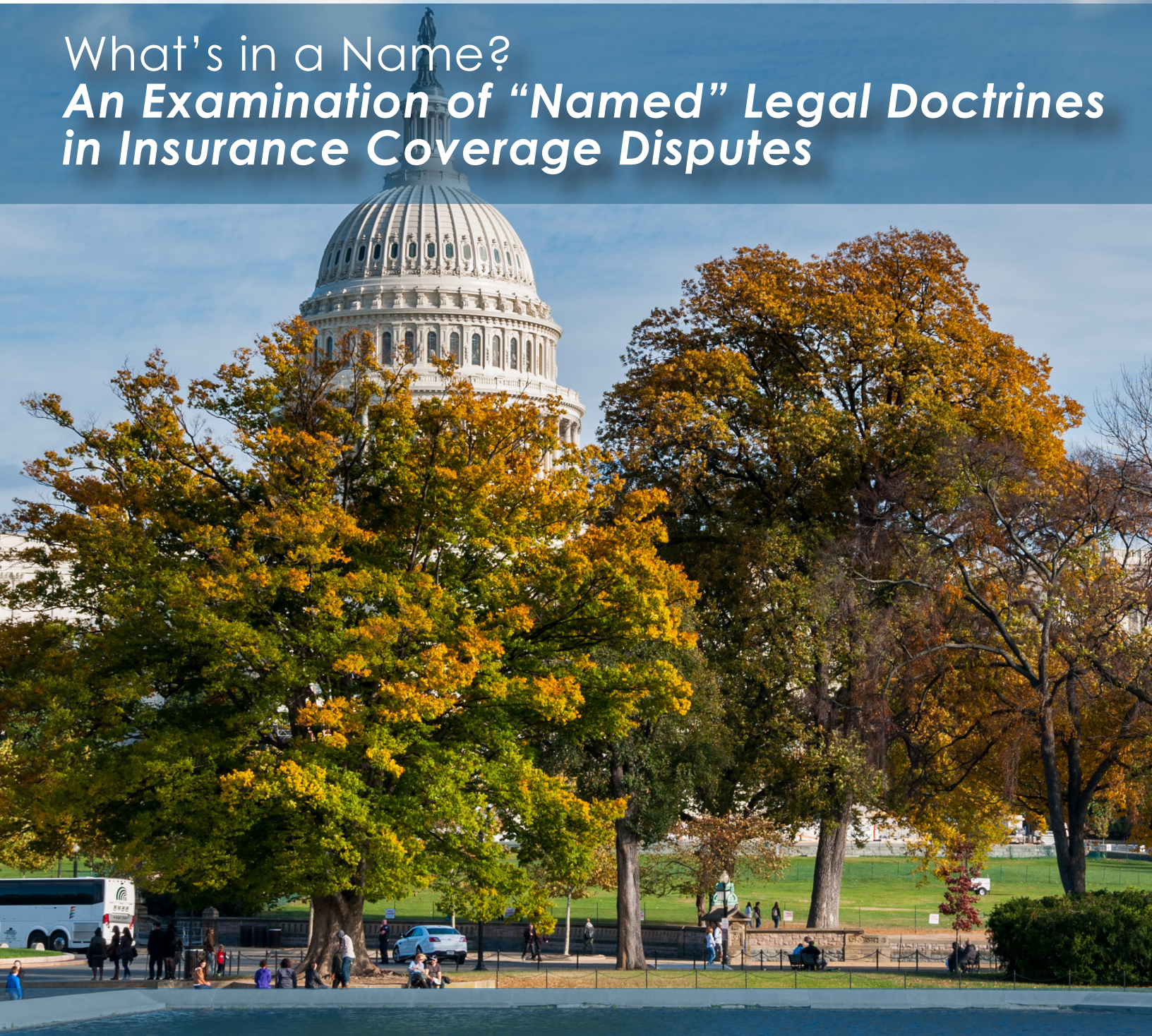
ACCC Insurance Law Symposium

American University Washington College of Law
Washington, DC | Friday, October 26, 2018

What's in a Name?
An Examination of "Named" Legal Doctrines in Insurance Coverage Disputes



AMERICAN COLLEGE OF COVERAGE COUNSEL

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Program Schedule

Friday, October 26, 2018

WHAT'S IN A NAME?

