ABA Section of Litigation

2020 Insurance Coverage Litigation Committee CLE Seminar

March 4-7, 2020
Loews Ventana Canyon Resort
Tucson, AZ

$50 Registration for In-House Counsel before 2/5/20

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AMERICANBARASSOCIATION
Litigation Section

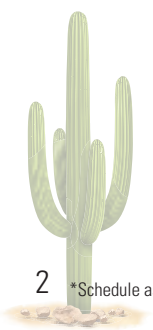
SCHEDULE*

Wednesday, March 4

Time	CLE	Event
3:30 PM – 6:30 PM		Registration
5:30 PM – 6:30 PM		Managing Editors of Coverage Meeting
		Managing Editors of Social Media Meeting
		Managing Editors of Website Meeting
6:30 PM – 7:30 PM		Happy Hour Honoring Diversity & Inclusion in the Profession, In-House Counsel, and Young Lawyers *(All attendees welcome)*

Thursday, March 5

Time	CLE	Event
8:00 AM – 5:30 PM		Registration
9:00 AM – 10:00 AM		Breakfast
9:00 AM – 10:00 AM		ICLC Business Meeting *(All attendees welcome)*
10:00 AM – 10:15 AM		Opening Remarks
10:15 AM – 11:30 AM	**CLE**	**Plenary:** Coverage Decisions of 2019: Their Impact for 2020 and Beyond
11:30 AM – 12:05 PM		Grab and Go Lunch *(Ticketed: $45)*
12:05 PM – 1:15 PM	**CLE**	**Plenary:** What's In Your Contracts? Indemnification and Insurance Clauses
1:25 PM – 2:25 PM	**CLE**	**Breakout:** Sharing Is Swearing: Challenges and Gaps in Insurance Coverage Where the Sharing Economy Meets Reality
	CLE	**Breakout:** Can Coverage Counsel Make Whoopee with Non-Cumulation Language?
	CLE	**Breakout:** A Conversation of Key Developments in Environmental Insurance Coverage
	CLE	**Breakout:** Top Ten Tips for Your Next "Routine" BI/CBI Loss
2:35 PM – 3:45 PM	**CLE**	**Plenary:** InsurTech and AI: Savvy Solutions or Bots Behaving Badly?
3:45 PM – 4:00 PM		Networking Break



*Schedule as of 2/13/20. Subject to change.

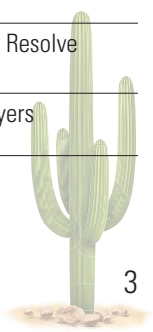
SCHEDULE*

Thursday, March 5 *(Continued)*

Time	CLE	Event
4:00 PM – 5:00 PM	**CLE**	**Breakout:** Ensuring Insurance Coverage Success in Litigation: Tips and Best Practices for Young (and Experienced) Lawyers
	CLE	**Breakout:** Lifting the Bar: Negotiating Coverage for Sexual Abuse Claims and Navigating Bankruptcy Resulting from Statute of Limitations Legislation
	CLE	**Breakout:** Claims Handling: Discovery and Privilege Disputes
	CLE	**Breakout:** Sex, Drugs, and Twitter: Emerging Issues in EPL Coverage
5:00 PM – 6:00 PM		Subcommittee Expo
6:00 PM – 7:00 PM		Welcome Reception

Friday, March 6

Time	CLE	Event
6:30 AM – 2:30 PM		Registration
7:00 AM – 8:00 AM		Breakfast
8:00 AM – 9:10 AM	**CLE**	**Plenary:** Read the Room: Coverage Arguments that Work in Court but May Backfire at Mediation
9:20 AM – 10:30 AM	**CLE**	**Plenary:** Disruptors in Insurance Coverage Litigation: 2020 and Beyond
10:30 AM – 10:45 AM		Networking Break
10:45 AM – 11:45 AM	**CLE**	**Breakout:** Cannibalization Dangers in Today's Insurance Coverage Jungle: Eroding Policies; Multiple Insureds; and Corresponding Good Faith, Defense, and Settlement Duties
	CLE	**Breakout:** Procedural Bad Faith: The Latest Trends
	Elimination of Bias CLE	**Breakout:** Eliminating Bias and Tackling Issues of Diversity and Inclusion in the Insurance Industry
	CLE	**Breakout:** "Event-Driven" Securities and Derivative Suits and How D&O Insurance May Provide Appropriate Cover
11:55 AM – 12:55 PM	**CLE**	**Breakout:** Persuasion, Credibility, and the Real Burden of Proof
	CLE	**Breakout:** The Three-Cornered Mediation: How to Resolve Coverage and Liability at the Same Time
	Wellness CLE	**Breakout:** Stress Management for Insurance Lawyers
	CLE	**Breakout:** Insureds Breaking Bad: Coverage for Narcotics-Related Claims



SCHEDULE*

Friday, March 6 *(Continued)*

Time	CLE	Event
1:05 PM – 2:15 PM		Roundtable Luncheons *(Ticketed: $55)*
2:30 PM – 5:00 PM (2:30 PM Tee Time)		Golf Tournament *(Ticketed: $100)*
2:30 PM – 4:30 PM		Tennis *(Pay on own)*
6:00 PM – 7:00 PM		Women's Reception *(All attendees welcome)*
7:00 PM – 10:00 PM		"Black & Red: A Night at the Casino" Reception & Dinner *(Ticketed: $85)*

