

White and Williams LLP
presents

2008

COVERAGE

COLLEGE

Pennsylvania Convention Center

1101 Arch Street
Philadelphia, PA 19107

Wednesday, September 17, 2008

Approved for 4.5 hours of PA Continuing Legal Education Credits



Insurance coverage is complex, the topics are diverse and the law is constantly changing. It is a potential minefield, even for those with years of experience.

The White and Williams Coverage College provides an opportunity for insurance claims professionals to engage in intensive study of a diverse insurance coverage curriculum. Students can choose from fourteen different Masters Classes being taught by over 25 experienced White and Williams insurance coverage attorneys. These advanced classes will allow students to interact with the faculty and fellow students to discuss a variety of complex issues, such as construction defect, advertising injury, bad faith, claims made issues, reinsurance and coverage litigation. In addition, general sessions will address emerging coverage issues and provide invaluable advice from a nationally renowned jury consultant.

Students at last year's Coverage College had this to say about their day on campus: "Most applicable CLE seminar yet;" "Course content appealed to all experience levels;" "Exceeded my expectations."

The White and Williams Coverage College provides a unique opportunity for insurance claims professionals to get answers to the hard questions that confront them. In addition, the day includes breakfast, lunch, two breaks and a cocktail reception, which provide many opportunities for networking and catching up with industry colleagues.

There is no charge to attend the College, but space is limited. Don't delay. Register today! The College has been approved for 4.5 hours of Pennsylvania Continuing Legal Education Credits.

CURRICULUM

8:00 AM

REGISTRATION AND BREAKFAST

9:00 AM

WELCOME AND INTRODUCTIONS

Gale White, Dean of the College

9:10 AM

GENERAL SESSION

Emerging Issues and Trends in Insurance Coverage

Randy J. Maniloff

Insurance coverage case law is constantly changing – new exposures lead to new coverage issues and traditional issues never stay static. This session addresses the latest emerging issues and trends in insurance coverage, including global warming; FACTA; Montrose endorsement; number of occurrences; pollution exclusion; construction defect; course and scope issues in professional Liability policies and the primary-excess relationship.

10:00 AM

MASTERS CLASS I (Choose one)

I. A. Construction Defect Coverage

If You Build It, They Will Come – For Coverage That Is

Anthony L. Miscioscia and Peter R. Rosenthal

This Masters Class will explore the coverage issues often raised by insureds seeking coverage for construction defect claims under CGL policies. We will examine the contractual liability exclusion and the insured contract exception, discuss recent developments in the law concerning the “occurrence” requirement, the applicability of business risk exclusions to construction defect claims and analyze additional insured tenders, what carriers need to consider and look for and how carriers should respond.

I. B. Bankruptcy/Insurance

What Every Claims Professional Needs to Know About Bankruptcy

Robert A. Kargen and Amy E. Vulpio

Arcane, esoteric and bizarre are some of the adjectives used to describe the bankruptcy process. This Masters Class will inform you, in practical and easy to understand language, of the issues raised when your insured or the claimant files for bankruptcy protection. You will learn about the different “chapters” of bankruptcy and how they determine who you deal with. You will learn how the bankruptcy court, as a court of equity, can alter certain contractual terms, and how claims are adjudicated in a bankruptcy proceeding. Most importantly, you will learn the dangers and pitfalls that can befall an insurer in a Chapter 11 plan of reorganization and the proactive steps you need to take so that the bankrupt company does not pull a fast one on you—by way of incomprehensible language buried in a plan which results in claims preclusion, issue preclusion or collateral estoppel. All phrases you will come to dread.

I. C. Duty to Investigate Before Denying A First Party Claim

William J. Schmidt and Adam M. Share

This session will cover the scope of the insurer’s duty to investigate a first party claim before issuing a coverage declination, and how the insurer’s actions prior to denying the claim can be used against the company in subsequent coverage/bad faith litigation. Among the questions we will answer are: What is the scope of the insurer’s duty to independently investigate the facts underlying the reported claim? How should the insurer handle multiple potential bases for denying a claim? Is the insurer obligated to investigate the underwriting background of the policy against which the claim is being made? Under what circumstances should the insurer contact the insured’s broker before declining coverage?

