

Insurance Coverage Litigation Committee CLE Seminar

Loews Ventana Canyon / Tucson, AZ

www.ambar.org/2015inscoverage

March 4–7, 2015

**\$50 Registration
for In-House
Attendees**



14.1 hours of MCLE credit, including 2.3 hours of ethics credit, have been requested in many 60-minute states, and 18.0 hours of MCLE credit, including 2.5 hours of ethics credit, have been requested in many 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 27th annual Insurance Coverage Litigation Committee CLE Seminar. Join us in attending plenary, breakout, and roundtable programs, as well as fun activities and valuable networking sessions. As in past years, the meeting will feature the same high-quality programming that has repeatedly attracted insurance practitioners from all over the United States and London. We are repeating last year's successful effort to encourage more in-house counsel attendance. **For our colleagues who are in-house at insurance companies or policyholder companies, we are offering registration for just \$50!** Join us in Tucson to make this another record-setting year!

What You Will Learn

- ▶ **Coverage Cases on Appeal:** Learn from our panel of distinguished judges and justices about how to properly present coverage issues on appeal.
- ▶ **Federal Court Certification of Questions to State Supreme Courts:** Hear from our experienced panel about legal developments in this area and tips for strategy in litigating your cases.
- ▶ **The Battle Over Defense Dollars:** Don't miss our panel's advice on negotiating the important issues of counsel rates and defense strategy.
- ▶ **Claims Presenting Excess Exposure:** Our panel will review recent developments in duty to settle cases and options for resolution.
- ▶ **Number of Occurrences:** You **haven't** heard this before. Listen to our experienced attorneys and a Supreme Court Justice discuss how many policies are triggered and the attendant issues that arise.
- ▶ **Underwriter Depositions:** How to take one and how to defend one. This litigation skill can be critical in coverage cases and our panel will get you ready!
- ▶ **The Ethics of Witness Preparation:** Prepare them well—but not TOO much! Our panel will provide practical tips for getting witnesses ready to testify.
- ▶ **Social Media Impact in Coverage Cases:** What has the widespread use of social media done to cyberinsurance claims and coverage for those claims? We have an experienced panel with real world examples to share. Don't miss it!
- ▶ **Insurance Bad Faith for Third-Party Claim Handling:** What are the courts doing with these claims? Our panel will update you on developments in the law and defenses to these claims.
- ▶ **Cyber Attacks and Privacy Perils:** Class action suits present significant exposure for insureds, and now there are even newer types of claims. Learn from our panel of experts in cyber risks about what coverage is available, and how these claims are handled.

Who Should Attend

- ▶ All attorneys who litigate in the area of insurance coverage.
- ▶ In-house counsel for insurance companies or policyholder companies. **Take advantage of the \$50 registration fee!**
- ▶ Risk managers and seasoned practitioners interested in an update from the leading trial lawyers and experts and members of the judiciary on the latest developments in insurance law.

Schedule at a Glance

Wednesday, March 4	2:00 pm – 6:00 pm	Registration
	6:30 pm – 7:30 pm	Early Bird Cocktail Reception
Thursday, March 5	9:00 am – 6:00 pm	Registration
	8:30 am – 9:30 am	Business Meeting
	9:45 am – 10:55 am	CLE Plenary Session: “Well, That Didn’t Go Right”—The Judges Panel On Perfecting Your Appeal
	11:15 am – 11:45 am	Luncheon (Ticketed: \$45)
	11:45 am – 12:45 pm	CLE Plenary Session (Option 1): Gender Bender, Take Two: Negotiating to Win—for Your Clients and Yourself
		CLE Plenary Session (Option 2): Detour Ahead: Federal Court Certification of Questions of Insurance Coverage Law to State Supreme Courts
	1:00 pm – 2:10 pm	CLE Plenary Session: The Right and Duty to Settle: Bad Faith and Negligence Exposure Associated with Third Party Claim Handling
	2:20 pm – 3:40 pm	CLE Plenary Session: <i>Young Lawyer Track</i> —“Bending the Cost Curve” in Long-Tail Liability Coverage: The Berkshire Hathaway Strategy
	3:40 pm – 4:00 pm	Coffee Break
	4:00 pm – 5:00 pm	CLE Breakout Sessions <ul style="list-style-type: none"> ▶ <i>Young Lawyer Track</i>—Duty—or No Duty? ▶ Give & Take: The Battle Over Defense Dollars ▶ Exploring the Excess Exposure Playbook: What to Do (and Not Do) When a Claim Presents Exposure in Excess of Coverage ▶ Transition from Primary to Excess Coverage: Effortless Step or Grand Canyon Leap?
	5:00 pm – 5:30 pm	Subcommittee Meet-Ups
	5:15 pm – 5:55 pm	Managing Editors of <i>Coverage</i> Meeting
	5:30 pm – 6:30 pm	In-House and Diversity Reception
	6:30 pm – 8:00 pm	Welcome Reception
Friday, March 6	7:00 am – 12:30 pm	Registration
	7:00 am – 8:00 am	Continental Breakfast
	8:00 am – 9:10 am	CLE Plenary Session: Doing the Settlement Two-Step: Strategies for Mediating the Underlying Case along with the Coverage Dispute
	9:15 am – 10:25 am	CLE Plenary Session: Cyber Attacks and Privacy Perils: Understand and Mitigate Your Risk Through Insurance
	10:25 am – 10:35 am	Coffee Break

