
Cooper & Scully, P.C.  
Dallas, TX

VERONICA CARMONA CZUCHNA\*  
Clark Thomas & Winters, P.C.  
Austin, TX

CATHERINE L. HANNA  
Hanna & Plaut, LLP  
Austin, TX

PAMELLA A. HOPPER\*  
Nickens Keeton Lawless Farrell & Flack LLP  
Austin, TX

MICHAEL W. HUDDLESTON\*  
Shannon, Gracey, Ratliff & Miller LLP  
Dallas, TX

JEFFREY R. JURY  
Burns Anderson Jury & Brenner  
Austin, TX

MARK L. KINCAID\*  
Kincaid & Horton L.L.P.  
Austin, TX

JIM LAROE\*  
The Law Offices of James K. LaRoe, P.C.  
Dallas, TX

J. MARK LAWLESS  
Nickens Keeton Lawless Farrell & Flack LLP  
Austin, TX

SANDRA COCKRAN LISER\*  
Naman Howell Smith & Lee, PLLC  
Fort Worth, TX

JOE K. LONGLEY\*  
Law Offices of Joe K. Longley  
Austin, TX

BRIAN S. MARTIN  
Thompson, Coe, Cousins & Irons, L.L.P.  
Houston, TX

CHRISTOPHER W. MARTIN  
Martin, Disiere, Jefferson, & Wisdom, L.L.P.  
Houston, TX

ERNEST MARTIN JR.  
Haynes and Boone, LLP  
Dallas, TX

PHILIP K. MAXWELL\*  
Attorney at Law  
Austin, TX

STEPHEN A. MELENDI\*  
Tollefson Bradley Ball & Mitchell, LLP  
Dallas, TX

AARON MITCHELL  
Tollefson Bradley Ball & Mitchell, LLP  
Dallas, TX

MELONEY CARGIL PERRY\*  
Meckler Bulger Tilson Marick & Pearson LLP  
Dallas, TX

DAVID L. PLAUT\*  
Hanna & Plaut, LLP  
Austin, TX

MICHAEL SEAN QUINN\*  
Quinn Hayes & Quinn  
Austin, TX

BOB ROBERTS\*  
The Law Offices of Bob Roberts  
Austin, TX

DAVID J. SCHUBERT\*  
Schubert & Evans PC  
Dallas, TX

LEAH KIMBERLY STEELE\*  
Sedgwick, Detert, Moran & Arnold  
Dallas, TX

MARK A. TICER\*  
Law Office of Mark A. Ticer  
Dallas, TX

JOHN C. TOLLEFSON\*  
Tollefson Bradley Ball & Mitchell, LLP  
Dallas, TX

PAUL J. VAN OSSELAER  
Van Osselaer & Buchanan LLP  
Austin, TX

STEPHEN E. WALRAVEN\*  
Langley & Banack, Inc.  
San Antonio, TX

\*planning committee member

## HOW TO REGISTER

### Mail your registration to:

The University of Texas  
School of Law  
Attn. CLE—IN10  
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**

## MATERIALS, AUDIO AND IN-HOUSE CLE

### Printed Materials in Course Binder

Leading practitioners and academics provide the definitive set of materials.

### eBinder on CD

Add the electronic version of the conference materials to your course registration or purchase of the Course Binder or Audio MP3 Speeches on CD or Audio CD Set for only \$50. eBinders are distributed 3–5 weeks after the conference and include searchable versions of printed materials in PDF format.

### Audio MP3 Speeches on CD or Audio CD Set

Listen to the Insurance Law Institute on the go. Informative, topical and entertaining presentations recorded from UT Law's other live CLE programs are also available.

### In-House CLE

In-House CLE for two or more participants—as many as you want! Receive full MCLE credit. We'll accredit the course for you, and provide one Audio CD Set plus a Course Binder for each participant.

## REGISTRATION FOR IN10

Mail this registration form to:

The University of Texas School of Law, Attn. CLE—IN10  
P.O. Box 7759, Austin, TX 78713-7759 or fax a copy to: 512-475-6876

### PLEASE PRINT CLEARLY

Bar Card# \_\_\_\_\_ ☐ TX ☐ Other State: \_\_\_\_\_ ☐ N/A

Name [ Mr. / Ms. ] \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Registrant's Email (required) \_\_\_\_\_

Assistant's Email (optional) \_\_\_\_\_

*Invoices, confirmations and receipts are emailed to these addresses.*

### REGISTRATION

Includes Course Binder and Thursday and Friday Luncheon Presentations

- ☐ Early Registration Fee due by Wednesday, October 6, 2010 .....\$525
- ☐ Registration Fee after Wednesday, October 6, 2010 .....\$575