I. D. Insurance Coverage 101 for “Freshmen”

A Nuts and Bolts Review of Significant Claim Issues for Our “Freshmen” Students And Those New To Claim Handling

Gregory T. LoCasale and Jennifer L. Wojciechowski

In this introductory level class, we will highlight some of the “red flags” and “must-dos” in addressing coverage in insurance claims. We will discuss how these issues present themselves in claim handling everyday and provide examples of how the issues are resolved. The topics to be discussed include:

- notice under occurrence and claims-made policies;
- notice by additional insureds;
- pre-tender defense costs;
- duty to defend standards; and,
- *Cumis* counsel.

10:40 AM

BREAK

11:00 AM

MASTERS CLASS II (Choose one)

II. A. Emerging Intellectual Property Issues and Developments in Advertising Injury Coverage

Anthony L. Miscioscia, Michael N. Onufrak and Michael O. Kassak

Intellectual property claims are becoming more prevalent and may trigger coverage under the Advertising Injury section of General Liability policies and other specialty products. The first part of this session will focus on the issues that claims professionals are likely to encounter when presented with these types of underlying claims, such as the elements of proof, the damages available and defenses. We will also focus on more practical concerns such as the cost of defending such claims and efficient methods for handling such disputes.

The second part of this session will examine recent insurance coverage decisions addressing the scope of personal and advertising injury coverage for intellectual property claims.

Topics to be covered will include the applicability of the prior publication and known falsity exclusions, course of advertising and coverage territory issues raised by the use of the Internet, and the scope of coverage for emerging claims.

The intellectual property claims that will be reviewed include the Fair and Accurate Credit Transaction Act (FACTA), the Lanham Act, the Telephone Consumer Protection Act (TCPA) and the United States Copyright Act.

II. B. Coverage for Long-Tail Claims: An Update

Patricia B. Santelle and Robert F. Walsh

Coverage litigation over “long-tail” claims (i.e., claims which involve latent manifestation of injury or damage) has been pending for over 25 years. While it has ebbed and flowed, and, at least in some jurisdictions, some issues have been resolved/clarified by high court rulings, on the whole, such litigation shows very little signs of slowing down. This session will cover issues that have either continued to be at the forefront or emerged as significant issues in the post-2000 litigation environment, as well as the most recent related case law such as “trigger,” allocation, the number of occurrences, the applicability of aggregate limits and the application of different forms of pollution exclusions.

II. C. Life, Health, Disability and ERISA

Elizabeth A. Venditta and Andrew I. Hamelsky

Nobody said that ERISA was straightforward. This specialty session provides an overview of key ERISA issues confronting those carriers and counsel involved in the fields of Life, Health and Disability. This session is designed for those who always wanted to handle these types of claims or for those who want to solidify their knowledge base and will also focus on the applicable standard of review in cases where the insurance carrier has an inherent conflict of interest. This hotly debated and decisive issue was recently the focus of attention in the Supreme Court of The United States.

II. D. Special Issues in Claims Made Coverage

William L. Schmidt; Lawrence J. Bistany and Celestine M. Montague

This Masters Class will include discussions on topics of particular relevance to claims made coverage. It will go beyond the usual questions of whether and when a claim was made to the more challenging issues that courts have resolved and not always consistently. Some of the issues that this session will address are:

- what constitutes a “claim?”;
- what constitutes sufficient notice under a claims-made policy?
- must an insurer prove prejudice to deny coverage based upon a notice provision in a claims-made policy?
- how does the purchase of tail coverage or extended reporting periods affect the analysis?
- when do Related and Interrelated Wrongful Acts provisions apply?