Schedule at a Glance

Friday, March 6

10:35 am – 11:35 am **CLE Breakout Sessions**

- ▶ *Young Lawyer Track*—Pre-Litigation Communications Between Insurers and Their Attorneys—Can Any Privilege Prevail?
- ▶ It's Only Forum Shopping When It's Coming from the Other Side!
- ▶ The Wall: A Close Look at the Persistent Problems Facing In-House Law Departments Simultaneously Giving Direct-Side Coverage Advice and Monitoring the Company's Reinsurance Program
- ▶ The Changing and Challenging World of D&O Insurance

11:40 am – 12:40 pm **CLE Breakout Sessions**

- ▶ *Young Lawyer Track*—Builder's Risk—Structuring the Right Coverage, Avoiding and Resolving Disputes
- ▶ The Science of Apology For Insurance Coverage Matters
- ▶ Best Practices to Most Efficiently Resolve Coverage Disputes (It's Not Personal; It's Business)
- ▶ Construction Defects May Be Accidents, But a Company's Response to Them Is Not

12:50 pm – 2:15 pm

Roundtable Luncheons (Ticketed: \$55)

1. Who Pays When Products Fail? Determining Damage and Coverage for Claims Involving Defective Products
2. Uncharted Territory: Coverage Challenges for Companies in the P2P Space
3. Defense Obligations Revisited: Comparing the Duty to Defend and the Duty to Pay Defense Costs
4. Data, Metrics, and Statistics: Managing Data for Insurance Claims
5. We Have to Produce What? The Battle Over the Discoverability of Insurers' Attorney Files in Bad Faith Disputes
6. Insuring Political Risk in an Unstable World
7. Are We Related? In Search of Analytic Principles for Interrelated Claims Provisions
8. Coverage Conundrums in Class Actions
9. Hot Topics in Environmental Coverage
10. Healthcare Management Liability Insurance: False Claims Act, Provider Reimbursement Litigation & Other Controversial Claims
11. Misrepresentation, Post-Claim Underwriting, and the Law of Bad Faith: Is There a Need for Special Rules
12. What Did the Insured Do and When Did the Insured Do It?
13. Claims Handling Experts: How to Find Them, Manage Them, and Win with Them
14. Exploring the Coverage Issues Emerging from the Recent Avalanche of Qui Tam Lawsuits
15. The Changing Landscape of Insurance for Infringement Claims
16. The Big E's: Eight Corners and Extrinsic Evidence
17. Construction Product Class Actions in Residential Construction—The New Frontier for Insurers and Insureds?
18. Complex Business Interruption Claim Disputes
19. Cyberliability: Where Should a Company and Its Directors and Officers Turn for Insurance Coverage?

Schedule at a Glance

Friday, March 6

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 Dinner (Ticketed: \$85)

Saturday, March 7

7:00 am – 12:30 pm

Registration

7:00 am – 8:00 am

Continental Breakfast

8:00 am – 9:10 am

CLE Plenary Session: Counting for Coverage: How Many Occurrences Were There?

9:20 am – 10:20 am

CLE Breakout Sessions

- ▶ *Young Lawyer Track*—Estopped in the Name of Coverage: Litigating the Effect of ROR and Denial Letters
- ▶ The Ethics of Witness Preparation in a Coverage Case—Prepare Your Witness ... But Not TOO Much!
- ▶ Product Recall Insurance: It's Not Just for Food Contamination Anymore
- ▶ Social Media—The Impact on Coverage Disputes and Litigation

10:20 am – 10:30 am

Coffee Break

10:30 am – 11:30 am

CLE Breakout Sessions

- ▶ *Young Lawyer Track*—The Underwriter Deposition Zone: Practice Tips and Potential Pitfalls
- ▶ Oops, My Policy Limits Are Gone. Who Do I Sue Next?
- ▶ Which Came First, The Chicken or the Egg? How Courts Apply the Concurrent Causation Doctrine to Resolve Coverage Disputes in First-Party Property Claims
- ▶ Municipalities are Policyholders Too: A Review of the Unique Insurance Coverage Issues Cities and Towns Are Facing

