

Insurance Coverage Litigation Committee 25th Annual CLE Seminar

Loews Ventana Canyon
Tucson, AZ



February 27 –
March 2, 2013



11.6 hours of MCLE credit, including 1 hour of ethics credit, have been requested in 60-minute states, and 14.0 hours of MCLE credit, including 1.2 hours of ethics credit, have been requested in 50-minute states.

ABA
Section of
Litigation

Program Highlights

Why You Should Attend

Learn the latest developments in insurance law from leading lawyers and insurance professionals at the 25th anniversary of the Insurance Coverage Litigation Committee CLE Seminar. Participate with lawyers, experts and members of the judiciary in plenary, breakout and roundtable sessions, as well as valuable networking events—some designed specifically for women, minorities and young lawyers. As in past years, the meeting will feature the same high-quality programming that over 300 people enjoyed last year. Join us in Tucson to make this another record-setting year!

What You Will Learn

- ▶ Lessons learned from Deepwater Horizon. Hear from counsel for BP and certain insurers about key coverage issues addressed in the Gulf oil spill coverage litigation.
 - ▶ Bodily injury coverage revisited. This panel will consider whether the concept of bodily injury in liability policies should be revisited in light of developing science on toxic exposures and insidious diseases.
 - ▶ How to maximize the value of 30(b)(6) depositions. Learn tips and strategies for taking and defending corporate depositions and for handling related disputes that often arise in coverage cases.
 - ▶ D & O coverage issues after the Facebook IPO, the JOBS Act and Rep. Frank's Clawback Bill.
 - ▶ Control of the defense. How far may insurers push their right to defend underlying litigation against their insureds? When policyholders invoke their right to independent counsel, are insurers' efforts to control "reasonable" defense costs fair, or do they go too far? Hear both sides from policyholder- and insurer-side lawyers.
 - ▶ How to pick a jury in a coverage lawsuit. Experienced practitioners and a federal magistrate judge will guide lawyer-led and judge-led voir dire exercises.
 - ▶ Ethical issues in mediations and arbitrations. What ethical constraints do mediators and arbitrators face in pushing parties to settlement? Do ethical standards for advocates differ depending on the context? Learn from practitioners who have faced these unique issues.
 - ▶ Emerging coverage issues: Superstorm Sandy, privacy, social media, political risk, live events coverage and more will be discussed in breakout sessions and roundtable discussions.
-

Who Should Attend

- ▶ All attorneys who litigate in the area of insurance coverage.
 - ▶ In-house counsel, risk managers and seasoned practitioners needing an update from the leading trial lawyers, experts and members of the judiciary on the latest developments in insurance law.
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Thank You to Our 2013 Committee and Seminar Co-Chairs

Committee Co-Chairs
 Ronald L. Kammer
Hinshaw & Culbertson, LLP

Sherilyn Pastor
McCarter & English, LLP

Seminar Co-Chairs
 Suzan Charlton
Covington & Burling LLP

Rahul Karnani
ACE Group

Seminar Vice Chairs
 James Cooper
Gardere Wynne Sewell LLP

Anna D. Torres
Powers, McNalis, Torres, Teebagy, Luongo

Wednesday, February 27	2:00 pm – 7:00 pm	Registration
	6:30 pm – 7:30 pm	Early Bird Cocktail Reception
Thursday, February 28	9:00 am – 6:00 pm	Registration
	1:00 pm – 2:10 pm	CLE Plenary Session The Bodily Injury Concept in Liability Policies Revisited
	2:15 pm – 3:20 pm	CLE Plenary Session Make It Or Break It – Tips and Strategies for Maximizing the Value of a Corporate Deposition in Your Coverage Case
	3:20 pm – 3:30 pm	Section Chair William R. Bay's Address
	3:30 pm – 3:40 pm	Coffee Break
	3:40 pm – 4:50 pm	CLE Plenary Session Idol 2013 – Jury Selection in State and Federal Courts
	5:00 pm – 5:30 pm	Subcommittee Meet Ups
	5:15 pm – 5:55 pm	Managing Editors of Coverage Meeting
	6:00 pm – 7:00 pm	In-House and Diversity Reception
	6:30 pm – 8:00 pm	Welcome Reception Yee-haw! Put on your cowboy boots and hats and come to a Western BBQ
Friday, March 1	7:00 am – 12:30 pm	Registration
	7:00 am – 8:00 am	Continental Breakfast
	8:00 am – 9:05 am	CLE Plenary Session More Deep Water on the Horizon: Lessons Learned from the Gulf Oil Spill Coverage Litigation
	9:10 am – 10:15 am	CLE Plenary Session Are the Shoemaker's Children Barefoot: How Well Do You Know Your Own Lawyers' Professional Liability Coverage?
	10:15 am – 10:30 am	Coffee Break
	10:30 am – 11:30 am	CLE Breakout Sessions <ul style="list-style-type: none"> ▶ Recent Developments in Insurance Law and their Impact on Construction Risks ▶ The High Cost of Privacy Violation Lawsuits and How Insurance May Provide Some Cover ▶ Reservations Required—or Not? Recent Trends Concerning Reservation of Rights Letters and the Impact on Defense Handling, Control and Conflicts of Interest ▶ Expert Witnesses—Can't Live With 'Em—Can't Live Without 'Em. Tips On The Use and Misuse Of Experts In Bad Faith and Coverage Cases

Schedule at a Glance

11:35 am – 12:35 pm **CLE Breakout Sessions**

- ▶ Idol 2013 – Jury Selection in State and Federal Courts
- ▶ You Say ‘Covered Consequential Loss,’ I Say ‘Non-Covered Inflicted Injury’: The Developing Law of Insurance Coverage for ‘Rip and Tear’ Damages in Construction Defect Litigation
- ▶ Bad Faith: Where is the Line
- ▶ Are You Still Covered? D&O Insurance After the Facebook IPO, the JOBS Act, and Efforts to Curb Clawback Coverage

12:35 pm – 2:00 pm **Roundtable Luncheons** (Ticketed: \$55)

1. Never Take ‘No’ for an Answer from Your Insurance Company – The Importance of the Insured’s Notice and Post-Denial Conduct in Recovering Insurance Proceeds
2. Gold Mine or Land Mine? A Practical Discussion of Underwriting and Claims Handling Discovery
3. Mind the Gap!: Avoiding Unexpected Gaps in Insurance Programs
4. Political Risk Insurance—Key Coverage Issues
5. Choose Your Weapons Wisely: Rescission, Reformation, Cancellation, and Other Coverage-Litigation Artillery
6. Defense Costs—Can They Be Allocated Between a Policyholder and Insurer?
7. Who Is An Insured? Update On Successors’ Rights To CGL Coverage, “Post-Loss” Assignments and Related Issues
8. Cancellations, Collapses and other Catastrophes—Insurance Coverage for Live Events
9. Claims and Coverage Issues Under Commercial Property Policies
10. Strategies in the Mediation and Settlement of Multi-Party Cases
11. An Excess Carrier’s Duty to Defend: A Slippery Slope or a Tangled Web?
12. Protect the Pocket: Risk Management and Insurance issues in the Sports and Entertainment Industries
13. Is There an App for That? How Technology has Transformed the Major Insurance Case
14. Legal Ethics and the Relationships Between Insurers, Policyholders and Defense Counsel
15. The Impact of Foreclosure and Other Economic Factors on Insurance Coverage and Measurement
16. “Now You See It, Now You Don’t”: The Continuing Duty of Good Faith
17. Evolution: The Past, Present and Future of Insurance Coverage Issues
18. Cyber Legislation and Regulation: The Full Employment for Lawyers Acts
19. Viability of Insurer’s Recoupment Requests
20. Wearing Two Hats: When Are Outside Coverage Counsel’s Documents Discoverable?
21. Coverage for Social Media Claims
22. Superstorm Sandy

