

LAW OFFICE OF Michael Sean Quinn

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PRINCIPAL PRACTICE & WORK AREAS: An Unelaborated Outline. (Not certified by Texas Board of Legal Specialization. (Then again, that Board does not certify in all areas, e.g., insurance law, legal malpractice, breach of fiduciary duties by lawyers, and others.))

Insurance Law and Litigation: Currently, (1) mostly expert witness in insurance cases of a variety of sorts, including bad faith, litigation and negotiation of insurance coverage disputes, litigation of insurance bad faith claims, coverage opinion work, bad faith counseling, problems involving intermediaries, reinsurance litigation, and arbitration. (Historical and current). (2) In addition, I consult on insurance cases of many sorts and on insurance lawsuits.

Other Litigation: malicious prosecution, attorney problems, mass tort property damage product liability cases (subrogation), negligent inspection in insurance cases, employer-employee problems arising out of termination, such as misappropriation of trade secrets, violations of covenants not to compete, and wrongful discharge, business entity dissolution and attendant torts; general tort and business. (Mostly historical)

Law of Lawyering: (1) Expert witness on lawyer conduct, counseling and litigation: attorney malpractice (broadly conceived), attorney fiduciary duties, attorney grievances, problems in legal ethics (e.g., conflicts), expert witness on legal fees. (Current and mostly more recent history). (2) Advice mainly to lawyers, and consultation in malpractice, fiduciary duty, and types of alleged lawyer misconduct suits or near suits.

EXPERIENCE: PREVIOUS WORKPLACES

After Law School: Law Firms—Some History:

QUINN, SEELIG [AND THEN HAYES] & QUINN (10/2001 -2011)
5511 PARKCREST
Austin, Texas 78731
(Names and addresses confusing.)

JORDAN, QUINN & CARMONA
1221 S. MoPac Expwy., Suite 300
Austin, Texas 78746

09/2002-05/2004

[Solo practice within coop group]

BELL, TURNEY, COOGAN & RICHARDS, L.L.P., OF COUNSEL (“EWYK”) 823 Congress Ave., Suite 706 Austin, Texas 78701	2001-2002
SHEINFELD, MALEY & KAY, Shareholder 1997-1998 301 Congress Avenue, Suite 1400 Austin, Texas 78701	1999-2001
ZELLE & LARSON, Partner 3000 One Main Place 1201 Main Street Dallas, Texas 75202	1988-1995
ROBINS, ZELLE, LARSON & KAPLAN , Partner Associate	1986-1988 1983-1986
2700 Nations Bank Plaza 901 Main Street Dallas, Texas 75202	
MEYERCORD, STEPHENS & BARTHOLOW (Dallas)	1981-1983
DURANT, MANKOFF, DAVIS, WOLENS & FRANCIS (Dallas) (I clerked here as well. I also clerked at Akin Gump and Vinson Elkins.)	1980-1981

After Law School: Academic Appointments

Adjunct Lecturer	Undergraduate College University of Texas at Tyler	Spring 2008
Adjunct Lecturer	Law School University of Houston Course: Life and Health Insurance	Spring 2003 Spring 2004
Adjunct Lecturer	Department of Advertising School of Communications University of Texas at Austin Course: Advertising and Society	2002
Visiting Professor (Part Time)	University of Texas--Law School Austin, Texas 78705-3299 Professional Malpractice--Legal (Fall 1999) Insurance Law (Spring 1999) Contemporary Contract Theories (Spring 2001) Texas Pretrial Procedure (Fall 2001) Texas Trial and Appellate Procedure (Spring 2002)	1998-2001
Adjunct Faculty	St. Edward’s University Executive M.B.A. Program	2001

Austin, Texas 78704
Business Law and Ethics (Spring 2001, Fall 2001)
Insurance and Risk Management (Summer 2001)

Visiting Professor (Full Time)	University of Texas--Law School Austin, Texas 78705-3299 Insurance; Texas Pre-Trial Procedure; Professional Responsibility (Legal Ethics); Professional Malpractice	1995-1997
Adjunct Lecturer	Southern Methodist University--Law School Dallas, Texas 75275 Texas Pretrial Procedure; Texas Trial and Appellate Procedure; Jurisprudence; Insurance Law	1984-1985 1990-1993
Adjunct Lecturer	Southern Methodist University Department of Philosophy Dallas, Texas 75275 Jurisprudence (Philosophy of Law)	1981-1991

During Law School

I "clerked" at five law firms including Durant, Mankoff (Dallas), Akin, Gump (Dallas), Vinson & Elkins (Houston), and Quinn & Peebles (Kansas City).

Before Law School

Assistant Professor	Southern Methodist University Department of Philosophy Dallas, Texas 75275	1970-1977
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I have also taught at the University of Texas--Dallas, the University of Maryland, Chatham College, and the University of Pittsburgh. In addition, I held the usual assortment of youthful jobs: waiter, store clerk, camp counselor, hod carrier, library assistant, typist, and the like.

EXPERIENCE: TRIAL WORK

1997- : Insurance coverage; insurance bad faith, litigation and arbitration of insurance and reinsurance disputes; lawyer conduct; and general litigation.
1990-1995: Insurance bad faith, insurance coverage, and murder cases.
1985-1990: Product liability and negligent inspection cases.
1980-1990: Employment law, business litigation, and divorce.

EXPERIENCE: APPELLATE WORK

The appellate work I have handled involves a variety of issues in state and federal appellate courts, including the Texas Supreme Court and the Fifth Federal Circuit. Some of the issues involve insurance, insurance bad faith, criminal matters, family law matters, the conduct of covenant not to compete and related matters, and a few other assorted issues.

EXPERIENCE: EXPERT WITNESS ENGAGEMENTS: SEE APPENDIX ONE

Most of my expert witness testimony has been in the area of insurance* and the conduct of lawyers. Occasionally, I have testified on the value of attorneys' fees.

*Adjuster License: All Lines: Texas #1305972.

LAW AND LAW RELATED PUBLICATIONS: SEE APPENDIX TWO

EDUCATION: COMPLETED

UNIVERSITY OF MISSOURI AT KANSAS CITY SCHOOL OF LAW, *J.D.* 1980
(started Law School at Southern Methodist University, Dallas, Texas)

UNIVERSITY OF PITTSBURGH, *Ph.D.* 1973
Subject: Philosophy. Focus: Philosophy of Law = Jurisprudence, Ethics. "Minor": Political Theory.

UNIVERSITY OF PITTSBURGH, *M.A.* 1968
Subject: Philosophy.

UNIVERSITY OF TEXAS AT AUSTIN, *B.A.* 1965
Major: Philosophy. Minor: English.

EDUCATION: COMPLETED CONTINUING EDUCATION (NOT INCLUDING CLE)

CPCU ["Chartered Property and Casualty Underwriting"] Program. Awarded 2001. This is a program in various insurance matters offered by the American Institute for Chartered Property Casualty Underwriters, the Insurance Institute of America, and the Insurance Institute for Applied Ethics. I have completed all of the ten courses towards the CPCU designation. They are as follows: Ethics, Insurance Perspectives and Insurance Contract Analysis, Personal Insurance and Risk Management, Commercial Property Insurance and Risk Management, Commercial Liability Insurance and Risk Management, Insurance Operations, The Legal Environment of Insurance, Management, Insurance Economics, Insurance Accounting, and Liability Adjusting. (This sequence of courses is counted as a substantial part of the work towards a Master of Science in Insurance Management by Boston University and similarly towards an MBA by Walden University.)

AIC ["Associate in Claims"] Program. Awarded 2001. Property Loss Adjusting and Liability Claims Practice. (The program is offered by the same groups that offer the CPCU.) Plus: Workers' Compensation and Managing Bodily Injury Claims (2003).

AU ["Associate in Underwriting"] Program. Awarded 2001. General Principles of Underwriting and Property Underwriting, Advanced Underwriting Techniques and Liability Underwriting, plus CPCU courses. (This program is offered by the same groups that offer the CPCU and the AIC.)

ASLI ["Associate in Surplus Lines Insurance"] Program. Awarded 2002. Surplus Lines Insurance Principles, Surplus Lines Practices, plus CPCU courses. (The program is offered by the same groups that offer the CPCU.)

AFSB ["Associate in Fidelity and Surety Bonding."] Program. Awarded 2002. Principles of Suretyship, Contract Surety Bonds, Commercial Crime Insurance, and Financial Institutions Bonds.

AMIM ["Associate in Marine Insurance Management"] Program. Awarded 2002. Ocean Marine Insurance, Inland Marine Insurance.

AIS [“Associate in Insurance Services”] Program. Awarded October 6, 2003. Additional Course Work in Delivering [High Quality] Insurance Services.

Miscellaneous Courses: Insurance Regulation.

ACTIVITIES AND RECOGNITION

After Law School

True Texas Legend in Insurance Law. (Recognition from the Texas Bar CLE and the Insurance Law Section of the State Bar of Texas. Plaque and Award: April 1, 2005.

Texas Super Lawyers [List]. LAW & POLITICS/TEXAS MONTHLY 90, 146 (October 2004). (Listed in the *Insurance Coverage* section. There are a large number of ads in the publication. They do not apply here, since none of them is mine.)

Member, Editorial Board, INSURANCE LITIGATION REPORTER (2001-08).

Distinguished Teaching Award (2001). This was presented by the Texas Center for Legal Ethics and Professionalism.

Chair, Insurance Section, State Bar of Texas (2000-2001). Member, Board of Directors (1998-2001).

Member, Editorial Board, BAD FAITH L. RPTR (2000-01). (This entity was merged into the INSURANCE LITIGATION LAW REPORTER, where I am an editor of some sort.)

Co-Chair, Bad Faith Sub-Committee, American Bar Association, Section of Litigation Insurance, Coverage Litigation Committee (1997-99).

Member, Planning Committee for CLE Program: Texas Insurance Law Symposium, South Texas College of Law (1998-2000).

Chair or Co-Chair, Planning Committee: Annual Insurance Law Institute, University of Texas School of Law (1996-2002).

Recipient, Outstanding Law Journal Article Award (1998). This was presented by the Texas Bar Foundation.

Member, Editorial Advisory Board, ENVIRONMENTAL CLAIMS JOURNAL (1996?-2006).

College of the State Bar of Texas (1991-2007).

Law School

Class Standing: 4th (? I think.). American Jurisprudence Awards for Highest Grade Received: Torts I (SMU), Criminal Procedure, Creditor Remedies (tie), Land Use Planning, Constitutional Law II (Governmental Powers), Natural Resources, and Commercial Transactions (tie). Law Review: Articles Editor, UMKC LAW REVIEW; Associate Book Review Editor, URBAN LAWYER.

Before Law School

Post-doctoral research grants from the National Endowment for the Humanities and Southern Methodist University; was Andrew W. Mellon Fellow in graduate school for two years; elected Phi Kappa Phi as an undergraduate.

APPENDIX ONE: EXPERT WITNESS ENGAGEMENTS

(Left Hand Margin: T= Trial Testimony; H= In-court hearings; D= Deposition; A = Arbitration. I have not listed cases in which I was retained to testify but did not or cases in which I was retained to consult only. When there is both trial and deposition testimony, both are put together under the date of the trial testimony.

- D *Vela v. Compos*, (County Court at Law, Cameron County, Texas #2008-CL-813-C). Deposition Taken” April 1, 2011. Topics. Problems in the context of agent actions and Insurance adjustment. Construction project: Issues: way agent signed application for premium financing, consequential cancellation of policy, problems with end of policy period, reading of policy by insurer, including inferences from knowledge of “occurrence,” to date of “occurrence,” the definition of “subsidence” and insurers statutory bad faith.
- D *Marquis Acquisitions, Inc. v. Steadfast Ins. Co.*, (County Court at Law # 2, Dallas County, Texas # CC—09-04702-B). Deposition Taken: March 16, 2011. Topics: Legal Conflicts, especially 1.06, mostly concerning defense lawyers and the liability insurer. In addition attorneys fees are an issue in the case, and I am designated to testify on this issue. Retained by the defendant-insurer.
- D *Menchaca v. USAA Texas* (9th Judicial District, Montgomery County, Texas) Deposition:) Taken February 23, 2011. Topic: Payables for residence with property damage caused by Ike: principal focus = roof. I principally testified on insurer bad faith in adjustment.
- D *Philadelphia Indemnity Insurance Company v. C.R.E.S. Management L.L.C.*, (S.D. Tex., Houston Div. #4:09-CV-01032). Deposition Taken: December 15, 2010. Topic: Whether the Insurer was guilty of either or both statutory and/or common law insurer bad faith in a several large or relatively large apartment and/or condominium commercial buildings in or near Houston Texas caused by Ike.
- T D *Bisland v. Financial Indemnity Co.*, (428th Judicial District, Hays County Texas.) Testified in jury trial. November 10, 2010. Deposition taken: September 25, 2009. Topics: Insurer management of an underlying liability case pursuant to its duty and right to defend, various *Stowers*-looking problems, plus the insurer’s treatment of one of the insureds, where his claim ended up being assigned to the victim-plaintiff in the underlying suit (This could be called, metaphorically, as “liability insurer claims-litigation malpractice.”)
- D *D’Andrea, M.D. v. Schmidt & Hoffer, L.L.P.*, (127th Judicial District Court, Harris County Texas. Taken twice: August 13, 2009 [215 pp.] and August 28, 2009 [118 pp.]). Topic: legal malpractice and breach of fiduciary duties. Themes: (1) Almost completely worthless case costing substantial sums to pursue but done anyway though both facts know early to the lawyer. (2) Title to patent at stake should have determined much more easily and less costly by a competent and knowledgeable person. (3) No

lawyer should ever call his client a criminal in the context of adversarial litigation. If the statement is true, it is probably a pro- found breach of fiduciary duties; if the statement is false, it is defamatory and therefore is still a breach of fiduciary duties. And so on, down a long, long list. Perhaps these should be counted as two depositions, but the lawyers in the litigation, did not do so, so neither will I.

- D Sentry Select Insurance Company v. Hosmer, 08-4254-CV-C-NKL (W.D. Mo.) Depo. Date: 10/12/2010, or there about. Topic: Among others: the duties etc., if any, running from a liability insurer to an insured who was not a party to a lawsuit.
- D *Scottsdale Commercial Development, Inc. v. Euler American Credit Indemnity Company*, No. CV2008-027700 Maricopa County, Arizona). Depo. Date: August 31, 2010. Topic: Policy interpretation, adjustment performance and practice & bad faith with respect to all of the former by a credit loss insurer.
- T D *Mid-Continent Casualty Company v. Eland Energy, Inc and Sundown Energy LP*, No. 3:06-CV-1576-D (BF)(Lead Case)(c/w 3:06-CV-1578-D)(N.D. Tex. 2006). Deposition taken on December 5, 2007. Trial testimony, August 26, 2010. Topics: Katrina-caused oil spill, related insurance, allegations of bad faith, perhaps plus very strange, erroneous, and unsupportable policy interpretations by the expert witness for the policyholder.)
- D *Birchman Baptist Church, Inc. v. United Fire Lloyds*, No, 342-238278—09; 342nd District Court, Fort Worth, Texas. Deposition Date: June 7, 2010. The litigation concerns suit for property damage covering hail damage and for recovery under the policy, plus insurer bad under both the common law and various statutes.. My testimony is on bad faith and it mainly concerned the insurer's decision to deny the claim being based on insufficient and poorly reasons. This testimony partly concerned the quality and logic of the insurer's investigation.
- T *Bledsoe v. Simmons*, No., CV-06-741 424th Judicial District, Blanco County, Texas (2009). In this case, the plaintiff alleged legal malpractice and breach of fiduciary duties against the attorney who represented her. Some attorney's fees were incurred in the underlying case, so they were part of the damages. I testified as to each of the preceding matters. The date of my testimony was March 8, 2010.
- D *Nevarez v. Wellington Insurance Company and Standard Guaranty Insurance Company*, No. D-1-GN-07-002-0024; 200th Judicial District, Travis County Court (2007). The case I am testifying in is an arbitration proceeding between the two insurers growing out of purely insurer v. insurer litigation which in turn grew out of the litigation cited above. The issue in the arbitration is whether the Wellington policy was in effect on the date of a fire at the Nevarez residence. (D: March 4, 2010. The principal topic was as just stated, plus the evidence upon which I rely for my opinions and my reasoning.) I was originally retained to testify on insurer bad faith in the underlying *Nevarez* but that case was settled close in time to trial.)
- D *Double Diamond Properties Construction Company v. NuWest Golf Course Construction Company*, No. 71-110-J-00055-09, American Arbitration Association. Deposition given on

February 25, 2010. Principal topics: requirements of §11.4 required of the Owner with respect to the Contractor? Did it have to be a “Builder’s Risk” policy? How should the term “soft cost” be understood? If an Owner fails to purchase, arrange for, or notify the Contractor regarding insurance, is the Owner to be understood as the Contractor’s insurer (or something its insurer). And so forth.

D *Salazar v. Medina*, No. 09—2-24170-MCV, 293rd Judicial District, Maverick County, Texas. Deposition given on January 29, 2010. Issues. Did the activities of two insurance intermediaries, who were employees, officers of, and owners of the same insurance agency, which did not involve the procurement of an insurance policy but which may have been related to that activity constitute part of their business of insurance? (The issues extended beyond that into other matters, but they did not pertain so directly and precisely to issues of insurance. They surely include issues areas of corporate or business ethics and responsibility, plus issues of torts and civil procedure. It is important to know that an insurance agency is a key defendant in this case.)

A *LaSalle National Bank, N.A. v. American International Speciality Lines Insurance Company*, (American Arbitration Association, Case No. 13 195 Y 00359 06) Testimony Given: Nov. 17-20, 2009 and January 5-7. 2010. Issues: insurance bad faith allegations first raised by the insured, but eventually raised by each side against the other under Delaware law. I testified to the insurer and against the insured. (I had given two previous depositions in this case.

D *National Union Fire Company v Continental Casualty Company*, (No. 07-CV-11073 (WHP) S.D.N.Y.) Given, in part: December 7, 2009). Principal topic: whether it was bad faith for an insurer to deny coverage under an “engineering malpractice” policy to deny coverage, after no empirical investigation, when an insured engineering firm was engaged in complex and highly technical repair of a commercial power generator, at least in part based upon its view that only design related engineering functions were insured, even though that proposition was not to be found in the policy.

T *Parsons v. Greenberg* (No. 017-217971-06, 17th Judicial District, Tarrant County, Texas) Given: November 3, 2009. Topic: legal malpractice in the service of process following the closing the statute of limitations window, in turn following the second year after the mandate in the relevant appeal in the underlying case. I testified for the plaintiff who represented himself *pro se*. The fundamentals of this case as presently tried can best be understood by reading *Parsons v. Turley*, 109 S.W.3d 804 (Tex. App.—Dallas, 2003, rev. den’d)

D *Park Memorial Condominium v. Lexington Insurance Company*, No. 2007-38187 (133rd Judicial District Court, Harris County Texas, Taken Friday May 8, 2009). Topic: Why does the plaintiff believe it has a bad faith case against the insurer. Or, put differently, upon what facts does the plaintiff believe it has a bad faith case against the insurer. I was de-

signed by the plaintiff to testify for it under Rule 199.2(b)(1). The designated topic was what the plaintiff organization believed about the insurer being in bad faith.