Saturday, March 7

Time	CLE	Event
6:30 AM – 12:30 PM		Registration
7:00 AM – 8:00 AM		Breakfast
8:00 AM – 9:10 AM	**CLE**	**Plenary:** The Restatement of the Law of Liability Insurance in the Courts
9:20 AM – 10:20 AM	**CLE**	**Breakout:** Completed or Not? That Is the Question.
	CLE	**Breakout:** Into the Weeds: Evolving Risks and Coverage Issues Involving Cannabis
	CLE	**Breakout:** The Living Dead: An Insurer's Obligations to a Defunct Insured (and the Insured's Duty to Cooperate)
	CLE	**Breakout:** Blast from the Past: Lost Policies and Long-Tail Environmental/Asbestos Claims from the Pre-Absolute Exclusion Era
10:20 AM – 10:35 AM		Networking Break
10:35 AM – 11:35 AM	**CLE**	**Breakout:** The Newest Kid on the Block: Reps and Warranties Claims
	CLE	**Breakout:** Decrypting Insurance Coverage for Ransomware Claims
	CLE	**Breakout:** Complex and Emerging Issues in Builder's Risk Coverage
	CLE	**Breakout:** Fingerprints, Facial Recognition, Permission? Oh My! Biometric Privacy Coverage Litigation Arriving Soon in Your State
11:45 AM – 12:55 PM	**Ethics CLE**	**Plenary:** Keeping Your License: Spotting and Managing Troublesome Clients Before They Spot and Manage You
4:30 PM – 5:30 PM		Farewell Happy Hour

*Schedule as of 2/13/20. Subject to change.

PROGRAMS

Thursday, March 5, 2020

Plenary:
Coverage Decisions of 2019: Their Impact for 2020 and Beyond

General CLE

10:15 AM – 11:30 AM

This program will review the top ten (or so) coverage decisions of 2019, and consider the decisions' implications for 2020 and beyond on policyholders and insurers. Attorneys from both sides of the coverage aisle will offer insight and debate the correctness, merits, and current and future impact of each decision.

Moderator: Frank Winston, Jr., Steptoe & Johnson LLP, Washington, D.C.

Panelists: Suzan F. Charlton, Covington & Burling LLP, Washington, D.C.; **Mary Craig Calkins,** Blank Rome LLP, Los Angeles, CA; **Toyja E. Kelley,** Saul Ewing Arnstein & Lehr LLP, Baltimore, MD

Plenary:
What's In Your Contracts? Indemnification & Insurance Clauses

General CLE

12:05 PM – 1:15 PM

When negotiating or reviewing an insured's business contract, to understand the insurance implications from it, it is essential to understand the contract's indemnity obligations, warranty provisions, insurance requirements and choice-of-law provisions. This session will address the law of indemnification and its interplay with liability and other insurance coverage. The panel will analyze the intersection between general liability insurance and an insured's separate agreements to indemnify using real-world examples from multiple jurisdictions.

Moderator: Sherilyn Pastor, McCarter & English LLP, Newark, NJ

Panelists: John C. Bonnie, Weinberg Wheeler Hudgins Gunn & Dial LLC, Atlanta, GA; **Kevin F. Gordon,** C&S Wholesale Grocers Inc., Keene, NH; **Hon. Tiffany M. Williams (Ret.),** Pepperdine School of Law, Malibu, CA

Breakout:
Sharing Is Swearing: Challenges and Gaps in Insurance Coverage Where the Sharing Economy Meets Reality

General CLE

1:25 PM – 2:25 PM

The sharing economy has invaded almost every aspect of daily life. From vacation rentals to clothing, it is possible to borrow almost anything for a price, creating new challenges for insurers and insureds in long-settled areas. This panel will explore those areas and discuss who may face liability exposure attendant with an economy where almost anything can be shared.

Moderator: Christopher Meeks, Lewis Brisbois Bisgaard & Smith LLP, Atlanta, GA

Panelists: Anthony B. Crawford, Reed Smith LLP, New York, NY; **Kristin Davis,** Thompson Hammerman Davis LLP, Washington, D.C.; **Peter J. Georgiton,** Dinsmore & Shohl LLP, Columbus, OH; **Arden Levy,** Arden Levy Law PLLC, Alexandria, VA

Breakout:
Can Coverage Counsel Make Whoopee with Non-Cumulation Language?

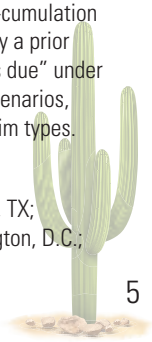
General CLE

1:25 PM – 2:25 PM

Using the format of the Newlywed Game, this panel will discuss various aspects of non-cumulation language in insurance policies. Topics will include: (1) What is the purpose of a prior insurance and non-cumulation provision?; (2) What does the term "loss" mean in a prior insurance and non-cumulation provision?; (3) How does one determine if a "loss" is "covered" by a prior policy?; (4) How does one determine whether there are "amounts due" under prior insurance?; and (5) Under various coverage and language scenarios, assess potential liability for insurers and insured for different claim types.

Moderator: Nancy Gutzler, KCIC, Washington, D.C.

Panelists: Carla Verena Green, Haynes and Boone LLP, Dallas, TX; **Gerald "Jay" P. Konkel,** Morgan Lewis & Bockius LLP, Washington, D.C.; **Eileen T. McCabe,** Mendes & Mount LLP, New York, NY; **Edward B. Parks II,** Shipman & Goodwin LLP, Washington, D.C.



PROGRAMS

Thursday, March 5, 2020 *(Continued)*

Plenary:
A Conversation of Key Developments in Environmental Insurance Coverage

General CLE

1:25 PM – 2:25 PM

Policyholder counsel, insurer counsel, a broker, and a risk manager will discuss recent trends in environmental coverage. Topics will include coverage for emerging contaminants, including PFAS/PFOA, new products, and the status of claims under PLL policies. The panel will also discuss caselaw developments under PLL and historic CGL policies.