8:00–8:30 a.m. **Registration and Coffee**

8:30–8:45 a.m. **Welcoming Remarks and Introductions**

Mary McCutcheon, Farella, Braun + Martel LLP; President, American College of Coverage Counsel
Scott Godes, Barnes & Thornburg LLP; **Robert Kelly**, Jackson & Campbell, P.C.; **Helen Michael**, Kilpatrick Townsend, & Stockton LLP; Co-chairs, Law School Symposium Committee

8:45–9:45 a.m. ***Estoppel by Any Other Name: The Meaning of this Doctrine in Insurance Law***

Speakers:
Laura Foggan, Crowell & Moring LLP
Jodi McDougall, Cozen O'Connor
John Vishneski III, Reed Smith LLP

The term "estoppel" has been employed by courts in two very distinct circumstances: (1) where an insurer controls the defense of a policyholder without providing a reservation of rights, the insurer may be "estopped" from refusing to pay a judgment or settlement if it tries to raise a coverage defense too late; and (2) where an insurer does not defend a policyholder or promptly file a declaratory judgment action to establish defenses to coverage, the insurer may be "estopped" from raising any defenses to coverage or suffer some other penalty if it is later found to have owed a duty to defend. Courts and the recent American Law Institute Restatement of the Law, Liability Insurance take varying approaches to how these two distinct "estoppel" doctrines should be applied, and in what circumstances. This presentation explores the complexities underlying this insurance law doctrine.

9:45–10:45 a.m. ***"Stowers" and the Art of Turning the Table on an Insurer with a Policy Limits Settlement Demand***

Speakers:
Robert Allen, The Allen Law Group
Julia Molander, Cozen O'Connor
Vince Morgan, Pillsbury Winthrop Shaw Pittman LLP

Called the Stowers doctrine in Texas, the concept of an insurer's potential liability in excess of its policy limits for failing to settle a case within policy limits is universal, although the legal standards and theories differ from jurisdiction to jurisdiction. The panel will explore and discuss the history, development, strategy, and practice involved in an insurer's duty to settle a claim against an insured within the policy limits.

10:45–11:45 a.m. ***The Art of the Deal Doctrines: So Many Doctrines in So Little Time***

Speakers:
Michael Huddleston, Munsch Hardt Kopf & Harr, PC
Meghan Magruder, King & Spalding LLP
Charles Spevacek, Meagher & Geer, P.L.L.P.

This panel will conduct an examination of named doctrines for working with "deals" used to extricate an insured from a potential or actual excess judgment, including discussion of Gandy, Damron, Coblenz, Miller-Schugart, Crist/Johansson Arrangements. The discussion will cover practical, ethical and legal issues presented by such arrangements and the attacks made on them by carriers.

12:00–1:30 p.m. **Lunch**

How Will the ALI's New* Restatement of the Law, Liability Insurance *Shape the Future of Coverage Disputes?

Speakers:
Michael Aylward, Morrison Mahoney LLP
John Buchanan, III, Covington & Burling LLP
Harold Kim, U.S. Chamber of Commerce
Lorelie Masters, Hunton Andrews Kurth LLP
Bill Shelley, Gordon & Rees

On May 22, after eight years of work, the American Law Institute approved the Restatement of Law, Liability Insurance, the first Restatement devoted specifically to a single industry. A panel of four ALI members who were active in the development and debate concerning this Restatement will discuss its most important and controversial provisions and forecast its implications for shaping the future of insurance coverage litigation.

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1:35–2:35 p.m. ***From Keene to Carter-Wallace, from Boston Gas to Owens-Illinois: The Clear Winner in the "Named Doctrine" Contest***

Speakers: **Georgia Kazakis**, Covington & Burling LLP
Stephen Pate, Cozen O'Connor
Scott Seaman, Hinshaw & Culbertson LLP

So-called "long tail" claims potentially trigger multiple years of coverage, and within each year multiple layers of insurance. The panel will describe the main themes of competing allocation doctrines, along with issues such as the impact of "prior insurance" and "other insurance" clauses, the mechanism for exhaustion of underlying layers of coverage, the differences between allocation of defense costs and allocation of indemnity payments, and responsibility for uninsured/underinsured periods.

2:35–3:35 p.m. ***Independent Counsel and the Tripartite Relationship: The Cumis Doctrine and Others Entitling Insureds to Pick Their Own Lawyers and Control Their Defense***

Speakers: **David Anderson**, Anderson Coverage Group
Troy Froderman, FR Law Group PLLC
Susan Harwood, Kaplan Zeena LLP
Mary McCurdy, McCurdy & Fuller LLP

This presentation will examine the tripartite relationship that is created between the policyholder, its insurer, and defense counsel when an insurer retains defense counsel to defend its policyholder. The panel will discuss various circumstances that can create conflicts of interest for defense counsel that entitle the policyholder to select independent defense counsel with no ties to the insurer and how the states of Illinois, Florida, California, and Arizona address the respective rights and duties of the parties in this context.