- D *Gray [M.D.] v. UnumProvident Corp.*, No. 2:08-CV-0209 (U.S. Dist. Ct., S. Div. of Texas, Corpus Christi Div., Taken: April 14, 2009). Disability coverage and bad faith dispute. Involving eye problems following retina surgery and an “own occ” policy. Quinn’s view: Inadequate investigation and poor analysis of what there was.
- D *Park Memorial Condominium Association, Inc. v. Lexington Insurance Company*, No. 2007-38187) 133d Judicial District Court, Harris County, Texas). Date given: January 30, 2009. Topic: bad faith in the adjustment of a property damage claim.
- T *Shiddell v. Kent Bevan & Dysart Taylor, Lay Cotter & McGonigle, P.C.*, #04 CV 238165 (Circuit Court, Jackson County, Kansas City, Mo., Div. 15) Topic: Insurance intermediary sued both an insurer both an insurer and its coverage and litigation counsel for malicious prosecution. This phase of the suit hinged mainly on the obtaining of a judgment which would be within the coverage of the law firm’s “malpractice” policy.) (Date: Jan. 14, 2009)
- T D *Gunter v. Oklahoma Farm Bureau Mutual Insurance Company*, No. CJ-2006-529 (Dist. Court of McClain County, Oklahoma) Date Taken: December 15, 2008) Topic: insurer bad faith in an UM/UIM case involving a rotator cuff tear caused by a MVA from the rear.) (Trial Testimony: Friday, 27, 2009)
- D *American International Specialty Lines Insurance Company v. LaSalle Bank N.A., [etc]* # 12 19 00359 06 (American Arbitration Association). Date Taken: December 12, 2008. Same topic as below. Focus on rebuttal-refutation reports and deposition of experts retained by LaSalle.
- D *Bradley v. Prudential Insurance Co of America, Texas Medical Association, Texas Medical Association Insurance Trust*, No. 07-0582 (Dist. Ct. 192, Dallas County, Texas). Date of Deposition: November 23, 2008). Topic: Group disability insurance and “its” Various certificate of insurance, etc.
- D *Beaird v. NRT Texas dba Coldwell Banker Residential Brokerage Co.*, 06-5794 (N.J., (FSH),200X). Date Taken: Nov. 22, 2008). Topic: whether a liability benefit program for real estate sales associates (aka agents) designed to fit into the large deductible of an E&O policy was itself insurance and hence whether CB’s handling of a suit against a former sales associate was proper, etc.. This was filed seeking class action certification.
- D *American International Specialty Lines Insurance Company v. LaSalle Bank N.A., [etc]* # 13 19 00359 06 (American Arbitration Association). Topic: Coverage, Bad Faith, Cancellation (perhaps), Lawyer Conduct. Date Taken: November 7, 2008. The type of insurance involved was loan insurance involving both pollution and secured collateral.
- D *Cloeren Inc. v. St. Paul Travelers, [etc.]*, B-060,470-C (260th Judicial District Court of

Orange County, Texas) Date taken: October 5, 2008. Topic: bad faith and issues of Business Income (aka business interruption) coverage—mostly—arising out of Rita.

- D *Davis v. Farmers Insurance & Truck Insurance*, _____ (195 Dist. Ct. Houston Texas) Date Taken: October 17, 2008. Topic: Suit against related companies; P was an employee of one (Farmers) and insured by the other (Truck) where the insurer's adjusters were employees of her employer. Central allegation: They mismanaged the defense of Davis in an accident and then refused to pay the legal fees of independent counsel she selected.
- T D *Pam Bruse for the Estate of Leila Grace Burford v. Western Surety Company*, 0716-CV-28228 (Circuit Court of Jackson County, Mo. at Kansas City) Date Taken: October 15, 2008) Topic: Surety bond as insurance and the applicability of the law of bad faith, including the Missouri "vexatious refusal" statute. Trial: March 6, 2009. Principal Questions: (1) Is a probate bond a type of insurance? Answer: Yes. (2) Was the adjustment conducted by Western Surety characterisable as bad faith under generally received industry practices and Missouri law" Answer: Yes.
- D *Industrial Safety Training Council v. XL Lloyd's Insurance Co. et al*, E-178,685 (Tx. Dist. Ct. #172, Jefferson County, Texas, 2007). Date Taken: September 9, 2008) Topic: Rita Losses—coverage, amounts, claim handling, and bad faith.
- D *Skinner v. McCullar*, GN-4033265 (Tx. Dist. Court #250, Travis County, Texas, 20XX). Date Taken: September 5, 2008. Topic: legal malpractice in the trial of a divorce case which was tried before a jury, in so far as it could have been, among other things.)
- D *Mid-Continent Casualty Co. v. Bay Rock Operating Co., St Paul Surplus Lines In. Co., &c.*, SA-07-CA-027-OG (W. Tex., July 30, 2008). Topic: blow-out of gas well and which Insurer owed what.
- T *Gouverne v. Care Risk Retention Group, Inc.*, 2:07-CV-206 (S.D. Tex., Corpus Christi Div., June 10, 2008). Topic: whether the plaintiff, a plastic surgeon, deliberately failed to disclose relevant information in his application for medical malpractice insurance even though the application required the disclosure; the application was included in the policy; and the applicant had warranted that he told the whole truth. An attorney from Lorange & Thompson took the direct testimony, and Paul Dodson cross examined.
- D HWM- *Coachman Industries, Inc. v. Royal Surplus Lines Insurance Co.*, 3:06-CV-00959- HTS (M. D. Fla. 19XX). Date taken: May 16, 2008. Topic: whether Royal's conduct was far enough outside the accepted norms of liability insurer conduct that the suit it brought against Coachman after it settled a death case for it and lost constituted a violation of a standard which "governs" the tort of malicious prosecution. The malicious prosecution as it now exists was "set up" by the opinion in *Royal Surplus Lines Insurance Company v. Coachman Industries, Inc.*, 184 Fed. Appx. 894, 2006 WL 1674261 (11th Cir. 2006), which opinion was modified slightly in one part by a supplementary opinion which is not

to be found even on WestLaw. (This case settled a week after my deposition.)
The deposition was taken by Fay Ryan of the Butler Pappas firm in Florida, and the record was protected by John Glenn of the AndersonGlenn firm in Florida.)

T H *Bryce v. Unitrin Preferred Ins. Co. &c.*, 06-951-C277 (277th Dist Ct., Williamson County).

Date: May 12, 2008. Topic: expertise qualifications under Rule 702. The court denied Plaintiff's motion to disqualify Quinn on June 2, 2008. Veronica Carmona Czuchna conducted the direct examination, and Mark Kincaid conducted the cross. I testified at the On June 23, 2008; the direct examination was conducted by Czuchna and another by Tom Culpepper, for the agent, and the cross again was conducted by Kincaid.

D *BillMatrix v. Higginbotham Insurance Agency & McQueary Henry Bowles Troy, LLP Numbers 05-11743 & DC-05-11740-D. (95th District Court, Dallas County, Texas) Taken: April 4, 2008. This is suit against insurance agents-or-brokers for failure to procure a requested type of insurance policy, and/or a failure to give notice or explain and/or advise, among other things. The deposition was taken by Thomas Culpepper (Thompson Coe for Higgintham) and Gregory Blaies (for McQueary). Eric Fein protected the record.*

D *E.A.Renfroe & Company v. Moran & Rigsby*, No. 06-WMA-17532-S (N.D. Ala., S. Div. Birmingham). Date taken: January 30, 2008. Topics: Katrina related. Employment contract of independent adjuster, its relation to a contract-based "Code of Ethics," etc'

D *Delilah Media Group, L.P. v. Aon Risk Services of Texas, Inc.*, No. 06-08627-E (County Court at Law #5, Dallas County, Texas). Deposition taken on January 16, 2008.
Topics: insurance intermediary charging both fixed fee and commissions after having agreed not to do so; whether the fixed fee was unconscionably large, whether there had been false advertising, whether the intermediary has told the truth to or concerning its customer, which includes the well known night-time DJ. (This case settled shortly after my deposition.) Jennifer P. Adams from Baker Botts took the deposition, while a partner from K&L Gates/Hughes & Luce (Clayton L. Falls?) protected the record.

D *Coachman Industries, Inc. v. Alternative Service Concepts L.L.C., and Willis of Illinois*, No. 06-0892 (S.D. Tex. 2006). Deposition taken on December 6, 2007. Topics: Late notice to an excess liability carrier and the causation responsibility thereof regarding an underlying fire case. (The Alternative Service Concepts branch of the case has settled but the Willis portion is moving toward trial.)

D *Travelers Property Casualty Company of America v. National Union Insurance Company of Pgh, Pa.*, No. 4:06-CV-946 (W. Mo. 2006). Deposition taken on November 20, 2007. Topics: whether the "Top-Down Purported Rule" was actually a rule and whether it could be justified, how the forgoing issue relates to the economic loss rule, whether a primary carrier had a duty of good faith an fair dealing to an excess carrier that had declined to

participate in a subrogation action, whether it would be malpractice for a lawyer to advise an excess carrier not to participate; the meaning of odd policy wording, and so forth.

- D *Gressler v. Medical Protective Co*, No. 95-10027-F (116th Judicial District of Dallas County, Texas) Topics: insurer bad faith re duty to defend, attorney malpractice and breach of fiduciary duties in connection with an underlying bad mal case in which a jury entered a \$600MM verdict which was highly publicized. October 4, 2007: This was the first 6 hours of the deposition and there will be more to come. There are three lawyers defending; only the first took up the 4th, and he was then no through. The second part of the deposition occurred on January 23, 2008, and it lasted approximately 5 hours, or so.
- D *Marketfare Annunciation v. United Fire & Casualty Co.*, No/s. 06-7232, C/W -7639, -7543, and -7644 (E.D. La. 2006). Katrina case involving several grocery stores. Issues: flood v. wind-and-rain, plus insurer bad faith. (Deposition: Two-thirds of a workday affair, taken on September 14, 2007 in New Orleans.)
- D *Empire Funding Holding Corp. & Island Wood Investments, LLC. v. Hohmann, Taube, & Summers, LLP & Eric Taube*, No. GN 304035 (345th Judicial District of Travis County, Texas). Topic: Legal malpractice etc. arising out of problems generated by a loan closing and related security interests—including a UCC-3--in relationship to a bankruptcy, etc. (Depositor: All day affair taken on August 21, 2007 in Austin, Texas)
- D *Zurich American Insurance Company v. Sabre, Inc. v. National Union*, No. 48-216486-06 (48th Judicial District of Tarrant County, Texas). Topic: insurer bad faith. Underlying case: suit by Northwest Airlines against Sabre regarding antitrust, defamation, disparagement. Issues: Zurich's handling of the underlying case re defense and indemnity and whether its conducts met the requirements of statutory good faith and fair dealing. (Nearly an all day affair taken on August 1, 2007 in Austin, Texas.)
- D *Southern Athletic Club v. The Hanover Insurance Company, Property Loss Consultants, L.L.C., & Aparicio, Walker, & Seeling, and Ron Davis*, No. 105-943 (34th Judicial District, Parish of St. Bernard, 2006). Topic: Katrina coverage. Problems: Agent, Insurer, Independent Adjuster. My report was on all three topics. By the time of my deposition only the intermediary was at issue, and it settled within a week of my deposition and several days before trial. (Deposition: June 5, 2007—approximately a 1/2 day affair.)
- T *Pool v. Allstate Texas Lloyds*, No. GN303334 (126th Judicial Dist., Travis County, Texas, April 27, 2007). Topic: Attorneys Fees.
- D *K-Bin & Shintech v. Austin Industrial, Zurich American Insurance, & British American Insurance*, No. 10498*BH99-1 (23d Judicial Dist., Brazoria County, Texas) (D: January 10, 2007; Austin, Texas; all day affair.) Among the issues were these: Was BrAm guilty of statutory bad faith in dealing with the plaintiff's claims? Same for Zurich, an excess carrier? What about coverage for the Austin Industrial indemnity agreement? Was the plaintiffs' settlement for \$10mn in the underlying burn case recoverable from its liability insurers? And so forth.

- D *Haskell Co. & Liberty Mut. Ins. Grp. v. Berkley Ins. Co., &c.*, No. 05-CVS-10610 (Mecklenburg Cnty., N.C.)(D: July 14, 2006; Richmond, Va.) Among the issues in this insurance case are the following: Was Haskell an additional insured under a policy issued to one of its sub-contractors? Did Berkley properly deny coverage to its named insured upon the grounds of non-cooperation? Was notice proper? What exclusions applied, if any? Was there any bad faith of any kind applicable? What are Liberty Mutual's subrogation rights, if any? And so forth
- D *Hargrove[s] v. Auto Club Family Insurance Company*, No. 2:05-CV-02009-JWL (D. Ks.-- Kansas City) (D: June 9, 2006). This was a coverage and bad faith case involving a couple who owned a home in Olathe, Kansas, who suffered some physical injury to the house as the result of a hail storm, and who were extremely dissatisfied with the adjustment performance and decisions of the insurer. I was asked to testify on bad faith and related topics, after an expert was designated by the plaintiffs and deposed. Just before trial, the judge apparently removed the bad faith issues from the case, under Kansas law.
- D *Cleveland Inspection Services, Inc. v. Evanston Insurance Co. and Markel Insurance Company*, No. 2001-58701 (189th District Court of Harris County, Texas) (D: April 28, 2006). This was a coverage and statutory bad faith case arising out of an engineer and architect professional service policy and the meanings of the phrases "professional services" and "inspection services," and—perhaps—the word "inspection." The underling case involved a natural gas explosion and the "One Call System."
- D *Wireless Communications Technology v. Hale and Dorr, LLP*, No. 2002-51474 (S.D. Tex. – Houston) (D: March 24, 2006). Deposition pertains to malpractice in a corporate lawyering context by outside counsel. The problem involved an inter-state reorganization of a Utah corporation, doing business internationally (and especially in Africa), run in Texas and perhaps Oklahoma by some of the principals, where the reorg was conceptualized, designed, and executed, at least in significant part by Mass. lawyers (as well as Utah lawyers), at least in part for a Mass principal to-be, who financed at least some of the arrangement, where the existing corporation "became," "was transformed into," or was (sort of) "converted into" or replaced by a Delaware corporation. A central problem pertains to the replacement of the stock of a significant holder of shares in the earlier company. The defendants contend that the plaintiffs were not their clients.
- D *Special Risk Services Group v. Trumble Steel Erectors, Inc. v. KAS, Inc.*, No. 5:04-CV-0289 (U.S. District Court (N.D. Tex. Lubbock Div.) (D: December 19, 2005). (Deposition given regarding prejudice and late notice, how *Stowers* works, insurer decision-making, and (to a small extent) intermediary conduct which was part of the point of my expert report).
- D *Beck v. [1] Koons, Fuller, Vanden Eykel and [2] Terry*, No. GN402126 (53rd District Court, Travis County, Texas) (D: December 6, 2005). (Testimony as to malpractice, fiduciary duty, breaches, etc. by divorce lawyers with respect to their client).
- D *Great American Ins. Co. v. Federal Ins. Co.*, No. 304 CV-2267-H (N.D. Tex. Dallas Div.) (D: November 11, 2005). The *action* in this case pertains to (1) employment-relations to modified CGL policies; (2) good faith and fair dealing; plus (3) subrogation rights.
- D *Scottsdale Insurance Company v. U.S. Fire Insurance Co.*, No. 04-01159 (160th District Court, Dallas County, Texas) (D: October 24, 2005). This case concerns contract reformation, the combination of a CGL and a professional liability policy, the significance of a binder, and related problems.

- T D *Conseco Health Insurance Co. v. Klug*, No. H-04-2229 (United States District Court for the Southern District (Houston Division)) (T: October 21, 2005) (D: June 21, 2005). The theme of the action, so far as I am concerned, is an attorney's violation of a previous client's confidential information. Fiduciary duties were, so far as I am concerned, the major issue.
- D *Auto-Owners Ins. Co. v. Haas, et. al.*, No. 034-1738 (Missouri Cir. Ct., St Louis City, Division 5). (D: October 12, 2005). The theme of this action is regarding bad faith pertaining to a liability policy and Worker's Compensation, as well as employee exclusions.
- T D *Sheldon v. The Hartford Ins. Co. & Desert Mountain Agency, Inc.*, No. CV-2003-08182 (2nd District Court, Bernalillo County, New Mexico). (D: October 7, 2005; T: December 15, 2005). The action in this case pertains to bad faith in relationship to an auto policy.
- T D *McGuire, Craddock, Strother & Hale, PC. v. Transcontinental Realty Investors, Inc. and RT Realty, L.P.*, No. 00-8050-C (68th District Court, Dallas County, Texas). (D: October 7, 2005) (T: August 10, 2006). This began as a suit by a law firm to recover fees from a client. The client counter-sued for breach of fiduciary duties, malpractice, over-charge, and related actions. I testified for the client on matters in the counter-claim.
- H *Franks v. Broadway*, No. 03-00-12378-CV (13th Judicial District, Navarro County, 2003) (H: April 14, 2005). My testimony concerned whether insurance policies were completely provided in discovery and whether those insurance policies provided coverage for an accident which involved the death of an infant. As nearly as I could make out, a truck driven by Cleaster Broadway hit a bridge, and the bridge collapsed. The principal defendant in the case was Schneider National Carrier.
- D *Peacock Construction Co., Inc. v. Hartford Lloyd's Ins. Co.*, No. B-04-111 (S.D. Tex. [Brownsville Division] 2004). (D: March 11, 2005). (Fundamental issues: (1) Did a contractor-subcontractor agreement make the general contractor an insured under the subcontractor's policy? (2) Was the indemnity agreement therein valid? (3) Art. 21.21).
- D *LaQuinta v. Lexington Insurance Company, &c*, No. 02-12164-E (101st District Court, Dallas County, Texas) (D: February 14, 2005). (Fine. New Building = replace. Bad Faith, &c).
- D *Burney v. Odyssey Re (London) Ltd.*, No. CA:2-04CV-032-J (N.D. Tex., Amarillo Division) (D: December 9, 2004). (Insurance: bad faith-insurer's rights and duties when it eliminates a RRR and substitutes counsel.) (Two insurers were defendants; the second one is Sphere Drake Insurance Company.)
- T D *Burns v. Allstate Texas Lloyds [Insurance] Company*, No. 96-206616-04 (96th District Court, Ft. Worth, Texas, 2003) (October 27, 2004). (Some Issues: water damage, mold losses, causation, insurer bad faith.) (The first named defendant was Chad Lindt, an Allstate adjuster.) (T: November 16, 2004).
- T H D *1212 Westheimer Group, L.P. v. Western Heritage Insurance Company*; No. GN304030 (126th District Court, Travis County, Texas) (October 26, 2004). (Some Issues: Storm and/or rain loss versus "wear and tear," &c, usual bad faith issues.) (H = Expert witness qualification hearing. Judge Dietz ruled MSQ an expert qualified to testify in a first-party property case.) (January 6, 2005).

