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ACCEC 2014 Insurance Law Symposium

Friday, March 21st

Robert C. Khayat Law Center
University of Mississippi, Oxford Mississippi



General Information

American College of Coverage and Extracontractual Counsel (ACCEC)

ACCEC 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 judiciary, 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.

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Symposium Location

The ACCEC Law Symposium will be held at the Robert C. Khayat Law Center on the campus of the University of Mississippi.

Accommodations

A block of rooms for has been reserved for the weekend at The Inn at Ole Miss. Anyone needing accommodations should call the hotel at 888-486-7666.

Date

Friday, March 21st

Registration

The cost for registration is \$100, which covers a luncheon and presentation handouts. Checks should be made out to ACCEC.

Schedule

Registration will open at 8:00am; The symposium will begin at 8:30am and will end at 5:00pm.

Registration Deadline

The registration deadline is Friday, March 14. Space is limited and available on a first-come, first-served basis.

Continuing Legal Education (CLE)

The States of Tennessee and Mississippi has awarded 6.3 CLEs for the Symposium.

Questions

Contact ACCEC's Meetings Department at (240) 404-6502.



Topics

[A Principled Approach To Coverage: The Scope and Future Of The American Law Institute's Principles of Liability Insurance Project](#)

Presenters: Lori Masters and Mike Aylward

The American Law Institute's (ALI's) 2010 Principles of the Law of Liability Insurance sets forth what the ALI believes the law should be. In May 2013, the ALI tentatively approved the first sections, including contract interpretation, misrepresentation, and the duty to defend. Additional duty to defend principles, bad faith, allocation, and other issues will be addressed in the future. Hear what the ALI has done and what the future holds, and find out the likely impact of these principles.

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[Experts in Insurance Coverage and Bad Faith Litigation: How to Choose, Use, and Lose](#)

Presenters: Tom Segalla, L.D. Simmons, Ned Currie, and Hon. Michael P. Mills, United States District Court Judge for the Northern District of Mississippi

The panel will discuss the application of expert witnesses to insurance issues and coverage and bad faith litigation, including: General law on the admissibility and scope of expert testimony in insurance coverage and bad faith litigation.

Choosing the expert:

- When to use an expert
 - » The appropriate role of the expert
- How to choose an expert—what are the considerations and qualifications necessary for the case?
- Using the Expert
 - » Qualifying the expert for admissibility of opinions
 - » What makes a credible and persuasive expert witness in insurance litigation?
- Losing the Expert
 - » At all stages: retention, deposition, pretrial, voir dire and trial
 - » Challenging the expert: application of Daubert standards to insurance expert testimony
- A demonstration on expert testimony in a bad faith case: mock direct and cross examination of an insurance bad faith expert Presided over by Hon. Mike Mills, Federal District Judge, Northern District of Mississippi

[Update on Mississippi Insurance Litigation](#)

Presenters: Farish Percy, Professor of Law, University of Ms School of Law, Richard T. "Flip" Phillips, and Myles Parker

Professor Farish Percy and attorneys Richard T. Phillips and Myles A. Parker will present on issues arising in insurance coverage disputes in Mississippi and elsewhere. Professor Percy will be reviewing and breaking down some of the more recent cases impacting the insurance practitioner. Mr. Phillips and Mr. Parker will then follow up on this update with strategic and technical observations involved in extracontractual litigation, including venue and forum selection, the scope of extracontractual damages, and the first-to-file doctrine. All are issues that insurance coverage attorneys routinely face when handling complex matters, and all often have critical implications on the final resolution of disputed claims.



Topics *continued*

Defective Construction Claims: Where Breach of Warranty and Covered Occurrences Merge or Divide

Presenters: Jill Berkeley, Stacy Broman, and Bruce Celebreeze

Insurance can play a crucial role in repairing and remediating defective construction. Unfortunately, all too often, owners, general contractors, and subcontractors treat insurance as an afterthought. This session will explore some recent developments in Mississippi relating to insurance coverage issues and more generally, will explore the line between uninsured warranty work and covered insurance claims.