11:40 am – 12:50 pm

CLE Ethics Plenary Session: Point/Counterpoint—An Ethics and Insurance Law Debate

4:30 pm – 5:30 pm

Farewell Networking Reception

Moderators & Speakers

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CLE Plenaries, Breakouts, & Roundtables

Thursday, March 5

9:45 am – 10:55 am

CLE Plenary Session: “Well, That Didn’t Go Right”—The Judges Panel on Perfecting Your Appeal

No one likes to lose and yet on motion, summary judgment, or trial, someone will not win. This panel of distinguished justices and judges, well versed in appeals and appellate issues, will address coverage cases on appeal: how to enhance briefing and oral argument, but also what practitioners must do below to protect the record.

Moderator: Daniel H. Rylaarsdam

Speakers: Hon. Jane Bland, Justice, Court of Appeals for the First Court of Appeals District of Texas, Hon. Ruben Castillo, Chief Judge, N.D. III, Hon. Richard Dietz, Judge, Ct. of Appeals, NC, Hon. Eileen C. Moore, Associate Justice, 4th District Cal. Ct. App.

11:45 am – 12:45 pm

CLE Plenary Session Option 1: Gender Bender, Take Two: Negotiating to Win—for Your Clients and Yourself (Ticketed: \$45)

How does being a woman affect career development, legal skills, business relationships, and the ability to negotiate for yourself? Learn from our panel of lawyers and a corporate coach, with decades of experience in navigating the steps to career success and promoting professional development in law firms and corporate law departments.

Moderator: Elizabeth Hanke

Speakers: Lacreia G. Cade, Ronald L. Kammer, Lorelie S. Masters

CLE Plenary Session Option 2: Detour Ahead: Federal Court Certification of Questions of Insurance Coverage Law to State Supreme Courts (Ticketed: \$45)

Should federal courts be deciding questions of first impression in insurance coverage cases? Is certification of questions of state law to state supreme courts a better approach? The panel will discuss the law that has developed regarding certification and the strategic implications for courts and counsel handling insurance coverage disputes.

Moderator: Steven R. Smith

Speakers: Hon. James G. Carr, Yvette McGee Brown, Keven D. Eiber, Max H. Stern

1:00 pm – 2:10 pm

CLE Plenary Session: The Right and Duty to Settle: Bad Faith and Negligence Exposure Associated with Third Party Claim Handling

Join a discussion of negligence/bad faith claims when a covered loss is not settled and results in an excess verdict. This program addresses issues such as competing duties when there are multiple claimants and inadequate limits; competing duties when there are multiple defendants and inadequate limits; and the duty (if any) to negotiate.

Moderator: Hon. Paul Stickney

Speakers: Linda Dedman, Pamela R. Dunlop Gates, D. Chris Heckman, Lori Seitz

2:20 pm – 3:40 pm

CLE Plenary Session: *Young Lawyer Track*—“Bending the Cost Curve” in Long-Tail Liability Coverage: The Berkshire Hathaway Strategy

One of the purported benefits of the Berkshire Hathaway strategy is the ability to use its market power to “bend the cost curve” of liability payments and defense cost payments, and reduce overall spending and erosion of coverage limits. What are the impacts of this strategy upon policyholders, insurers, reinsurers, defense counsel, and underlying claimants?

Moderator: John M. Sylvester

Speakers: Joseph R. DeHope, Jr., Anna P. Engh, Brian A. Kelly, Frances Ma, Jonathan R. Terrell

CLE Plenaries, Breakouts, & Roundtables

4:00 pm – 5:00 pm

CLE Breakout Sessions

Young Lawyer Track—Duty—or No Duty?

Just how far do an insurer's duties stretch? Test your mettle as the panel discusses wild and crazy fact patterns hidden behind various briefcases, à la Howie Mandel. Did the court find a "duty" or "no duty" in the case described? Cast your vote, and take it to the banker!

Moderator: Bridget T. Schuster

Speakers: Cory M. Figiel, Kathryn M. Knudsen, Isaac Ruiz

Give & Take: The Battle Over Defense Dollars

This program will cover (1) the initial negotiation between carrier and policyholder regarding defense, rates, and potential impact on later reimbursement; (2) managing the defense process—frustrations and tips from policyholder and insurer; and (3) strategies in pursuing and defending actions for reimbursement of defense and indemnity amounts.

Moderator: Katherine E. Mast

Speakers: Robert D. Allen, Diego Garcia, Jr., Gary Thompson

Exploring the Excess Exposure Playbook: What to Do (and Not Do) When a Claim Presents Exposure in Excess of Coverage

Liability claims often present exposures that exceed an insured's policy limits, and a claimant's settlement demand often comes when there remain unresolved questions about liability and coverage. The panel will review recent developments in duty to settle case law and discuss the options and strategies available for dealing with excess exposure claims.