- D *Pacific Motor Transport Company d/b/a Pacer Pacific Company v. Lockton Companies, Inc. et al.*; C.A. No. 2:03-CV-00362 (E.D. Tex. Marshall Division) (D: October 12, 2004). (Some Issues: truck accident -- agent-broker; MGA; claims procedures for self-handler with eventually liquidated fronting company; adjustment; MCS-90; &c).
- D *Allen v. Midwest National Life Ins. Co. of Tennessee*, No. 03C434 H (C) (N. Okla. 2003). (D: September 27, 2004). (Health insurance: denial for “Pre-Existing Condition,” “Rescission,” & Bad Faith issues.)
- T D *Swicegood v. The Medical Protective Company*, No. 3-95:CV-0335-D 9 (N.D. Tex. 1995) (D: August 17, 2004). (Significance of sex acts exclusion in a medical malpractice case where a married, middle-aged, male M.D. seduced a young adult female patient with assertions of love, pages of poetry, writing of songs, and samples of prescription-level medications, and abandoned her). (T: September 15, 2004).
- D *Ranger Ins. Co. v. Scottsdale Ins. Co.*, No. 17-174271-98 (17th District Court, Tarrant County, Texas) (August 10, 2004 and August 23, 2004). (Insurance and the “Revival Rally for Christ”).
- D *Hammer Trucking, Inc. v. St. Paul Fire and Marine Insurance Company*, No. 00-12-741 (271st Judicial District, Wise County, Texas) (March 30, 2004). (Insurance bad faith case arising out of the adjustment and litigation of a truck accident).
- T *Matteucci v. Safeco Ins.*, No. 01CC-003150, Division 6 (Circuit Court St. Louis County, State of Missouri) (March 11, 2004). (Homeowner’s insurance, fraud allegations, bad faith, including Missouri statutes).
- D *Phelps Dunbar v. Brittany Ins. Co.*, No. 02CV-3237 (U.S. District Court, Southern District of Texas, Houston Division) (February 23, 2004). (Legal malpractice, breach of fiduciary duties, fee statements-all in the context of a fee dispute between the law firm and small components of the “follow” component of the London Market: arises out of BFI coverage litigation).
- D *Southern Farm Bureau v. Trinity*, No. 2003-49-4 (170th Judicial District, McLennan County, Texas) (February 11, 2004). (Stowers and Art. 21.21).
- D *Brown v. American Insurance Company of Texas*, No. 017-185548-00 (17th Judicial District, Tarrant County, Texas) (January 15, 2004). (Health insurance cancellation and adjustment).
- D *Robert v. Travelers*, No. 3-02-CV2757M (U.S. District Court, Northern District of Texas, Dallas Division) (January 5, 2004). (UIM/Bad Faith.)
- T D *Garza v. Medina*, No. C-405-02E(1) (275th Judicial District, Hidalgo County, Texas) (D: December 4, 2003; T: July 22-23, 2004). (Issues: Father, daughter, lawyer, adultery, pregnancy, and contract for legal services: principal issue lawyer violation of fiduciary duty).
- A D *ONEOK v. Federal Insurance Company*, Arbitration (October 24, 2003). (Testimony concerning D&O insurance, adjusting such claims, attorneys’ fee audits by insurer.) Arbitration Hearing (November 10-12, 2003).
- H *Hartford Fire Insurance Company v. University of Houston*, No. 730-1-2374-W (State Office of Administrative Hearings, Austin, Texas, October 14, 2003). (Testimony concerned deductibles and claims handling in a general liability policy which was part of an Owner Controlled Insurance Program.)

- T *Nuevo Energy Co. v. Ranger Ins. Co.*, No. 2002-30174 (133rd District Court, Harris County, Texas) (October 6, 2003). (Testified on reasonableness of attorneys' fees in a fee-shifting matter before the court only).
- D *Prince v. Zurich-American Insurance Company*, No. 2002-CVE-000617 D2 (111th District Court, Webb County, Texas) (September 16, 2003). (Various forms of insurer bad faith in the context of UIM coverage).
- H *In re R&E Systems*, No. 02-13434-FRM (Bnkruptcy Ct. W.D. Tex.) (July 31, 2003). (Motion for sanctions against a lawyer for disputed creditor brought by debtor.)
- D *Breckenridge Enterprises, Inc. v. Philadelphia Life Insurance Company*, No. 3:01-CV-562-P consolidated with No. 02-CV-538 (U.S. District Court, Northern District of Texas, Dallas Division) (June 26, 2003). (Unusual insurance case involving a variety of issues).
- T D *Dairy Farmers v. Traveler*, No. 99-0637-CV-W-6 (U.S. District Court, Western District of Missouri) (D: June 6, 2003; T: July 10, 2003). (Administration of settlement involving several policies including at least one excess policy).
- D *Haynes v. Gronwaldt*, No. A-144,481-B (60th Judicial District Court, Jefferson County, Texas) (May 8, 2003). (Attempt to invalidate Mobil Oil's worker's comp program over many years).
- D *RSR Corporation v. A.I.U. Insurance Company, et al.*, No. 93-0127; (71st District Court, Harrison County, Texas) (March 17, 2003 and March 25, 2003). (Pollution exclusion, "hostile fires," excess policies, allocation and regulatory estoppel, statutory bad faith, &c).
- D *Wedge Management, Inc. v. Tobey*, No. 98-09512; (345th District Court, Travis County, Texas) (March 7, 2003). (Legal malpractice, breach of fiduciary duties, violations of legal ethics, &c).
- A D *Lone Star Corrugated Container Corporation v. CNA Insurance Company--Group Benefits*, No. 71 E 195 00360 02 (Before the American Arbitration Association, Dallas, Texas) (March 3, 2003). (Non-subscriber policy: interpretation, waiver, estoppel, etc.) (Arbitration testimony given on April 16, 2003 in Dallas, Texas).
- D *Glover v. Fortis*, No. 2001-06943 (133rd District Court, Harris County, Texas). (Issues: good health clause in life insurance policy, misrepresentation clause, adjustment practice, intermediary performance) (February 13, 2003).
- D *Mercer v. Pittman & Fink*, No. GN102172 (98th District Court, Travis County, Texas) (Issues: lawyer misconduct: fee problems, pleading problems, etc.) (January 22, 2003).
- T D *McMillin v. State Farm Lloyds*, No. GN 200297 (201st District Court, Travis County, Texas). (Issues: bad faith, homeowner's: property insurance: water damage and mold) (D: January 21, 2003; T: December 4, 2003).
- H [Identity Confidential] (Grievance Committee [Dallas], December, 2002). (Testify before evidentiary panel).
- D *In re J. T. Thorpe Co.*, No. 02-41487-H5-11 (Bankr. Ct., S.D. Tex. 2002). (Insurance coverage and related issues and a "pre-pak" Ch. 11 involving asbestos) (December 15, 2002).
- D *United Investors Realty Trust v. Hartford*, No. 3:01-CV-2083-BC (Northern District of Texas 2002) (December 12, 2002). (Directors & officers insurance).

- H *In the Matter of the Marriage of Forage and Gallagher*, No. FM205428 (250th District Court, Travis County, Texas) (November 4, 2002). (Attorney disqualification).
- H D *Texas v. Farmers Group*, No. GV-202510 (261st District Court, Travis County, Texas) (2002) (D: October 17, 2002). (Temporary Injunction Hearing: trade secrets, &c).
- D *Dillard's, Inc. v. TIG Insurance Company, Inc., et al.*, No. CV-00-8538 (Circuit Court of Pulaski County, Arkansas) (October 11, 2002). (Late notice issues, excess carrier behavior and structure of industry, interpretation issues, &c).
- D *Consumers County Mutual Insurance Company v. Bichsel Trucking v. Bichsel Trucking*, No. 48-182953-00 (48th District Court, Tarrant County, Texas) (October 9, 2002). (Truck insurance: certificates of insurance, agent performance, Art. 21.02, and Art. 21.04, custom and practice in the industry, &c)
- T D *Stinson v. Winkelmann*, No. 2001-23155; (334th District Court, Harris County, Texas) (August 9, 2002 and August 20, 2002). (Truck insurance: variety of problems including *Stowers*, &c).
- D *National Union Fire Insurance Company of Pittsburgh, Pa. v. Keck, Mahin & Cate*, Nos. 94-018363 and 94-018363A (80th District Court, Harris County, Texas) (July 2, 2002). (See Texas Supreme Court decision for the range of issues).
- H *Janice Copeland vs. Dallas Home for Jewish Aged, Inc.*, No. DV98-04690-G; (134th District Court, Dallas County, Texas) (May 20, 2002). (This was a hearing regarding the relationship between *Stowers* and Art. 4590i, § 11.02(c).)
- D *Gulf Insurance Company v. Sonia Y. Jones v. Cowles & Thompson, P.C.*, No. 3:00-CV-0330-L (United States District Court for the Northern District of Texas, Dallas Division) (May 1 & May 8, 2002). (*Stowers*, legal malpractice, &c).
- D *Commonwealth Insurance Company v. Stone Container Corp.*, No. 99-C-8471 (United States District Court for the Northern District of Illinois, Eastern Division) (March 29, 2002). (Agent liability, policy configuration, &c).
- D *Clayton Williams Energy, Inc. v. Lexington Insurance Co.*, No. MO01CA017 (United States District Court for the Western District of Texas, Midland Division) (March 20, 2002). (Oil and gas insurance problems, adjustment practices, reservation of rights letters, &c).
- D *Citizens 1st Bank, Tyler, Texas v. St. Paul Mercury Insurance Company v. James I. Perkins*, No. 6:01CV421 (United States District Court for the Eastern District of Texas, Tyler Division) (March 8, 2002). (D&O insurance problems, adjustment problems, &c).
- D *American International Specialty Lines Insurance Company v. Res-Care, Inc.*, No. 3-00-CV-2201-R (N.D. Tex.) (February 7, 2002).
- H *de la Garza v. State Farm Fire & Casualty*, No. 96-01253-1 (County Court at Law #1, Nueces County, Texas) (November 1, 2001). (Class action certification.)
- H *Bailey v. Kemper Insurance Company, et al.*, No. 2001-030 (4th District Court, Rusk County, Texas) (September 4, 2001). (Class action certification.)

- T *Caro v. Sharp*, No. 23,137 (335th District Court, Bastrop County, Texas) (August 30, 2001). (Title insurance.)
- D *Cabot Oil v. Ranger Insurance Company*, No. DC-00-266 (229th District Court, Starr County, Texas) (August 17, 2001). (Oil and gas specialty insurance.)
- D *Stewart & Stevenson Services, Inc. v. Certain Underwriters at Lloyds of London*, No. 96-48409 (281st District Court, Harris County, Texas) (D: started on May 23, 2001 and completed on November 9, 2001).
- D *Travelers Indemnity Company of Connecticut v. Zurich Insurance Company*, No. 3-00-CV-0440M (N.D. Tex. 1999) (April 12, 2001).
- D *Vera v. Holms*, No. 99-2049-E (148th District Court, Nueces County, Texas) (February 5, 2001). (Legal malpractice).
- D *Fraley, et al. v. Daniel, et al.*, No. cc-99-5823-c (County Court at Law No. 3, Dallas County, Texas) (January 22, 2001). (Legal malpractice, &c).
- H *Dryer v. Mh/RFD, LLC*, No. GN-003513 (261st District Court, Travis County, Texas) (December 20, 2000). (This was a hearing regard a Motion to Disqualify the defendant's counsel.)
- H *Palacios v. Sloan*, No. 349-4381 (349th District Court, Anderson County, Texas) (September 8, 2000). (This was a hearing regarding the relationship between *Stowers* and Art. 4590i, § 11.02(c).) (Perhaps this is better classified as a post-trial hearing.)
- D *HealthSouth Corporation, et al. v. Moore, et al*; No. 348-172230-98 (348th District Court, Tarrant County, Texas) (May 23, 2000).
- D *Cunningham Capital Corporation v. Doyle, Restrepo, Harvin & Robbins, L.L.P.*, No. 97-00944, (250th District Court, Travis County, Texas) (date of deposition uncertain).
- D *Butler v. H. R. Management Company*, No. 96-50493 (269th District Court, Harris County, Texas) (March 13, 2000).
- D *Total Tool Rental, Inc. v. United Capitol Insurance Company* , Civil Action No. H-98-3968 (S.D. Tex., Houston Division) (January 11, 2000).
- D *St. Paul Fire & Marine Insurance Company and St. Paul Mercury Insurance Company v. Green Tree Financial Corp. – Texas*, Civil Action No. 3:94-CV-688-R (N.D. Tex., Dallas Division). (November 10, 1999).
- D *Autobond Acceptance Corp. v. Progressive Northern Ins. Co.*, No. 98-11559 (281st District Court, Harris County, Texas) (August 31, 1999). Issue: propriety of insurer's cancellation of something like mortgage insurance, only involving cars.
- T D *Cathey v. Meyer*, No. 97-1786-3 (74th District Court, McLennan County, Texas) (June 7, 1999). (Legal malpractice, &c).
- D *Walters, Benders & Strobehn, P.C. v. Paradigm Ins. Co.*, No. 98-CV-17957 (Circuit Court of Jackson County, MO, filed July 24, 1998) (February 9-10, 1999). (Legal fees, &c).

- D *Frank v. Chubb Lloyds Ins. Co. of Texas*, No. 97-9244-B (44th District Court, Dallas County, Texas, filed October 10, 1997). (Value of my attorneys' fees only).
- D *Gatch vs. Holms*, No. 98-549-G (319th District Court of Nueces County, Texas). (D: January 20, 1999). (Legal malpractice, &c).
- T *United States of America v. Loe*, No. 4:97-CR-71, (United States District Court for the Eastern District of Texas (Sherman Division)). (T: November 2, 1998). Issue: fire case in a boat yard giving rise to a criminal prosecution relating to insurance fraud.
- T D *Fitzgerald v. State Farm Lloyds*, No. 96-10131, in the 250th District Court of Travis County, Texas. (D: October 21, 1998; T: November 11, 1998).
- D *First Insurance Company of Hawaii v. Scottsdale Insurance Co.*, No. 97-00831 SPK (D. Hawaii) (October 20, 1998).
- T *Janik v. Amica Insurance*, No. 395-CV-2594-D (N.D.Tex. (Dallas Division), August 26, 1998). Issue: water damage resulting from a sewer leak, among other things.
- D *Everett v. Lloyd's Underwriters*, No. 342-152198-94 (342nd District Court of Tarrant County, Texas).
- D *American National Insurance Co. v. Aetna Casualty and Surety Co.*, No. 95-CV-0993, 122nd Judicial District Court of Galveston County. (Deposed twice)
- D *Certain Underwriters at Lloyd's v. Bristol-Myers Squibb Co.*, No. A-0145,672-F, 58th Judicial District Court of Jefferson County, Texas (1994).
- D *Royal Indemnity Co. v. Thrift*, Civil Action No. SA. 96-CA-1326, in the United States District Court for the Western District of Texas (San Antonio Division).
- D *Bristol-Meyers Squibb Co. v. AIG Ins. Co.*, No. A-0145672 (58th Judicial District Court for Jefferson County, Texas (1994)).
- T D *Grubbs Auto Park, v. Employers Insurance Company of Wausau*, No. 96-15979-95 (96th Judicial District Court of Tarrant County, Texas (1996)). Issue: hail damage.
- D *American National Fire Insurance Company v. Masters*, No. 95-007672 (334th Judicial District Court of Harris County, Texas (1995)).
- D *State Farm Mutual Automobile Insurance Company v. Agee*, Class Action No. 96-01410 (98th Judicial District Court of Travis County, Texas (1996)).
- D *Robinson v. Blackwood*, No. 95-03275 (126th Judicial District Court of Travis County, Texas (1996)). Legal malpractice case.
- T D *Antolek v. Price*, No. 94-14499 (250th Judicial District Court of Travis County, Texas (1995)). This was a legal malpractice case. I testified for the defendant lawyer represented by Earl Landers Vickery ("Lanny"), while the plaintiff was represented by David Dunham.
- T D *Triton Energy Corp. v. Federal Insurance Company*, No. 92-26185 (152nd Judicial District Court of Harris County, Texas (1993-4)). (Quasi-trial testimony given).

- D *Acceleration National Insurance Company v. Amwest Savings Association*, No. 3-93-CV-1473-T (United States Judicial District Court for the Northern District Court of Texas, Dallas Division (1994-5)).
- T D *St. Paul Insurance Company v. City National Bank of Colorado City, Texas*, No. 12, 482 (32nd Judicial District Court of Mitchell County, Texas (1994)) (attorney's fees).
- D *Hartman v. St. Paul Fire & Marine Insurance Company*, No. 4:95-CV-921-IIA (N.D. of Tex., Fort Worth Division (1993)).
- T D *Hartman v. St. Paul Fire & Marine Insurance Company*, No. 3-93-CV-890-H (N.D. of Tex., Dallas Division (1993)).
- D *Rothrock v. Akin Gump*, No. 90-10237-A (14th Judicial District for Dallas County (1992)). Issue: legal malpractice in connection with petroleum production.
- T D *Webster v. Insurance Corporation of America* (113th Judicial District Court of Harris County, Texas (1992)). This case is reported as *Ins. Corp. of Am. v. Webster*, 906 S.W.2d 77 (Tex. App.--Houston [1st Dist.] 1995, writ den'd).

T/A = 36

H = 14

D = 124 (or thereabouts)

APPENDIX TWO

LAW AND LAW RELATED PUBLICATIONS

Book Sections

- *The Eleven Commandments of Professional Responsibility: Gallifmaufry Secundum*, Book Two, THE ETHICS COURSE (5th Ed. 2004). (This is currently an electronic publication on a CD Rom, but it was also for a couple of years at least included in a paper edition of the volume in due time. It came out in late 2004 or early 2005. The essay-outline is approximately 376 pages long, and it is a revision and update of the publication immediately below. The CD version has been (or will be) distributed to those taking the required Bar course for new lawyers at least through the end of 2007. Evan Koch was the co-author.)
- *The Eleven Commandments of Professional Responsibility: A Gallifmaufry*, THE ETHICS COURSE (4th Ed. 2001). (This is a revision/extension of a piece which has been used in some CLE functions. It is approximately 150 pages long. It is partly an essay and partly an outline. For several years, it was regularly distributed to those attending a course required of new lawyers by the Bar.)

Articles: Some of the following articles, squibs, &c. can be found on my expert witness website: www.michaelseanquinn.com, in the Articles section.

- *Expert Testimony in Various Types of Insurance Cases*, 31 INS. LITIG. RPTR 237-260 (May 18, 2009) .
- *Book Review: Kenneth S. Abraham, THE LIABILITY CENTURY: INSURANCE AND TORT LAW FROM THE PROGRESSIVE ERA TO 9/11*. (Cambridge, Mass., Harvard University Press, 2008). 31 INS. LITIG. RPTR 5-15 (February 10, 2009). (This entry is repeated under "Book Reviews later in the Resume.) 33.3 Ins Litig. Rptr 104-05 (Feb. 29±, 2011
- *Lawyer-Performance Suits Brought by Liability Insurers Against Defense Counsel*, v.30#8 INS. LITIG. RPTR 245-65 (June 1, 2008). Should liability insurers defending insureds have causes of action to sue the defense lawyers and recovery from them when those lawyers are guilty of legal malpractice and have damaged the carrier? What are attractive causes of actions and legal theories? (This paper was written with Susan Scott Hayes.)
- *Coverage for Extra Expenses in Running a Business Following a Catastrophic Event*, John DiMungio, Ed., CATASTROPHY CLAIM, §§ 11.1-11.9. WestLaw, 2008. This anthology/book was published by WestLaw and simply put into their catalogue. I authored Chapter 11. I have never actually seen it.
- "Agents" and "Brokers": *Texas Statutory Definitions and Rule-Entailing Characterizations*, 8 J. OF TEXAS INS. LAW 2-16 (Fall 2007).
- *Legal Malpractice and Evidence from Experts*, Priscilla Anne Schwab, Ed., THE LITIGATION MANUAL: FIRST SUPPLEMENT 1130-52 (ABA 2007). Olga Seelig is the coauthor; Judge Seelig sits in Austin Texas, part time, and practices with Martin, Dissere, and Jefferson, in their Austin office. This essay is an invited-by-the-ABA 2006 revised version of an earlier piece which first appeared in the LITIGATION JOURNAL (Fall 2003) and then in an earlier version of THE LITIGATION MANUAL.
- *Safeco Insurance Company v. Burr: The United States Supreme Court Creates New Guidelines for the Use of Credit Reports in Underwriting*, 29 INS. LITIG. RPTR 453-60 (July 27+, 2007). John Dimugno was the "senior author," and I was listed second.

