

# 15<sup>th</sup> Annual Insurance Law Institute

## October 14-15, 2010 • InterContinental Stephen F. Austin Hotel • Austin, TX

### Thursday Morning, Oct. 14, 2010

8:00 am	<b>Registration Opens</b>  Includes continental breakfast.
8:50 am	<b>Welcoming Remarks</b>
	<p><b>THE SEMINAR WILL COVER A BROAD RANGE OF INSURANCE LAW TOPICS.</b></p> <p>To focus on practical application, some of the presentations will use a common hypothetical guide. 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 will also 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 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.</p>
9:00 am 0.75 hr 0.25 hr ethics	<b>Coverage Opinion</b>  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 and characteristics of a thoughtfully drafted coverage opinion letter.  Michael Sean Quinn, Quinn Hayes & Quinn - Austin, TX L. Kimberly Steele, Sedgwick, Detert, Moran & Arnold - Dallas, TX
9:45 am 0.75 hr 0.25 hr ethics	<b>You Can't Handle the Truth! Pleading and Duty to Defend</b>  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 <i>Erie</i> -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 am	<b>Break</b>

10:45 am 1.00 hr	<p><b>Allocation and Exhaustion</b></p> <p>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.</p> <p>J. Mark Lawless, Nickens Keeton Lawless Farrell &amp; Flack LLP - Austin, TX Aaron Mitchell, Tollefson Bradley Ball &amp; Mitchell, LLP - Dallas, TX</p>
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## Thursday Afternoon, Oct. 14, 2010

11:45 am	<p><b>LUNCHEON PRESENTATION</b></p> <p>Pick up Box Lunch</p> <p>Included in conference registration fee.</p>
12:00 pm 1.00 hr ethics	<p><b>Ethics Buffet</b></p> <p>A smorgasbord of saucy, spicy and hot-off-the-stove ethics issues. All you care to eat. Antacids available.</p> <p>Jeffrey R. Jury, Burns Anderson Jury &amp; Brenner - Austin, TX</p>
1:00 pm	<p><b>Break</b></p>
1:15 pm 1.00 hr	<p><b>Trial of the Duty to Indemnify</b></p> <p>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 <i>Gandy</i> 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.</p> <p>R. Brent Cooper, Cooper &amp; Scully, P.C. - Dallas, TX Michael W. Huddleston, Shannon, Gracey, Ratliff &amp; Miller LLP - Dallas, TX</p>
2:15 pm 0.50 hr	<p><b>Other Insurance and Priority of Payment</b></p> <p>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.</p> <p>Stephen A. Melendi, Tollefson Bradley Ball &amp; Mitchell, LLP - Dallas, TX Stephen E. Walraven, Langley &amp; Banack, Inc. - San Antonio, TX</p>
2:45 pm	<p><b>Break</b></p>

3:00 pm 0.50 hr 0.25 hr ethics	<p><b>Coverage Mediations: Backing Away from the Brink</b></p> <p>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.</p> <p>Paul J. Van Osselaer, Van Osselaer &amp; Buchanan LLP - Austin, TX</p>
3:30 pm 0.75 hr	<p><b>Pay Me Now! Strategies to Promote and Resist Payment of Defense Costs under Claims-Made Policies</b></p> <p>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.</p> <p>Jamie Rohde Carsey, Thompson, Coe, Cousins &amp; Irons, L.L.P. - Houston, TX J. James Cooper, Gardere Wynne Sewell LLP - Houston, TX</p>
4:15 pm 0.75 hr	<p><b>Certificates of Insurance: Are They Worth the Paper They're Written On?</b></p> <p>The limitations on certificates of insurance, the pitfalls in accepting or providing a certificate and the potential liability of the brokers who issue them.</p> <p>Sandra Cockran Liser, Naman Howell Smith &amp; Lee, PLLC - Fort Worth, TX Bob Roberts, The Law Offices of Bob Roberts - Austin, TX</p>
5:00 pm 0.50 hr	<p><b>What's in the Pipeline: Attorney/Client Issues</b></p> <p>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.</p> <p>Erika Lea Blomquist, Haynes and Boone, LLP - Dallas, TX</p>
5:30 pm	<p><b>Adjourn</b></p>