Moderator: Dana A. Ferestien

Speakers: Kelly Castriotta, Michael T. Skoglund, William T. Um

Transition from Primary to Excess Coverage: Effortless Step or Grand Canyon Leap?

As mature long-tail defendants exhaust available limits, the transition between primary and excess layers presents thorny legal issues, and practical survival obstacles. The panel will offer advice on primary layer exhaustion, evidentiary burdens, settlement implications, policy allocation developments, the Comerica/Qualcomm overlay, and other issues.

Moderator: Patrick J. McGrath

Speakers: Maria G. Enriquez, William Howard, Benedict M. Lenhart

Friday, March 6

8:00 am – 9:10 am

CLE Plenary Session: Doing the Settlement Two-Step: Strategies for Mediating the Underlying Case along with the Coverage Dispute

Settling coverage disputes over pending unresolved liability claims presents special challenges. Two experienced national mediators—one specializing in coverage, the other in IP and CD—join a senior in-house carrier counsel and an experienced policyholder attorney to share strategies for successfully meeting the challenge.

Moderator: Paul J. Van Osselaer

Speakers: Karl Bayer, Catherine S. Durkin, Kirsten C. Jackson

CLE Plenaries, Breakouts, & Roundtables

9:15 am – 10:25 am

CLE Plenary Session: Cyber Attacks and Privacy Perils: Understand and Mitigate Your Risk Through Insurance

The panel will explore the legal and regulatory developments, the trends in class action litigation, and potential coverage for emerging cyber and privacy risks, including emerging threats such as cyber espionage and cyberterrorism, under “legacy” insurance policies and the newest cutting-edge “cyber” insurance products.

Moderator: Judy Selby

Speakers: Roberta Anderson, Laura Foggan, Jason Glasgow, Nadia Hoyte

10:35 am – 11:35 am

CLE Breakout Sessions

Young Lawyer Track—Pre-Litigation Communications Between Insurers and Their Attorneys—Can Any Privilege Prevail?

Join a discussion of recent decisions interpreting the application at the claim evaluation stage of attorney-client and work-product privileges. The panel will consider practical challenges faced when counsel is retained pre-suit during claim evaluation and investigation, and joint defense agreements and their potential impact on privilege claims.

Moderator: Michael Troisi

Speakers: Jay M. Levin, Kellyn J.W. Muller

It's Only Forum Shopping When It's Coming from the Other Side!

Insurance coverage litigation seems to span as many forum disputes as virtually any kind of dispute. Veteran insurance litigators will discuss some of the reasons why, critique the arguments used to support the insurer and policyholder-side positions in forum disputes, and share insight into approaches that work best.

Moderator: Richard D. Milone

Speakers: Cyndie M. Chang, John B. Mumford, Jr., Paul A. Rose

The Wall: A Close Look at the Persistent Problems Facing In-House Law Departments Simultaneously Giving Direct-Side Coverage Advice and Monitoring the Company's Reinsurance Program

The panel will describe the challenges inherent in giving sound coverage and reinsurance advice to the same client company, including differences in the application of privilege rules to coverage and reinsurance communications, and the perils of handling coverage cases with available reinsurance protections in mind.

Moderator: Cindy Koehler

Speakers: Robert J. Bates, Arthur C. Harris

The Changing and Challenging World of D&O Insurance

New developments and hot topics in directors and officers insurance coverage issues and the claims that impact D&O policies. This session will go beyond the recent Supreme Court rulings to explore important trends in securities litigation and other D&O claims. This panel will examine important D&O policy provisions and the current areas of coverage disputes.

Moderator: Michael W. Early

Speakers: Dan A. Bailey, Angela R. Elbert, Koji Fukumura

CLE Plenaries, Breakouts, & Roundtables

11:40 am – 12:40 pm

CLE Breakout Sessions

Young Lawyer Track—Builder's Risk—Structuring the Right Coverage, Avoiding and Resolving Disputes

This session will provide war stories to address key areas of Builder's Risk coverage. It will walk through the main areas of coverage and consider issues that arise much too frequently. It will provide insights through the perspectives of an attorney, a construction manager, and a forensic accountant.

Moderator: Christopher M. Brophy

Speakers: Joseph A. Castellano, James R. Murray, Joyce Wang

The Science of Apology For Insurance Coverage Matters

This panel will examine the latest research on the use of apologies as a pre-litigation strategy and a trial strategy with particular application to insurance coverage and bad faith cases.

Moderator: Ernest Martin, Jr.