2:15 pm – 5:00 pm	Activities: Golf, Hiking, Tennis (Prices may vary)
5:00 pm – 6:00 pm	Women’s Reception
6:00 pm – 7:00 pm	Young Lawyers’ Reception
7:00 pm – 10:00 pm	Reception and Anniversary Dinner (Ticketed: \$85)

Saturday, March 2	7:00 am – 12:30 pm	Registration
	7:00 am – 8:00 am	Continental Breakfast
	7:00 am – 7:45 am	Committee Business Meeting
	8:00 am – 9:00 am	CLE Plenary Session The Deal-Slayers – Settlement Landmines in Recent Case Law
	9:05 am – 10:05 am	CLE Breakout Sessions <ul style="list-style-type: none">▶ Practitioner’s Pulse: Enforcing D&O Insurance Coverage Subject to the Insured v. Insured Exclusion▶ Recovery of Diminished Value for First Party Homeowner/Commercial Property Claims▶ Things You Need to Know About London Market Practice▶ “Is That Reasonable?” – Efforts to Control the Cost of Defense
	10:05 am – 10:20 am	Coffee Break
	10:20 am – 11:20 am	CLE Breakout Sessions <ul style="list-style-type: none">▶ Survey Says: The Feud Over Insurance and Indemnity Provisions in Business Contracts▶ Whaddya Mean It’s Not Covered?!?! Assessing Potential Broker Liability for Claims Insurers Deny▶ Recent Developments in the Selection, Conduct, and Disqualification of Reinsurance Arbitrators▶ Insurance Coverage for Sexual Abuse Claims
	11:25 am – 12:30 pm	CLE Ethics Session Ethical Issues in Mediations and Arbitrations
	12:30 pm - 4:30 pm	Optional Activities: Sabino Canyon, Desert Museum, Mountain Biking
	4:30 pm – 5:30 pm	Farewell Networking Reception

Moderators & Speakers

Nancy D. Adams

*Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo P.C.*
Boston, MA

David A. Attisani

Choate Hall & Stewart LLP
Boston, MA

Sina Bahadoran

Hinshaw & Culbertson LLP
Miami, FL

David J. Baldwin

*Potter Anderson
& Corroon LLP*
Wilmington, DE

William T. Barker

SNR Denton US LLP
Chicago, IL

John Bickerman

*Bickerman Dispute
Resolution, PLLC*
Washington, DC

James P. Bobotek

*Pillsbury Winthrop Shaw
Pittman LLP*
Washington, DC

John C. Bonnie

Weinberg Wheeler
Atlanta, GA

Mark Boon

La Playa Insurance
New York, NY

Nicholas J. Boos

Sedgwick LLP
San Francisco, CA

Mary Borja

Wiley Rein LLP
Washington, DC

Richard J. Bortnick

Cozen O'Connor
Philadelphia, PA

Simon Boxall

Marsh Energy
London, UK

Hon. Kitty K. Brennan

*Wisconsin Court of
Appeals - District I*
Milwaukee, WI

Charles Browning

Plunkett Cooney
Bloomfield Hills, MI

Susan Brune

Brune and Richard
New York, NY

R. Tyler Bryant

*Goodman, McGuffey, Lindsey
& Johnson, LLP*
Atlanta, GA

John G. Buchanan

Covington & Burling LLP
Washington, DC

Rina Carmel

*Zelle McDonough
Cohen LLP*
Los Angeles, CA

Jamie R. Carsey

*Thompson, Coe, Cousins
& Irons LLP*
Houston, TX

Kendric M. Cobb

Caterpillar Inc.
Peoria, IL

Jeffrey M. Cohen

Carlton Fields
Miami, FL

Mary Craig Calkins

Jenner & Block LLP
Los Angeles, CA

Hillary Coombs Jarvis

Steptoe & Johnson LLP
Washington, DC

Karen Cusato

Cusato Consulting LLC
Westport, CT

Stefan R. Dandelles

*Wilson Elser Moskowitz
Edelman & Dicker LLP*
Chicago, IL

Jeffrey O. Davis

Quarles & Brady LLP
Milwaukee, WI

Matthew J. Dendinger

Thompson, Loss & Judge LLP
Washington, DC

Andrew Deutsch

Meagher & Geer PLLP
Minneapolis, MN

Mike DiSilvestro

AXIS Insurance
Kansas City, MO

Christina Dixon

The Dixon Law Firm
Denver, CO

Adam P. Doherty

*Allied World National
Assurance Company*
Farmington, CT

Michael W. Early

*Chicago Underwriting
Group, Inc.*
Chicago, IL

Terrance J. Evans

Duane Morris LLP
San Francisco, CA

Tred R. Eyerly

*Damon Key Leong Kupchak
Hastert*
Honolulu, HI

Michele L. Fenice

*ACE North American
Professional Risk Claims*
Jersey City, NJ

Elizabeth Fitzpatrick

Johs Avallone Aviles, LLP
Islandia, NY

Laura Foggan

Wiley Rein & Fielding LLP
Washington, DC

Seth M. Friedman

*Weissman, Nowack,
Curry & Wilco P.C.*
Atlanta, GA

Vanci Y. Fuller

McCurdy & Fuller, LLP
Covina, CA

Diego Garcia, Jr.