Moderator: Collin Gannon, Beveridge & Diamond PC, Baltimore, MD

Panelists: Ginamarie Alvino, The RiverStone Group, Manchester, NH; **Christina (Tina) Desiderio,** K. Hovnanian Companies LLC, Matawan, NJ; **James (Jim) Vetter,** Marsh, Salt Lake City, UT

Breakout:
Top Ten Tips for Your Next "Routine" BI/CBI Loss

General CLE

1:25 PM – 2:25 PM

Our experienced coverage panel will offer insight on recent trends in approaching non-catastrophe loss scenarios, including increased reliance on appraisal, recurring areas of disagreement in CBI/BI losses, and the nuts and bolts of smoothing the claim process. Every loss is unique – but there are ways to minimize friction and steady the rocking boat.

Moderator: Geoffrey J. Greeves, Bradley Arant Boult Cummings LLP, Washington, D.C.

Panelists: Erica J. Dominitz, Aon, Washington, D.C.; **Kristine Elkind,** Matson Driscoll & Damico LLP, Lake Mary, FL; **Jonathan R. MacBride,** Zelle LLP, Philadelphia, PA

Plenary:
InsurTech and AI: Savvy Solutions or Bots Behaving Badly?

General CLE

2:35 PM – 3:45 PM

Artificial Intelligence, "optimization" algorithms, blockchain, and other recent innovations in insurance technology ("InsurTech") can save costs and time for insurers and insureds alike. But what if the technology is biased, or simply runs amok? This panel will address the regulatory, coverage, and bad faith implications of InsurTech innovations.

Moderator: Peter Kochenburger, University of Connecticut School of Law, Hartford, CT

Panelists: John G. Buchanan III, Covington & Burling LLP, Washington, D.C.; **Ellen MacDonald Farrell,** Squire Patton Boggs, Washington, D.C.; **Andrew Mais,** Connecticut Commissioner of Insurance, Hartford, CT; **Satish Narayanan,** Marsh, Phoenix, AZ

Breakout:
Ensuring Insurance Coverage Success in Litigation: Tips and Best Practices for Young (and Experienced) Lawyers

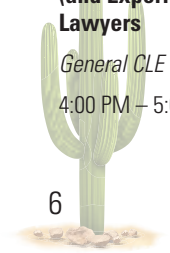
General CLE

4:00 PM – 5:00 PM

In-house counsel, a federal court judge, and coverage attorneys will teach you how to excel in several litigation success metrics, including how to: (1) identify, manage, and exceed client expectations; (2) shine in pre-trial and trial practice; and (3) save costs and minimize risk in claims and pre-suit negotiations.

Moderator: Andrea DeField, Hunton Andrews Kurth LLP, Miami, FL

Panelists: Meg Blackwood, Colonial Pipeline Company, Alpharetta, GA; **Cara Tseng Duffield,** Wiley Rein LLP, Washington, D.C.; **Hon. Darrin P. Gayles,** U.S. District Court for the Southern District of Florida, Miami, FL



PROGRAMS

Breakout:
Lifting the Bar: Negotiating Coverage for Sexual Abuse Claims and Navigating Bankruptcy Resulting from Statute of Limitations Legislation

General CLE

4:00 PM – 5:00 PM

Across the country, legislatures are acting to alter statutes of limitations for childhood sexual abuse claims. This panel will discuss issues frequently encountered by policyholders seeking coverage for such claims (including missing or incomplete policies, number of occurrences, applicable limits, and policy exclusions) and those filing for bankruptcy.

Moderator: Arthur R. Armstrong, Anderson Kill PC, Philadelphia, PA

Panelists: Christina Arnone, Stinson LLP, Kansas City, MO; **Shannon Y. Shin,** Dentons US LLP, Chicago, IL; **Jared Zola,** Blank Rome LLP, New York, NY

Breakout:
Claims Handling: Discovery and Privilege Disputes

General CLE

4:00 PM – 5:00 PM

Whether insurer-side or policyholder-side, everyone agrees that the scope of permissible discovery into claims handling materials is clear cut. They just can't agree on what the parameters are, especially when counsel is retained and looped in before a coverage determination issue. This panel will discuss where courts have drawn the lines and how they've considered the issue.

Moderator: Robyn L. Michaelson, Blank Rome LLP, New York, NY

Panelists: Carla M. Jones, Potter Anderson & Corroon LLP, Wilmington, DE; **Elderidge Nichols, Jr.,** Clyde & Co, Washington, D.C.

Breakout:
Sex, Drugs, and Twitter: Emerging Issues in EPL Coverage

General CLE

4:00 PM – 5:00 PM

Is your EPL policy made for the modern age? Learn about how coverage for novel matters, including #MeToo, medical and recreational marijuana, social accountability/social media, ADA compliance, and wage and hour exposure, are being handled under employment practices liability policies.

Moderator: Seth Lamden, Neal Gerber & Eisenberg LLP, Chicago, IL

Panelists: Christina Anne Culver, Thompson Coe Cousins & Irons LLP, Houston, TX; **Thomas P. Hams,** Aon, Chicago, IL; **Candice P. Shih,** Hanson Bridgett LLP, San Francisco, CA

Friday, March 6, 2020

Plenary:
Read the Room: Coverage Arguments that Work in Court but May Backfire at Mediation

General CLE

8:00 AM – 9:10 AM

In mediation, context is everything. Who are you negotiating with? What has their involvement with the claim been? What might be the triggers that, if hit, will be counter-productive? When considering what kind of substantive discussion to have in written submissions and at the mediation itself, it helps to consider context.

Moderator: Andrew S. Nadolna, JAMS, New York, NY

Panelists: Natasha Romagnoli, Blank Rome LLP, New York, NY; **Linda L. Sager,** Herold & Sager, Encinitas, CA; **Erica Villanueva,** Farella Braun + Martel LLP, San Francisco, CA; **Julie A. Weerth,** Wood Smith Henning & Berman LLP, New York, NY

PROGRAMS

Friday, March 6, 2020 *(Continued)*

Plenary:
Disruptors in Insurance Coverage Litigation: 2020 and Beyond

General CLE

9:20 AM – 10:30 AM

Disruptor: "something that drastically alters or destroys the structure of something." What disruptors will impact insurance coverage litigation in 2020 and beyond? This panel will address developments in the law, capital markets (such as availability of litigation financing), technology, and insurance markets that will disrupt insurance coverage litigation as we know it.