- *When the Storm Passes: How to Prepare and Maximize Insurance Claims After a Hurricane*, 4.6 OIL & GAS FINANCIAL JOURNAL ____ (June 2007) (Vince Morgan of Pillsbury Winthrop should be classified as the senior author.)
- *Liabilities of Intermediaries When Sued by Their Customers (Part III)*, 29 INS. LITIG. RPTR. 173-79 (April 2, 2007). I was the co-author with Susan Scott Hayes.
- *Legal Duties of Insurance Intermediaries to Their Customers (Part II)*, 29 INS. LITIG. RPTR. 117-48 (March 15, 2007). Susan Scott Hayes was the co-author with me.
- *Legal Duties of Insurance Intermediaries to Their Customers (Part I)*, 29 INS. LITIG. RPTR. 53-77 (February 27, 2007). Susan Scott Hayes was the co-author with me.
- “The” “*Insurance Buyback*,” 28 INS. LITIG. RPTR. 661-686 (November 1, 2006). This essay concerned the use of insurance policy buybacks as a method of settling insurance disputes. It considers legal theory, the relationship between buybacks and releases, and a number of recent cases.
- *The Recent Spread of Mysterious Insurance Litigation*, 28 INS. LITIG. RPTR. 621-31 (October 13, 2006). This essay concerns *Fairfax Financial Holdings v. S.A.C. Management*, currently pending in federal district court in New Jersey, after having been filed in state court there. An insurer (more or less) is seeking \$5b in damages from a short-selling hedge fund, and others. The thesis of the articles is that this is a new kind of insurance litigation.
- *Katrina and Her Cat-ty Stormy Colleagues: Extra Expenses & Business Interruption Coverages*, 28 INS. LITIG. RPTR. 163-200 (May 15, 2006). Co-author: Pam Hopper, as before.
- *Legal Ambiguity: Varieties/Virgules/Vagaries*, 28 INS. LITIG. RPTR. 5 (February 10, 2006)
- *After the Storms: Important Insurance Considerations for the Energy Industry Following Hurricanes Katrina and Rita*, 30 OIL, GAS AND ENERGY RESOURCES: SECTION REPORT 11 (December 2005). This is a journal of the Oil Gas and Energy Section of the State Bar of Texas. (Vincent E. Morgan of Pillsbury Winthrop was the first-listed author and the origin of the original idea; I was the second author.)
- *The “Notice of Loss” Condition, Judicially Inferred Negations Thereof (To-wit: Lack of Prejudice), and The True Realities of Memory*, 27 INS. LITIG. RPTR. 873 (November 13, 2005). (Paula Patton Quinn was the principal author, while I was the secondary author.)
- *Quality Questioning—Quellenforschung*, 27 INS. LITIG. RPTR. 765 (October 1, 2005.) This is an essay about deposition questions in bad faith cases. It is also a review of a book by Ray Bourhis, a San Francisco plaintiffs’ lawyer, entitled *INSURANCE FRAUD AND THE BIG BUSINESS OF BAD FAITH* which was published in 2005. The book is mostly about *Hangartner v. Provident Life and Acc. Ins. Co.*, 236 F.Supp 3d 1069 (N.D. Cal. 2002), *aff’d. in part, rv’d. in part*, 376 F.3d 998 (9th Cir. 2004).
- *Look for Coverage!* 27 INS. LITIG. RPTR. 461 (July 6, 2005.)
- *The Spitzer Caused Costly “Catamaran” Catastrophe: How Long is the Wake? How Wide is It?*, 27 INS. LITIG. RPTR. 401 (June 15, 2005.)

- *Phoney “Parmenidean” Practices: Aon’s Place in the Insurance Litigation Exposé*, 27 INS. LITIG. RPTR. 341 (May 30, 2005). (I was the second listed author.)
- *“Damn Fools” - Looking Back at Stowers after 75 Years*, 6 J. TEXAS INS. LAW 2 (May 2005). (Vincent Morgan was the senior author, and I was the assisting author. The idea was his.)
- *Spitzer v. MarshMac*, 27 INS. LITIG. RPTR. 277 (May 1, 2005). (Melissa Hamilton was the assisting author.)
- *Marsh & McLennan: Some More Brief History Before the Spitzer Scandal - Part B: Putnam, Trident, and Mercer*, 27 INS. LITIG. RPTR. 197 (March 31, 2005). (Melissa Hamilton was the senior author, and I was the assisting author.)
- *Marsh & McLennan: Some Brief History Before the Spitzer Scandal–Part A: The Insurance Side of the Business*, 27 INS. LITIG. RPTR. 125 (March 15, 2005). (Melissa Hamilton was the assisting author.)
- *Before the Marsh & McLennan Scandal and Its Times*, 27 INS. LITIG. RPTR. 5 (January 28, 2005).
- *Adjustment of Disability Claims and the Problem of Bad Faith*, 19 INS. LITIG. RPTR. 697 (December 3, 2004). (Evan Koch was the co-author of this article.)
- *Disability Insurance: An Elementary and “Puristical” Introduction to Coverage Issues*, 26 INS. LITIG. RPTR. 69 (November 17, 2004) (Evan Koch is the assisting co-author of this rather lengthy piece. There will be another part published in the next issue.)
- *Extra Expenses and Business Interruption Coverages*, 26 INS. LITIG. RPTR. 97 (February 2004). (Pamella A. Hopper was the co-author.)
- *Legal Malpractice and Evidence from Experts*, 30 LITIGATION 40 (Fall 2003). (Olga Seelig was the co-author.)
- *Ensuing Loss Clauses in Texas Insurance Jurisprudence*, 4 J. TEXAS INS. LAW 8 (November 2003). (Olga Seelig was the co-author.)
- *The Analects for Lawyers: Variations Upon Confucian Wisdom*, 34 TEXAS TECH L. REV. 933 (2003).
- *Insurance Bad Faith and the Attorney-Client Privilege*, 32 THE BRIEF [ABA] 37(Spring 2003).
- *Liability Insurance and Supplementary Payments*, 25 INS. LITIG. RPTR. 133 (February 2003). (Olga Seelig was a co-author.)
- *Terrorism and Insurance: Some Tentative Thoughts*, 14 ENV’T L CLAIMS J. 19 (Winter 2002).
- *Insurance and Dangerous Political Perversity*, 24 INS. LITIG. RPTR. 240 (May 2002). (This is an article-length critical study. It considers a book entitled ALLIANZ AND THE GERMAN INSURANCE BUSINESS FROM 1933-1945 written by Gerald D. Feldman, a Professor of History at the University of California. The book was published by Cambridge University Press in 2001.)
- *The Posnerian Re-formation of Insurance Law*, 23 INS. LITIG. RPTR. 662 (2002). (This was mainly a discussion of *Lockwood International v. Volm Bag*, 273 F.3d 741 (7th Cir. 2001)).

- *Insurance and Bankruptcy*, 36 TORT & INS. L. J. 1025 (Summer 2001). (Brian S. Martin was the co-author.)
- *Coverage B: Personal and Advertising Injury Liability--1998 Revisions*, 11 COVERAGE 47 (May/June 2001).
- *Directors' and Officers' Liability Insurance: Probable Directions in Texas Law*, 20 REV. OF LITIG. 381 (2001). (Andrea D. Levin was the co-author.)
- *Preparing for Adjuster Depositions in Bad Faith Cases: Anticipating the Plaintiff's Questions*, 16 BAD FAITH L. RPTR. 231 (December 2000). (John D. Moyer was the co-author.)
- *Preparing for Adjuster Depositions in Bad Faith Cases: The Plaintiff's Objectives*, 16 BAD FAITH L. RPTR. 183 (October-November 2000). (John D. Moyer was the co-author.)
- *The Defending Liability Insurer's Duty to Settle: A Meditation Upon Some First Principles*, 35 TORT & INS. L. J. 929 (Summer 2000). Part of this essay was apparently reprinted in R. Hanson Lawton & Russell L Weaver, CONTEXTUAL NEGOTIATION: FACILITATED PROCEDURES AS ADVANCED NEGOTIATION 80-88 (Carolina Academic Press, 2006).
- *Whom Does the Insurance Defense Lawyer Represent?*, 2 J. TEX. INS. L. 12 (Spring 2000).
- *The Malicious Prosecution Analogy*, 16 BAD FAITH L. RPTR. 61 (April 2000). William T. Barker replied in the same issue, *The Malicious Prosecution Analogy: Reply to Quinn*, 16 BAD FAITH L. RPTR. 72 (April 2000).
- *Insurance Bad Faith and Insurance Expertise*, 22 INS. LITIG. RPTR. 80 (February 15, 2000). (Some sections of this piece appear previously.)
- *Argument and Authority in Common Law Advocacy and Adjudication: An Irreducible Pluralism of Principles*, 74 CHICAGO-KENT L. REV. 655 (1999). This paper has been presented by invitation three or four times to a seminar at the University of Texas Law School taught by Richard Markovits. The seminar is entitled "Legal Scholarship." The last presentation was on April 25, 2007. It also covered the Edwards-Levinson debate on the appropriate foci of legal scholarship, as have the other presentations. They usually last about 3 hours.
- *Fortuity, Insurance, and Y2K*, 18 REV. OF LITIG. 3 (Summer 1999).
- *"Occupying" Forces--Limitations on the Pollution Exclusion as Applied to On-Site Discharges*, 9 COVERAGE 27 (March/April 1999). (Robert A. Shults was the co-author.)
- *Reformation and the Insurance Contract*, 1 J. TEX. INS. L. 47 (1999).
- *Insurer Bad Faith: Expertise & Appellate Review*, 20 INS. LITIG. RPTR. 774 (Oct. 15, 1998).
- *Depositions of Claims People*, 8 COVERAGE 21 (May/June 1998).
- *Insurance Law*, 51 SMU L. REV. 1131 (May-June 1998). (This is an 80+ page summary of developments in Texas insurance law during 1997-98. I was the senior author; Pamela D. Nielson, then a shareholder at SMK, was the junior author.)

- *A Liability Insurer's Duty to Settle: the Primary, the Excess and the Insured*, 20 INS. LITIG. RPTR. 343 (May 1, 1998).
- *The Ethical Habitat of Adjusters: Part 2. Principles, Problems, and Practicalities*, 10 ENV'T'L CLAIMS J. 77 (Spring 1998).
- *Struggle, Confusion, and Diversity: Insurance Bad Faith in Texas--Recent Rapid Evolution*, 20 INS. LITIG. RPTR. 175 (March 15, 1998). This is a discussion of the *Simmons* case.
- *The Ethical Habitat of Adjusters: Part 1. Principles, Problems, and Practicalities*, 10 ENV'T'L CLAIMS J. 91 (WINTER 1998).
- *Memory, Repression & Expertise: Civilly Actionable Sexual Misconduct in Texas and Individual Rights*, 3 TEXAS FORUM ON CIVIL RIGHTS & CIVIL LIBERTIES 1 (Winter 1997).
- *Balance, Tension, and Change: Insurance Jurisprudence and the Dynamics of the Common Law*, 19 INS. LITIG. RPTR. 849 (December 15, 1997).
- *Pouring, Spilling, Storing and Dripping*, 13 TEXAS TRIAL LAWYER 14-17 (September 15, 1997). This publication is an insert into the TEXAS LAWYER. (Robert A. Shults was the senior author.)
- *Arch-Angel Insurance Company v. Walter Raleigh: A Hypothetical Case on Recoupment of Defense Costs. Appellee's Brief*, 19 INS. LITIG. RPTR. 585 (September 15, 1997).
- *Moot Court Problem: Arch-Angel v. Raleigh*, 19 INS. LITIG. RPTR. 532-35 (September 1, 1997). (Issue: May a liability insurer which has no duty to defend but pays defense expenses out of caution obtain restitution of those expenses?)
- *Insurer Bad Faith -- Sic et Non -- Texas Style*, 19 INS. LITIG. RPTR. 485 (August 15, 1997). This is a discussion of *Giles, Nicolau, and Williams*.
- *Reserving Rights Rightly*, 7 COVERAGE 23 (July/August 1997).
- *Cowan's Case: Bodily Injuries, Occurrences, and the Duty to Investigate*, 19 INS. LITIG. RPTR. 349 (July 1, 1997).
- *Liability Insurance Contracts: A Primer*, 34 TEX. J. BUS. LAW 2 (Spring 1997). (In 1998, the Texas Bar Foundation awarded this article the Outstanding Law Journal Article Award for 1997.)
- *The Duty to Defend: New Texas Developments*, 19 INS. LITIG. RPTR. 193 (May 1, 1997).
- *On the Assignability of Legal Malpractice Claims*, 37 S. TEX. L. REV. 1204 (1996).
- *Sweet and Sour Deals*, 12 BAD FAITH L. RPTR 163 (1996).
- *Vendor's Endorsements*, 18 INS. LITIG. RPTR 375 (1996).
- *Subrogation, Restitution and Indemnity*, 74 TEX. L. REV. 1361 (1996). (This essay starts as a review of Charles Mitchell's THE LAW OF SUBROGATION, published by Oxford University Press in 1994. The essay discusses the nature of subrogation, its relationship to restitution, and professional responsibility problems facing subrogation counsel.)

- *Punitive Damages and Liability Insurance*, 18 INS. LITIG. RPTR 121 (1996).
- *Post Employment Agreements Not to Compete: A Texas Odyssey*, 33 Tex. J. Bus. L. 7 (1996). (Andrea Levin was co-author. She was a law student at UT-Austin and now practices in Houston.)
- *Are Liability Carriers Second-Class Clients? No, but They May Be Soon -- A Call to Arms Against the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS*, 6 COVERAGE 21 (1996). (The name of Professor Charles Silver appears first; I was the co-author.)
- *Scholarly Ethics: A Response*, 46 J. LEGAL EDUC. 110 (March 1996) (Response to article by Ronald K. L. Collins which is to be found at 45 J. LEGAL EDUC. 139 (1995).)
- *California Choice of Law, Insurance Contracts, and Environmental Litigation*, 8 ENVT'L CLAIMS J. 29 (1995/96).
- *Patrick's Case*, 5 TEX. J. OF WOMEN AND THE LAW 101 (1995). This paper has been presented by invitation a couple of times to Markovits's seminar at the University of Texas Law School. The seminar is entitled "Legal Scholarship."
- *Wrong Turns on the Three-Way Street: Dispelling Nonsense About Insurance Defense Lawyers*, 5 COVERAGE 1 (November/December 1995). (The name of Professor Charles Silver appears first, and I was the co-author. We responded to criticism in the next issue of the journal. *All Clients are Equal, but Some are More Equal Than Others: A Reply to Morgan and Wolfram*, 6 COVERAGE 47 (1996).)
- *Tort Liability and Reinsurance Contracts*, 8 ENVT'L CLAIMS J. 67 (1995). (Nicole Chaput, then an associate at what is now Cooper & Scully, was junior author.)
- *Common Law Insurance Bad Faith in Texas and the Duty to Defend*, 11 BAD FAITH L. RPTR 105 (1995).
- *Insurance Coverage Opinions*, 36 S. TEX. L. REV. 479 (April 1995). (L. Kimberly Steele, an associate with Zelle & Larson, was junior author.) This essay was reprinted at 44 DEFENSE LAW J. 591 (1995). It was reprinted again in 8 NAT'L INS. L. REV. 79 (1996).
- *Review Essay on Stempel's INTERPRETATION OF INSURANCE CONTRACTS*, 7 ENVT'L CLAIMS J. 105-127 (1995).
- *The Advice of Counsel Defense*, 42 TEX. L. REV. 1487 (1994). (This is a contribution to a faculty edited symposium on insurance bad faith law.)
- *The Unruly Judge*, 12 REV. OF LITIG. 1 (1992). (Michelle Caldwell was junior author. She clerked at Zelle & Larson at the time.)
- *Insurance Contracts and Semantic Analysis: The Case of the Limited Pollution Exclusion*, 4 ENVT'L CLAIMS J. 275 (1992) (Caldwell was junior author.) This paper has been presented by invitation a couple of times to Markovits's seminar on "Legal Scholarship."
- *Insurance, Ambiguity and the Sophisticated Insured*, 4 ENVT'L CLAIMS J. 89 (1991) (Caldwell was junior author.)
- *Closing Arguments in Insurance Fraud Cases*, 28 TORT & INS. L. J. 744 (1988).

- *Bungled Inspections: A Polemic Against Insurer Liability (With Special Reference with Boilers)*, 4 TEXAS INS. L. RPTR 17 (August 1986).
- *AMADEUS and The Unity of Sin*, FOUNDATIONS: A MAGAZINE OF ANGLICAN FAITH AND LIFE 2 (November-December 1984)
- *Educating Alien Kids*, TEXAS OBSERVER 5 (September 17, 1982).
- *Critical Essay: DEMOCRACY AND DISTRUST*, 49 U. M. K. C. L. Rev. 377 (1981). (This is a critical study of John Hart Ely's book entitled DEMOCRACY AND DISTRUST.)
- *One Dialogue on Constitutional Religion*, 14 CREIGHTON L. REV. 1249 (1981). (Coauthored with Douglas Linder; I was a junior author and principal draftsman.)
- *Comment, The Jurisprudence of Similar Acts Evidence in the Eighth Circuit*, 48 UMKC L. REV. 342 (1980).
- *Effective Use Flexible and Conditional Zoning Devices - What They Can and What They Cannot Do For Cities*, Southwestern Legal Foundation, 1978 INSTITUTE ON PLANNING, ZONING AND EMINENT DOMAIN 167 (1979). (Robert H. Freilich was senior author; I was junior author and principal draftsman.)
- *Note, Seduction and Fraud An Honorable Marriage?*, 47 UMKC L. Rev. 464 (1979).
- *The Acceptance of Rules*, 31 DIALOGOS 103 (1978).
- *Practice Defining Rules*, 65 ETHICS 76 (1975). (This essay and the next one were extractions from my Ph.D. dissertation on the role of rules in ethics and (impliedly, at least) law. This topic of parts of the dissertation and all of the essay pertained to a central idea of John Rawls and how to formulate it. Rawls's THEORY OF JUSTICE, published a little earlier (1971), has become a key source for American jurisprudence, plus college and law school teaching. (I taught it in both types of places.) It is still influential. Cass Sunstein, for example, Professor of Law, University of Chicago, has stated that Rawls's book is "the most elaborate and careful discussion of what justice requires—and hence illuminates many legal problems." *Lives Shaped By Books* 92 ABA JOURNAL 80 (July 2006). The essay was discussed as a "central character" in a dialogue-essay by Roy A. Sorensen, *Permission to Cheat*, 67 ANALYSIS 205-14 (June 2007). Not long before that it was cited in the following book: Stuart P. Green, LYING, CHEATING AND STEALING: A MORAL THEORY OF WHITE-COLLAR CRIME 54 N. 3, 57, 63 N. 43 (Oxford University Press 2006).
- *Critical Essay: Nozick's ANARCHY, THE STATE, AND UTOPIA*, 5 HUMAN RIGHTS 119 (1975). (Brian Lidji, then a graduate student in philosophy, now a Dallas lawyer, was the junior author, and I was principal draftsman. HUMAN RIGHTS is a journal of the American Bar Association.)