Speaker: Christopher W. Martin

Best Practices to Most Efficiently Resolve Coverage Disputes (It's Not Personal; It's Business)

Insurers and policyholders have the common goal of determining the best method to resolve coverage disputes efficiently. This presentation discusses the best practices in certain litigation and practice areas to achieve that goal.

Moderator: Gregory E. Schopf

Speakers: Alexander J. Berline, Barbara Reeves Neal, DeeAnn B. Waller, Ray L. Wong

Construction Defects May Be Accidents, but a Company's Response to Them Is Not

This panel will discuss the unique issues companies face when defending against construction defect litigation, including balancing the desire to maximize covered damages and minimize liability, utilizing experts, protecting against disclosure of sensitive work product, and avoiding cooperation clause blunders.

Moderator: Gregory R. Chemnitz

Speakers: Carlos Diaz-Padron, Jodi Hatherly, Meghan C. Moore

12:50 pm – 2:15 pm

Roundtable Luncheons (Ticketed: \$55)

1. Who Pays When Products Fail? Determining Damage and Coverage for Claims Involving Defective Products

Coverage for damage resulting from defective products remains a contested issue in the courts, with different jurisdictions reaching conflicting conclusions as to what constitutes property damage and when such damage occurs. The panel will discuss common claims when products have failed or are expected to fail and coverage issues involved.

Speakers: Linda Bondi Morrison, David Cox, Brian DeSoto

2. Uncharted Territory: Coverage Challenges for Companies in the P2P Space

Learn about the innovative business models and technology that drive companies and at the same time expose them to potential liability within a complex regulatory framework. Discuss a variety of unique coverage challenges and potential coverage gaps that P2P companies face and explore ways to address them.

Speakers: Jan A. Larson, Cara Tseng Duffield

CLE Plenaries, Breakouts, & Roundtables

- 3. Defense Obligations Revisited: Comparing the Duty to Defend and the Duty to Pay Defense Costs**

Liability policies offer two well-known types of defense coverage, but their scope, trigger, consequences, and enforcement vary tremendously across states. This roundtable will discuss the advantages and disadvantages of representative states' regimes.

Speakers: Freya K. Bowen, Karen L. Toto

- 4. Data, Metrics, and Statistics: Managing Data for Insurance Claims**

Massive insurance coverage claims often come with masses of disorganized data. Find out here how to help your clients organize, assemble, and use this data to more effectively manage the insurance coverage claim and the underlying defense. The panel will also consider technological solutions to decrease the costs of gathering and sharing information.

Speakers: Joseph A. Arnold, Kami E. Quinn

- 5. We Have to Produce What? The Battle Over the Discoverability of Insurers' Attorney Files in Bad Faith Disputes**

In light of the Washington Supreme Court's decision in *Cedell v. Farmers Insurance Company of Washington*, the panel will discuss the ongoing dispute over the application of the attorney-client privilege and work product doctrine to insurers' attorneys' files in bad faith and coverage litigation from both the carriers' and the policyholders' perspectives.

Speakers: Adam P. Doherty, Nicholas M. Insua

- 6. Insuring Political Risk in an Unstable World**

Demand for political risk insurance has grown significantly in this environment. This roundtable will explore the types of such insurance currently available in the market, and issues arising in the application of these policies to various events and losses companies have experienced.

Speakers: Christopher M. Brophy, John Gibbons

- 7. Are We Related? In Search of Analytic Principles for Interrelated Claims Provisions**

Depending on the context, a finding of relatedness may benefit either the policyholder or the insurer. Is there a principled way to argue both sides of the relatedness coin from one case to the next? We will discuss recent decisions regarding interrelated claims issues.

Speakers: Whitney Lindahl, Gregory Rubio

- 8. Coverage Conundrums in Class Actions**

As the proliferation of consumer protection, privacy violation/data breach, wage/hour, and securities claims continues, more corporate entities are becoming targets of class action suits. This panel will address coverage issues that arise, including types of policies typically triggered, duty to defend issues, and potential coverage defenses and limitations.

Speakers: James P. Bobotek, Tara L. Goodwin

- 9. Hot Topics in Environmental Coverage**

This roundtable will explore current and emerging issues in the area of environmental insurance under CGL and pollution liability policies. Potential topics include climate change, hydraulic fracturing, odor-related claims, and rail transport of crude oil.

Speakers: Megan R. Brillault, Brian Margolies, Bryan Weiss

CLE Plenaries, Breakouts, & Roundtables

10. **Healthcare Management Liability Insurance: False Claims Act, Provider Reimbursement Litigation & Other Controversial Claims**

This roundtable will discuss, debate, and explore the issues that arise when policyholders in the healthcare industry seek coverage under their management liability policies for lawsuits presenting challenging coverage issues, including False Claims Act violations, provider reimbursement litigation, and statutory damages.