Moderator: John B. Mumford, Jr., Hancock Daniel & Johnson PC, Richmond, VA

Panelists: Fiona A. Chaney, Bentham IMF, Los Angeles, CA; **Rahul Karnani,** Chubb, Atlanta, GA; **Diane Quick,** Ankura, New York, NY; **Palmer Gene Vance II,** Stoll Keenon Ogden PLLC, Lexington, KY

Breakout:
Cannibalization Dangers in Today's Insurance Coverage Jungle: Eroding Policies; Multiple Insureds; and Corresponding Good Faith, Defense, & Settlement Duties

General CLE

10:45 AM – 11:45 AM

Three seasoned insurance professionals (claimant counsel, carrier counsel, & national insurance broker) explain their perspective (and debate their tips) on how to successfully address the types of risky conflicts and treacherous legal traps they've been seeing under policy limits that cover indemnity and defense combined ("self-cannibalizing" or "self-liquidating" insurance policies).

Panelists: Thomas F. Ahearne, Foster Garvey PC, Seattle, WA; **Nancy A. Brownstein,** Davis Wright Tremaine LLP, Seattle, WA; **Mathew Romano,** USI Insurance Services, Boston, MA; **Jeanette M. Bourey,** Markel Corporation, Deerfield, IL

Breakout:
Procedural Bad Faith: The Latest Trends

General CLE

10:45 AM – 11:45 AM

Allegations of procedural bad faith are on the increase again, even where there is no coverage. Current issues include alleged single regulatory violations, an insurer's communications before the insured presents an actual claim, whether claims are adequately addressed, and how federal and state court interpretations differ.

Moderator: Karin Scherner Aldama, Perkins Coie LLP, Phoenix, AZ

Panelists: Tred R. Eyerly, Damon Key Leong Kupchak Hastert, Honolulu, HI; **Meghan E. Ruesch,** Lewis Wagner LLP, Indianapolis, IN; **Demetrius E. Rush,** Zurich North America, Schaumburg, IL

Breakout:
Eliminating Bias and Tackling Issues of Diversity and Inclusion in the Insurance Industry

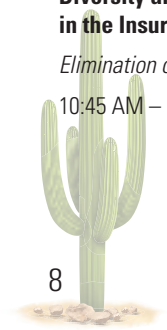
Elimination of Bias CLE

10:45 AM – 11:45 AM

Nationally recognized experts on diversity and inclusion issues with extensive experience in the insurance industry will discuss diversity and inclusion from the perspective of both policyholders and insurers, and will provide strategies for eliminating bias. Everyone is welcome. Audience participation is encouraged.

Moderator: Terrance J. Evans, Duane Morris LLP, San Francisco, CA

Panelists: Rachel K. Ehrlich, Ehrlich Mediation & Dispute Resolution Services, Judicate West, San Francisco, CA; **Sophia M. Piliouras,** Minority Corporate Counsel Association, Washington, D.C.; **Peter L. Tracey,** Perkins Coie LLP, Washington, D.C.



PROGRAMS

Breakout:
"Event-Driven" Securities and Derivative Suits and How D&O Insurance May Provide Appropriate Cover

General CLE

10:45 AM – 11:45 AM

There has been a rise in "event-driven litigation" from cybersecurity events to #MeToo claims to weather-related disasters. This presentation will address these and other litigation and how D&O Insurance could provide appropriate cover for the inevitable securities and derivative lawsuits and related government investigations.

Moderator: William T. Um, Jassy Vick Carolan LLP, Los Angeles, CA

Panelists: Gretchen Hoff Varner, Covington & Burling LLP, San Francisco, CA; **Kristen Kraeger**, Aon, Boston, MA; **Kelly T. Nugent,** Nicolaides Fink Thorpe Michaelides Sullivan LLP, San Francisco, CA

Breakout:
Persuasion, Credibility, and the Real Burden of Proof

General CLE

11:55 AM – 12:55 PM

Two all-new TED-style talks. First, Kalpana Srinivasan will show how witnesses can easily and disastrously damage their own credibility and what the lawyer and witness should do to defuse bad facts and to build, strengthen, and cement the witness's credibility. Then, lawyer-author Ken Berman (*Reinventing Witness Preparation*) will expose the myth of the neutral adjudicator and teach why the litigation playing field is seldom level, how hidden brainwork silently alters the burden of proof, and what to do to overcome these roadblocks to victory.

Speakers: Kenneth R. Berman, Nutter McClennen & Fish LLP, Boston MA; **Kalpana Srinivasan,** Susman Godfrey LLP, Los Angeles, CA

Breakout:
The Three-Cornered Mediation: How to Resolve Coverage and Liability at the Same Time

General CLE

11:55 AM – 12:55 PM

It's tricky, tangled tightrope-walking when you mediate coverage and liability issues at the same time. But we all have to do it. Plaintiffs won't settle unless they know the money is there. So, what's effective for policyholder- and carrier-side counsel? What's ethical? Where's your safety net?

Moderator: Jeff Kichaven, Jeff Kichaven Commercial Mediation, Los Angeles, CA

Panelists: Katherine E. Jacobi, Hepler Broom LLP, Chicago, IL; **Amman Khan,** Pierce Bainbridge Price & Hecht LLP, Los Angeles, CA; **David F. Klein,** Pillsbury Winthrop Shaw Pittman LLP, Washington, D.C.; **Joanna L. Young,** Kennedys Law LLP, New York, NY

Breakout:
Stress Management for Insurance Lawyers

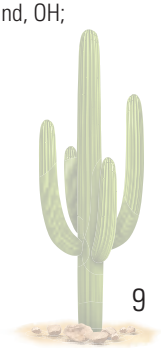
Wellness CLE

11:55 AM – 12:55 PM

Improperly managed stress is behind many problems in the legal profession. Insurance coverage lawyers are not immune from stress! Stress can be managed, and this seminar presentation will provide techniques that help prevent and treat the ethical and substance abuse problems that are caused by high levels of stress.