## Friday Morning, Oct. 15, 2010

8:00 am	<p><b>Conference Room Opens</b></p> <p>Includes continental breakfast.</p>
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8:30 am 0.75 hr	<p><b>Additional Insured and Contractual Indemnity Coverage: Which Is Better?</b></p> <p>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.</p> <p>Veronica M. Bates, Hermes Sargent Bates, LLP - Dallas, TX</p>
9:15 am 0.75 hr	<p><b>Lies, Liens and Offsets</b></p> <p>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.</p> <p>Jamie Penton Cooper, Martin, Disiere, Jefferson &amp; Wisdom, L.L.P. - Houston, TX Meloney Cargil Perry, Meckler Bulger Tilson Marick &amp; Pearson LLP - Dallas, TX</p>
10:00 am	<b>Break</b>
10:15 am 0.75 hr	<p><b>"Bad Faith" Update</b></p> <p>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.</p> <p>Veronica Carmona Czuchna, Clark Thomas &amp; Winters, P.C. - Austin, TX Mark L. Kincaid, Kincaid &amp; Horton L.L.P. - Austin, TX</p>
11:00 am 0.75 hr	<p><b>Appraisal</b></p> <p><i>State Farm Lloyds v. Johnson</i>, what happened?</p> <p>Moderator: Beth D. Bradley, Tollefson Bradley Ball &amp; Mitchell, LLP - Dallas, TX Panelists: Scott A. Brister, Andrews Kurth LLP - Austin, TX Panelists: Mark A. Ticer, Law Office of Mark A. Ticer - Dallas, TX</p>

## Friday Afternoon, Oct. 15, 2010

11:45 am	<p><b>LUNCHEON PRESENTATION</b></p> <p>Pick up Box Lunch</p> <p>Included in conference registration fee.</p>
12:00 pm 1.00 hr 0.25 hr ethics	<p><b>Insurance Legend: Lessons to Be Learned from the Life of Rusty McMains</b></p> <p>William J. Chriss, Law Office of William J. Chriss, P.C. of counsel to Gravely &amp; Pearson, L.L.P. - Austin, TX</p>
1:00 pm	<b>Break</b>

1:15 pm 0.75 hr ethics	<p><b>Lawyers and the Business of Insurance</b></p> <p><i>Tilley to Traver to Perez:</i> A dangerous combination within the insurance defense tripartite relationship.</p> <p>Robert D. Allen, Meckler Bulger Tilson Marick &amp; Pearson LLP - Dallas, TX Joe K. Longley, Law Offices of Joe K. Longley - Austin, TX</p>
2:00 pm 0.75 hr	<p><b>Successor Liability and Anti-Assignment</b></p> <p>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.</p> <p>Catherine L. Hanna, Hanna &amp; Plaut, LLP - Austin, TX Pamella A. Hopper, Nickens Keeton Lawless Farrell &amp; Flack LLP - Austin, TX</p>
2:45 pm 0.50 hr	<p><b>Top Ten Commercial Hurricane Damage Claims Disputes: A Texas Perspective</b></p> <p>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.</p> <p>Jim LaRoe, The Law Offices of James K. LaRoe, P.C. - Dallas, TX</p>
3:15 pm 0.75 hr	<p><b>Ask the Experts: Structured Q&amp;A</b></p> <p>All questions answered! Submit your questions at the registration desk throughout the program.</p> <p>Moderator: Lee H. Shidlofsky, Visser Shidlofsky LLP - Austin, TX Panelists: Brian Scott Martin, Thompson, Coe, Cousins &amp; Irons, L.L.P. - Houston, TX Panelists: Christopher W. Martin, Martin, Disiere, Jefferson, &amp; Wisdom, L.L.P. - Houston, TX Panelists: Ernest Martin Jr., Haynes and Boone, LLP - Dallas, TX</p>
4:00 pm	<p><b>Adjourn</b></p>