“Legal Beat” Column (1998-2001):

- *A Look at Invoking War Exclusions*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 22 (October 8, 2001).
- *Are Producers Always the Agents of Insurers?*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 52 (September 3, 2001).
- *Agents and Coverage Opinions*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 18 (August 8, 2001).
- *Ponzied Insurance Premiums*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 18 (June 18, 2001).
- *Article 21.55: Reason Prevails*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 22 (June 4, 2001).
- *Fiduciary Duties and Expert Testimony*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 23 (May 14, 2001).
- *Tortious Interference and Business Competition*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 18 (April 30, 2001).
- *Recent Court Decision Rocks WC System*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 24 (April 16, 2001).
- *Refining Workers’ Comp*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 20 (April 2, 2001).
- *UM/UIM Developments*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 26 (March 19, 2001).
- *Paying for Holocaust Insurance Claims*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 22 (March 5, 2001).
- *Agent-Broker Malpractice*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 26 (February 19, 2001).
- *Good Samaritan Liability*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 25 (February 5, 2001).
- *Liability Insurers and Rights of Reimbursement*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 20 (January 22, 2001).
- *Who Owns A Customer?*, 7 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 26 (January 8, 2001).
- *Advertising Liability: Exploring the Often Misunderstood Coverage*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 20 (December 18, 2000).

- *Liability Coverage for Breaches of Contract*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 30 (November 20, 2000).
- *Legal Malpractice Insurance*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 36 (November 6, 2000).
- *Restraining the Departed? When Agents Divorce Their Insurance Company*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 28 (October 23, 2000).
- *An Agent's Nightmare Continues*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 38 (October 9, 2000).
- *An Agent's Nightmare*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 32 (September 25, 2000).
- *When Agents Go Bankrupt*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 28 (September 4, 2000).
- *It's a Dog's Life. . . And an Agent's Lot*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 26 (August 24, 2000).
- *Lying, Cheating and Stealing*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 24 (July 24, 2000).
- *Successor Liability for Renewal Commissions*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 30 (July 10, 2000).
- *Agents in the Claims Process*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 28 (June 26, 2000).
- *Agent Indemnification: How Not to Get Burned*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 30 (June 5, 2000).
- *Slavery & Insurance*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 54 (May 15, 2000). This article was reprinted as *Commentary: Examining Slave Insurance In a World 150 Years Removed*, 78 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF THE WEST 43 (July 24, 2000).
- *Negligent Misrepresentation--Part II*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 28 (April 24, 2000).
- *Negligent Misrepresentation--Part I*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 6 (April 10, 2000).
- *Imbetterment & Enworsement*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 28 (March 27, 2000).
- *Car Wrecks and Car Parts*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 26 (March 13, 2000). There is also a Very Short Case Note to be found on this topic at 16 BAD FAITH L. RPTR. 54 (March 2000).

- *Consumer Privacy and the Law*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 28 (February 28, 2000).
- *Wooge's Case: Ownership of Renewals*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 36 (February 7, 2000).
- *All Santa Wants for Christmas*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 12 (December 13, 1999).
- *Business Income Interruption Coverage*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 26 (November 22, 1999).
- *Defining Negligence, Misconduct*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 44 (November 8, 1999).
- *Processing Class Actions--Texas Style*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 24 (October 18, 1999).
- *A Class Action Litigation Primer*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 20 (October 4, 1999).
- *Stacking and Statutes*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 46 (September 20, 1999).
- *Insurance for Arson*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 58 (August 30, 1999).
- *Agents Get a Big Courtroom Stick*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 34 (August 9, 1999).
- *To Squeal or Not to Squeal?*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 36 (July 19, 1999).
- *Refining the Rules Surrounding Bad Faith*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 24 (June 28, 1999).
- *Premises Liability and the Insurance Agent - Part III*, 6 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 36 (May 17, 1999).
- *Premises Liability and the Insurance Agent - Part II*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 26 (April 26, 1999).
- *Premises Liability and the Insurance Agent - Part I*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 30 (April 5, 1999).
- *Expert Testimony and Insurance Brokerage Malpractice in Texas*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 26 (March 15, 1999).
- *Liability and Independent Contractors*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 28 (February 8, 1999).

- *Insurance Agents and Surety Bonds*, 5 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 60 (January 18, 1999).
- *Insurance Agents and Legal Agency*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 17 (November 30, 1998).
- *Liability and the Professions*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 44 (November 9, 1998).
- *Insurance Agents and Defense Lawyers*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 28 (October 19, 1998).
- *Surety Bonds and Insurance*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 40 (September 28, 1998).
- *The Stowers Doctrine--An Agent's Primer*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 13 (September 7, 1998).
- *Workplace Sex and the Innovative Agent*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 12 (August 17, 1998).
- *Leaky Pipes: Highest Courts Take On Slabs*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 34 (July 27, 1998).
- *The Business Pursuits Exclusion*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 22 (July 6, 1998).
- *Article 21.21 and Insurance Brokerage*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 38 (June 15, 1998).
- *Jones Against Clinton*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 18 (May 18, 1998). This piece was reprinted with the title *Insurance Ramifications of Jones v. Clinton*, 76 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF THE WEST 22 (May 18, 1998).
- *Agent Liability and the Passage of Time--Part II*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 26 (May 4, 1998).
- *Agent Liability and the Passage of Time--Part I*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 44 (April 13, 1998).
- *Dogs, Guns and Automobiles*, 4 INS. JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 16 (March 23, 1998).
- *Insurance Bad Faith: The Basic Tenets and More*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 20 (March 2, 1998).
- *Insurance, Arson & the American Family*, 4 INSURANCE JOURNAL: THE PROPERTY/CASUALTY MAGAZINE OF TEXAS 12 (February 9, 1998).

Other Book Reviews:

- *Book Review: 2008 Edition of New Appleman Insurance Law Practice Guide.* (Editors: Jeffrey E. Thomas, Leo Martinez, Mark Mayerson, and Douglas Richmond) LexisNexis 2007. This is a 3 volume set of collected essays about many topics in insurance law and practice. 10 J. of Texas Ins. Law 8-12 (Spring 2010).
- *Book Review: Kenneth S. Abraham, THE LIABILITY CENTURY: INSURANCE AND TORT LAW FROM THE PROGRESSIVE ERA TO 9/11.* Cambridge, Mass., Harvard University Press, 2008. 31 #1 INS. LITIG. RPTR 5-15 (Early 2009). (This is repeat of what has been set forth under articles.)
- *Book Review: A "Poetics" of Insurance Litigation,"* 29 INS. LITIG. RPTR 397-400 (July 5, 2007). This is a review of one book: Eric Wertheimer, UNDERWRITING: THE POETICS OF INSURANCE IN AMERICA, 1722-1872 (Stanford University Press, 2006). This is a shortened version cut down by the journal's editor. The longer draft may be found on my expert witness website: www.michaelseanquinn.com.
- *Book Review: One Hundred Years of Intermittent Controversy, Plus Occasional Scandal: Part II,* 19 ENVTL CLAIMS J. 97-119 (2007). This is the review of two books about the San Francisco Earthquake of 1906. Here they are: Simon Winchester, THE GREAT EARTHQUAKE AND FIRESTORMS OF 1906: HOW SAN FRANCISCO NEARLY DESTROYED ITSELF (2005) and Sandor Demlinger, 1906 EARTHQUAKE: SAN FRANCISCO'S GREAT DISASTER (2006).
- *Book Review: One Hundred Years of Intermittent Controversy, Plus Occasional Scandal: Part I,* 18 ENVTL CLAIMS J. 333-54 (Fall 2006). This is a review of two books: Dennis Smith, SAN FRANCISCO IS BURNING: THE UNTOLD STORY OF THE 1906 EARTHQUAKE AND FIRES (2005) and Philip L. Fradkin, THE GREAT EARTHQUAKE AND FIRESTORMS OF 1906: HOW SAN FRANCISCO NEARLY DESTROYED ITSELF (2005). Two more books on this topic will be reviewed in the second part.
- *Book Review: Ron Shelp with Al Ehrbar, FALLEN GIANT: THE AMAZING STORY OF HANK GREENBERG AND THE HISTORY OF AIG.* New York: John Wiley & Sons, Inc., 2006, 28 INS. LITIG. RPTR 757-62 (December 1, 2006)
- *Container Shipping Revolution,* 37 J. MARITIME L. AND COMMERCE 459-467 (July 2006). This was a review of two books: Marc Levinson, THE BOX: HOW THE SHIPPING CONTAINER MADE THE WORLD SMALLER AND THE WORLD ECONOMY BIGGER (2006) and Brian J. Cudahy, BOX BOATS: HOW CONTAINER SHIPS CHANGED THE WORLD (2006). A discussion of changes in maritime cargo insurance was included in the review, although not particularly in the books reviewed.
- *Storms and Claims,* 18 ENV'T CLAIMS J. 61-82 (Winter 2006). (Kerry Emanuel, DIVINE WIND: THE HISTORY AND SCIENCE OF HURRICANES. LONDON & NEW YORK; OXFORD U. PRESS, 2005. The author is a hurricane expert and a professor of related subjects at MIT.
- *Ungentlemanly Acts,* 64 TEX. BAR J. 1078 (December 2001). (Louise Barnett, UNGENTLEMANLY ACTS. (New York: Hill and Wang/Farrar, Straus & Giroux (2000)).)
- *Mentors in Inspiration,* 87 THE ABA JOURNAL 80 (April 2001). (Amiram Elwork and Mark R. Siwik, SUCCESS BRIEFS FOR LAWYERS: INSPIRATIONAL INSIGHTS ON HOW TO SUCCEED AT LAW AND LIFE) (The Vorkell Group, 2001).

- *Construction Defects and Liability Insurance*, 13 ENV'T CLAIMS J. 133 (Autumn 2000). (Patrick J. Wielinski, INSURANCE FOR DEFECTIVE CONSTRUCTION: BEYOND BROAD FORM PROPERTY DAMAGE COVERAGE) (International Risk Management Institute, Inc., 2000).
- *Contexts Are (Almost) Everything: A Bobo-esque Essaylike Review*, 12 ENV'T CLAIMS J. 149 (Summer 2000). (David Brooks, BOBOS IN PARADISE: THE NEW UPPER CLASS AND HOW THEY GOT THERE) (New York: Simon & Schuster, 2000).
- *Environmental Responsibility: The Once, Present, and Future Problem*, 12 ENV'T CLAIMS J. 205 (Spring 2000). (Richard N. L. Andrews, MANAGING THE ENVIRONMENT, MANAGING OURSELVES: THE HISTORY OF AMERICAN ENVIRONMENTAL POLICY) (New Haven: Yale University Press, 1999).
- *Loathing Lying Lawyers*, 12 ENV'T CLAIMS J. 117 (Winter 2000). (Arthur Isak Applbaum, ETHICS FOR ADVERSARIES: THE MORALITY OF ROLES IN PUBLIC AND PROFESSIONAL LIFE (Princeton University Press, Princeton, N.J. 1999).
- *Lead Poisoning Litigation*, 12 ENV'T CLAIMS J. 77 (Autumn 1999). (Paul J. Bottari and Michael L. Bulhosa, A COMPLETE GUIDE TO LEAD PAINT POISONING LITIGATION, (ABA: TIPS, 1998)).
- *Reality Bites*, 15 TEXAS LAWYER 63 (January 31, 2000). Reviewing Steven Keeva, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE (ABA Publication 1999). (Keeva is a senior editor at THE ABA JOURNAL, and this book is published by the ABA.)
- *Promises, Contracts, Remorse and Regrets*, 11 ENV'T CLAIMS J. 117 (Summer 1999). (This essay reviews a volume of contract jurisprudence. E. Allan Farnsworth, CHANGING YOUR MIND: THE LAW OF REGRETTED DECISIONS (New Haven: Yale University Press, 1998)).
- *Power, Sex, Money, and Fame*, 11 ENV'T CLAIMS J. 111 (Spring 1999). (This essay reviews a popular lawyer novel. John Grisham, THE TESTAMENT (New York: Doubleday, 1999)).
- *Lives Lawyers Lead*, 11 ENV'T CLAIMS J. 2 (Winter 1999). (This essay reviews two books: Arthur L. Liman, LAWYER: A LIFE OF COUNSEL AND CONTROVERSY (New York: Public Affairs, 1998) and Cameron Stracher, DOUBLE BILLING: A YOUNG LAWYER'S TALE OF GREED, SEX, LIES, AND THE PURSUIT OF A SWIVEL CHAIR (New York: William Morrow & Company, Inc., 1998). Both of these books are autobiographical studies of lawyers.)
- *Legal Fees and Legal Audits*, 11 ENV'T CLAIMS J. 1 (Autumn 1998). (This review discusses Macklin Fleming, LAWYERS, MONEY, AND SUCCESS: THE CONSEQUENCES OF DOLLAR OBSESSION (Westport, Connecticut: Quorum Books, 1998)).
- *Drunk Driving, Pollution, and Insurance*, 10 ENV'T CLAIMS J. 173 (Summer 1998.) (This review discusses David Lebedoff, CLEANING UP: THE STORY BEHIND THE BIGGEST LEGAL BONANZA OF OUR TIME (New York: Free Press, 1998). It is an account of the Exxon Valdez oil spill.)
- *Book Review: THE ECONOMICS OF A DISASTER: THE EXXON VALDEZ OIL SPILL*, 29 JOURNAL OF MARITIME LAW AND COMMERCE 1 (January 1998). (Bruce M. Owen, David A. Argue, Harold W. Furchtgott-Roth, Gloria J. Hurdle & Gail Mosteller are the authors of this book which was published by Quorum Books in 1995).
- *Attorneys' Fees and Lawyers' Billings: A Tale of Emperors' Old Clothes*, 10 ENV'T CLAIMS J. 131 (1997). (This review discusses William G. Ross, THE HONEST HOUR: THE ETHICS OF TIME-BASED BILLING BY ATTORNEYS (Durham, N.Carolina: Carolina Academic Press, 1996)).

- *Insurance and the Long View*, 9 ENV'T CLAIMS J. 159 (1997). (This review discusses two books: Richard C.J. Sommerville, *THE FORGIVING AIR: UNDERSTANDING ENVIRONMENTAL CHANGE* (Berkeley: University of California Press, 1996) and John M. Barry, *RISING TIDE: THE GREAT MISSISSIPPI FLOOD OF 1927 AND HOW IT CHANGED AMERICA* (New York: Simon & Schuster, 1997)).
- *Teratology, Toxicity, and Torts*, 9 ENV'T CLAIMS J. 129 (1997). (This review discussed two books and a case: Michael D. Green, *BENEDICTIN AND BIRTH DEFECTS: THE CHALLENGES OF MASS TOXIC SUBSTANCES LITIGATION* (1996); Marsha Angell, *SCIENCE ON TRIAL: THE CLASH OF MEDICAL EVIDENCE AND THE LAW IN THE BREAST IMPLANT CASE* (1996); *Hall v. Baxter Health Care Corp.*, 947 F. Supp. 1387 (D. Ore. 1996)).
- *The Paradoxical Perversity of Nearly Everything*, 9 ENV'T CLAIMS J. 147 (1997). (This review discussed Edward Tenner, *WHY THINGS BITE BACK: TECHNOLOGY AND THE REVENGE OF UNINTENDED CONSEQUENCES* (New York: Knopf 1996)).
- *One Hell of a Book*, 9 ENV'T CLAIMS J. 165 (1996). (This review discussed Jonathan Harr, *A CIVIL ACTION* (New York: Random House 1995)).
- *Forests, Philosophy, and Forensics*, 8 ENV'T CLAIMS J. 139 (1996). (This review considered Alton Chase, *IN A DARK WOOD: THE FIGHT OVER FORESTS AND THE RISING TYRANNY OF ECOLOGY* (Boston: g14 Houghton Mifflin, 1995)).
- *Risk, Disease, and Democracy*, 8 ENV'T CLAIMS J. 169 (Spring 1996) (This review considered Aaron Wildavsky, *BUT IS IT TRUE? A CITIZEN'S GUIDE TO ENVIRONMENTAL HEALTH AND SAFETY ISSUES* (Oxford University Press, 1995)).
- *Environmentalism, 'Environmental Justice,' and the Uses of History*, 8 ENV'T CLAIMS J. 161 (Winter 1995/96). (A review of three books touching problems of, so-called, environmental justice. The review raises insurance issues.)
- "Ecorealism": *Principles, Problems, and Paradoxes*, a review of Easterbrook, *A MOMENT ON THE EARTH: THE COMING AGE OF ENVIRONMENTAL OPTIMISM*, 8 ENV'T CLAIMS J. 169 (1995).
- *All Letter, Little Spirit* -- Two Reviews: Phillip K. Howard, *THE DEATH OF COMMON SENSE* (1995) and Mary Ann Glendon, *A NATION UNDER LAWYERS* (1995). DALLAS MORNING NEWS 8J (March 12, 1995).
- Book Review: Robert L. Wilken, *THE CHRISTIANS AS THE ROMANS SAW THEM* (1984) 1 FOUNDATIONS: A MAGAZINE OF ANGLICAN FAITH AND LIFE 7 (Sept/Oct. 1984)
- Book Review: Harvey Cox, *RELIGION IN THE SECULAR CITY* (1984), 1 FOUNDATIONS: A MAGAZINE OF ANGLICAN FAITH AND LIFE 7 (Pentecost 1984)
- *Legal War-Stories*: Alan Dershowitz, *THE BEST DEFENSE*, DALLAS MORNING NEWS 14A (Friday, July 16, 1982).
- *Book Review*: Charles Fried, *CONTRACT AS PROMISE*, 35 Sw. L.J. 1125 (1982). (This journal is now called the SMU L.Rev.)
- *A Life of Persistent Awkwardness*: Don Locke, *A FANTASY OF REASON: THE LIFE 7 THOUGHT OF WILLIAM GODWIN* (1981), 66 SOUTHWEST REVIEW 433-37 (Autumn 1981).
- *Giraffe's-Eye View*: John Kenneth Galbraith, *A LIFE IN OUR TIMES*, Dallas Morning News (Friday, June 5, 1982) p. 12A (Editorial Page).