Moderator: Mark Siwik, SandRun Risk, Richfield, OH

Panelists: Stacy RC Berliner, Brouse McDowell LPA, Cleveland, OH; **Atoyia S. Harris,** Proskauer Rose LLP, New Orleans, LA; **Christina Nosari,** Clyde & Co, Atlanta, GA



PROGRAMS

Friday, March 6, 2020 *(Continued)*

Breakout:
Insureds Breaking Bad: Coverage for Narcotics-Related Claims

General CLE

11:55 AM – 12:55 PM

This program will focus on coverage issues related to the class action opioid litigation and other unique claims that arise when an insured unknowingly becomes involved in the sale, manufacture, or distribution of illicit or prescription drugs.

Moderator: Tyler Bryant Walker, Goodman McGuffey LLP, Atlanta, GA

Panelists: Geoffrey J. Miller, Custom House Risk Advisors, Westwood, MA;
Cory B. Patterson, Haynsworth Sinkler Boyd PA, Greenville, SC;
Rachel Raphael, Crowell & Moring LLP, Washington, D.C.;
Sara Schroeder, Allied Professionals' Insurance Services, Orange, CA

Saturday, March 7, 2020

Plenary:
The Restatement of the Law of Liability Insurance in the Courts

General CLE

8:00 AM – 9:10 AM

The new Restatement of the Law of Liability Insurance has been the source of considerable debate. The real test for the Restatement, however, will come in the courts. This panel will examine how the Restatement has been received by courts, and will consider its future impact on insurance law.

Moderator: Catherine D. Cockerham, Steptoe & Johnson LLP, Washington, D.C.

Panelists: Lorelie S. Masters, Hunton Andrews Kurth LLP, Washington, D.C.;
Daniel Payne, OneBeacon Insurance Group, Plymouth, MN;
Douglas Richmond, Aon, Kansas City, MO;
Adam Scales, Rutgers Law School, Camden, NJ

Breakout:
Completed or Not? That is the Question.

General CLE

9:20 AM – 10:20 AM

Courts around the country are unable to agree on just what is a completed operations hazard when an insured is sued in a construction defect case and then tenders the defense to a subcontractor. This panel will attempt to answer this question based on the policy language and the insurance provisions in the construction contract signed by the insured.

Moderator: Ronald L. Kammer, Hinshaw & Culbertson LLP, Coral Gables, FL

Panelists: Carlos Diaz-Padron, Granada Insurance Company, Miami, FL;
Jodi Spencer Johnson, Brouse McDowell LPA, Cleveland, OH;
Christopher Stuffle, St. Charles Insurance, St. Peters, MO

Breakout:
Into the Weeds: Evolving Risks and Coverage Issues Involving Cannabis

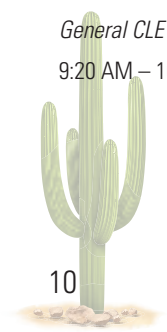
General CLE

9:20 AM – 10:20 AM

This panel will engage in a discussion of the progression of cannabis from a banned illegal substance to partial legalization and social acceptance. As part of this discussion, we will highlight the complexities arising from the Farm Bill as address to the opioid epidemic and resulting litigation and its impact on the recommendation and use of cannabis as an opioid substitute. We will analyze the markets that are impacted by legalization, their claims and litigation exposure, the types of insurance policies implicated, and the resulting coverage issues.

Moderator: Jodi S. Green, Nicolaides Fink Thorpe Michaelides Sullivan LLP, Los Angeles, CA

Panelists: Geoff Pope, Aon, Philadelphia, PA; **Phillip Skaggs,** American Association of Insurance Services, Chicago, IL.



PROGRAMS

Breakout:
The Living Dead: An Insurer's Obligations to a Defunct Insured (and the Insured's Duty to Cooperate)

General CLE

9:20 AM – 10:20 AM

Who controls the litigation when the insured is in bankruptcy, has been dissolved, or has simply disappeared? How does defense counsel provide a defense to an insured who is uncooperative? The panel will answer these questions and more in an interactive format.

Moderator: Rodrigo (Diego) Garcia, Jr., Thompson Coe Cousins & Irons LLP, Houston, TX

Panelists: Gabrielle T. Kelly, Brouse McDowell LPA, Cleveland, OH; **Nicole B. Weinstein,** Beveridge & Diamond PC, New York, NY

Breakout:
Blast from the Past: Lost Policies and Long-Tail Environmental/ Asbestos Claims from the Pre-Absolute Exclusion Era

General CLE

9:20 AM – 10:20 AM

Long-tail liability claims may stem from occurrences long past, but they continue to generate new coverage disputes and caselaw. This program will explore current issues in the wild world of long-tail claims, including collecting under excess policies, multi-carrier settlements, cost characterization, bad faith, and more.

Moderator: Bridget T. Schuster, Williams Kastner, Seattle, WA

Panelists: Susannah Carr, Gordon Tilden Thomas Cordell LLP, Seattle, WA; **Kathryn (Kayti) M. Knudsen,** Plaintiff Litigation Group PLLC, Seattle, WA; **Daniel Singerman,** Risk International, Cleveland, OH

Breakout:
The Newest Kid on the Block: Reps & Warranties Claims

General CLE

10:35 AM – 11:35 AM

Parties to M&A transactions now commonly use Representation and Warranty Insurance ("RWI") to shift deal risk. This complex product presents both frequency and severity. This panel of the market's top claims experts, counsel and brokers will break down some of the unique issues presented by this emerging segment.