*Thompson Coe Cousins
& Irons, LLP*
Houston, TX

Douglas W. Gastelum

*Law Offices of Douglas
Gastelum*
Long Beach, CA

Scott Godes

Dickstein Shapiro
Washington, DC

Kenneth M. Gorenberg

Barnes & Thornburg LLP
Chicago, IL

Russell B. Gregg

Liberty Mutual Insurance Co.
Boston, MA

Sarah M. Hall

Covington & Burling LLP
Washington, DC

Elizabeth Hanke

KCIC LLC
Washington, DC

Jonathan G. Hardin

Covington & Burling LLP
Washington, DC

Kelley A. Harvilla

Carroll, Burdick & McDonough, LLP
San Francisco, CA

John E. Heintz

Dickstein Shapiro LLP
Washington, DC

Eric Hilton

H.J. Russell & Company
Atlanta, GA

Miles C. Holden

Hanson Bridgett LLP
San Francisco, CA

Theodore A. Howard

Wiley Rein LLP
Washington, DC

Caleb E. Jay

Arizona Diamondbacks
Phoenix, AZ

Joseph D. Jean

Lowenstein Sandler, P.C.
Roseland, NJ

Chauntis T. Jenkins

Porteous, Hainkel & Johnson
New Orleans, LA

Valarie H. Jonas

Murchison & Cumming, LLP
San Francisco, CA

Charles A. Jones

Troutman Sanders LLP
Washington, DC

Marla Kanemitsu

Dickstein Shapiro
Washington, DC

Kathryn E. Kasper

Hancock, Daniel, Johnson & Nagle P.C.
Glen Allen, VA

Lisa M. Kauffman

Fireman's Fund Insurance Co.
Chicago, IL

Georgia Kazakis

Covington & Burling LLP
Washington, DC

Toyja E. Kelley

Tydings & Rosenberg, LLP
Baltimore, MD

JP Kennedy

Frenkel & Company
New York, NY

Jeff Kichaven

Jeff Kichaven, Mediator
Los Angeles, CA

Kevin King

Turner Construction Company
Montvale, NJ

Amy S. Kline

Saul Ewing LLP
Philadelphia, PA

Ruth S. Kochenderfer

Steptoe & Johnson LLP
Washington, DC

Angela P. Krahulik

Ice Miller LLP
Indianapolis, IN

Hon. M. Hannah Lauck

*United States District Court,
Eastern District of Virginia*
Richmond, VA

Parker J. Lavin

Wiley Rein LLP
Washington, DC

Amy L. Ledoux

C.N.A.
Washington, DC

Richard Leedham

Addleshaw Goddard LLP
London, U.K.

Fay Lemberg

*Fortune Brands Home
& Security, Inc.*
Deerfield, IL

Benedict M. Lenhart

Covington & Burling LLP
Washington, DC

James J. Leonard

Barnes & Thornburg LLP
Atlanta, GA

Melissa C. Lesmes

*Pillsbury Winthrop Shaw
Pittman LLP*
Washington, DC

Anthony B. Leuin

Shartsis Friese LLP
San Francisco, CA

Arden B. Levy

Arden Levy Law PLLC
Alexandria, VA

Whitney R. Lindahl

Troutman Sanders LLP
Washington, DC

Ellen MacDonald Farrell

Crowell Moring
Washington, DC

Natalie G. Maciolek

Quarles & Brady LLP
Milwaukee, WI

Peri N. Mahaley

Orrick
Washington, DC

Dan Maloney

KCIC LLC
Washington, DC

Stephanie Manson

Aon Risk Solutions
London, U.K.

Andrew L. Marquis

*Ropers, Majeski, Kohn
& Bentley*
New York, NY

Richard C. Mason

Cozen O'Connor
Philadelphia, PA

Katherine E. Mast

Sedgwick LLP
Los Angeles, CA

Lorelie S. Masters

Jenner & Block
Washington, DC

Ernest Martin Jr.

Haynes and Boone LLP
Dallas, TX

Jason S. Mazer

Ver Ploeg & Lumpkin, P.A.
Miami, FL

Megan A. McClellan

Marsh - FINPRO
Washington, DC

Mary E. McCutcheon

Farella Braun & Martel LLP
San Francisco, CA

Evans M. McLeod

Phelps Dunbar LLP
New Orleans, LA

Kathryn M. Metz

Sedgwick LLP
Chicago, IL

Helen K. Michael

*Kilpatrick Townsend
& Stockton LLP*
Washington, DC

Gregory D. Miller

*Podvey, Meanor, Catenacci,
Hildner, Coccoziello
& Chatman, P.C.*
Newark, NJ

Moderators & Speakers

Samantha Miller

Chadbourne & Park LLP
Washington, DC

Allan B. Moore

Covington & Burling LLP
Washington, DC

Meghan C. Moore

Ver Ploeg & Lumpkin, P.A.
Miami, FL

Michael Mulvaney

Maynard Cooper & Gale
Birmingham, AL

John B. Mumford, Jr.

*Hancock, Daniel, Johnson
& Nagle, P.C.*
Richmond, VA

Victor F. Mustelier

*Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.*
New York, NY

John O'Neil

Mass Mutual Law Division
Springfield, MA

Jerold Oshinsky

Jenner & Block LLP
Los Angeles, CA

Alan Palmer Jacobus

*Carroll, Burdick &
McDonough, LLP*
San Francisco, CA

Eileen Parsons

Ver Ploeg & Lumpkin, P.A.
Miami, FL

Sherilyn Pastor

McCarter & English
Newark, NJ

Joseph Perkins

Cummins, Inc.
Indianapolis, IN

John H. Podesta

Murchison & Cumming, LLP
San Francisco, CA

Neil B. Posner

Much Shelist, P.C.
Chicago, IL

Andres Rivero

Rivero Mestre LLP
Coral Gables, FL

Robert Romero

Hinshaw & Culbertson LLP
San Francisco, CA

Deborah Rothman

Los Angeles, CA

Demetrius E. Rush

Zurich North America
Schaumburg, IL

Tracy Alan Saxe

Saxe Doernberger & Vita, P.C.
Hamden, CT

Brian S. Scarbrough

Jenner & Block LLP
Washington, DC

David E. Schoenfeld

Grippo & Eiden LLC
Chicago, IL

Gregory E. Schopf

Nixon Peabody
San Francisco, CA

Gregory J. Schwartz

Schwartz Kelly, LLC
Annandale, NJ

Clark Schweers

BDO Consulting
Bethesda, MD 20814

Clifford J. Shapiro

Barnes & Thornburg LLP
Chicago, IL

Kenneth E. Sharperson

Anderson Kill & Olick, P.C.
Newark, NY

Karen L. Stevenson

Buchalter Nemer
Los Angeles, CA

Charles Stuaber

Torus Insurance (UK) Ltd
Jersey City, NJ

Wendy R. Taylor

Chubb & Son
Warren, NJ

Andrea Tecce

Navigant Consulting
Washington, DC

Joe Thacker

Thacker Martinsek
Perrysburg, OH

Robert P. Thavis

Leonard, Street and Deinard
Minneapolis, MN

Gary Thompson

Reed Smith LLP
Washington, DC

Anna D. Torres

*Powers, McNalis, Torres,
Teebagy, Luongo*
West Palm Beach, FL

Sarah Turpin

K&L Gates LLP
London, U.K.

William T. Um

Hunton & Williams LLP
Los Angeles, CA

Ellen M. Van Meir

Thompson Coe
Dallas, TX

Paul J. Van Osselaer

Van Osselaer & Buchanan LLP
Austin, TX

Carla Varriale

*Havkins Rosenfeld Ritzert
& Varriale, LLP*
New York, NY

Jeffrey J. Vita

Saxe Doernberger & Vita, P.C.
Hamden, CT

Mary Kay Vyskocil

*Simpson Thacher
& Bartlett LLP*
New York, NY

Rebecca Westerfield

JAMS
San Francisco, CA

Suzu P. White

Manatt, Phelps & Phillips, LLP
Los Angeles, CA

Chester D. White

Aon Risk Solutions
New York, NY

Ray L. Wong

Duane Morris LLP
San Francisco, CA

Rebecca Woods

Seyfarth Shaw LLP
Washington, DC

Rick Woollams

*Global Commercial Claims
Chartis*
New York, NY

Wednesday, February 27

2:00 pm – 7:00 pm

Registration

6:30 pm – 7:30 pm

Early Bird Cocktail Reception

Thursday, February 28

11:00 am – 6:00 pm

Registration

1:00 pm – 2:10 pm

CLE Plenary Session: The Bodily Injury Concept in Liability Policies Revisited

When bodily injury occurs, it affects several aspects of liability coverage, from trigger to limits. Recent medical studies have allowed insurers to challenge older trigger and claim classification principles. This program will discuss insurer challenges (and policyholder responses) to timing of injury in a variety of cases, including Keasbey and Crane.