3:35–3:50 p.m. **Break**

3:50–4:50 p.m. ***Jurisdictional and Venue Considerations in Insurance Coverage Litigation: The "Colorado River" Runs Through It***

Speakers: **John Heintz**, Blank Rome LLP
Edward Parks, Shipman & Goodwin LLP
Caroline Spangenberg, Kilpatrick Townsend & Stockton LLP
Koorosh Talieh, Perkins Coie LLP

Increasingly, jurisdictional and venue considerations play a large role in determining what court will resolve (or get the first crack at resolving) insurance coverage disputes. The panel will examine the application of judicial abstention doctrines, *forum non conveniens* and related venue principles, and personal jurisdiction requirements in the context of competing insurance coverage actions in state and federal courts.

4:50–5:00 p.m. **Closing Remarks**

General Information

American College of Coverage Counsel (ACCC)

ACCC brings together pre-eminent lawyers representing the interests of both insurers and policyholders to improve the quality of the practice of insurance law and to increase civility and professionalism in our field. Our mission includes educating all sectors involved in insurance disputes—including the judiciary, law students, legal and insurance professionals, and businesses—on critical topics such as best practices in policy formation and claims handling, developing trends in insurance law, and bad faith.

Symposium Location

The ACCC Law School Symposium will be held at **American University Washington College of Law, 4300 Nebraska Avenue, NW, Washington, DC 20016**. Sessions will take place in Claudio Grossman Hall.

Date

Friday, October 26, 2018

Schedule

Registration opens at 8:00 a.m.; the symposium begins at 8:30 a.m. and concludes at 5:00 p.m.

Accommodations

A room block has been reserved at **Courtyard Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815**.

To get the ACCC rate of $129/night, plus tax, call 301-656-1500 and inform the reservations agent you are with the 2018 ACCC Insurance Law Symposium room block. You can also register under the group at this link: https://bit.ly/2IuiWRN.

The last day to make reservations under the room block is **Tuesday, September 25, 2018**.

Local Access

The Courtyard Marriott is roughly 30 minutes from Ronald Reagan Washington National Airport (DCA), or 45 minutes from Dulles International Airport (IAD).

We recommend using Washington National Airport. From DCA, take the yellow line Metro in the direction of Mt. Vernon Square/Fort Totten. At Gallery Place-Chinatown, transfer to the red line in the direction of Shady Grove and exit at Friendship Heights. The hotel is a 5-minute walk north along Wisconsin Avenue.

The parking garage entrance for the law school campus is located at **4300 Nebraska Avenue, NW**. Parking for the school is not permitted in the residential neighborhoods adjacent to campus.

Ride shares Uber and Lyft both service Washington, DC.

Registration

Free for all Law Students and Faculty. Registration required.

ACCC Fellows and Other Attorneys

- $250 on or before September 25
- $275 September 26 and after

AU Washington College of Law Alumni and Young Attorneys (less than 5 years in practice)

- $195 on or before September 25
- $220 September 26 and after

Registration Deadline

The early bird registration deadline is **September 25, 2018**. Space is limited and available on a first-come, first-served basis.

Cancellation Policy

If a cancellation is received by **5:00 p.m. ET Friday, October 19, 2018**, a refund of 75% of the registration fee will be issued. There are no refunds for cancellations received after that date.

Questions

Contact ACCC at **703-683-5561** or **info@americancollegecec.org**

Registration Form

Registration Information

If registering multiple attendees, make copies of this form and provide payment information one time. Online registration is available at ***americancollegecoverage.com***

Full Name

First Name on Badge/Nickname

Firm or Affiliation

Address

City State Zip

Phone

Email

□ I require special accommodations to participate. *Please attach a description of your needs.*

□ Vegetarian □ Kosher □ Other _____

Please list states and bar numbers for CLE credit: _____

Total Fees *(U.S. Dollars)*

Registration Type	On/Before Sep 25	Sep 26 & After	Quantity	
ACCC Fellow and other Attorneys	$250	$275	x_____	$_____
AU-WCL Alumni	$195	$220	x_____	$_____
Law Student/Faculty	$0	$0	x_____	$_____
Total			_____	$_____

□ Check (payable to ACCC) □ MasterCard □ VISA □ American Express

Account Number Exp. Date

Name on Card Security Code

Signature

Return your completed form with payment by fax, email, or mail:
ACCC
2800 Eisenhower Avenue, Suite 210
Alexandria, VA 22314
F: 703-683-5480 | E: info@americancollegecec.org