Moderator: Jennifer Cavill, Chubb, Cincinnati, OH

Panelists: Stacey Hammer, Lockton Companies LLP, New York, NY; **Tracy A. Nichols,** Holland & Knight LLP, Miami, FL; **Stefano Vranca,** Ankura, Los Angeles, CA

Breakout:
Decrypting Insurance Coverage for Ransomware Claims

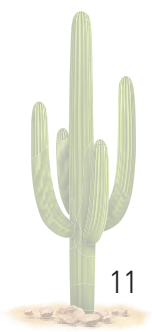
General CLE

10:35 AM – 11:35 AM

Ransomware is prevalent, and the size and scope of events continues to grow. Ransomware gives rise to first-party losses (including for cyber extortion, business interruption, and data recovery) and, often, third-party claims. This panel will explore the nuances of coverage across coverage lines and will address different loss scenarios.

Moderator: Edward R. Brown, Wiley Rein LLP, Washington, D.C.

Panelists: J. Andrew Moss, Reed Smith LLP, Chicago, IL; **Kenneth Suh,** Beazley Group, Chicago, IL; **Kelly Thoerig,** Marsh, Richmond, VA; **Cheryl Warner,** MoxFive, Tysons, VA



PROGRAMS

Breakout:
Complex and Emerging Issues in Builder's Risk Coverage

General CLE

10:35 AM – 11:35 AM

This program will explore emerging issues in builder's risk coverage pitfalls surrounding master builder's risk programs, unique wording interpretations by courts nationwide, and additional non-builder's risk ways to cover ongoing construction projects, all supported by real-life examples and case studies.

Moderator: Stella Szantova Giordano, Saxe Doernberger & Vita PC, Trumbull, CT

Panelists: Michelle Luster, Swinerton, Concord, CA;
Ebony S. Morris, Garrison Yount Forte & Mulcahy LLC, New Orleans, LA;
Frank Russo, Procor Solutions + Consulting LLC, New York, NY

Breakout:
Fingerprints, Facial Recognition, Permission? Oh My! Biometric Privacy Coverage Litigation Arriving Soon in Your State

General CLE

10:35 AM – 11:35 AM

The Illinois Biometric Privacy Act (BIPA) has spawned hundreds of privacy class actions based on alleged failure to obtain advanced written permission to collect biometric information. States across the country are considering similar statutory protections. This panel will discuss these developments and the coverage disputes that are emerging under cyber, media liability, general liability, and employment practices liability policies.

Moderator: James (Jim) M. Davis, Perkins Coie LLP, Chicago, IL

Panelists: Ruth S. Kochenderfer, Marsh, Washington, D.C.;
David E. Schoenfeld, Shook Hardy & Bacon LLP, Chicago, IL;
Raymond H. Sheen, Farella Braun + Martel LLP, San Francisco, CA

Breakout:
Keeping Your License: Spotting and Managing Troublesome Clients Before They Spot and Manage You

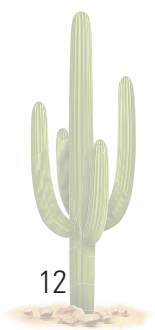
Ethics CLE

11:45 AM – 12:55 PM

The data is clear! Representing error-prone (or worse) clients exposes lawyers to monetary and disciplinary liability. This panel will show insurer-side and policyholder-side coverage lawyers alike how to spot and manage such clients early enough to avoid or reduce these risks.

Moderator: Neil B. Posner, Much Shelist PC, Chicago, IL

Panelists: Frederick Marsh, Beazley Group, London, UK;
Mary Borja, Wiley Rein LLP, Washington, D.C.;
Mary E. McCutcheon, Farella Braun + Martel LLP, San Francisco, CA



ROUNDTABLES

Friday, March 6, 2020 | 1:05 PM – 2:15 PM (Non-CLE) *Ticketed $55*

1. Insurance Coverage For Prosecution of Affirmative Claims For Relief As Part of the Defense of a Covered Lawsuit /Recovery of Attorney's Fees Incurred in Affirmative Prosecution that Is Defensive of Covered Claim	Recent cases reveal a split in authority on whether defense of a lawsuit can encompass prosecution of claims that are defensive even though they entail prosecution of a counterclaim or indemnification or pursuit of a related legal proceeding. **Speakers: David A. Gauntlett,** Gauntlett & Associates, Irvine, CA; **Tamara S. Holtslag,** Peabody & Arnold LLP, Boston, MA
2. Coverage in the Pipeline	With the expanding network of natural gas pipelines comes an expanding set of insurance coverages to address the risk of personal, property, and environmental damage from accidents, terrorism, cyber attacks, and more. This roundtable will discuss recent case law addressing these coverage issues and discuss predictions for the future of this industry. **Speakers: Megan Shannon,** Offit Kurman, Philadelphia, PA; **Nicholas Sochurek,** KCIC, Washington, D.C.
3. …And Three's A Crowd: Joint Mediation of Plaintiff, Policyholder, and Insurer Disputes	Discuss best (and worst) practices for navigating the complex dynamics that arise upon joint mediation of the underlying dispute between plaintiff and policyholder and the coverage dispute between policyholder and insurer. Outside counsel for policyholders and insurers will share advocate-based perspectives that arise on each side of such a dispute and we hope to include at least one mediator in our audience to weigh in with neutral-based observations. Topics will include preparation leading up to the mediation, structure of the mediation, participating in and conducting the mediation, and resolution at/after the mediation. **Speakers: Christine Cusick Ross,** Duane Morris LLP, San Francisco, CA; **Jan A. Larson,** Jenner & Block LLP, Washington, D.C.
4. Coverage Position Letter Pitfalls: Avoiding Waiver Anxiety and Stress with Carefully Crafted Correspondence	Coverage position letters are an insurer's most important correspondence and must fairly inform the insured of the carrier's position. This roundtable will discuss how to avoid waiver and bad faith issues with tailored letters, highlighting law from particularly restrictive states. The discussion will include insurer and policyholder perspectives. **Speakers: Lauren E. Burk,** Phelps Dunbar LLP, New Orleans, LA; **Heather W. Habes,** Covington & Burling LLP, Los Angeles, CA
5. Contra Proferentem: A Vanishing Doctrine?	Black letter law requires ambiguous provisions to be construed against the insurer and in favor of coverage. Right? Don't count on it. This roundtable explores recent decisions looking beyond the policy to interpret ambiguous terms and discusses how insurers and policyholders can prepare for, and take advantage of these situations. **Speakers: Marilyn B. Fagelson,** Murtha Cullina LLP, New Haven, CT; **Jacob Mihm,** Hoke LLC, Chicago, IL