Waiving Goodbye to the Attorney Client Privilege in Insurance Litigation: Express, Implied, and Subject Matter Waivers

Presenters: John Jones and Jean Lawler

This session will involve a discussion of the scope of the implied waiver of the attorney-client privilege when an “advice of counsel” defense is raised in bad faith claims alleging extracontractual and punitive damages. As a general rule, raising “advice of counsel” works a waiver of the privilege, and the plaintiff is entitled to review the complete, unexpurgated file of the defense counsel, whose advice led to the challenged claim decision. To meet the defense, the plaintiff is generally required to show that the legal advice was not “objectively reasonable” in fact or law. Issues to be discussed include:

1. The extent of the agency relationship between defense counsel and the insurer for purposes of tort liability.
2. Whether “advice of counsel” can be raised in defense of the underlying claim of “bad faith.” That is, is the claim decision supported by legitimate or arguable reason in fact or law, or is it limited to “willfulness” issues related to the level of intent that must be shown to send punitive damages issues to jury?
3. Whether “advice of counsel” is an affirmative defense. Which party bears the burden of proof on the issue?
4. Whether claims of partial waiver of the privilege can succeed. If so, under what parameters?
5. How “advice of counsel” defense can be effectively met through the plaintiff’s proof at trial.
6. Other circumstances in which advice of in-house legal counsel involved in claim decision can be protected from/disclosed in discovery.

The Government and Plaintiffs Come Knocking: Do You Know Where Your D&O Coverage Is?

Presenters: Dan Kohane and Caroline Spangenberg

When faced with governmental investigations and the shareholder class actions and derivative suits start to pile on, insurance might not be one of the first things on your mind. It should be, however. This panel will deal with important issues that can ensure—or interfere with—insurance coverage for civil and criminal liability issues facing corporate officers and directors, including notice under claims made policies, selection of counsel, coverage for external and internal investigations, the ramifications of discovery admissions or criminal pleas, and exhaustion traps.

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Speaker Bios

Michael Aylward is a partner in the Boston office of Morrison Mahoney, LLP, where he chairs the firm’s complex insurance claims practice. For the past three decades, he has represented insurers and reinsurers in disputes throughout the United States involving diverse sources of liability ranging from asbestos to Y2k. He has written widely on insurance and bad faith issues and is a frequent speaker at insurance claims conferences. In addition to his work with ACCEC, he currently chairs the DRI Law Institute and is a past member of the DRI board of directors and past chair of its Insurance Law Committee. He has also held similar leadership positions with the Association of Defense Trial Attorneys, the Federation of Defense and Corporate Counsel, the International Association of Defense Counsel, and the Massachusetts Reinsurance Bar Association.

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Jill B. Berkeley chairs Neal Gerber & Eisenberg’s Insurance Policyholder Practice Group. In 2012, *Chambers USA* reported that clients describe her as a “a breath of fresh air in litigation.” Ms. Berkeley represents policyholders and claimants in insurance coverage disputes involving toxic torts and hazardous wastes, environmental pollution, construction, product liability, intellectual property, first-party property, business interruption, and excess liability matters.

Stacy Broman focuses her practice on complex commercial litigation defending insurers in insurance coverage and bad faith litigation, and she represents professionals in professional liability litigation. For her work on behalf of the insurance industry, she was named by *Best Lawyers*® as Minneapolis Insurance Lawyer of the Year for 2013. She is listed in *The Best Service Professionals in the United States* (under Lawyers: Insurance) and in *The Best Lawyers in America*®. Additionally, she was selected as a 2014 Top-Rated Lawyer in Insurance Law by *American Lawyer* and *Corporate Counsel* magazines and *Martindale – Hubbell* and has been included in the *Minnesota Super Lawyers* list each year from 2005 through 2013. In 2013, Ms. Broman was elected to the American College of Coverage and Extracontractual Counsel.

Bruce D. Celebrezze is chair of the Insurance Division of the international law firm Sedgwick LLP and is a member of the firm’s Executive Committee. Mr.Celebrezze represents a wide variety of international, national, and regional primary and excess insurers and reinsurers, with an emphasis on litigating coverage issues arising out of complex third-party casualty and first-party property disputes as well as life, health, and disability claims. In addition, Mr. Celebrezze is a frequent lecturer and is widely published as a legal expert in the field. He is recognized by the top legal directories as a leader in insurance, including being ranked in *Chambers USA* (2010–2012), where he is noted for his “dedication” and “practical and common-sense approach.” In 2012, commentators in *Chambers USA* described him as being “incredibly smart, down to earth and one of the most hard-working people I have ever seen.”