Moderator: Alan Palmer Jacobus

Speakers: Ellen MacDonald Farrell, Kelley A. Harvilla, Peri N. Mahaley, Karen L. Stevenson

2:15 pm – 3:20 pm

CLE Plenary Session: Make it or Break it – Tips and Strategies for Maximizing the Value of a Corporate Deposition in Your Coverage Case

This program will address the important role of corporate depositions in coverage cases, and will provide effective strategies for preparing for and taking/defending these depositions. Using segments from real and fictional depositions, the panelists will address issues and disputes that often arise during corporate depositions in coverage cases.

Moderator: John B. Mumford, Jr.

Speakers: James P. Bobotek, Theodore A. Howard, Georgia Kazakis, Ruth S. Kochenderfer

3:20 pm – 3:30 pm

Section Chair William R. Bay's Address

3:30 pm – 3:40 pm

Coffee Break

3:35 pm – 4:45 pm

CLE Plenary Session: Idol 2013 – Jury Selection in State and Federal Courts

In its third year, the ICLC Idol program addresses the practical skills necessary to impanel a jury. The audience serves as the jury pool and will be subjected to voir dire in coverage litigation involving an emerging area. After hearing from judges, ICLC attendees will vote for their favorite contestant.

Moderator: Gregory J. Schwartz

Speakers: Jamie R. Carsey, Valarie H. Jonas, Toyja E. Kelley, Angela P. Krahulik, Hon. M. Hannah Lauck, Jerold Oshinsky, Anna D. Torres

5:00 pm – 5:30 pm

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Managing Editors of Coverage Meeting

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Yee-haw! Put on your cowboy boots and hats and come to a Western BBQ.

Friday, March 1

7:00 am – 12:35 pm

Registration

7:00 am – 8:00 am

Continental Breakfast

8:00 am – 9:05 am

CLE Plenary Session: More Deep Water on the Horizon: Lessons Learned from the Gulf Oil Spill Coverage Litigation

This panel will explore current issues and developments in the ongoing Deepwater Horizon oil spill insurance coverage litigation between BP (majority owner of the well), Transocean (owner of the rig), and relevant Insurers that issued policies to Transocean under which BP claims rights as an “additional insured.” Key issues to be addressed may include: the nature and scope of “additional insured” rights in oil and gas insurance policies and drilling contracts; the interplay of indemnity and insurance issues in such contracts; and how the insurance market may change in the wake of the Gulf of Mexico spill.

Moderator: Chauntis T. Jenkins

Speakers: Simon Boxall, Evans M. McLeod, Allan B. Moore

9:10 am – 10:15 am

CLE Plenary Session: Are the Shoemaker’s Children Barefoot: How Well Do You Know Your Own Lawyers’ Professional Liability Coverage?

You be the judge! Please join us for an interactive, audience participation seminar aimed at focusing our laser-like collective attention on some key—and surprising—issues respecting our own lawyers’ professional liability coverage. This is one program your firm will surely tell you not to miss!

Moderator: Robert P. Thavis

Speakers: Mary Borja, Amy L. Ledoux, Anthony B. Leuin, Chester D. White

10:15 am – 10:30 am

Coffee Break

10:30 am – 11:30 am

CLE Breakout Sessions

Recent Developments in Insurance Law and Their Impact on Construction Risks

A survey of recent court decisions on insurance coverage that impact construction risk management, and vice versa including: (1) defense and indemnity of class actions, (2) trigger and allocation between a client’s direct insurance and additional insured coverage; (3) policy exclusions, and (4) What is an “occurrence”/what constitutes “property damage”?

Moderator: John H. Podesta

Speakers: Seth M. Friedman, Vanci Y. Fuller, Jeffrey J. Vita

The High Cost of Privacy Violation Lawsuits and How Insurance May Provide Some Cover

The number of class action lawsuits filed against companies alleging violations of privacy and data breach is on the rise. This program will provide an update on the latest developments regarding these lawsuits and explore how insurance coverage may be a potential resource to address the costs to defend such class actions.

Moderator: William T. Um

Speakers: Andrew L. Marquis, Helen K. Michael

Reservations Required—or Not? Recent Trends Concerning Reservation of Rights Letters and the Impact on Defense Handling, Control and Conflicts of Interest

Issues such as right to and choice of, independent counsel, settlement, and use of billing guidelines are standard fare in coverage litigation when an insurer defends under a reservation. Recent case law allowing an insurer who fails to reserve rights to later challenge coverage could take these disputes to a whole new level.

Moderator: Jeffrey O. Davis

Speakers: Nicholas J. Boos, Hon. Kitty K. Brennan, Kendric M. Cobb

Expert Witnesses—Can't Live With 'Em—Can't Live Without 'Em. Tips on the Use and Misuse of Experts in Bad Faith and Coverage Cases

This program will provide guidance regarding expert testimony in bad faith and coverage trials. The panel will discuss the law and techniques relating to the use of expert witnesses to persuade the jury, including the discovery of expert opinions and the admissibility of expert testimony at trial. Following the discussion, the panel will demonstrate techniques pertaining to preparation of experts, the deposition of experts and expert testimony at trial in connection with a hypothetical case. The audience will be asked to propose the appropriate rulings of the court regarding the pre-trial and trial demonstrations.

Moderator: Jason S. Mazer

Speakers: Jeffrey M. Cohen, Karen Cusato, Robert Romero

11:35 am – 12:35 pm

CLE Breakout Sessions

Idol 2013– Jury Selection in State and Federal Courts

In its third year, the ICLC Idol program addresses the practical skills necessary to impanel a jury. The audience serves as the jury pool and will be subjected to voir dire in coverage litigation involving an emerging area. After hearing from judges, ICLC attendees will vote for their favorite contestant.

Moderator: Gregory J. Schwartz

Speakers: Jamie R. Carsey, Valarie H. Jonas, Toyja E. Kelley, Angela P. Krahulik, M. Hannah Lauck, Jerold Oshinsky, Anna D. Torres

You Say 'Covered Consequential Loss,' I Say 'Non-Covered Inflicted Injury': The Developing Law of Insurance Coverage for 'Rip and Tear' Damages in Construction Defect Litigation

The case law addressing insurance coverage for alleged consequential loss in the form of “rip and tear” or “get to” damages continues to develop and evolve. The panel discusses arguments for and against coverage for these damages—often significantly exceeding the cost of repairing already damaged property—and the case trends nationwide.

Moderator: Melissa C. Lesmes

Speakers: John C. Bonnie, Eric Hilton, Charles Stuaber

Bad Faith: Where is the Line?

Most states recognize a cause of action for bad faith, but determining where the line is can be far from easy. This panel will consider three areas where disputes may arise, investigation of first-party claims, evaluation of third-party claims, and conduct of coverage litigation, and debate a “hard case” hypothetical for each in an attempt to draw a line that might provide guidance to insurers and policyholders alike.