ROUNDTABLES

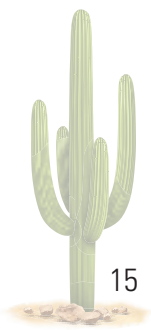
Friday, March 6, 2020 | 1:05 PM – 2:15 PM (Non-CLE) *Ticketed $55*

6. How Many Pollution Incidents Are There?	Pollution legal liability policies are often triggered by a "pollution incident," typically defined as the physical release of pollutants into the environment. But government investigations may reveal numerous pollution incidents, one incident, or none, and can take years. Pollution policies typically have self-insured retentions and limits that apply on a "per pollution incident" basis. This creates a conundrum. The policyholder and insurer both need to know how many pollution incidents there are to determine the numbers of SIRs and applicable limits, but how can they make this determination when the number of incidents is unknown until the investigation is complete? **Speakers: Bevin A. Carroll,** Kennedys Law LLP, Chicago, IL; **Adrienne N. Kitchen,** Reed Smith LLP, Chicago, IL
7. Autonomous Vehicles and Artificial Intelligence; Just Who Is Driving That Ship, Anyhow???	This program will discuss the shift in financial responsibility (and, thus, insurability) from operator to manufacturer and programmer for liabilities arising from the use of autonomous vehicles and AI. Teaching points will include: (1) When is a vehicle "autonomous"?; (2) When is intelligence "artificial"?; (3) How autonomy and machine learning shift liability and insurability upstream; and (4) How insurers and manufacturers are adapting to these shifts and anticipating future exposures. **Speakers: Michael S. Levine,** Hunton Andrews Kurth LLP, Washington, D.C.; **Laurel Stevenson,** Haden Cowherd & Bullock LLC, Springfield, MO
8. Discovery Techniques and Use of Experts in Institutional Bad Faith Cases	Institutional bad faith claims are on the rise. What discovery techniques are policyholders using to support their claims? How can insurers use discovery to defend against such claims? Learn how the right experts can make or break your case. **Speakers: Rina Carmel,** Anderson McPharlin & Conners LLP, Los Angeles, CA; **Jason S. Mazer,** Cimo Mazer Mark PLLC, Miami, FL
9. Challenges in Resolving a Representations and Warranties Claim	Nearly every deal in today's market involves Representations and Warranties Insurance ("RWIs"). But what do claims under such policies look like? There are exceedingly few public reports since most R&W insurers insist on having an arbitration clause in their policies. This roundtable will explore what a policyholder needs to do to present such a claim, including a proof of loss, the steps insurers take to evaluate and adjust a R&Ws claim, and the dynamics of the claim process. **Speakers: Jodi McDougall,** Cozen O'Connor PC, Seattle, WA; **John S. Vishneski,** Reed Smith LLP, Chicago, IL
10. What Constitutes a "Claim" Under a Claims-Made Policy?	What is considered a "claim" under a claims-made policy is not as straight forward as it may seem. This will be an interactive discussion of recent trends and rulings, along with seemingly easy scenarios that one could determine there is not a claim under the policy, but really is. **Speakers: Christine Kroupa,** Gordon Rees Scully Mansukhani LLP, Denver, CO **Paul Walker-Bright,** Neal Gerber & Eisenberg LLP, Chicago, IL

ROUNDTABLES

Friday, March 6, 2020 | 1:05 PM – 2:15 PM (Non-CLE) *Ticketed $55*

11. No Coverage Does Not Necessarily Mean No Bad Faith	A discussion about the bounds of the insurer's coverage investigation and how pre-litigation claims handling can lead to bad faith claims, even in the absence of coverage. **Speakers: Alicia M. Santos,** O'Brien & Padilla PC, Albuquerque, NM **Tristan Swanson,** Miller Nash Graham & Dunn LLP, Seattle, WA
12. Tips and Strategies for Handling First-Party Litigation	The first-party property coverage trial presents a unique set of "risks" and "perils." In this roundtable we'll explore the challenges inherent in the first-party coverage trial and exchange tips and advice for preparing the case for trial. **Speakers: Katelyn J. Fulton,** Miller Nash Graham & Dunn LLP, Portland, OR; **Anna D. Torres,** TorresVictor, West Palm Beach, FL
13. Retrospective Premiums Revealed – Avoiding Surprises and Understanding Risk Sharing	This roundtable will address issues affecting policyholders and insurers when coverage at issue contains retrospective premium endorsements. Never be confused by a retrospective premium invoice again! Participants will discuss how retrospective premiums are calculated, common retrospective premium disputes that arise in complex coverage cases and mass torts, and the treatment of retrospective premiums in bankruptcy **Speakers: William Downs,** Ankura, Washington, D.C.; **John M. Sylvester,** K&L Gates LLP, Pittsburgh, PA
14. Legal Analytics: Leveraging Insights on Judges, Party, and Lawyer Behavior to Insurance Litigation Strategy	Legal Analytics enables litigators to supplement traditional legal research with data-driven insights into the behavior of judges, parties, law firms, and attorneys. Data about case timing, resolutions, damages, remedies, and findings helps lawyers craft winning litigation strategy in cases alleging breach of an insurance contract or seeking to determine the rights of parties to an insurance contract. Trends in cases involving specific policies types, including business liability, homeowners, auto, and life, as well as hurricane-related cases, can be used to obtain competitive advantage. **Speakers: Owen Byrd,** Lex Machina, Menlo Park, CA; **Dominic Rupprecht**, Reed Smith LLP, Pittsburgh, PA