Speakers: Jeffrey A. Kiburtz, Joseph Sappington

11. **Misrepresentation, Post-Claim Underwriting, and the Law of Bad Faith: Is There a Need for Special Rules**

An insurer, presented with a claim, sometimes seeks to rescind the policy based on application misrepresentation. Some courts and commentators have identified what they regard as an abuse of the misrepresentation defense, which they call "post-claim underwriting." This presentation examines how bad faith law ought to deal with the issue.

Speakers: William T. Barker, Jason S. Mazer

12. **What Did the Insured Do and When Did the Insured Do It?**

This roundtable discussion will examine issues involved in determining the application of prior notice, prior acts, and prior and pending litigation exclusions under professional liability and directors and officers insurance policies and related public policy implications.

Speakers: Steven W. McNutt, William Schreiner, Jr.

13. **Claims Handling Experts: How to Find Them, Manage Them, and Win with Them**

For bad faith and unfair insurance practices claims, a claims handling expert is key. A discussion of the best sources for claims handling experts, legal issues that can be raised, tips for managing their review of documents, getting the best out of them to guide your discovery program, and actually winning if you go to trial.

Speaker: Frances O'Meara, Elizabeth J. Stewart

14. **Exploring the Coverage Issues Emerging from the Recent Avalanche of Qui Tam Lawsuits**

Qui tam lawsuits are easier than ever to bring and plaintiffs are bringing them more frequently. Policyholders often turn to their PII, EPLI, and D&O policies for coverage. This roundtable will discuss emerging coverage issues from these claims, which generally involve whistleblowers, government agencies, and confidential investigations.

Speakers: Manuel Mungia, Jr., Jared Zola

15. **The Changing Landscape of Insurance for Infringement Claims**

A discussion of the changing scope of coverage under different types of policies for patent, copyright, trademark, and trade dress claims, and how companies in different businesses may face different needs.

Speaker: Erin L. Webb

16. **The Big E's: Eight Corners and Extrinsic Evidence**

Exceptions to the "Eight Corners" rule challenge established notions regarding the breadth of the duty to defend and may leave policyholders more susceptible to early claim denials. This roundtable will survey recent case law addressing these exceptions and provide an opportunity to discuss missteps of policyholders and insurers in the duty to defend.

Speakers: Christopher C. Frost, William T. Um

CLE Plenaries, Breakouts, & Roundtables

17. **Construction Product Class Actions in Residential Construction—The New Frontier for Insurers and Insureds?**

The product class action presents policyholders and carriers with unique issues involving the substantive claims and the remedies available to successful plaintiffs. We will discuss a few of the unique claims and insurance issues presented by the class action form of litigation against homebuilders and contractors.

Speakers: John H. Podesta, Jeffrey J. Vita

18. **Complex Business Interruption Claim Disputes**

The discussion will include recent legal decisions regarding business interruption claims. The panel will also discuss and analyze legal and claim calculation disputes arising from recent natural disasters including the Napa earthquake, Superstorm Sandy, the Thailand floods, and the earthquake/tsunami in Japan.

Speakers: Samuel Arena, Gregory S. Thaler

19. **Cyberliability: Where Should a Company and its Directors and Officers Turn for Insurance Coverage?**

Every company, director, and officer should now know the importance of protecting against cyberliability. With a view toward recent governmental and agency positions on cybersecurity and cyberliability, we will examine potential sources of insurance coverage with a focus on protections for directors and officers.

Speakers: Parker Lavin, Brian S. Scarbrough

Saturday, March 7

8:00 am – 9:10 am

CLE Plenary Session: Counting for Coverage: How Many Occurrences Were There?

The number of occurrences impacts how many deductibles/SIRs must be paid, available limits, and how many policies are triggered. Counsel will present hypothetical arguments based on actual cases involving temporal and non-temporal occurrences, and a Supreme Court justice will provide insight on effective briefing and arguments at the appellate level.

Moderator: Tred R. Eyerly

Speakers: Karin Aldama, Rina Carmel, Hon. Peter Maassen, Demetrius Rush

9:20 am – 10:20 am

CLE Breakout Sessions

Young Lawyer Track—Estopped in the Name of Coverage: Litigating the Effect of ROR and Denial Letters

Reservation of rights and denial letters often become the central focus in coverage litigation. The content and timing of these letters can be the difference between coverage and no coverage. The panel will explore the latest case law trends, provide tips for litigating these issues, and tips from both sides for writing and responding to these letters.

Moderator: Seth Friedman

Speakers: Vijay V. Bondada, Rahul Karnani, Sherilyn Pastor

The Ethics of Witness Preparation in a Coverage Case— Prepare Your Witness ... But Not TOO Much!