- *Ruling Britannia*: Geoffrey Smith and Nelson Polsby, BRITISH GOVERNMENT AND ITS DISCONTENTS, Dallas Morning News 2D (February 20, 1981)(Editorial Page).
- *Liberal Self-Scrutiny*; Bruce A. Ackerman, SOCIAL JUSTICE IN THE LIBERAL STATE, 3 LONE STAR REV. [Book Supplement from the Sunday DALLAS TIMES HERALD] 9 (December 1980).
- *Book Review*: Betnun, HOUSING FINANCE AGENCIES: COMPARISON BETWEEN STATES AND HUD, 12 URBAN LAWYER 400 (1980).
- *Book Review*: Strom, Ed., LAND USE AND ENVIRONMENTAL LAW REVIEW (1978), 12 URBAN LAWYER 210 (1980).
- *Book Review*: Altschuler, Womack & Pucher, THE URBAN TRANSPORTATION SYSTEM, 12 URBAN LAWYER 213 (1980).
- *Book Review*: Helliwell, Ed., URBAN STORM DRAINAGE, 11 URBAN LAWYER 774 (1979).
- *Book Review*: Weisbrod, Ed., PUBLIC INTEREST LAW, 11 URBAN LAWYER 192 (1979).
- *Background Analysis of Race Litigation*, 62 SOUTHWEST REV. 419 (Autumn 1977). (This was a review of Richard Kluger, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY. New York: Alfred A. Knopf, 1977).

Short Stuff, On Insurance (a/k/a, “Case Blurbs” or “Squibs”—Sometimes Including Commentaries) - Titles Short Sometimes Altered for Description + Length Reduction (Many of these squibs involve short opinion commentaries, though not all. Not all of the dates of publication are accurate to the day; since I sometimes get advance copies of the place of publication and never see the actual publication except on WestLaw, often much later.) [During some of 2010 and early 2011, the listed squibs are not in perfect chronological order, etc. Some got temporally shuffled. Oh well.]

- Agents & Brokers *People v. Well Fargo Services*, ___ N.E.2d ___ (N. Y. 2011), 2011 WL 534198. Insurance brokers had No fiduciary duty (“then,” at least) running to their customers to disclose payment Arrangements with carriers. Recent New York government regulations since then may have changed things. 33.3 ILR 104-05 (March 4, 2011).
- Excess Liability Sues Defense Lawyers. *Great American E & S Insurance Company v. Quintairo, Pioto, Woods, and Boyer, P.A.*, ___ So.3d ___ (Miss. App. 2011) 2011 WL 135682 (Mississippi Court of Appeals allows an excess liability carrier to sue defense attorney hired by the primary carrier under an equitable subro theory. The court stopped short of recognizing a direct duty of care. 33.2 ILR 73-75.2011)
- *The Burlington Northern and Santa Fe Railway Company F/K/A The Atchison, Topeka, and Santa Fe Railroad Company, v, National Union Fire Insurance Company*, ___ S.W.3d ___, 2011 WL 711099 (Tex. 2011). 33 ILR 149, 3/26/11)]
- Brokers/Antitrust. *In re Insurance Brokerage Antitrust Litigation*, 618 F.3d 300 (3d Cir. 2010). Antitrust case involving accusations against large intermediaries, when March Mac had already settled. The case arose out of non-disclosure of payments from carriers to intermediaries, and common arrangements for distributing customers. Long complicated opinion affirms most of lower court decision, but saves bid-rigging and sends back. (33 ILR ___)
- Agents & Brokers. *Langwith v. American National General Insurance Co. et al*, 793 N.W.2d 215 (Iowa 2010) Insurance intermediaries principal targets. (33.4 ILR 135-137, 3/25/2011)
- Agents & Brokers. *Morrison v. Allen*, ___ S.W.3d ___, 2011 WL 536593, ___ SW 3d ___ (Tenn. 2011). Intermediaries are principal targets, insurer settled before trial. Insurance intermediaries buying the wrong life policy. Damages an issue. (33.4 INR 137-140)
- Policy Anti-Assignment case. *Keller Foundations, Inc. v. Wausau Underwriting Inc. Co.*, ___ F.3d ___ (5th Cir. F.3d, 2010), 2010 WL 4673026I, 32.21 ILR 670-73 670-73, 2010). Under Texas law, anti-assignment clauses are in CGL policies are valid and enforceable.
- Pollution Exclusion & Products – Completed - Operations. *West Bend Mutual Insurance Company v. United States Fidelity and Guaranty Company, et al*, 598 F.3d 918 (7th Cir.

2010). Under Indiana law, a CGL policy's pollution exclusion bars coverage for both injurious gasoline leak from service station, and additional coverage for products-completed operation hazards in Umbrella policy does not cover leak.

- Bad Faith. *Perera v. United States Fidelity and Guaranty Co.*, ___ So. 3d ___, 2010 WL 179115 (Fla. 2010). 32.10 INS. LITIG. RPTR. 281 (2010). Failure of primary carrier's bad faith failure to settle not injure insured if that defendant has enough excess insurance to cover the loss, as in this case.
- Exclusions & Duties of Insurer. *Gilbert Texas Constructions, L.P. v. Underwriters at Lloyd's London*, No. 08-0246 (Tex. June 4, 2010). 2010 WL 2219645. 32..10 ILR 327 (Oct. 15, 2010). Standard breach of exclusion in CGL policy works for duty to indemnify but not duty to defend
- Intermediaries. *Fowler v. Hunter*, 388 S.E. 2d 531 (S.C. 2010). Professional negligence claim for evidence regarding for failure to procure correct policy, plus procedural issues. Insured's assignment of professional negligence claim against agent in exchange for covenant not to execute was valid absent evidence of collusion. However, competing insurance guidelines precluded summary judgment on insurer's equitable indemnification action against agency. 32.17 INS LITIG RPTR 540+ (October 15, 2010).
- Intermediaries. *Mladineo [Husband & Wife Insureds] v. Schmidt [Intermediary & His Firm] Plus Northwest Property and Casualty Ins. Co. [the Property Insurer]*, 33.2 INS. LITIG. RPTR 66 57 (2/18/11). Mississippi Supreme Courts rejects a claim against intermediary and insurer based upon alleged misrepresentation as to policy's coverage (duty to read), but preserves claim based upon negligent misrepresentation by intermediary regarding need for coverage hurricane coverage. Dissent would extend the Duty to Read Rule to the saved cause of action.
- State Regulation. *Quynh v. Allstate Insurance Company*, 227 P. 3d 73 (N.M. 2010). [MSQ]
- *Potvin v. Lincoln Service Equipment Company*, ___ 2d ___ (Conn. 2010), 298 Conn. 620 (2010), 2010 WL 3958696. [MSQ]
- *Cedell v. Farmers Insurance Co. of Washington*, 237 P. 2d 309 (Wash. App. August 3, 2010). Carriers retain their attorney-client privilege rights in first party bad faith litigation, absence a showing of an established exception, such as fraud. 32.15 ILR 475 (Oct 15, 01)
- *Scottsdale Insurance Co. v. Subscription Plus, Inc.*, ___ F.3d ___ (7th Cir. 2010) 2010 WL 1496366 [MSQ]
- Human Rights. *Michael v. Appalachian Heating & State Auto Insurance Company*, ___ S.E.2d ___, 2010 WL 23446274 (W. Va. 2010). Third parties claimants may sue tortfeasor's liability insurer under a relevant non-insurance human rights statute fir racial discrimination

+ dissenting opinion.

- Auto Exclusion + [Wow!]. *Mid-Continent Casualty Co. v. Global Enercom Management, Inc.*, 323 S.W.3d 151 (Tex. 2010). 32.20 INS. LITIG. RPTR. 638-41 (12/3/2010). The auto use exclusion in a CGL policy precludes coverage for deaths resulting when a rope breaks while a truck is being used to power a rope pulley system to lift workers to the top of a cellular telephone tower. Case rests on significant precedent and variations therewith. Rulings in this case are broader than the facts and the statements of the rules here—much broader!
- Bad Faith: Montana Supreme Court Examines When Insured’s Liability Is “Reasonably Clear” for Purposes of Liability Insurer’s Duty to Settle. *Peterson v St Paul and Marine Insurance Company*, 357 Mont. 293 ___, P.3d ___, 2010 WL 3326706 (Mont. 2010) 32.17 INS. LITIG. RPT 541-43 (2010). Question: When is an insured’s liability “reasonably clear” for the purposes of the carrier’s duty to settle? Answered: Case of first impression under Montana “bad faith” statute.
- Agents & Brokers: Insured’s Assignment of Professional Negligence Claim against Agent in Exchange for Covenant Not to Execute Was Valid Absent Evidence of Collusion. *Fowler v. Hunter*, 388 S.C. 355, 697 S.E.2d 534 (S.C. 2010) 32.17 INS. LITIG. RPT 540 (2010)

• **MSQ; GO TWO DOWN FOR CHECKING**

- Bad Faith/Third Party Claims, West Virginia Supreme Court Allows Third Party Claimants to Sue Tortfeasor’s Liability Insurer under State’s Human Rights Act for Racially Discriminatory Settlement Despite 2005 Legislation Prohibiting Third Party Bad Faith Claims under West Virginia Unfair Trade Practices Act. *Michael v. Appalachian Heating & State Auto Insurance Company* ___, S.E.2d ___, 2010 WL 2346274 (W. Va. 2010) 32.15 INS. LITIG. RPT 476-77 (2010)
- Property Insurance/Theft Exclusion. Trial Court Erroneously Found Severing and Moving Copper Pipes on Roof Was Not Theft under Coverage Exclusion. *Nautilus Insurance Co. v. Steinberg*, ___, S.W.3d ___, 2010 WL 2636141 (Tex. App., July 2, 2010) 32.13 INS. LITIG. RPT 427-28 (2010).
- Agents & Brokers/Antitrust. Third Circuit Revives Bid-Rigging Portion of Insurance Brokerage Antitrust Litigation. *In re Insurance Brokerage Antitrust Litigation*, 618 F.3d 300 (3rd Cri. 2010) 33.2. INS. LITIG. RPT 63-4 (2011)
- Washington State law: Insurer’s Attorney-Client Privilege in First-Party Bad Faith Case, Subject to Actual Fraud Exclusion (Not “just” Bad Faith). 237 P.3d 2010 (Wash. 2010). 32.15 INS. LITIG. RPT 475-76 (2010) **[MSQ]**
- Liability Insurance, Insurer Bad Faith, *State Human Rights Act: Racial Discrimination*. ___, S.E.2d ___, 2010 WL 2346274 (W. Va. 2010). 32.15 INS. LITIG. RPTER, 476-77 (2010).
- New York Insurance Bad Faith Law in the Settlement Context. *Doherty v. Merchants Mutual Insurance Company*, 93 N.Y.S.2d 836 (N.Y. App. (4th Dept.) 2010) (2-1). If an insurer has serious doubts about the insured’s liability when the insurer passed up an opportunity to settle, that insurer is entitled to summary judgment in a bad faith case resting on the duty to settle. The dissenting judge rejects that a rational insurer would have a rational reason to doubt the insured’s liability. The dissenting opinion is more interesting than majority, even though the majority contains a nice summary of applicable N.Y. law. **[MSQ]**

- Property Insurance and the Theft Exclusion. *Nautilus Insurance Co. v. Steinberg*, ___ S.W.3d ___, 2010 WL 2636141 (Tex. App.—Dallas, July 2, 2010). Held: The trial court erroneously found that severing and moving copper pipes on the roof of a building was not theft under the coverage exclusion. Looked far more like theft. Remanded to determine the element of intent.
- Determining the Existence of Damages: Bad Faith & Failure to Settle, *Perera v. United States Fidelity and Guaranty Co.*, ___ So.3d ___, 2010 WL 179151 (Fla. 2010). This case involved a failure to settle over time and for the right amount. A jury in federal court found the insurer to be liable for bad faith and the verdict held to be determinative and was not reversed. However, the insured had an excess policy with more than enough to pay. Hence the insured did not suffer damages as a result of the lower insurers misconduct. The Florida Supreme Court decided this case on a certified question from the 9th Circuit.
- False Advertising & CGL Coverage. *Harleysville Mutual Insurance Company v. Buzz Off Insect Shield, L.L.C. & International Garment and Technologies, L.L.C., et al.*, ___ S.E.2d ___, 2010 WL 1492136 (N.C., Apr. 15, 2010). The case involved insurer liability for false advertising, where the only falsity (if any) was the insured/defendant bragging about its own product. 32 INS. LITIG. RPTR ___ (2010).
- Negligence and/or Negligent Misrepresentation on the Part of an Insurance Broker, *Liberty Surplus Insurance Co. v. First Indemnity Insurance Services, Inc.*, ___ So.3d ___. 2010 WL 711712 (Fla. App., 4th Dist., 2010). A broker failed to disclose all of the actions or proceeding brought against a law firm, when it submitted the firms application for insurance. The firm was sued again, and the insured settled whereupon it sued the broker. The broker had won summary judgment based upon implausible reasons, and the court of appeals reversed. Curiously both the law firm and the agent “beneath” the broker provided it with accurate information.

Msg: inserts?

MOVE THE ONE BELOW: Ellie I'll show you where.

- *Proper Protection*, 28.6 LEGAL MANAGEMENT 42 (August 2009). This is the trade publication of the Association of Legal Administrators, and the topic of the essay is insurance for law offices.

MSQ; ANYTHING IN HERE?

- Class Action--Bad Faith in UIM Adjustment: Standardized Software Advanced Determination of the Reasonableness of Medical Expenses. *Strawn v. Farmers Insurance*, ___ P. 3d ___, 2009 WL 1409471 (Or. App., May 20, 2009). 31.9 INS LITIG. RPTR 305-07 (June 9, 2009)
- Duty to Defend/Reservation of Rights/Missouri Statute: § 537.065. *Kinnaman-Carson v. Westport Insurance Corporation*, ___ S.W.3d ___, 2009 WL 1211259 (Mo. May 5 2009). 31.9 INS. LITIG. RPTR. 310-12 (June 9, 2009). An insurer’s agreement to defend a suit without a reservation precluded it from contesting coverage in a garnishment action, even though the insured had ready settled without informing the insured.
- Liability Insurance for Trade Dress Infringement? *KLNSteel Products Co. LTD. v. CAN Ins. Co.*, 278 S.W.3d 429 (Tex. App—San Antonio, 2008). 31.9 INS. LITIG. RPTR. 316-18 (June 9, 2009). CGL policy’s Coverage B does not obligate an insurer to defend claims that an insurer imitates the product design of a claimant. Claims were not potentially covered under the policy’s coverage for “product disparagement” and “trade dress infringement.”
- Agents & Brokers: Suits Against Intermediaries Once the Carrier Has Paid a Settlement. *Horizon*

Offshore Contractors, Inc. v. Aon Risk Services, Inc., ___ S.W.3d ___, 2009 WL 620257 (Tex. App.—Houston [14th Dist.], March 12, 2009). The policyholder’s litigation and settlement of a coverage dispute with the insurer in England does not preclude a later lawsuit against a broker in the United States, if the factual and legal arguments in both cases are consistent. The broker’s election of remedies and judicial estoppel defenses were rejected in the court of appeals, and summary judgment based on those defenses was reversed. 31.7 INS. LITIG. RPTR 205-09 (May 4, 2009).

- Liability Insurance/Intentional Injury Exclusion. Texas Supreme Court Refuses to Apply Intentional Exclusion to Auto Accident Injuries Resulting from and during a High Speed Chase. *Tanner v. Nationwide Mutual Fire Insurance Company*, ___ S.W.3d ___. 2009 WL 1028048 (Tex., April 17, 2009). The fact that it was a high speed chase does not show that the driver intended to injury anyone, and This point of view is supported by the fact that the driver-insured hit his brakes. 31.7 INS. LITIG. RPTR 221-22 (MAY 4, 2009)
- Notice-Prejudice Rule, Claims Made Policies, and “ASAP” “Requirement.” *Prodigy Communications Corp. v. Agricultural Excess & Surplus Lines Insurance Co.*, ___ S.W.3d ___, 2009 WL 795530 (Tex. March 27, 2009) and *Financial Industries Corp. v. XL Speciality Ins. Co.*, ___ S.W. 3d ___ (Tex., March 27, 2009). Texas Supreme Court applies the Notice-Prejudice Rule to the “ASAP” requirement sometimes to be found in claims-made policies. Serious dissent in one of the opinions and none in the other. 31.6 INS. LITIG RPTR 183-186 (April 27±, 2009).
- How Many Policies? *Progressive County Mutual Insurance Company v. Kelley*, ___ S.W.3d ___, 2009 WL 797538 (Tex., March 27, 2009). A fact issue existed regarding whether the insurer issued One policy or two for purposes of determining limits of coverage applicable to an accident. The insurer covered five cars belonging to members of the same family, listing two document with different policy numbers but claimed that it was only one policy. 31.6 INS. LITIG RPTR 186-88 (April 27±, 2009)
- Policy Reformation Requires Mutual Mistake in Rhode Island. *Merrimack Mutual Fire Insurance Co. v. Dufault*, 958 A.2d 620 (R.I. 2008) In R.I. insurance contract reformation requires proof of mutual mistake by clear and convincing evidence. 30.21 INS. LITIG. RPTR 681 (DEC. 31, 2008)
- Claims Made Coverage, Class Actions, E & O Policies. Applicability of Prior Act Coverage to Class Actions--a Question of First Impression. Previous class actions asserting similar claims may trigger the exclusion. *H & R Block v. American International Specialty Lines Insurance*, 546 F.3d 937 (8th Cir. 2008). 30.21 INS. LITIG. RPTR 653 (Dec. 31, 2008).
- Intermediaries—Agents & Brokers: Louisiana peremption statutes as to insurance intermediaries. *Burk Property Investments v. Alliance Insurance Agency*, ___ So.2d ___, 2008 WL 4191138 (La. App., September 10, 2008). When does it start? 30.18 INS. LITIG. RPTR 624-25 (November 14± 2008).
- Intermediaries—Agents & Brokers: Insurance intermediaries may be sued by their customers for both negligence and breaches of fiduciary duties under Florida law. Both types of causes of action are assignable, and valid assignments may occur simultaneously with the insured-assignor’s release of t the claimant assignee. *Wachovia Ins. Services v. Toomey*, ___ So.2d ___, 2008 WL 4379587 (Fla. Sept. 29, 2008). 30.18 INS. LITIG. RPTR 621-24 (Nov. 14±, 2008)
- Duty to Defend—Liability insurers must defend class actions seeking compensation for the cost of new, unsupplied headsets from cell phone manufacturers where bodily injury is just barely alleged factually in the pleadings, and perhaps not genuinely part of the case. This is treated as a consequence of the “Complaint-Allegation Rule,” aka the “Eight Corners Rule.” *Zurich American Ins., Co. & National Union Fire Ins. Co. v. Nokia, Inc.*, ___ S.W.3d ___, 2008 WL 3991183 (Tex., Aug. 29, 2008). Several cases transferred to Texas under MDL rule were involved. 30 INS. LITIG. RPTR.

583-86 (Oct 20±, 2008). This case includes a significant discussion of *GuideOne Elite Insurance v. Fielder Rd. Baptist Church*, 197 S.W.3d 305 (Tex. 2008), which involves a significant discussion of The use of extrinsic evidence and the duty to defend.

