

ACCEC

American College of Coverage and
Extracontractual Counsel



2018 ACCEC Annual Meeting

May 16-18, 2018 | The Westin Chicago River North | Chicago, IL



AGENDA

Wednesday, May 16, 2018

1:00 pm – 4:00 pm <i>Jackson Park</i>	Board Meeting <ul style="list-style-type: none"> Lunch will be buffet-style from 12:00pm to 2:00pm.
4:30 pm – 5:30 pm <i>Jackson Park</i>	Membership Committee Meeting
6:30 pm – 8:00 pm <i>Promenade Ballroom C</i>	Welcome Reception <ul style="list-style-type: none"> Professional Liability (E&O and EPLI) Committee Meeting

Thursday, May 17, 2018

7:30 am – 8:30 am <i>Promenade Ballroom ABC</i>	Breakfast Buffet <ul style="list-style-type: none"> Cyber Insurance & Computer Crime Committee Meeting Professionalism & Ethics Committee Meeting (8:00am)
8:30 am – 8:40 am <i>Grand Ballroom C</i>	Welcome Remarks <ul style="list-style-type: none"> <i>Bruce Celebrezze: Clyde & Co.; ACCEC President</i> <i>Stacy Broman, Meagher & Geer, P.L.L.P.; 2018 Annual Meeting Co-chair</i> <i>Jason Mazer, Cimo Mazer Mark PLLC; 2018 Annual Meeting Co-chair</i>
8:40 am – 9:30 am <i>Grand Ballroom C</i>	Coverage in a Time of Storms <i>Speakers: William Berk, Berk, Merchant & Sims, PLC; Sherilyn Pastor, McCarty & English LLP; Neil Rambin, Drinker Biddle & Reath LLP</i> <p>Following storm events, disputes can arise over the cause and amount of covered loss. Most policies allow parties to invoke appraisal by a competent and disinterested appraiser or panel to attend to valuation issues. We will discuss when an appraisal award can be set aside for a party or party appraiser's failure to disclose potential conflicts of interest. We also will discuss concurrent and efficient proximate cause issues, which are likely to arise where covered and excluded causes combine to create a loss.</p>

<p>9:30 am – 10:15 am <i>Grand Ballroom C</i></p>	<p>Rules of the Game <i>Speakers: Kenneth Abraham, University of Virginia School of Law; Richard Bryan, Jackson & Campbell, P.C.; Lorelie Masters, Hunton & Williams, LLP; Jack Montgomery, Jones Day</i></p> <p>The panelists will present a dialogue, separately between policyholder and its counsel, and between insurer and its counsel, regarding the issues frequently encountered at the commencement of a Bermuda form arbitration. The issues will include: commencement and pleadings, the seat of the arbitration, curial law, selection of arbitrator (US, English, Bermudian, other) selection of chair (same possibilities) and involvement of the parties in his/her selection, the need for and selection of a QC, discovery, expert witnesses, proof of law, admissibility of extrinsic evidence, and the possible consideration of a preliminary issue (similar to summary judgment).</p>
<p>10:15 am – 10:30 am <i>Grand Ballroom C</i></p>	<p>Break</p>
<p>10:30 am – 11:40 am <i>Grand Ballroom C</i></p>	<p>Ethical Issues Arising Out of Sharing Information <i>Speakers: Marialuisa Gallozzi, Covington & Burling LLP; Neil Posner, Much Shelist, P.C.; Doug Richmond, Aon Professional Services</i></p> <p>Complex cases give rise to complicated relationships among insurers, insureds, lawyers, experts, to name just a few. In the typical situation, information has to be shared in order to allow all parties to do their jobs, and protect their respective interests. This panel will discuss the ethical, as well as evidentiary, concerns that are implicated by these situations.</p>
<p>11:30 am – 12:30 pm <i>Grand Ballroom C</i></p>	<p>Transactional Liability Insurance <i>Speakers: Joseph Finnerty III, DLA Piper LLP; Jill Kerxton, Aon Risk Solutions; Peter Rosen, Latham & Watkins LLP</i></p> <p>Panelists will briefly trace the development of transactional liability policies and how the M&A markets have increasingly adopted these policies in private and public M&A transactions. The panel will discuss the various types of transactional liability policies, their mechanics and their key provisions. The panel also will discuss how the policies and their provisions have affected the way private equity firms and companies have approached the purchase or sale of a private company. The panel will further discuss the claims history of these policies and give specific examples from known arbitrations and litigations.</p>
<p>12:30 pm – 1:30 pm <i>Promenade Ballroom ABC</i></p>	<p>Lunch Annual Business Meeting, featuring Recognition of New Members</p>