The panel will discuss due diligence in selecting the proper witnesses from whom to obtain background facts, considerations to address for former employees of the client, and navigating balance between refreshing recollection and "putting words in mouths of" witnesses.

Moderator: Joseph G. Harraka, Jr.

Speakers: Chauntis T. Jenkins, Angela Krahulik, Leslie Thorne

CLE Plenaries, Breakouts, & Roundtables

Product Recall Insurance: It's Not Just for Food Contamination Anymore

Product recalls have meant losses and liability for hundreds of companies. The insurance industry has responded with new coverage products geared toward technology, life sciences, and medical devices, among other industries. Just how good is this coverage, and what issues arise when companies make claims? This panel will address these questions and more.

Moderator: James J. Cooper

Speakers: Joseph F. Bermudez, Suzan F. Charlton, Bradley Murlick

Social Media—The Impact on Coverage Disputes and Litigation

Join us for a discussion of emerging trends in cyber insurance and coverage for defense and indemnity when the use of social media is involved. We will also discuss using social media when investigating coverage issues and the admissibility of social media content, including but not limited to Facebook profiles and Twitter feeds at trial.

Speakers: James M. Davis, Neil E. Hansen, Rick Kubler

10:30 am – 11:30 am

CLE Breakout Sessions

Young Lawyer Track—The Underwriter Deposition Zone: Practice Tips and Potential Pitfalls

There is a deponent with information as vast as space and as timeless as the creation of a policy. It is the middle ground that has been known to strike fear in the heart of the deponent and counsel alike. This is the dimension of the underwriter. It is an area that we call the Underwriter Deposition Zone.

Moderator: Amy J. Woodworth

Speakers: Sarah R. Anchors, Matthew Elstein, Tyechia L. White

Oops, My Policy Limits Are Gone. Who Do I Sue Next?

This program will explore potential pitfalls and practical solutions for brokers, insurers, and counsel where claim expenses erode policy limits available to settle claims, including subsequent claims for professional negligence against brokers and defense counsel, and bad faith claims against insurers.

Moderator: Laura Hanson

Speakers: Mary E. Borja, Robert P. Thavis, Chester White

Which Came First, The Chicken or the Egg? How Courts Apply the Concurrent Causation Doctrine to Resolve Coverage Disputes in First-Party Property Claims

This program will present a number of hypothetical situations and demonstrate how the jurisdiction considering each scenario might reach a different conclusion as to coverage depending on the way it applies the concurrent causation doctrine through discussion between policyholder and carrier counsel as well as in-house counsel.

Moderator: Kirsten C. Jackson

Speakers: Matthew R. Dornauer, Kathryn E. Kasper, John S. Vishneski III

Municipalities are Policyholders Too: A Review of the Unique Insurance Coverage Issues Cities and Towns Are Facing

This program will review a number of insurance issues that local governments are facing, including divergent case law regarding coverage for civil rights claims; coverage for investigations/claims arising from increased scrutiny of municipal debt issuances; and the interplay of insurance with governmental immunity and public records laws.

Moderator: Brent W. Huber

Speakers: Niquelle R. Allen Winfrey, Nicholas Reuhs, Michelle R. Valencic

CLE Plenaries, Breakouts, & Roundtables

11:40 am – 12:50 pm

CLE Ethics Plenary Session: Point/Counterpoint—An Ethics and Insurance Law Debate

This ethics seminar is modeled on the famed *Saturday Night Live* skit "Point/Counterpoint." Two policyholder and two insurer side debaters will address recent coverage opinions, while a moderator comments on ethical issues presented. Audience participation is encouraged during this educational—and humorous—interactive program.

Moderator: Rahul Karnani

Speakers: Daniel E. Tranen, Elizabeth T. Simon, Jennifer C. Wasson



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General Information

Registration

Various registration rates and discounts are available for your convenience. Your registration fee includes: admissions to CLE sessions, committee and subcommittee meetings, course 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 17, 2015**. After this date, registration will take place onsite. We encourage you to take advantage of online registration. Visit us online at www.ambar.org/2015inscoverage. You can also retrieve a printable registration form online. 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, March 4	2:00 pm – 6:00 pm
Thursday, March 5	9:00 am – 6:00 pm
Friday, March 6	7:00 am – 12:30 pm
Saturday, March 7	7:00 am – 12:30 pm

Hotel Information
Loews Ventana Canyon
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Tucson, AZ 85750
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(800) 234-5117

Individuals are responsible for making their own travel accommodations. A block of rooms has been reserved at the discounted rate of \$189 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, February 3, 2015**. All reservations are subject to availability. You make your hotel reservations online by visiting www.ambar.org/2015inscoverage or calling the Loews directly at (800) 234-5117 and refer to the ABA Section of Litigation 2014 Insurance Coverage CLE Seminar.