11:45 AM

LUNCH (will be provided)

1:15 PM

MASTERS CLASS III (*Choose one*)

III. A. Bad Faith

Andrew F. Susko and Wesley R. Payne, IV

The bad faith arena generates a large number of suits, the potential for huge verdicts and consternation for insurance carriers attempting to fairly administer, evaluate and resolve claims. The cases are often complex and usually very fact specific. Further, the interpretation of a jurisdiction’s bad faith standard may vary from judge to judge or from court to court. Undoubtedly, the carrier’s decision and the basis for the decision is always questioned or second guessed by claimants, their attorneys and the courts. This session will address the issues that commonly lead to bad faith claims and strategies to minimize the potential for unfavorable results.

III. B. Successor Liability

A “Must-Know” for GL Adjustors in This Business Age

Gale White and Jennifer L. Wojciechowski

This class will present an in depth look at successor liability issues starting from the basics and working to the complex. We will begin with a primer on business forms (corporations, partnerships, sole proprietorships) then discuss what happens to the assets and liabilities of the business forms as they combine or change by merger, acquisition or otherwise. Finally we will address what happens to the insurance policies of the companies as they go through changes and how courts have addressed the application of insurance policies in successor situations.

III. C. Liability Coverage Under Homeowner’s Insurance

Randy J. Maniloff and Taryn B. Kindred

This session will address various issues involving homeowner’s insurance liability claims and will include: college students and children of divorce and whether they qualify as resident relatives; a discussion of the separation of insureds doctrine and its application to liability claims against an insured for intentional torts committed by a co-insured; and an analytical framework to determine when an auto exclusion or business pursuits exclusion applies.

1:55 PM

BREAK

2:15 PM

MASTERS CLASS IV (*Choose one*)

IV. A. Litigating a Declaratory Judgment Action

Guy A. Cellucci and Shane Heskin

Whether an insurer is defending or bringing a declaratory judgment action, numerous strategic decisions must be made from the inception of a suit through trial. We will attempt to



identify and discuss how to address critical decisions every step of the way, including choice of forum, affirmative and defensive discovery, selection and preparation of experts and ultimately trying the case to a judge or jury.

IV. B. Reinsurance: Follow the Settlements

What it Is and What it Isn't

Michael S. Olsan and Christine G. Russell

Follow the settlements is a bedrock of the cedent-reinsurer relationship and we will explore the obligations of cedent and reinsurer underlying this fundamental reinsurance principle. We will attempt to answer the following questions during the course of this session: What obligations does a ceding company have before follow-the-settlements is invoked? Does the reinsurer have any defenses to follow-the-settlements? Is a reinsurer obligated to follow a ceding company's allocation of a particular loss? Will follow-the-settlements be read into a reinsurance contract that is otherwise silent on the topic? How does the doctrine of utmost good faith relate to follow-the-settlements?

IV. C. Class Actions and Insurance Related Issues:

Trouble Comes in Bunches

David J. Creagan and David E. Edwards

We will explore the basics of a class action suit, what it means to be a target of a class action (such as an insurance rate action) and how such actions are defended. Class actions tend to be brought by specialists who keep abreast of new "class theories" and cases around the country. Thus, when a case appears in one state there will generally be copy-

cat cases filed in other jurisdictions. An insurance company can be the direct target of a class action (e.g., rate actions, policy issues, claims handling/processing, etc.) or be required to defend its insureds against class actions (e.g., product liability, advertising injury, unsolicited facsimiles, residential construction, etc.). In this class you will learn what a class action is, how such cases differ from "ordinary" litigation and what are the key issues relating to insurance coverage.

3:10 PM

GENERAL SESSION

A Private Session With A Jury Consultant Featuring

David Davis Ph.D., a nationally renowned jury consultant and Thomas M. Goutman

Not to be Missed

Jury consultants are valuable tools and may even be necessary in very large cases. But many cases do not warrant engaging a jury consultant. Here is your chance to meet a jury consultant and talk to him about how juries perceive insurance companies and what can we do about it. He will also address what the insurance company professional can do to give his or her best testimony at deposition and at trial.