- Intermediaries—Agents & Brokers: The agency relationship between an intermediary and an insured 6/1/2011 usually ends once the policy asked for is obtained, but not always, e.g., when the policy occurred at variance with the one sought and the intermediary agrees to try and correct the problem. *Precision Mechanical Services, Inc. v. T.J. Pfund Associates, Inc.*, 952 A.2d 818 (Conn. App. 2008). Connecticut law applied. 30 INS. LITIG. RPTR 575-76 (Oct. 20±, 2008)
- Intermediaries—Agents & Brokers: An Insurance purchaser's failure to prove that the broker's malpractice proximately caused the purchaser's damages precludes the purchaser's recovery from the broker, and in a failure-to-inform type case, the purchaser must prove that he could and would have acted to avoid the loss, had he received the needed information from the brokers. *Harbor Commuter Service, Inc. v. Frankel & Co.*, 951 A.2d 198 (N.J. App. 2008). This case had a lengthy history and a complex set of facts. That—if nothing else—is what makes this case interesting. 30 INS. LITIG. RPTR, 505-08 (Sept. 28±, 2008). This is not an easy case to read.
- Intermediaries—Agents & Brokers/Surplus Lines: A provision in Florida's statutes requiring surplus lines liability carriers to deliver policies to the named insured is met if the policy is delivered to the insured's broker. *Essex Ins. Co. v. Zota*, 985 So.2d 1036 (Fla. 2008). This case arose out of questions "sent over" by the 11th Circuit. There are interesting discussions of the relationship between the terms "broker" and "agent," and there are especially interesting discussions of how to interpret statutes. 30 INS. LITIG. RPTR. 469-72 (September 1, 2008, or so).
- Intermediaries—Agents & Brokers: Under Massachusetts Law, insurance agents have no general duty to make sure that contracts of insurance they procure provide coverage that is adequate for the needs of their individual customers. When such a duty exists, it arises from the existence of a "special relationship" between the agent and the customer, based upon "assertion, representation, and reliance." *AGA Fishing Group Ltd. v. Brown & Brown, Inc.*, 533 F.3d 20 (1st Cir. 2008). 30 INS. LITIG. RPTR 468-469 (September 1, 2008, or so).
- Intermediaries—Agents & Brokers: Under Colorado law, absent a "special relationship" between an insurer's agent and a customer, that agent has no duty to advise or warn the customer regarding provisions in the policy being sold. Whether a "special relationship" has been formed, turns on whether there has been "entrustment," i.e., whether the agent or broker has assumed duties in addition to those which usually attach. *Sewell v. Great Northern Ins. Co.*, ___ F.3d ___ (10th Cir. July 31, 2008). 2008 WL 2926226. 30 INS. LITIG. RPTR. 466-68 (September 1, 2008, or so).
- Additional Insureds: Identity of additional insureds is determined by the language of that section in a CGL policy and not by the indemnity clause of the policy, other things being equal, and an analogous rule applies to "follow form" excess policies. *Evanston Insurance Co. v. ATOFINA Petrochemicals, INC.*, 30.13 INS. LITIG. RPTR 433-39 (Aug. 90, 2008), ___ S.W.3d ___ (Tex., June 13, 2008), 2008 WL 2405005. This is the third decision of Texas Supreme Court in this case on the same issues, the two previous decisions having been withdrawn, consequent upon motions for rehearing.)
- Agents & Brokers: No breach of contract action in Nebraska bringable by an insured (or such customer) if the intermediary is an agent acting solely on behalf of an insurer, though such an action is recognized if the intermediary is a broker that is the legal agent of neither insurer nor insured and able to shop the coverage. 30.13 INS. LITIG. RPTR, 43941 (AUG. 9, 2008), *Broad ex rel. Estate of Schekall v. Randy Bauer Insurance Agency, Inc.*, 749 N.W.2d 478 (Neb. 2008).

- Excess Insurance: “Follow form” policies are not the same as “follow the fortune” policies, so when an insured settled with an underlying carrier, it must prove coverage under the excess policy to recover (plus other issues relating to “property damage” in the case about liability insurance and undersea treasure). *American Home Assurance Co., v. Oceaneering Int’l Co.*, 2008 WL 2169411 (S.D. Tex., May 22, 2008) 30.13 INS. LITIG. RPTR 441-444 (Aug. 9, 2008)
- Subrogation: If a liability insurer for a subcontractor “involuntarily,” as that term is defined, pays its insured’s contract-based indemnity obligation, then it and that sub have standing to pursue equitable subrogation against the manufacturer of the product that led to the payment. *Frymire Engineering Co., By and Through Real Party in Interest, Liberty Mutual Insurance Co. v. Jomar Int’l Ltd and Mixer S.R.L.*, ___ S.W.3d ___, 2008 WL 2404961 (Tex., June 13 2008). 30.13 INS. LITIG. RPTR 441-444 (Aug. 9, 2008).
- Agents & Brokers: Nevada’s Interstate Licensing Statute Declared Unconstitutional for Violating the “Privileges and Immunities” Clause of the U.S. Constitution. *Council of Insurance Agents & Brokers & Rebecca Restrepo v. Molasky-Arman*, 522 F.3d 925 (9th Cir. 2007). 30.9 INS. LITIG. RPTR 311-13 (June 25, 2008)
- Agents & Brokers: Insurance Brokers May Not Owe Their Customers fiduciary Duties as a Matter of Law or Universally as a Matter of Custom, but They Sometimes Do. The Existence of Such a Duty Is a Question of Fact. *Clark & Lavey Benefits Solutions, Inc. v. Educational Development Center, Inc.*, ___ A.2d ___, 2008 WL 1932968 (N.H. 2008). 30.9 INS. LITIG. RPTR 308-310 (June 25, 2008).
- Use of Lawyers Employed by Liability Insurers to Defend Insured Permitted when the Interests of the Insurer and the Insured are “Congruent.” 30.8 INS. LITIG. RPTR 285-89 (June 1, 2008), discussing *Unauthorized Practice of Law Committee v. American Home Assurance Company, Inc. & Travelers Indemnity Company*, ___ S.W.3d ___, 2008 WL 821034 (Tex. March 28, 2008). The staff attorney must fully disclose to the insured the nature of the lawyer’s affiliation with the insurer.
- Agents & Brokers. Whatever Duty a Policyholder Owes His Intermediary to Read and Understand the Policy Purchased Is Simply a Rebuttably Presumptive Component of the Comparative Negligence Defense Available to the Intermediary, That May Have a Duty to Advise. *Insurance Network of Texas v. Kloesel*, ___ S.W.3d ___, 2008 WL 907479 (Tex. App.—Corpus Christi, April 3, 2008). 30.8 INS. LITIG. RPTR 267-72 (June 1, 2008). Policyholder claims against intermediaries are assignable.
- Employer’s Liability Insurance & Punitive Damages: Coverage Not Forbidden by Texas Public Policy. 30.5 INS. LITIG. RPTR 141-44 (April 1, 2008), discussing *Fairfield Ins. Co. v. Stephens Martin Paving* ___ S.W.3d ___, 2 008 WL 400397 (Tex. Feb. 15, 2008). This holding pertains to gross negligence, but there is an exploration of broader issues and public policy which suggests that the same result may not apply to all liability policies.
- Liability Insurer Has No Duty to an Insured Being Defended to Supply Unsought Information. 30.5 INS. LITIG. RPTR 145-48 (April 1, 2008), discussing *National Union v. Crocker*, ___ S.W.3d ___, 2008 WL 400398 (Tex. Jan. 25, 2008)
- Statute of Limitations for Brokers, etc. Discoverability of Error Near Policy Issuance Entails that Limitation Period Begins Running Near Policy Issuance, Not When the Loss Occurs, 30.6 INS. LITIG RPTR 171-72 (April 27, 2008), discussing *Flip v. Block*, 879 N.E.2d 1076 (Ind. 2008).
- Notice: Texas Supreme Court Adopts Notice-Prejudice Rule in a Liability Case Involving Coverage

B, 30.3 INS. LITIG. RPTR 98-100. *PAJ, Ins. V. Hanover Ins. Co.* (Tex. 243 S.W.3d 630). This was a 5-4 decision, and the minority would treat the “Notice Rule” as a condition precedent and not as a covenant. From the point of view of technical legal principle, i.e., stare decisis, one wonders how strong this opinion is in determining holdings in property insurance cases.

- Excess Insurance: Excess Carrier has Standing to Sue a Primary Carrier, 30.3 INS. LITIG. RPTR 83-86 (847 N.Y.S.2d 7 (App. Div., Nov. 8, 2007). Excess liability carrier does not have a malpractice claim against the insured’s defense counsel, since there is no relevant privity, but does have standing to sue the primary insurer controlling the defense under the “Direct Action Theory.”
- Agents & Brokers: *Assignability of Professional Negligence Claim Against Insurance Intermediary*, 30.3 INS. LITIG. RPTR 80-82 (March 26? 2008). *Webb v. Gittlen*. 174 P.3d 275 (Ariz. 2008). Holding: A Professional negligence claim against an insurance intermediary is assignable to a judgment creditor of the intermediary’s customer, rejecting *Cigars Int’l Ltd v. Farmer-Butler-Leavitt Ins. Agency*, 96 P.3d 555 (Ariz. App. 2004).
- Agents & Brokers: *Garcia v. Associated Insurance Service, Inc.*, ___ S.W.2d ___ (Ky. App., 12-14--08), 2007 WL 4355198. An insured’s malpractice claim against an intermediary for placing coverage with a financially unstable insurer is assignable to a tort plaintiff suing an insured. The terms of the Insured’s settlement with the tort plaintiff are not binding on the intermediary, however.
- Bad Faith: *Undiscovered Evidence Supporting Coverage Denial and Bad Faith*. 29 INS. LITIG. RPTR 829-33 (December 20 [or so], 2007). *Wilson v. 21 Century Insurance Company*, ___ P.3d ___, 2007 WL 4200527 (Cal. App. November 29, 2007). This case held that evidence not known to an insurer At the time of claim denial did not make a mistake “genuine” if the insurer failed to investigate fully And fairly evaluate the evidence supporting coverage.
- D & O Coverage: *Insurer Rescission for Misrepresentations in Application Requires that the Misrepresentation and/or Omission be Deliberate*, 29 Ins. Litig. Rptr 789-95 (December 5 [or so], 2007). The case here was *Executive Risk Indemnity v. AFC Enterprises, Inc.*, 510 F.Supp. 1308 (N.D.Ga. 2007). One issue is found in the title; another pertains to the relationship between rescission and insurer bad faith.
- Subrogation & Contribution: *Primary-and-Excess Carrier v. Primary-Only Carrier*, 29 INS. LITIG. RPTR 757-64 (November 15, 2007). The case here was *Mid-Continent Insurance Company v. Liberty Mutual Insurance Company*, ___ S.W.3d ___, 2007 WL 2965401 (Tex. 2007). The issue was whether a settling liability carrier can bind another liability carrier insuring the same risks for the same insured to contributing to a settlement pot, and the answer was negative.
- Underwriting: *Federal Fair Credit Reporting Act Applies to Mortgage Guarantee Insurers User of Borrowers’ Credit Information in Pricing Lenders’ Policies*, 29 INS. LITIG. RPTR 737-39 (November 15, 2007). The case here is *Whitfield v. Radian Guaranty, Inc.*, ___ F.3d ___, 2007 WL 2452641 (3d Cir. 2007). The case also concerns not only what is in the title above but also whether the lack or privity between an insurer and a borrower exempts the insurer from the requirements of the FCRA. The answer was negative.
- Fiduciary Duty and Third Party Administrator: *Third-Party Administrators Do Not Owe Insurers General Fiduciary Duties*, 29 INS. LITIG. RPTR 715-20 (November 15, 2007). The case here is *National Plan Administrators, Inc. v. National Health Ins. Co.*, ___ S.W.3d ___, 2007 WL 2811130 (Tex. September 28, 2007). The case concerns not only general law but a specific agreement between a health insurer and a TPA.

- Statutory Review: *Texas Statute Forbidding Auto Insurer from Owning Auto Repair Shops*, 29 INS. LITIG. RPTR 614-18 (October 1, 2007). *Allstate Ins. Co. v. Greg Abbott, In His Official Capacity as A.G. of Texas*, ___ F.3d ___ (5th Cir. August 22, 2007). (This was a revision of an opinion issued on August 1, 2007.) Statute held constitutional, although part of the statute violated the Free Speech Clause.
- *Intermediary Exonerated of Misrepresentation and Fraud in the Sale of a Joint Life Policy Since Policy Itself Was Unambiguous in Addressing Relevant Issue*, 29 INS. LITIG RPTR 493-94 (August 20, 2007). *Horace Mann Life Ins. Co. v. Nunaley*, ___ So.2d ___, 2007 WL 2051532 (Miss. July 9, 2007).
- *Parent Corporation's Indemnification of Subsidiary's D & O Defense Costs and Settlement Expenses Not Preclude D&O Coverage, Since "Loss" Included Indemnification Paid by Third Party*, 29 INS. LITIG RPTR 502-05 (August 20, 2007). *AT&T Corp. v. Clarendon Am. Ins. Co.*, ___ A.2d ___, 2005 WL 1892240 (Del., July 2, 2007).
- *Washington Supreme Court Takes Broad, Pro-Policyholder View of Liability Insurer's Duty to Defend, Even When the "Eight Corners" Rule Can Be Circumvented*, 29 INS. LITIG RPTR 541-45, 164 P.3d 454 (Wash. 2007)(en banc). Underlying Facts: Dentist inserts boar tusks in a woman's mouth and takes pictures. They are later given to her, and she is mortified. Substantial damages.
- *Agents Have No Duty to Procure Insurance Merely Because a Customer Orders It*, 29 INS. LITIG RPTR 462-65 (July 27+, 2007). Discussion of *Avery v. Diedrich*, 734 N.W.2d 159 (Wis. 2007).
- *The "Made Whole Rule" of Subrogation Trumped and Fractured*, 29 INS. LITIG RPTR 477-82 (July 27+, 2007). Discussion of *Fortis Benefits v. Cantu*, ___ S.W.3d ___. 2007 WL 1861000 (Tex. June 29, 2007).

[MSQ] Cite missing_____

- *Insurance Intermediaries, Recovery From Insurers For Breach of Duty to Indemnify: Actual Damages? Emotional Distress? Punitive Damages? (Yes + No & No)* 29 INS. LITIG RPTR 402-04 (July 4, 2007). The Mississippi Supreme Court, as a foundation, adopted a new standard for principals having a duty to indemnify agents: namely §8.14 of the RESTATEMENT (THIRD) OF AGENCY, this it adopted as a whole, thereby replacing its previous adoption of §439 in a 1987 case.
- *Business Interruption/Deductible Case: Policy Definition of "Deductible" Judged Ambiguous*, 29 INS. LITIG RPTR 364-66 (June 14, 2007). *Texas Industries Inc. v. Factory Mutual Ins. Co.*, ___ F.3d ___, 2007 WL 1376337 (5th Cir. May 11, 2007). Case decided for insureds after district judge found the definition unambiguous, while the circuit court found it ambiguous and affirmed.
- *Law Firm's Current Malpractice Insurance Covered Attorney for Certain Work—A Restricted Range—After Leaving the Firm and the Client Remained a Client of the Firm*. 29 INS. LITIG REPTR 386-89 (June 15, 2007). *Jolley v. Marquess*, ___ A.2d ___, 2007 WL 1518114 (N.J. Super., App. Div., May 25, 2007).
- *Liability Insurer Bad and Settlement Offers Within Policy Limits*, 29 INS. LITIG RPTR 330-3I (May 29, 2007). *McKinley v. Guaranty National Insurance Company*, ___ P.3d ___, 2007 WL 1288323 (Idaho, May 3, 2007). This cause of action may exist even if the insured has not been completely cooperative.
- *The Texas Attorney General May Bring a Class Action Under the Insurance Code Without Obtaining Private Citizens as Class Representatives. Farmers Group, Inc. v. Lubin*, ___ S.W.3d ___, 2007 WL 1225080 (Tex. April 27, 2007), 29 INS. LITIG RPTR 350-56 (May 30, 2007). Still, prerequisites to

class certification apply to the Attorney General, albeit in a relaxed fashion. (This was a famous political incident at the time. It involved homeowner's insurance, underwriting figures, the Department of Insurance, marketing practices, and the insurer's threat to leave the state.) My Comment included a discussion of *Citizens Ins. Co. of Am. v. Duccach*, 217 S.W.3d 430 (Tex. 2007) which illustrates another important change in underwriting practices and controversies.

- *Insurer and Intermediary: No Fiduciary Duty Running from Former to Latter, and Insurer's Adjustment Practice Not Generate an Intentional Interference with Prospective Business Relationship for the Intermediary*, 29 INS. LITIG. RPTR 246-48 (April 24, 2007). *MCM Group Associates v. CX Reinsurance Company LTD., U.K.*, ___ P.3d ___, 2007 WL 528800 (Colo. App. 2007) (jury verdict and judgment in favor of intermediary reversed).
- *Insured May Often Sue Intermediary for Failure to Purchase Excess Policy, Even After Underlying Cases Settles*, 20 IN. LITIG. RPTR 248-49 (April 24, 2007). *Terrain Tamers Chip Hauling Inc. v. Insurance Marketing Corporation of Oregon*, 152 P.3d 915 (Or. App. 2007).
- *No Attorney-Client Relationship Exists Between Reinsurer and Attorneys Hired by Ceding Insurer to Defend Policyholder*, 29 INS. LITIG. RPTR 259-61 (April 24, 2007). *Zenith Insurance Co. v. O'Connor*, 55 Cal.Rptr.3d 911 (Cal. App. 2007). (Quinn wrote only a comment at p. 261; DiMungo wrote the remainder.)
- *Lawyer Who Has Acted as Insurance Defense Counsel for an Insured May not a Little Later Represent the Insured Against the Insured in a Related Bad Faith Case, Since There Is a Conflict*, 29 IN. LITIG. RPTR 261-63 (April 24, 2007). *Nevada Yellow Cab Corporation v. The Eighth Judicial District Court*, 152 P.3d 737 (Nev. 2007). Underlying principle: Insurance defense lawyers primary represent insureds but secondary represent the liability carriers that have a duty to defend and are carrying it out.
- *A Surety May Recover Contractually Based Attorneys Fee, Even Though the Fees Were Incurred in Litigating Issues of Federal Bankruptcy Law*, 29 INS. LITIG. RPTR 277-79 (April 24, 2007), *Travelers Casualty & Surety Company of America v. Pacific Gas & Electric Company*, ___ U.S. ___, ___ 127 S.Ct. ___ (2007). Thus, state law may control the interpretation of federal statutes.
- *Applications for Legal Malpractice, Claims-Made Coverage: What a Lawyer Knows is Quite Possible But Which In Undisclosed May Justify As-A-Matter-Of-Law Rescission*, 29 INS. LITIG. RPTR 205-08 (April 2, 2007). *Liberty Surplus Insurance Corporation, Inc. v. Nowell Amoroso, P.A.*, 916 A.2d 440 (2007). The insurer's summary judgment to the above effect was affirmed.
- *Excess Liability Carriers Have No Legal Right to Sue Insurance Defense Counsel for Malpractice Under Indiana Law*, 29 INS. LITIG. RPTR 189-91(April 2, 2007). *Querrey & Harrow, Ltc. Transcontinental Insurance Company*, ___ N.E.2d ___, 2007 WL 505791 (Ind. App. 2007). The law of equitable subrogation does not create a right for an excess liability carrier to sue defense counsel. The implications of the case probably apply to primary carriers as well.
- *Conduct of Insurer Counsel May Be Used as Evidence of Insurer Bad Faith Only in Restricted Circumstances*, 29 INS. LITIG. RPTR 12-14 (February 10, 2007). *Parsons v. Allstate Ins. Co.*, ___ P.3d ___, 2006 WL 3437561 (Colo. App. 2006).
- *Texas Law: UM/UIM Coverage Disputes--(1) Prejudgment Interest & (2) Atty Fees*, 29 INS. LITIG. RPTR 42-46 (Feb. 10, 2007). *Brainard v. Trinity Univ. Ins. Co.*, ___ S.W.3d ___, 2006 WL 3751572 (Tex. 12/22/06), *State Farm Mut. Auto. Ins. Co. v. Norris*, ___ S.W.3d ___, 2006 WL 3751580 (Tex. 12-22-06), & *State Farm Auto. Ins. Co., v. Nickerson*, ___ S.W.3d ___, 2006 WL 3754824 (Tex. 12.22.06).