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



General Information

Cancellation Policy

To receive a refund for your registration fee and /or social events, a written request must be received on or before **Tuesday, February 17, 2015**. Cancellations may be sent via e-mail to Daniela Saporito at Daniela.Saporito@americanbar.org. There will be an administrative fee of \$50 deducted from the refund. No refunds will be provided for cancellations after **Tuesday, February 17, 2015**; 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.

Substitutions

Written requests for substitutions will be permitted prior to the conference for requests received by **Tuesday, February 17, 2015**. After this date, substitutions will need to be made onsite. There is no additional cost for substitutions. Substitutions are not permitted once a registrant has registered onsite or after the conference has occurred. Please submit a request to transfer the registration to another person. Only the substitute will be eligible for CLE credit. The substitute and original registrant must work out the payment between themselves.

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.

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Airport Information

For your reference, there are two convenient airports for your air transportation arrangements:

Tucson International Airport (TUS): Travel Distance: Approximately 19 miles (35 minutes)

Phoenix International Airport (PHX): Travel Distance: Approximately 95 miles (2 hours)

Ground Transportation

Arizona Stagecoach Shuttle

Provides discounted service between the Tucson Airport and Loews Ventana Canyon for \$42 one-way/\$80 round trip. For reservations, visit www.azstagecoach.com, enter group code: ICLC, 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 may be extensive based upon city demand.)

Hotel Concierge

The hotel concierge can arrange a town car for your transportation needs; the cost is \$55 plus tip. For reservations, complete the transportation service request form or call (520) 529-7837.

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 14.1 CLE credit hours (including 2.3 ethics hours) in 60-minute-hour states, and 18 credit hours (including 2.5 ethics hours) in 50-minute-hour states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit www.ambar.org/2015inscoverage.

Program Course Materials

Conference materials will be disseminated via email to all registrants prior to the seminar. 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: Daniela.Saporito@americanbar.org. All requests must be received by Tuesday, February 17, 2015.

Services for Persons with Disabilities

If special arrangements are required, please contact Daniela Saporito at (312) 988-5664 or Daniela.Saporito@americanbar.org. Reasonable advance notice is required

Roster of Participants

Those registered by the cut-off date will be included on the attendee roster and posted on the seminar website.

Activities

Golf
All meeting attendees are welcome to play in our golf tournament on **Friday, March 6, 2015**, 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, and unlimited practice balls. 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.

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.

General Information

Activities (continued)

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 two 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 backcountry, 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 6, beginning at 2:30 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 a racquet rental, if needed. Questions about tennis matches should be directed to Paul Van Osselaer at Paul@VanOs-selaerADR.com.



Thank You

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Thank You to Our 2015 Committee and Seminar 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.

Committee Co-Chairs

Sherilyn Pastor and
Laura Hanson

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Registration Form

Registration Deadline: Tuesday, February 17, 2015

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 2/17/15	After 2/17/15
☐ Section of Litigation Member	\$475	\$525
☐ First-Time Section Member Attendee	\$345	\$395
☐ Government/Academic/Public Service/Judge	\$325	\$375
☐ Young Lawyer (age 35 or younger or in practice less than 5 years)	\$325	\$375
☐ ABA Member	\$620	\$670
☐ Law Student	\$25	\$50
☐ Non-ABA Member	\$765	\$815
☐ In-House Attorney	\$50	\$100
☐ Sponsor	\$0	\$0
☐ Speaker Program Only	\$0	\$0

Ticketed Events	\$/Person	Quantity	Total
Wednesday, March 4			
Early Bird Reception	Complimentary	_____	\$0
Thursday, March 5			
Luncheon and CLE	\$45	_____	\$ _____
In-House and Diversity Reception	Complimentary	_____	\$0
Welcome Reception	Complimentary	_____	\$0
Friday, March 6			
Roundtable Luncheon / Program Number _____	\$55	_____	\$ _____
Golf Tournament	\$100	_____	\$ _____
Tennis	TBD	_____	TBD
Women's Reception	Complimentary	_____	\$0
Young Lawyers Reception	Complimentary	_____	\$0
Reception & Dinner Event	\$85	_____	\$ _____
Reception & Dinner Event-Child (12 & under)	\$35	_____	\$ _____
Saturday, March 7			
Farewell Networking Reception	Complimentary	_____	\$ _____
Total Amount Enclosed			\$ _____

4 Easy Ways to Register:

Visit www.ambar.org/2015inscoverage

Fax (312) 988-6234

Call (800) 285-2221

Mail Complete and mail this form to:
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March 4–7, 2015

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