Edward “Ned” Currie is a founding member of Currie Johnson Griffin & Myers P.A. Ned focuses his practice on the gamut of insurance defense matters and represents insurers in litigating insurance coverage and bad faith issues. With thirty seven years in the courtroom, Ned has tried over one hundred seventy five cases to verdict. He is a former adjunct professor of law at the Mississippi College School of Law, former president of the Mississippi Defense Lawyers Association and former president of the Mississippi Chapter of the Federal Bar Association. He presently serves on the Mississippi Supreme Court Advisory Committee for the Rules of Civil Procedure. Ned was selected as 2012 Lawyer of the Year for Insurance Law in Mississippi by Best Lawyers and as a 2013 and 2014 Top Rated Lawyer for in Insurance Law by *American Lawyer* and *Corporate Counsel Magazine* and *Martindale Hubbell*. He is listed in Top 100 Lawyers for 2013 and was named by International Global Law Experts as 2013 Product Liability Lawyer of the Year in Mississippi. Ned also is listed in Top 10 Leaders in Law for 2013 by the *Mississippi Business Journal*.



Speaker Bios *continued*

John Griffin Jones is senior partner at the Jackson, Mississippi, law firm of Jones, Funderburg, Sessums, Peterson & Lee, PLLC. A native of Jackson and a product of the Jackson public schools, he attended Millsaps College and the University of Mississippi (“Ole Miss”), double majoring in English and History. He returned to Ole Miss for graduate school but switched over to the Ole Miss law school, receiving his J.D. in 1985. Mr. Griffin served a clerkship from 1985 to 1986 with United States District Judge Tom S. Lee, Southern District of Mississippi, before starting in private practice in Jackson, where he has remained. He has published articles and papers on both non-legal and legal issues, including more than 50 papers in his fields of concentration: workers’ compensation; insurance litigation of all types, including bad faith tort actions arising in the first-person-contract and compensation settings; contract law; employment law; and a broad personal injury practice.

Dan D. Kohane, a senior member of the New York law firm of Hurwitz & Fine, P.C., is a nationally recognized insurance coverage counselor who serves as an expert witness and conducts extensive training, consultation, and in-house seminars on this highly specialized practice. Mr. Kohane is known in the industry for his comprehensive newsletter, *Coverage Pointers*, a biweekly publication summarizing important insurance coverage decisions. An accomplished trial lawyer and litigator, Mr. Kohane also has considerable experience mediating complex casualty and insurance coverage disputes. He teaches insurance law as an adjunct professor at the University at Buffalo Law School and heads his firm’s Insurance Coverage Practice Group.

Jean M. Lawler is a Senior Partner of Murchison & Cumming, LLP, resident in the firm’s Los Angeles office. She served as Managing Partner of the firm from 2008 through 2013, is Co-Chair of the firm’s International Law practice group and founded the firm’s Insurance Law practice group more than 25 years ago. Her practice includes representing insurers in complex insurance and bad faith litigation, at trial and on appeal; providing insurers with coverage, underwriting and risk management advice; and defending professionals (including agents, brokers and other non-medical professionals) in professional liability litigation. Ms. Lawler is a Regent of the American College of Coverage & Extra-Contractual Counsel and is a Past-President of the Federation of Defense & Corporate Counsel. She is rated AV Preeminent by Martindale, has served as an expert witness in matters involving insurance law and is a frequent speaker and author on a variety of legal issues.

Lorelie S. Masters is a partner in Jenner & Block’s Insurance Litigation and Counseling Practice Group and has more than 30 years of experience representing policyholders in insurance coverage counseling and litigation. She is co-author of two treatises on insurance coverage issues: 1) *Insurance Coverage Litigation*, published in its second edition in January 2000 and updated yearly, and 2) *Liability Insurance in International Arbitration*, published in its second edition in early 2011.

Honorable Michael P. Mills is a United States District Court Chief Judge for the Northern District of Mississippi. He was a representative in the Mississippi House of Representatives from 1984 to 1995 and served as a justice of the Mississippi Supreme Court from 1995 to 2001. On September 4, 2001, Mr. Mills was nominated by President George W. Bush to a seat on the United States District Court for the Northern District of Mississippi that had been vacated by Neal B. Biggers. Mr. Mills was confirmed by the United States Senate on October 11, 2001, and received his commission on October 16, 2001. He became chief judge in 2007, and he continues to serve in this capacity to the present.