Speakers: Rina Carmel, Tred R. Eyerly, Demetrius E. Rush, John S. Vishneski III

Are You Still Covered? D&O Insurance After the Facebook IPO, the JOBS Act, and Efforts to Curb Clawback Coverage

It's now more important than ever to understand Directors & Officers insurance coverage available for new risks and emerging claims. This program will address shareholder claims in the wake of the Facebook IPO, potential crowdfunding and roadshow claims under the JOBS Act, and the background and prospects for D&O clawback coverage.

Moderator: Andrew Deutsch

Speakers: Sina Bahadoran, JP Kennedy, Sherilyn Pastor

12:35 pm – 2:00 pm

► **Roundtable Luncheons** (Ticketed: \$55)

1. Never Take ‘No’ for an Answer from Your Insurance Company – The Importance of the Insured’s Notice and Post-Denial Conduct in Recovering Insurance Proceeds

Many insurers count on insureds to simply “go away” after an initial denial of coverage—and many insureds will do just that. But an insured should always have a coverage attorney review the denial to see whether coverage or a defense may be available under the prevailing law, and to push back on the insurer when appropriate and when it is in the insured’s best interests. Once the denial is issued, the insured is essentially free to defend or settle as it sees fit, and then charge the settlement and defense costs back against the insurer. However, there are still limits within which the insured must work, and must carefully document its losses for the insurance claim. Policyholder coverage counsel and risk management consultant will provide real-world examples of insurance recoveries (following initial denials) for policies dating back 60 years(!) in some instances.

Speakers: James J. Leonard, Andrea Tecce

2. Gold Mine or Land Mine? A Practical Discussion of Underwriting and Claims Handling Discovery

Underwriting and claims handling materials can contain the richest evidence for an insured and, conversely, the most troublesome source of information for an insurer. When is an insured entitled to it and how does she get it? When can an insurer withhold it and how does he refuse it?

Speakers: Sarah M. Hall, Whitney R. Lindahl

3. Mind the Gap! Avoiding Unexpected Gaps in Insurance Programs

As risks become more complex, organizations require multiple policies to cover them, leading to the additional risk of coverage gaps. For example, gaps can occur between D&O and E&O policies, and between successive claims-made policies. This program identifies substantive and technical coverage gaps, and addresses underwriting solutions and claims challenges.

Speakers: Nancy D. Adams, Mary E. McCutcheon

4. Political Risk Insurance—Key Coverage Issues

This program will provide an overview of Political Risk Insurance (PRI) including: a) overview of PRI coverage and key coverage terms, b) the main players on the policyholder and insurer sides, c) major types of typical PRI claims, d) key areas of PRI coverage dispute, e) the leading PRI coverage cases and rulings, f) the role of PRI in international investment deals, g) public vs. private PRI, and h) PRI current trends.

Speakers: Benedict Lenhart, Gregory Schopf

5. Choose Your Weapons Wisely: Rescission, Reformation, Cancellation, and Other Coverage-Litigation Artillery

Sometimes an insurer’s best coverage defense is a good offense that goes beyond a garden-variety declaratory relief action. This program will examine alternative tools in carriers’ arsenals, including rescission, reformation and cancellation, as well as policyholders’ options to combat such lesser-used tactics and practical strategies for resolving coverage disputes.

Speakers: Terrance J. Evans, Miles C. Holden, Katherine E. Mast

6. Defense Costs – Can They Be Allocated Between a Policyholder and Insurer?

Can coverage for defense costs, as indemnity or part of a duty to defend, be allocated between a policyholder and insurer based on covered and uncovered claims, periods of insurance and self-insurance, or other factors? We will examine key decisions and the current split in the case law.

Speakers: Parker J. Lavin, Brian S. Scarbrough

-
- 7. Who Is an Insured? Update on Successors' Rights to CGL Coverage, "Post-Loss" Assignments and Related Issues**
A review of developments concerning the rights of corporate successors and asset purchasers to coverage under predecessors' CGL policies. The program will discuss what "post-loss" assignment means in the context of liability coverage. Related issues include whether conflicts in the underlying defense and multiple occurrences preclude assignment.
Speakers: David E. Schoenfeld, Joe Thacker
-
- 8. Cancellations, Collapses and other Catastrophes—Insurance Coverage for Live Events**
Several types of insurance coverages exist to protect against liabilities faced by performing acts, venues, sponsors, promoters, and others in connection with live events, including (a) event cancellation insurance; (b) nonappearance insurance; (c) general liability insurance for liabilities faced when concertgoers are injured at the event; and (d) property insurance for damage to the insured's own property and business interruption losses.
Speakers: Mark Boon, Joseph D. Jean, Suzy P. White
-
- 9. Claims and Coverage Issues Under Commercial Property Policies**
This workshop will discuss key components of builders risk policies and provide attendees with a comprehensive approach to preparing claims and analyzing coverage through the use of real-life examples to illustrate claims and coverage scenarios.
Speakers: Tracy Alan Saxe, Timothy B. Walker
-
- 10. Strategies in the Mediation and Settlement of Multi-Party Cases**
Multi-party coverage cases present special problems when trying to settle all of the competing interests. Two experienced coverage mediators, with the aid of the roundtable members, will lead a discussion of the various ways to sort through the competing interests and focus the parties on settlement.
Speakers: Jeff Kichaven, Paul J. Van Osselaer
-
- 11. An Excess Carrier's Duty to Defend: A Slippery Slope or a Tangled Web?**
This roundtable will cover issues relating to an excess carrier's duty to defend, including the effect of "follow form" and "pay and walk" provisions, vertical versus horizontal exhaustion, self-insured primary coverage, insolvency of policyholder or underlying insurers, and allocation among insurers where settlements exceed primary policy limits.
Speakers: Natalie G. Maciolek, Ellen M. Van Meir
-
- 12. Protect the Pocket : Risk Management and Insurance issues in the Sports and Entertainment Industries**
Sports and entertainment venues are exposed to a wide variety of risks that need to be properly managed. This program will discuss the risks associated with these facilities. The program will also focus on the types of insurance which can protect against lawsuits alleging injury to spectators or athletes, damages from suits against management and other related types of insurance to protect against the associated risks.
Speakers: Caleb E. Jay, Kenneth E. Sharperson, Carla Varriale
-
- 13. Is There an App for That? How Technology Has Transformed the Major Insurance Case**
This panel will discuss technology's transformative power. Technology touches all aspects of an insurance case and the desire for more data by all parties continues to grow. But have DVD's simply replaced boxes of paper or are we really getting better information? Is there an app for that? You betcha.
Speakers: Elizabeth Hanke, Rick Woollams

14. Legal Ethics and the Relationships Between Insurers, Policyholders and Defense Counsel

This lively roundtable program will explore how the rules of ethics impact counsel for insurance companies, policyholders, and defense counsel as they deal with coverage issues, as well as the defense and resolution of complex claims. We will discuss a variety of topics including the control of defense counsel under duty to defend policies and the special relationships created under indemnity policies.