<p>1:45 pm – 2:45 pm <i>Grand Ballroom C</i></p>	<p>Comparative Bad Faith: Trends, Tricks, and Traps <i>Speakers: Barbara O’Donnell, Sulloway & Hollis P.L.L.C. (moderator); Lewis Collins, Butler Weihmuller Katz Craig LLP; Christine Haskett, Covington & Burling LLP; Doug McIntosh, McIntosh Sawran & Cartaya P.A.; Doug Richmond, Aon Professional Services</i></p> <p>Is comparative bad faith a viable theory in 1st and 3rd party claim and, if so, to what extent? The Extra-Contractual Committee will present a point-counterpoint panel discussion of this concept including: Are burdensome requests/refusal to provide information evidence of comparative bad faith? Is the application of comparative fault principles inconsistent with an insurer’s obligation of good faith and fair dealing? Does the defense of comparative bad faith discourage so-called “set-ups” and does it invade claimant’s counsel’s state of mind? Is this theory already accounted for when considering the willingness of the claimant to settle/no reasonable possibility of settlement? Under the Totality of the Circumstances test, is comparative bad faith a proper consideration or does the attorney client or work product privilege prevent such an inquiry? Can the parties use “custom and practice” experts to opine on questions of policy interpretation or good faith claim handling?</p>
<p>2:45 pm – 3:00 pm</p>	<p>Break</p>
<p>3:00 pm – 3:45 pm <i>Grand Ballroom C</i></p>	<p>Managing Captive Claims <i>Speakers: Michael Aylward, Morrison Mahoney LLP; David Goodwin, Covington & Burling LLP; Barbara Miller, Wells Fargo & Company</i></p> <p>Many large companies use their captive insurance companies to pay claims and then reinsure their captives. This session, which will include the claims manager for Wells Fargo’s captive insurer, will explore how captives handle claims in the real world, and how reinsurers respond to claims from captives.</p>
<p>3:45 pm – 4:30 pm <i>Grand Ballroom C</i></p>	<p>Fifteen Cases in 45 Minutes <i>Speakers: Robert Chesler, Anderson Kill PC; Anthony Leuin, Shartsis Friese LLP; Suzanne Midlige, Coughlin Duffy LLP</i></p> <p>A review of the leading insurance coverage decisions of 2017-2018, including Medidata Solutions v. Federal Insurance Co., Travelers v. Activis, OneBeacon v. Celanese, and Harleysville v. Heritage Communities.</p>
<p>6:30 pm – 7:30 pm <i>Promenade Ballroom C</i></p>	<p>Reception</p> <ul style="list-style-type: none"> • New Fellows & First Time Attendees are invited to come early, at 6:00pm
<p>7:30 pm – 9:30 pm <i>Riverfront Room</i></p>	<p>Dinner</p>

<p>7:30 am – 8:30 am <i>Promenade Ballroom ABC</i></p>	<p>Breakfast Buffet</p>
<p>8:30 am – 9:15 am <i>Grand Ballroom C</i></p>	<p>The Legacy of Level 3 More than 15 Years Later <i>Speakers: Mitchell Dolin, Covington & Burling LLP; Michael Manire, Manire & Galla LLP</i></p> <p>It has been fifteen years since the Seventh Circuit issued its landmark ruling in Level 3 questioning the availability of D&O coverage for damages that are “restitutionary in character. In the ensuing years, courts have come to markedly different approaches on the insurability of damages that might be characterized as restitution or disgorgement. What is Level 3’s legacy, how has the law evolved, and how have changes in policy language addressed these issues?</p>
<p>9:15 am – 10:00 am <i>Grand Ballroom C</i></p>	<p>The Opioid Epidemic <i>Speakers: Robert Kole, Choate Hall & Stewart LLP; R. Hugh Lumpkin, Ver Ploeg & Lumpkin, P.A.</i></p> <p>State and local governments across the country are filing lawsuits on almost a daily basis, seeking recovery of the costs they have expended and are expending as a result of the opioid epidemic. Those suits are being brought against manufacturers, distributors, pharmacies and doctors, among others. The presentation will explore the coverage issues arising from these multi-billion dollar claims, both in terms of decisions that already have been rendered and those that may be on the horizon.</p>
<p>10:00 am – 10:15 am</p>	<p>Break</p>
<p>10:15 am – 11:15 am <i>Grand Ballroom C</i></p>	<p>Are Two Policies Better than One? <i>Speakers: Suzan Charlton, Covington & Burling LLP; Scott Hecht, Stinson Leonard Street LLP; Ronald Kammer, Hinshaw & Culbertson LLP</i></p> <p>This lively panel will discuss the interplay between occurrence-based CGL policies and claims-made PL policies when both are triggered. Typically one would think that more coverage is better for the insured, but this is not always the case. Issues that may arise include control of the defense, how defense costs are treated when only the PL policy is a “wasting” policy, and how indemnity costs are allocated, particularly when each policy provides different amounts of coverage.</p>
<p>11:15 am – 12:15 pm <i>Grand Ballroom C</i></p>	<p>Emerging Coverage B Claims <i>Speakers: James Bryan, Nexsen Pruet PLLC; Laura Foggan, Crowell & Moring LLP; Seth Lamden, Neal Gerber Eisenberg LLP</i></p> <p>Civil rights claims for wrongful conviction, imprisonment and incarceration have put a spotlight on the availability of Coverage B for such claims. This panel will analyze the emerging body of law concerning these claims as well as emerging theories and defenses to coverage with respect to other Coverage B offenses, notably the scope of coverage for privacy claims.</p>
<p>12:15 – 12:20 pm <i>Grand Ballroom C</i></p>	<p>Closing Remarks</p>