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Myles A. Parker is recognized by various organizations as one of the top litigators in the country. His career spans more than 23 years, and his practice primarily concentrates on representing domestic and international insurance and reinsurance clients in the major loss context. This involves working with diverse professionals around the world from different cultural and educational backgrounds in various jurisdictional settings. His approach to losses like this is to keep the clients fully informed and to be forward-thinking in terms of moving the matter toward ultimate resolution—whether it be in litigation, alternative dispute resolution, or some less formal forum. He has applied this skill set and experience in effectively serving as lead counsel in complex coverage matters exceeding \$1 billion in claimed value.

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Farish Percy joined the Ole Miss Law Faculty in 2001, after practicing with the Tollison Law Firm, P.A. in Oxford, Mississippi, for eight years. While engaged in private practice, Professor Percy specialized in tort litigation, commercial litigation, and appellate practice. She tried numerous civil cases in state and federal courts in Mississippi and briefed and argued several appellate cases before the United States Court of Appeals for the Fifth Circuit and the Mississippi Supreme Court. Prior to practicing in Oxford, Professor Percy practiced with Latham & Watkins in Washington D.C, where she concentrated in corporate tax. Immediately after graduating from law school, Professor Percy clerked for Judge E. Grady Jolly of the United States Circuit Court of Appeals for the Fifth Circuit. While at the University of Virginia School of Law, Professor Percy was a member of the Articles Review Board for the *Virginia Law Review*. She was also made a member of the Order of the Coif.

Richard T. (Flip) Phillips is a founding partner of the law firm Smith, Phillips, Mitchell, Scott & Nowak, LLP. He is a 1972 graduate of the University of Mississippi School of Law where he served as a member of the *Mississippi Law Journal* and president of the Law School Student Body. From 1973, when he argued the seminal *Rampy* and *McMinn/Crestman* uninsured motorist cases before the Mississippi Supreme Court, to the nationally-watched post-Katrina *Corban v. USAA*, which defined Mississippi anti-concurrent causation law in 2009, Flip has been a pioneer in the development of Mississippi insurance law. His jury verdicts have been recognized in the WALL STREET JOURNAL and the NATIONAL LAW JOURNAL “Top Verdicts in America.” From 1994 through 2004, Flip represented policyholders nationwide in “vanishing premium” and life insurance deceptive sales practices cases, serving as lead counsel, co-lead counsel and a member of the Plaintiffs Steering Committees in nationwide class actions and Multi-District Litigation from coast to coast. He is a former President of the William C. Keady American Inns of Court. Flip is the author of numerous law journal articles, one book, MISSISSIPPI AUTOMOBILE INSURANCE, First Ed. (1987), and chapters in two multi-volume MATTHEW-BENDER national treatises.

Thomas Segalla is a nationally recognized authority on bad faith, reinsurance, and insurance; an ARIAS board-certified arbitrator and mediator; and a founding partner of the firm. He has been retained as counsel and as a consultant by numerous major insurance carriers and policyholders in more than 35 jurisdictions nationally and internationally, and he has served as an expert witness in more than 100 bad faith, coverage, and extracontractual cases across the country. His active practice focuses on the defense and insurance coverage aspects of matters involving bad faith; construction site personal injury accidents [Labor Law §§ 200, 240(1) and 241(6)]; toxic tort and environmental issues; and extracontractual, product liability, professional liability, and railroad litigation. Mr. Segalla also has experience representing and advising life science, pharmaceutical, and medical device industry clients.



Speaker Bios *continued*

L.D. Simmons is a co-chair of McGuireWoods insurance recovery practice and has 20 years of experience representing clients in state and federal courts in high-exposure insurance disputes. Clients frequently call on him to handle matters pending in jurisdictions where juries are hostile to corporate defendants. He has represented clients in cases in Alabama, California, Mississippi, Florida, Delaware, Pennsylvania, Tennessee, Washington, Georgia, North Carolina, Kentucky, New Mexico, New York, New Jersey, South Carolina, West Virginia, Texas, and Virginia.

Caroline Spangenberg, a Partner at Kilpatrick Townsend, has thirty years of experience representing policyholders in insurance coverage matters and related indemnity disputes. She has helped her clients recover hundreds of millions of dollars in insurance proceeds through negotiation, mediation and other forms of ADR, arbitration (including international arbitrations) and litigation throughout the United States and overseas. Ms. Spangenberg was recognized by The Best Lawyers in America® for Insurance Law in 2014 and the six years immediately preceding. In 2004, 2011, 2012 and 2013, she was recognized as a Georgia “Super Lawyer” in Insurance Coverage by SuperLawyers magazine.

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