Speakers: Michael W. Early, Neil B. Posner

15. The Impact of Foreclosure and Other Economic Factors on Insurance Coverage and Measurement

Foreclosure and other related financial issues continue to affect a litany of coverage and measure issues. From whether an insured is entitled to recover replacement cost or actual cash value, to the applicability of ordinance and law coverage, many different coverages are potentially impacted. This panel examines developing case law, practical considerations in terms of assignments of rights and obligations, and practice pointers in addressing these complex issues.

Speakers: Joseph D. Jean, Gregory D. Miller

16. “Now You See It, Now You Don’t”: The Continuing Duty of Good Faith

Insurers have a duty of good faith to their policyholders, but how far does that duty extend? What happens after a lawsuit is filed but information about a claim is still being exchanged? An insurer’s continuing duty of good faith varies by state and can create pitfalls for the unwary insurer or additional theories of recovery for the savvy policyholder. Counsel for insurers and policyholders alike will benefit from this overview of the elusive continuing duty of good faith.

Speakers: Michael Mulvaney, Eileen Parsons

17. Evolution: The Past, Present and Future of Insurance Coverage Issues

A discussion of how coverage matters have evolved and may continue to change. Speakers will address the evolution of select coverage issues, such as changes in the types of cases being litigated, use of technology, role of insurers, litigation strategy, new insurance products, and industry consolidation.

Speakers: Charles Browning, Marla Kanemitsu, Dan Maloney

18. Cyber Legislation and Regulation: The Full Employment for Lawyers Acts

Recent federal and state laws and regulations create new and expanded breach reporting and fiduciary disclosure requirements arising from a company’s cyber-security risks and exposures. They also will generate D&O claims, including securities fraud and derivative litigation. And who wins? Lawyers, of course.

Speakers: Richard J. Bortnick, Elissa Doroff, Scott Godes

19. Viability of Insurer’s Recoupment Requests

Insurers often offer a defense before coverage questions are resolved. A recurring issue is whether insurers can recoup defense costs from policyholders if a claim is ultimately found to be uncovered. This roundtable will consider whether and when policyholders must reimburse their insurers.

Speakers: William T. Barker, Clifford J. Shapiro

20. Wearing Two Hats: When Are Outside Coverage Counsel’s Documents Discoverable?

This roundtable addresses the difficult work product and attorney-client privilege issues that can arise when outside coverage counsel is retained by the insurer early in the claims investigation process and becomes heavily involved—particularly where the policyholder alleges bad faith in later coverage litigation, arguably putting outside coverage counsel’s role at issue.

Speakers: Jonathan G. Hardin, Kathryn E. Kasper

21. Coverage for Social Media Claims

The use of social media is a major paradigm shift in American business. It poses risks, however. The roundtable will discuss these risks, coverage available under traditional policies, and the kinds of policies being offered that specifically address these risks.

Speakers: Mike DiSilvestro, Rebecca Woods

22. Superstorm Sandy

Lively debate on first-party coverage issues, from definitional disputes (was it a “hurricane”?) to business interruption, ingress/egress, civil authority, and more.

Speakers: Hillary Coombs Jarvis, Lorelie S. Masters, Clark Schweers

2:15 pm – 5:00 pm

Activities: Golf, Hiking, Tennis (Prices may vary)

5:00 pm – 6:00 pm

Women’s Reception

6:00 pm – 7:00 pm

Young Lawyers’ Reception

7:00 pm – 10:00 pm

Reception and Anniversary Dinner (Ticketed: \$85)

Saturday, March 2

7:00 am – 12:30 pm

Registration

7:00 am – 8:00 am

Continental Breakfast

7:00 am – 7:45 am

Committee Business Meeting

8:00 am – 9:00 am

CLE Plenary Session: The Deal-Slayers—Settlement Landmines in Recent Case Law

Settlement isn’t easy. Insureds who settle tort claims may lose coverage; insurers who don’t may face bad faith. Insureds who settle primary coverage may forfeit excess coverage. Settlement credits may eviscerate settlement recoveries. And D&O settlements are minefields for all concerned. This panel addresses recent cases creating these and other settlement traps.

Moderator: John G. Buchanan

Speakers: Mary Craig Calkins, Russell B. Gregg, Rebecca Westerfield, Ray L. Wong

9:05 am – 10:05 am

CLE Breakout Sessions

Practitioner’s Pulse: Enforcing D&O Insurance Coverage Subject to the Insured v. Insured Exclusion

In the wake of the FDIC’s pursuit of failed bank executives, D&O coverage litigation has intensified. A major coverage battleground has emerged in an unsettled area of law: the Insured v. Insured “IVI” exclusion. The panelists will track the evolution of the exclusion from its application during the S&L crisis to the current crisis.

Moderator: Andres Rivero

Speakers: Susan Brune, Elizabeth Fitzpatrick, Victor F. Mustelie, John O’Neil

Recovery of Diminished Value for First Party Homeowner/Commercial Property Claims

On May 29, 2012, the Georgia Supreme Court held that an insured had the right to recover for diminished value to real property after the property has been damaged and repaired. With this landmark decision, Georgia has become one of the first states to authorize recovery of diminished value under a property policy. This program will focus on the arguments for (policyholder) and against (carrier) extending real property coverage to stigma damage and the effects this Georgia decision will likely have on the insurance industry and policyholder litigation.

Moderator: R. Tyler Bryant

Speakers: Diego Garcia, Jr., Meghan C. Moore, Gary Thompson

10 Things You Need to Know About London Market Practice

Litigation practice involving London market insurers, including Lloyd's, presents unique challenges. This seminar discusses these issues from the policyholder-client, London insurer, and litigation counsel perspectives, including how London market placement works (and how that affects client relationships), jurisdiction and service, potential application of foreign law, and discovery.

Moderator: Richard Leedham

Speakers: Sarah Turpin, Stephanie Manson, Samantha Miller

"Is That Reasonable?" – Efforts to Control the Cost of Defense

The cost of defending claims continues to increase. How do insurers attempt to control those costs, and do these efforts improperly interfere with the defense or create ethical problems for defense counsel?

Moderator: Charles A. Jones

Speakers: Adam P. Doherty, Toyja E. Kelley, Megan A. McClellan

10:05 am – 10:20 am

Coffee Break

10:20 am – 11:20am

CLE Breakout Sessions

Survey Says: The Feud over Insurance and Indemnity Provisions in Business Contracts

Question: "Name three ways a company can reduce its litigation risk." Answer: "Survey says... Transfer it, insure it, or limit it." Using a format akin to the popular "Family Feud" game show, in which two teams' answers are compared to an audience survey, contestants including in-house lawyers will share their thoughts on effective ways to transfer, insure or limit corporations' litigation risks and costs. No answer is necessarily right or wrong but intended to launch an informative discussion. Topics will include insurance provisions, indemnity provisions, liability limitations, and similar risk transfer and risk avoidance measures. Question categories will address statutory limitations, "magic" words, types of insurance, and recent court decisions.