3:50 PM

EVALUATIONS, DOOR PRIZES AND DIPLOMAS

4:00 PM

COCKTAIL RECEPTION

DEAN OF THE COLLEGE

Gale White

DEAN OF STUDENTS

Randy J. Maniloff

FACULTY

Lawrence Bistany
Guy A. Cellucci
David J. Creagan
David Davis Ph.D.
David E. Edwards
Thomas M. Goutman
Andrew I. Hamelsky

Shane Heskin
Robert A. Kargen
Michael O. Kassak
Taryn B. Kindred
Gregory T. LoCasale
Anthony L. Miscioscia
Celestine M. Montague

Michael S. Olsan
Michael N. Onufrak
Wesley R. Payne, IV
Peter F. Rosenthal
Christine G. Russell
Patricia B. Santelle
William J. Schmidt

Adam M. Share
Andrew F. Susko
Elizabeth A. Venditta
Amy E. Vulpio
Robert F. Walsh
Jennifer L. Wojciechowski

PROGRAM INFORMATION AND REGISTRATION



There is no cost to attend Coverage College. However, class size is limited. Please register early to ensure your spot in this year's Coverage College!

When: Wednesday, September 17, 2008

Where: Pennsylvania Convention Center
1101 Arch Street
Philadelphia, PA 19107

Ways to Register: It is easy to register online at www.whiteandwilliams.com. Click on the Coverage College link located in the "Events" section of the homepage. You may also complete the attached form and fax it to 215-789-7523, attention Katie McDonald.

Ways to Get There: Located in the heart of Philadelphia at 1101 Arch street, the Pennsylvania Convention Center is easy to reach by plane, train and car.

Philadelphia International Airport: The Pennsylvania Convention Center is located just 20 minutes from the Philadelphia International Airport. Taxi cabs are readily available at the airport. Alternatively, Septa's R1 Airport line provides an easy ride to Market East Station (at 8th and Market Streets) which is within walking distance of the Convention Center.

Septa Rail Line: The Pennsylvania Convention Center is within walking distance of Septa's Market East Station (at 8th and Market Streets) which is within walking distance of the Convention Center.

Amtrak Rail Transportation: The Pennsylvania Convention Center is less than 10 minutes away from Amtrak's 30th Street Station. Taxi cabs are readily available at 30th Street Station. Alternatively, many Septa rail lines at 30th Street Station provide a quick connection to Market East Station (at 8th and Market Streets) which is within walking distance of the Convention Center.

Parking

For detailed driving directions and a local parking area map, please visit <http://www.paconvention.com/visitors/directions.asp>.

Hotel Information

We have secured a special rate (\$289 per night; excluding tax) at the Philadelphia Marriott Downtown at 1201 Market Street - across the street from the Convention Center. Call 215-625-2900 or 800-228-9290 for reservations.

REGISTRATION FORM



You may register online at www.whiteandwilliams.com or fax this completed form to Katie McDonald at 215-789-7523. Questions? Email us at events@whiteandwilliams.com or call 215-864-6381.

First Name _____ Last Name _____

Name as You Would Like it to Appear on Badge _____

Title _____

Company _____

Address _____

City _____ State _____ Zip _____

Email (required) _____

Business Phone _____ Fax _____

Number of Years Experience in Claims _____ Types of Claims Handled _____

Please help us with our planning and pre-register for your Masters Classes by selecting one per session.

MASTERS CLASS I

- A. Construction Defect Coverage**
Anthony L. Miscioscia and Peter F. Rosenthal
- B. What Every Claims Professional Needs to Know About Bankruptcy**
Robert A. Kargen and Amy E. Vulpio
- C. Duty to Investigate Before Denying A First Party Claim**
William J. Schmidt and Adam M. Share
- D. Insurance Coverage 101 for “Freshmen”**
Gregory T. LoCasale and Jennifer L. Wojciechowski

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- B. Successor Liability**
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- C. Liability Coverage Under Homeowners Insurance**
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- B. Reinsurance: Follow the Settlements**
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