GENERAL INFO

Hotel Information

Loews Ventana Canyon Resort
7000 N. Resort Drive
Tucson, AZ 85750

A block of rooms has been reserved at Loews Ventana Canyon Resort for $189 plus 12.05% city/state tax per night (for single/double rooms). The deadline for room reservations at the discounted rate is **Monday, February 10, 2020 at 5:00 PM CT**. To reserve, use the direct link posted at ambar.org/litigationinsurance or call 800-234-5117 and reference the 2020 Insurance Coverage Litigation Committee CLE Seminar. All reservations are subject to availability.

Airport Information

Tucson International Airport (TUS)
Travel Distance: 19 miles (35-minute drive)

To access ABA-negotiated airfare discounts for travel, visit americanbar.org/travel.

Cancellations, Substitutions, and Tuition Assistance

Please visit ambar.org/litigationinsurance for details.

MCLE Information

The ABA will seek 14.25 hours of CLE credit (including 1.1 hours of ethics, 1.0 hour of elimination of bias, and 1.0 hour of wellness) in 60-minute states, and 17.1 hours of CLE credit (including 1.4 hours of ethics, 1.2 hours of elimination of bias, and 1.2 hours of wellness) in 50-minute states for this program. Credit hours are estimated and are subject to each state's approval and credit rounding rules. Please visit the program website at ambar.org/litigationinsurance for program CLE details or visit www.americanbar.org/mcle for general information on CLE at the ABA.

Program Course Materials

Course materials will be sent in advance via email to registered attendees. You may bring a laptop, smartphone, or tablet to view the materials onsite, as complimentary Wi-Fi access will be available.

Roster of Participants

Those registered by **Wednesday, February 19, 2020** will be included on the attendee roster and posted on the seminar website.

Registration/Participant Image and Voice Agreement

Registration for, attendance at, or participation in the 2020 Insurance Coverage Litigation Committee CLE Seminar and other associated activities constitutes an agreement by the registrant to permit the American Bar Association to use and distribute (both now and in the future) the participant's image or voice in photographs, videotapes, electronic reproductions, or audiotapes of such event.

Cancellations and Substitutions

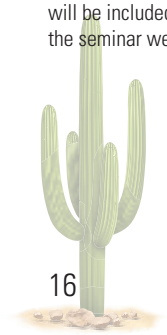
Registration cancellations must be made in writing by **Wednesday, February 19, 2020** and are subject to a $50 administrative fee. No refunds will be provided for requests made after this date. Registrants who do not cancel before **Wednesday, February 19, 2020** and who do not attend will receive a copy of the program materials after the Conference. Written substitutions will be permitted until **Wednesday, February 26, 2020**. After this date, substitutions must be made onsite. Substitutions are not permitted once a registrant has registered onsite or the seminar has occurred. Only the substitute will be eligible for CLE credit. The substitute and original registrant must work out the payment between themselves. Please submit all written requests to Sohana Cantwell at sohana.cantwell@americanbar.org. The ABA reserves the right to cancel any programs and assumes no responsibility for personal expenses. Please contact Sohana Cantwell at 312-988-5498 with any questions.

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. For courses costing over $500, attorneys who qualify will receive at least a 50% reduction in the course fee(s). This does not include any reduction in meals, lodging, or travel costs. To apply, send a letter outlining the basis for your fee waiver request to sohana Cantwell at Sohana.cantwell@americanbar.org. All requests must be received by **Wednesday, February 5, 2020**.

Services for Persons with Disabilities

If special arrangements are required, please contact Sohana Cantwell at 312-988-5498 or sohana.cantwell@americanbar.org. Please submit requests at least two weeks prior to the meeting.



REGISTRATION

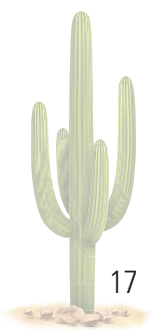
Registration Fees	Through 2/5/20	After 2/5/20
Section of Litigation Member	$475	$525
First-Time Attendee*	$345	$395
Government/Academic/Public Service/Judge*	$325	$375
Young Lawyer* *(age 35 or younger or in practice less than 5 years)*	$325	$375
Law Student*	$25	$50
In-House Counsel (does not include solo practitioners, contract lawyers, vendors, or law firm attorneys)	$50	$100
ABA Member	$620	$670
Non-ABA Member	$765	$815
Sponsor	$0	$0

Rate applies to Section of Litigation members only. Join the Section at **ambar.org/ltjoin. Already an ABA member? Become a Section member for only $65!*

Ticketed Events

Wednesday, March 4, 2020	
Happy Hour Honoring Diversity & Inclusion in the Profession, In-House Counsel, and Young Lawyers	Included/Guest: $25
Thursday, March 5, 2020	
Grab and Go Lunch	$45
Welcome Reception	Included/Guest: $25
Friday, March 6, 2020	
Roundtable Luncheons	$55
Golf Tournament	$100
Tennis Tournament	Pay on Own
Women's Reception	$25
"Black & Red: A Night at the Casino" Reception & Dinner	$85
Saturday, March 7, 2020	
Farewell Happy Hour	Included/Guest: $25

Register at ambar.org/litigationinsurance.



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ABA Section of Litigation

2020 Insurance Coverage Litigation Committee CLE Seminar

March 4-7, 2020

Loews Ventana Canyon Resort

Tucson, AZ

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