Moderator: Kenneth M. Gorenberg

Speakers: Stefan R. Dandelles, Michele L. Fenice, Fay Lemberg, Joseph Perkin

Whaddya Mean It's Not Covered?!?! Assessing Potential Broker Liability for Claims Insurers Deny

This panel will discuss obligations that insurance brokers owe to both policyholders and insurers, claims brokers may face when they allegedly fail to satisfy those obligations, strategies to make and avoid broker claims, potential defenses to liability, and recent developments and emerging trends in the law.

Moderator: Arden B. Levy

Speakers: Matthew J. Dendinger, Douglas W. Gastelum, Lisa M. Kauffman

Recent Developments in the Selection, Conduct, and Disqualification of Reinsurance Arbitrators

This session will address arbitrator conduct and trends in the selection of reinsurance arbitrators, including neutral panels and the refined bases for disqualification, as described by recent rulings. The panel will also discuss the responsive behavior of arbitrators with respect to conflict disclosures, and the exercise of their authority as triers of fact, decision-makers, and stewards of discovery and motion practice.

Moderator: David A. Attisani

Speakers: Amy S. Kline, Wendy R. Taylor, Mary Kay Vyskocil

Insurance Coverage for Sexual Abuse Claims

Legislation under consideration in New York, New Jersey, Pennsylvania and Massachusetts could provide a "window" in which to bring sexual abuse cases now barred by statutes of limitations. This program will discuss trigger, allocation, knowledge-based defenses, public policy and other issues regarding insurance coverage for abuse cases.

Moderator: David J. Baldwin

Speakers: Ernest Martin, Jr., Richard C. Mason, Kathryn M. Metz

11:25 am – 12:30 pm

CLE Ethics Session: Ethical Issues in Mediations and Arbitrations

Mediations and arbitrations pose unique ethical issues. This panel will explore such issues as:

- ▶ Are advocates subject to candor and Rule 11 type standards?
- ▶ What ethical constraints do mediators face in pushing parties to settlement?
- ▶ Does mediation confidentiality preclude parties and mediators from disclosing bad faith conduct in mediation?

Moderator: John E. Heintz

Speakers: John Bickerman, Christina Dixon, Laura Foggan, Deborah Rothman

12:30 pm – 4:30 pm

Optional Activities: Sabino Canyon, Desert Museum, Spring Training

(Prices may vary)

4:30 pm – 5:30 pm

Farewell Networking Reception

General Information



The Loews Ventana Canyon Resort

Registration

The registration fee allows registrants to attend all CLE programs, committee and subcommittee meetings. In addition, the fee includes program materials, continental breakfasts and admission to the Wednesday Early Bird Reception, Thursday Evening Networking Reception, Thursday In-House Counsel and Diversity Networking Event, Friday Women's Networking Event, Friday Young Lawyers' Networking Event and Saturday Evening Happy Hour.

The deadline for advance registration is **Tuesday, February 5, 2013**. After this date registration will take place onsite. Take advantage of online registration by visiting www.ambar.org/insurancecoverage where you can also retrieve a printable registration form. All attendees must be registered for this seminar to participate.

Registration Desk Hours

The registration desk will be located in the Grand Ballroom Foyer, during the following hours:

Wednesday, February 27	2:00 pm – 7:00 pm
Thursday, February 28	9:00 am – 6:00 pm
Friday, March 1	7:00 am – 12:30 pm
Saturday, March 2	7:00 am – 12:30 pm

Cancellation Policy

To receive a full refund for your registration fee and /or social events, a written request must be received on or before **Tuesday, February 12, 2013**. Cancellations may be sent via e-mail to Katie Jacobson at katie.jacobson@americanbar.org or by fax (312) 988-6234. There will be an administrative fee of \$50 deducted from the refund. No refunds will be provided for cancellations after **Tuesday, February 12, 2013**; however, substitute registrants are welcome. Registrants who do not cancel within the allotted time period and who do not attend the seminar will receive a copy of the program course materials after seminar completion. The ABA reserves the right to cancel any programs and assumes no responsibility for personal expenses. Refund requests will be processed 30 days after the meeting concludes.

Hotel Information

The seminar will be held at the Loews Ventana Canyon Resort, nestled in the rugged beauty of the Santa Catalina Mountains and the lush high Sonora Desert. A block of rooms has been reserved at the discounted rate of \$194 plus 13.05% tax for single /double rooms; identification is required at the time of check-in. The deadline for room reservations at the discounted rates is **Tuesday, January 29, 2013**. For reservations, call the Loews directly at (800) 234-5117 or visit our seminar page, www.ambar.org/insurancecoverage for a direct link to reservations.

Individuals with guaranteed reservations must cancel their reservations 72 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

Airline Information

The American Bar Association has an online travel site where you can obtain ABA negotiated airfare discounts. ABA Orbitz for Business enables you to purchase the best airfare at the time of your reservation, by providing you with the ability to search for and compare fares from virtually every airline servicing the destination.

Reservations with ABA Orbitz for Business can be accessed at www.americanbar.org/travel or by calling (877) 222-4185.

ABA Airline Discount Codes:

▶ **American Airlines**

(800) 433-1790

For reservations made before December 31, 2012: ABA Discount Code: **A7112TT**

For reservations made on or after January 1, 2013: ABA Discount Code: **A8913TT**

Discount NOT available online.

▶ **United Airlines**

If you call (800) 426-1122, use code **648816Z** Code: **ZMVB**

Online Discount Code: **ZP65937323**

Discount available at www.united.com

▶ **Virgin America Airlines**

ABA Discount Code: **VXABA312**

Discount available at www.virginamerica.com

Ground Transportation

Arizona Stagecoach Shuttle

Provides discounted service between the Tucson Airport and Loews Ventana Canyon for \$35 one-way/\$66 roundtrip. For reservations visit www.azstagecoach.com, enter group code: ICLCC. Or call (520) 889-1000 and refer to the Insurance Coverage Litigation Committee in order to receive the discounted rate.

Taxi Cabs

Taxis are available for approximately \$60 to/from airport (please note that the wait for a taxi maybe extensive, based upon city demand).

Hotel Concierge

The hotel concierge can arrange a town car; the cost is \$55 plus tip. For reservations call (520) 529-7837.

Car Rental

A wide range of rental car companies are available at both airports. Additionally, Hertz is located conveniently across from the resort at The Diplomat Landing. The ABA Member Advantage program offers discounts exclusively for ABA members. Take advantage of free upgrades to Hertz Gold Plus Rewards™ status, as well as discounts on car rentals. Hertz allows ABA members to upgrade to Hertz Gold Plus Rewards™ status at no charge—a \$60 value. Visit www.americanbar.org/advantage and click on Hertz to enroll. Reservations can be made by calling Hertz directly at (800) 654-2240. Be sure to inform the rental agent that you are a member of the ABA and provide them with the PC# 144771 and the ABA's CPD# 13000.

General Information

MCLE Credit

ABA programs ordinarily receive CLE credit in AK, AL, AR, AZ, CA, CO, DE, FL, GA, GU, HI, IA, ID, IL, IN, KS, KY, LA, ME, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, VI, WA, WI, WV, and WY. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 11.5 CLE credit hours (including 1.0 ethics hours) in 60-minute-hour states, and 13 credit hours (including 1.2 ethics hours) in 50-minute-hour states. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit www.ambar.org/insurancecoverage or contact Katie Jacobson at katie.jacobson@americanbar.org or (312) 988-6245.