### CONFERENCE PUBLICATIONS AND MEDIA

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

- ☐ Course Binder WITHOUT Conference Registration.....\$225  
Note: Conference registration includes Course Binder.
- ☐ Audio MP3 Speeches on CD.....\$200
- ☐ Audio CD Set.....\$130
- ☐ eBinder on CD (PDF format).....\$225/\$50  
(\$225 purchased alone, \$50 with Registration or purchase of Course Binder or Audio MP3 Speeches on CD 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 Binders.....\$825
- \_\_\_\_\_ Add participants (includes Course Binder) for \$225 each.....\$ \_\_\_\_\_

TOTAL ENCLOSED .....\$ \_\_\_\_\_

### METHOD OF PAYMENT

- ☐ Check (make checks payable to: The University of Texas at Austin)
- ☐ VISA or ☐ MasterCard (sorry, no AMEX or Discover)

Card number     -     -     -

X \_\_\_\_\_  
Authorized Signature

/    
Exp. Date (mm/yy)



The University of Texas at Austin  
THE UNIVERSITY OF TEXAS SCHOOL OF LAW  
P.O. Box 7759 • Austin, TX 78713-7759

*This program is not printed or mailed at state expense.*

## 15<sup>TH</sup> ANNUAL INSURANCE LAW INSTITUTE

October 14–15, 2010 ■ InterContinental Stephen F. Austin Hotel ■ Austin, Texas

NON-PROFIT-ORG  
U.S. Postage  
PAID  
U T School of Law

E-mail us at

[utcle@law.utexas.edu](mailto:utcle@law.utexas.edu)

or call us at

**512-475-6700**

for more information

### AUSTIN

October 14–15, 2010

#### CONFERENCE LOCATION



**InterContinental Stephen F. Austin Hotel**  
701 Congress Avenue  
Austin, TX 78701  
512-457-8800

**Special Room Rate: \$189**  
good through September 22, 2010  
(subject to availability)

**Valet Parking:**  
\$14 per day; \$25 overnight  
(subject to change)

#### KEY DATES

**October 6, 2010, 5 p.m.**  
*last day for early registration*  
add \$50 for registrations  
received after this time

**October 8, 2010, 5 p.m.**  
*last day for full refund*

**October 11, 2010, 5 p.m.**  
*last day for partial refund*  
\$50 processing fee applied

**October 14, 2010, 9 a.m.**  
*Institute begins*

## Subscribe to the UTCLE eLibrary

*Cutting-edge research at your fingertips—papers, PPTs and podcasts.*

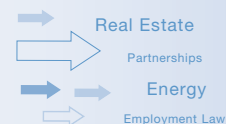


FREE SEARCHES, PREVIEWS AND DEMO—TRY IT TODAY AT [WWW.UTCLE.ORG/ELIBRARY](http://WWW.UTCLE.ORG/ELIBRARY)

**SAVE TIME, STAY CURRENT, AND WORK MORE PRODUCTIVELY WITH A SUBSCRIPTION TO THE UTCLE ELIBRARY.** Emerging practice areas, the latest drafting tips, planning techniques, litigation strategies, and case law updates—it's all here for you—in print and audio.

#### Papers, PPTs, and Podcasts in over 40 Practice Areas

The eLibrary offers resources from over forty practice areas, such as real estate, partnerships, employment law, estate planning, bankruptcy, patent law, energy, insurance, family law...and much more.



#### Easily Search the Best Articles and Resources

Superb resources at your fingertips, with lightning-fast searches by keyword, author, conference name, or practice area. Search and download them whenever, wherever and as often as you want!



#### Audio-to-Go Files (Podcasts)

Listen on your iPod: The eLibrary includes related audio files for most papers that are easily saved to your computer, your iPod or MP3 player. Listen to the presentation at your computer or on the go!



**SUBSCRIBE NOW AND GET  
UNLIMITED DOWNLOADS  
FOR A YEAR.**

**Subscribe today at [www.utcle.org/eLibrary](http://www.utcle.org/eLibrary)**

Your one-year subscription provides access to all the materials in the eLibrary—papers, PPTs, and podcasts. Search and download them whenever, wherever and as often as you want!

M  
C  
L  
E

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 14.25 hours, of which 2.75 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).

**UTCLE** Questions? Contact us at [service@utcle.org](mailto:service@utcle.org) or (512) 475-6700.