Program Course Materials

Conference materials will be disseminated via email to all registrants prior to the conference. Please be sure you have an email address on file with the ABA or one is indicated on your registration form.

You may bring a laptop, iPad, or tablet to view the materials onsite, as complimentary wi-fi access will be available.

Tuition Assistance

A limited number of scholarships to defray registration fees may be available for government employees, public interest lawyers employed with nonprofits, academics and law students, as well as unemployed attorneys. To apply, send a letter outlining the basis for your fee waiver request to katie.jacobson@americanbar.org. All requests must be received by **Friday, January 4, 2013**.

Services for Persons with Disabilities

If special arrangements are required, please contact Katie Jacobson at (312) 988-6245 or katie.jacobson@americanbar.org. Reasonable advance notice is required.

Activities

Golf

All meeting attendees are welcome to play in our golf tournament on **Friday March 1, 2013** at the Loews Ventana Canyon championship course. The tournament will be a four-person scramble format with a shotgun start at 2:15 pm. Please sign up when you register for the meeting. The tournament fee is \$100 per person, which includes greens fees, cart with Prolink GPS System, unlimited practice balls, and a box lunch. Clubs are available for \$35 (includes six golf balls). If desired, the resort can arrange for your clubs to be delivered to the golf course upon check-in at the resort. Once you are signed up for the tournament, you will receive an email requesting your playing partner preferences (if you have any), club rental details, etc. Questions about the golf tournament should be directed to John Mumford at jmumford@hdjn.com. Finally, if you are interested in booking tee times of your own, please call (520) 577-4015 at least 30 days in advance.



The Loews Ventana Canyon championship course

Sabino Canyon

Experience the beauty of one of the most unique southwestern desert canyons on a Sabino Canyon tram ride. Sabino Canyon is a natural desert oasis located in Tucson's Coronado National Forest and is home to spectacular desert landscapes and abundant wildlife. During the winter and summer rainy seasons, pools of water form in rocky outcroppings that wind up among hillsides resplendent with palo verde trees, cholla and prickly pear cactus and graceful groves of ocotillo. Sabino Canyon tours offers a narrated, educational 45-minute, 3.8 mile tour into the foothills of the Santa Catalina Mountains. The trams have nine stops along the tour with several restroom facilities and picnic grounds located near Sabino Creek. The tram turns around at Stop #9 and heads back down to the Visitor's Center, at which point riders may remain on board or hike back down. Trams arrive on average every 30 minutes.



Sabino creek

Arizona-Sonora Desert Museum

The Arizona-Sonora Desert Museum is a world-renowned zoo, natural history museum and botanical garden, all in one place! Exhibits recreate the natural landscape of the Sonoran Desert Region so realistically you find yourself eye-to-eye with mountain lions, prairie dogs, Gila monsters, and more. Within the Museum grounds, you will see more than 300 animal species and 1,200 kinds of plants. There are almost 2 miles of paths traversing 21 acres of beautiful desert.

Mountain Biking with Southwest Trekking

No matter what the season, Arizona's climate offers the bicycle enthusiast many fascinating rides. In the winter, when most of the nation is snowbound, a cyclist can explore the desert surrounding Tucson. In the summer, when the desert is too warm, a cyclist can enjoy cooler climates of the pine-covered country atop Arizona's plateaus and highlands. The unpaved back roads and trails of southwestern Arizona wind through some spectacular scenery of this intriguing land offering many different trail rides for all types of riders within a group to discover. If you are looking for an exciting, active way to experience the real Arizona back-country, then escape to the quiet beauty of the Sonoran Desert on a mountain bike.

Tennis

Tennis Round Robin matches will be played on Friday, March 1, 2012, beginning at 2:15 pm. Please sign up when you register for the meeting. There will be a nominal fee depending on the number of participants, which will include a can of balls and racquet rental, if needed. Questions about tennis matches should be directed to Paul Van Osselaer at pvanosselaer@vbllp.com.

For a full list of activities and the local dining guide, visit www.ambar.org/insurancecoverage.

Thank You

The ABA Insurance Coverage Litigation Committee would like to thank the following sponsors for their generous support of this 2013 CLE Seminar:

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Thank you to Our Seminar and Committee Co-Chairs

The Committee would also like to thank all planning committee members for their hard work in coordinating the panelists, programs and materials. Their efforts and outstanding ABA Section of Litigation staff support, along with the panelists' participation, made this CLE Seminar possible.

Registration Form

Registration Deadline: Tuesday, February 5, 2013

First/Last Name (as it should appear on badge)

ABA I.D. # (the number is above your name on the mailing label)

Company/Affiliation

Mailing Address

Apt/ Suite

City

State

Zip

Telephone

Fax

Email (providing your email address allows you to receive promotions and communications from the ABA and its entities)

Accompanying Spouse/Guest (please include full name, city, and state as it should appear on badge)

Special Dietary Needs

Registration Fees

	Before 2/5/13	After 2/5/13
<input type="radio"/> Section of Litigation Member	\$475	\$525
<input type="radio"/> First-Time Section Member Attendee	\$345	\$395
<input type="radio"/> Government/Academic/Public Service/Judge	\$325	\$375
<input type="radio"/> Young Lawyer (age 35 or younger or in practice less than 5 years)	\$325	\$375
<input type="radio"/> ABA Member	\$620	\$670
<input type="radio"/> I am an ABA Member and would like to join the Section for \$60 and receive the Section Member rate	\$535	\$585
<input type="radio"/> I am an ABA member and First-Time Attendee and would like to join the Section for \$60 and pay the First-Time Section Member rate	\$405	\$455
<input type="radio"/> Law Student	\$25	\$50
<input type="radio"/> Non-ABA Member	\$765	\$815

Ticketed Events

	\$/Person	Quantity	Total
Wednesday, February 27			
Early Bird Reception	Complimentary	_____	\$ _____
Thursday, February 28			
In-House and Diversity Subcommittee's Reception	Complimentary	_____	\$ _____
Welcome Reception	Complimentary	_____	\$ _____
Friday, March 1			
Roundtable Luncheon	\$55	_____	\$ _____
<input type="checkbox"/> 1st Choice _____ <input type="checkbox"/> 2nd Choice _____			
Golf Tournament	\$100	_____	\$ _____
Women's Reception	Complimentary	_____	\$ _____
Tennis	TBD	_____	\$ _____
Dinner Event	\$85	_____	\$ _____
Young Lawyer Reception	Complimentary	_____	\$ _____
Saturday, March 2			
Farewell Networking Reception	Complimentary	_____	\$ _____

Total Amount Enclosed

\$ _____

4 Easy Ways to Register:

Visit www.ambar.org/insurancecoverage

Fax (312) 988-6234

Call (800) 285-2221

Mail Complete and mail this form to:
ABA Section of Litigation
Katie Jacobson
321 North Clark St.
Chicago, IL 60654

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Is this your first time attending the Insurance Coverage Litigation Committee CLE Seminar? Yes No


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Insurance Coverage Litigation Committee 25th Annual CLE Seminar

Loews Ventana Canyon
Tucson, AZ

February 27 –
March 2, 2013

www.ambar.org/insurancecoverage