- *Insurance Intermediary: When Statutes of Limitations Begin*, 28 INS. LITIG. RPTR 763-64 (December 1, 2006). *Bullard v. Guardian Life Ins. Co. of Am.*, ___ So.2d ___, 2006 WL 3094125 (Miss., Nov. 2, 2006). An agent's action against an insurer for inducing the agent to sell a fraudulent product begins to run when the insured sues the agent, not when the agent sold the policy. Look to when damages are sustained by the plaintiff, not when the policy was sold.
 - *Abstention By a Federal District Court in This Dec Action Turned Out to Be Reversible Error*, 28 INS.LITIG RPTR 782-85 (December 1, 2006). Case: *Grt. Am. Ins. Co. v. Gross*, ___ F.3d ___, 2006 WL 3059884 (4th Cir. Oct. 30, 2006). Topic: declaratory judgments arising out of the insolvency of The Reciprocal Group and how the rule in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1975) should be interpreted in insurance based cases, where there are some other Cases in other jurisdictions.
- Insurance Counsel: Insurer May Have an Opposing Policyholder's Law Firm Disqualified, When It Is Joined by a Lawyer, Who Previously Represented the Insurer in the Pending Coverage Action*, 28 INS. LITIG. RPTR 738-40 (November 15, 2006). This is true even when the final appellate briefs have been filed and even though the new law firm screened off the new lawyer. *National Union Fire Ins. Co. of Pgh., Pa., v. Alticor, Inc.*, ___ F.3d ___ (6th Cir. 2006).
- *Insurance Bad Faith Cases Need Not Always be in the Coverage or Breach of Insurance Contract Suit*, 28 INS. LITIG. RPTR 691-93 (November 1, 2006). The cases discussed is *Rawe v. Liberty Mutual Fire Ins. Co.*, 462 F.3d 521 (6th Cir. 2006). In that case, the insurer settled with the insured and they required that there be a release of all types of claims before payment was made. When the insured sued for bad faith, the insurer sought to invoke res judicata. The coverage case had already had a final judgment entered.
 - *Subrogation: The "Made Whole Doctrine" Again Rejected Under South Dakota Law*, 28 INS. LITIG. RPTR 648-51 (October 13, 2006). The case discussed is *Met Life Auto and Home Ins. Co. v. Lester*, 719 N.W.2d 385 (N.D. 2006). There was a dissent.
 - *Plaintiff's Lawyers Who Ignore Subrogated Insurer Lien Letter Are Exposed to Suit*, 28 INS. LITIG. RPTR 568-70 (Sept. 20, 2006), *AIG Life Ins. Co. v. Federal Ins. Co.*, ___ S.W.2d ___, 2006 WL 2361335 (Tex. App.—Dallas, 2006) Federal was not in the end the target. It was the plaintiff's lawyer. All had received subrogation lien letters from AIG, but AIG's name was not on the settlement check. The lawyer was ruled to be exposed to causes of action for conversion and conspiracy; since these are intentional torts, exemplary damages were also at issue.
 - *Releases, Brokers, and Fiduciary Duties*, 28 INS.; LITIG. RPTR 549-51 (September 20, 2006), *CIC Property Owners v. March USA, Inc.*, ___ F.3d ___, 2006 WL 2329499 (5th Cir. Aug. 11 2006). (Marsh settled a suit with CIC and got a complete release. It turned out that Marsh owed CIC some returned premium money. CIC demanded it and Marsh paid. CIC found more and demanded more. Marsh eventually refused to pay more, and suit followed. The release applied, CIC took no more.
 - *Customers Have No Cause of Action Against Brokers Under New Jersey's Consumer Fraud Act*, 28 INS. LITIG. RPTR. 547-49 (September 20, 2006). *Plemmons v. Blue Chip Ins. Services, Inc.*, A.2d ___, 2006 WL 20388672 (N.J. Super App. Div., Aug. 21, 2006) N.J.'s CFA held not to reach "semi-professionals," like insurance brokers.
 - *Insurance Agents Not Have a Generalized Duty to Inspect Property*, 28 INS. LITIG. RPTR. 544-46 (Sept. 20, 2006), *Wisniski, v. Brown & Brown Co. of Pa.*, ___ A2d ___, 2006 WL 2381337 (Pa. Super.

App. Div., August 15, 2006). Classic law school case, following many previous published decisions in this case

- *Katrina Flood Damage Not Insured*, 28 INS. LITIG. RPTR 521-25 (September 10, 2006). *Leonard v. Nationwide Mut. Ins. Co.*, ___ F.Supp.2d ___ (S.D. Miss., Aug. 15, 2006). (Wind v. Flood: I wrote only a second “Comment.”)
- *Brokers, the Illinois Self-Evaluation Privilege, and Waiver*, 28 INS. LITIG. RPTR 468-68 (August 31, 2006). *Lawndale Restoration Limited Partnership v. Acordia of Illinois, Inc.*, ___ N.E.2d ___ (Ill. App. 2006), 2006 WL 2057286. This case concerns the relationship between and Illinois statute creating a self-evaluation privilege and the consequences for that right if there was antecedent disclosure of the evaluation to someone.
- *Subrogation Carve-Out and Utilities*, 29 INS. LITIG. RPTR 488-89 (August 31, 2006). *Franklin Mut. Ins. Co. v. Jersey Central Power & Light*, ___ A.2d ___, 2006 WL 207 6779 (N.J. 2006). When a regulated public utility fails to provide its services and a customer sustains damages, the insured customer’s insurer does not have a subrogation action against the insurer under New Jersey law.
- *Building Tenants Are Not Automatically Implied Co-Insureds with Building Lessors*, 28 INS. LITIG. RPTR 490-91, 2006 WL 2193039 (Vt. 2006). Property insurers for building lessors are not legally barred from using subrogation to sue negligent tenants, under Vermont law.
- *Broker, Agents, and the Law of Agency Under Illinois Statutory law*, 28 INS. LITIG. RPTR 421-22 (August 1, 2006). *County Mutual Insurance Co. v. Carr*, ___ N.E.2d ___ (Ill. App., July 14, 2006), 2004 WL 1999220. Mainly the case involved a 1997 amendment to Illinois law which created negligence actions brought by insureds against not only “brokers” but also “agents” of insurers who are employed by those insurers. The decision, if it lasts, changes Illinois case law and legal vocabulary, which historically deployed the words “agent” and “broker” in unusual ways.
- *The “Stowers Doctrine” Not Apply When Tort Case Won on Appeal*, 28 INS. LITIG. RPTR 426-27 (August 1, 2006). *Archer, M.D. v. Med. Protective Co.*, 2006 WL 1932582, ___ S.W.3d ___ (Tex. App. – Amarillo, July 13, 2006). Legal malpractice action also included.
- *Agents’ Obligation: Policy Content Disclosure-- Available Causes of Action for Failure*, 28 INS. LITIG. RPTR 373-77 (July 15, 2006), *R & B Auto Center, Inc. v. Farmers Group, Ins.*, 140 Cal. Rptr 426 (4th Dis. 2006) (highly complex case involving coverage under the California Lemon Law and duties of intermediaries).
- *Insurer Action Against Departing Agent*, 28 INS. LITIG. RPTR 377-78 (July 15, 2006), *Farmers Insurance Exchange v. Schirado*, ___ N.W.2d ___ (N.D. 2006) Issue: Use of circumstantial evidence to prove causation of injury and damages by a stridently self-interest and departing agent-intermediary.
- *Intermediary’s Duty to Notify Insured of Policy Cancellation, If the Insured Know or Should Know of the Impending Cancellation*, 28 INS. LITIG. RPTR 379-81 (July 15, 2006), *GlobalNet Financial.com v. Frank Crystal & Co., Inc.*, 449 F.3d (2d Cir. 2006). Issues: (1) choice of law: New York v. Florida— N.Y. wins, (2) answer to question in title=No.
- *Duty to Defend and “Complaint-Allegation Rule” versus Use of Extrinsic Evidence: Is Texas Law Due to Reform?* 28 INS. LITIG. RPTR 394-98 (July 15, 2006), *GuideOne Elite Ins. Co. F/K/A Preferred Abstainers Ins. Co.* ___ S.W.3d ___ (Tex. 2006). Issues: nature of Texas duty to defend. Answer: No revision, but recognitions of possible exceptions near or at the outlying boarder. This is as 5-0-4 decision: no dissents but five concurring justices with one quite different opinion. Issues

amongst the justice: where to discuss relevant-looking issues, where they are not truly relevant. (This case and topic were done again in a telephone conference on August 18, 2006, as noted elsewhere herein. The squib published here was a so distributed there.)

- *Brokers, "Specific Request" Requirement, & "Special Relationship" Requirement*, 28 INS. LITIG. RPTR 324-26 (July 6, 2005). Case: *Hoffend & Sons, Inc. v. Rose & Kiernan, Inc.*, ___ N.E.2d ___ (N.Y. 2006), 2006 WL 1547708. Holding: Insurance brokers are liable for not obtaining a coverage only if the customer has specifically requested it, and there is no automatic "special relationship" between brokers and customers. Alas, the idea of "special relationship" is not well explained in this case, although it is better done in previous New York cases.
- *A "Specific Request" Versus a "Specific Agreement,"* 28 INS. LITIG. RPTR 326-27 (July 6, 2006). Case: *Avery v. Diedrich*, 2006 WL 1540787 (Wis. App. 2006)(final publication decision pending). An agent is not liable for failing to obtain insurance when the agent has not agreed to obtain it, even if the agent is factually mistaken about its (un)availability.
- *Adding an Additional Insured to an Excess Policy*, 28 INS. LITIG. RPTR 264-65 (June 15, 2006). Case: *Evanston Ins. Co. v. Atofina*, ___ S.W.2d ___, 2006 WL 1195330 (Tex. 2006)
- *Insurers Duties Under "Large Deductible" Workers Comp Policies*, 28 INS. LITIG. RPTR. 269-270 (June 15, 2006). Case: *Liberty Mut. Ins. Co. v. Precisionaire, Inc.*, 2006 WL 905389 (M.D. Fla. 2006). Can excessive settlements constitute breach of contract or bad faith?
- *Liability Insurer v. Insurance Defense Counsel*, 28 INS. LITIG. RPTR 272-75 (June 15, 2006). Case: *TIG Ins. Co. v. Griffin, Winning, Cohen & Bodewes, P.C.*, 444 F.3d 587 (7th Cir. 2006). Case: First defense counsel had a role in causing a discovery dispute. Second Defense counsel spent \$1.2m trying to undo it. What are the insurer's damages, if any?
- *Insurer Negligence, Texas Insurance Code, and Bad Faith*, 28 INS. LITIG. RPTR 201-03 (May 15, 2006). Case *Minnesota Life v. Vasquez*, ___ S.W.3d ___, 2006 WL 889724 (Tex., April 7, 2006).
- *Arbitration Agreements May Be Interpreted Broadly To Include Tortious Interference Actions Brought Intermediaries*, 28 INS. LITIG. RPTR 177 (April 15, 2006). Case: *In re Vesta Ins. Group.*, 192 S.W.3d 759, 2006 WL 662335 (Tex. March 17, 2006).
- *An Attorney May (Under Some Circumstances) Testify Against an Insurance Intermediary*, 28 INS. LITIG. RPTR. 57 (March 1, 2006). *Hagen Ins. Inc. v. Roller*, 139 P.3d 1216, 2006 WL 147593 (Alaska, Jan. 20, 2006). The case involved an agent's not timely procuring worker comp coverage, and the lawyer/expert-witness knew a lot about comp. The principle is more general, however.
- *Intermediary Negligence, Expert Testimony, & Florida Law*, 28 INS. LITIG. RPTR. 58 (March 1, 2006). *AMH Appraisal Consultants, Inc. v. Argov Gavish Partnership*, 919 So.2d 580, 2006 WL 51150 (January 11, 2006), The case concerned whether an intermediary could be held liable for issuing a too-small policy on the basis of a poor appraisal.
- *In re Lumbermens Mutual Casualty Co.*, 184 S.W.3d 718, 2006 WL 249979 (Tex., Feb 3, 2006). The case concerned when a liability insurer could intervene in an appellate process when its insured was a defendant. It could in this case, given the agreement struck by the insured.
- *Weighing a Personal Airplane Not Constitute an Excluded Use Thereof*, 28 INS. LITIG. RPTR. 30 (February 10, 2006). *Tucker v. Allstate Texas Lloyds Ins. Co.*, 180 S.W.3d 880 (Tex. App.—Texarkana 2005). Issue: How to determine "use."

- *The “Wind Deductible” Endorsement: Not Apply, Unless—Wind Is Direct-Immediate Cause of Otherwise Insured Loss*, 28 INS. LITIG. RPTR. 23 (February 10, 2006). *Turner Construction v. Ace Property and Casualty*, 429 F.3d 52 (2d Cir. 2005)(Texas law applied).
- *Exclusions Governing Additional Insured Construed “Arising Out Of” Liberally to Favor Coverage*, 28 INS. LITIG. RPTR. 15 (February 10, 2006). *Atofina Petrochemical f/ka Fina Oil & Chem. Co. v. Continental Casualty Co.*, 185 S.W.3d 440, 2005 WL 3445514 (Tex. 2005)
- *An “Annual” Premium Need Not Cover a Whole Year’s Life Insurance Coverage*, 27 INS. LITIG. RPTR. 931 (January 2, 2006). *Goldman v. Metro. Life Ins. Co.*, 841 N.E.2d 742, 2005 WL 3091088 (N.Y. 2005). This case also concerns whether the term “annual” is ambiguous.
- *Insurance Intermediaries and the Duty to Explain and Recommend*, 27 INS. LITIG. RPTR. 889 (November 13, 2005). This squib discusses *Owens v. Mississippi Farm Cas. Ins. Co.*, 910 So.2d 1065 (Miss. 2005). The case also concerned UM/UIM issues and insurer bad faith.
- *The “Arising From” Exclusion*, 27 INS. LITIG. RPTR. 901 (November 13, 2005). This case, *Maroney v. New York Central Mut. Fire Ins. Co.*, 839 N.E.2d 886, 2005 WL 2777579 (N.Y. 2005), also concerned the “Uninsured Premises” Exclusion.
- *E & O Duty to Defend + Art. 21.55. [Ch. 542.001] and Liability Policies*, 27 INS. LITIG. RPTR. 819 (November 18, 2005) Case: *Service Lloyds Ins. Co. v. J.C. Wink, Inc.*, 182 S.W.3d 19, 2005 WL 2438350 (Tex. App. - San Antonio 2005) (2-1 as to 21.55).
- *Insurance Intermediary’s Duties Regarding Replacement Do Not Entail a Duty to Find and Sell at the Best Price*, 27 INS. LITIG. RPTR. 814 (November 18, 2005) Case: *Houck v. State Farm*, 620 S.E.2d 326, 2005 WL 2351297 (S.C. 2005).
- *Known Falsity Not Absolutely Sufficient For Proof of Intermediary Fraud, There Is No Intent to Deceive*, 27 INS. LITIG. RPTR. 815 (November 18, 2005) Case: *Victorian v. Am. Deposit Ins. Co.*, 923 So.2d 650, 2005 WL 2321024 (LA. App. 2005).
- *Liability Insurer’s Duty to Settle Under Kansas Law*, 27 INS. LITIG. RPTR. 817 (November 18, 2005) Case: *Roberts v. Printup*, 422 F.3d 1211 (10th Cir. 2005).
- *Layers of Excess Insurance*, 27 INS. LITIG. RPTR. 788 (October 25, 2005). Re: *TIG Ins. Co. v. N.Am. Van Lines*, 170 S.W.3d 264 (Tex. App.—Dallas, 2005).
- *Expert Testimony, Property Insurance, and Bad Faith Issues*, 27 INS. LITIG. RPTR. 722 (October 2, 2005). *U.S. v. Croft*, 175 S.W.3d. 457, (Tex. App. - Dallas, 2005) [2005 WL 2046243].
- *If Insurer Has No Duty to Pay for Anything under the Policy, Then (Usually) Insurer Is Not Liable for Bad Faith*, 27 INS. LITIG. RPTR.688 (Sept. 27, 2005) *Progressive Cnty. Mutual. Ins. Co. v. Boyd*, 177 S.W.3d. 919 (Tex. 2005) [2005 WL 2045816].
- *Duty-to-Defend Triggered Affirmatively by Unpled Facts*, 27 INS. LITIG. RPTR. 638 (Sept. 1, 2005). (*Hartford Cas. Ins. v. Litchfield Mutual Fire Ins. Co.*, 876 A.2d 1139 (Conn. 2005) (But not negatively!)).
- *Policy Limits and a “Sexual Abuse Occurrence” Special Definition*, 27 INS. LITIG. RPTR. 592 (August 15, 2005). (*TIG Ins. Co. v. San Antonio YMCA, d/b/a YMCA of San Antonio*, 172 S.W.3d 652, (Tex. App. - San Antonio, July 13, 2005) (2005 WL 1629801). This case had to do with the relationship between two definitions and a liability insurance policy with an endorsement. The

definitions were of “Occurrence” and of “Sexual Abuse Occurrence.” The latter had a very restrictive way to count occurrences.

- *Life Insurance Application, the Meaning of the Questions, and Rescission*, 27 INS. LITIG. RPTR. 603 (August 15, 2005). (*O’Riordan v. Federal Kemper Life Assurance*, 30 CAL. RPTR. 3d 507 (2005)). The issue here was whether the applicant’s smoking a few cigarettes, now and then, required a “Yes” answer to the question, “Have you smoked cigarettes in the last 36 months?”
- *The Meaning of “Wear & Tear,”* 27 INS. LITIG. RPTR., 563 (July 31, 2005). (*Meridian Leasing, Inc. v. Associated Aviation Underwriters, Inc.*, 409 F.3d 342 (6th Circuit 2005)).
- *Assertions of Agents May Determine Insurer Liability When Inconsistent with Policy Language*, 27 INS. LITIG. RPTR. 561 (July 31, 2005). (*Tran v. Metropolitan Life Insurance Company*, 408 F.3d 130 (3rd Circuit 2005)). This was a “Vanishing Premium” case involving the Pennsylvania Legal “Doctrine of Reasonable Expectation” pertaining to the sale of insurance.
- *Business Interruption/Consequential Damages*, 27 INS. LITIG. RPTR. 546 (July 31, 2005). (*Lava Trading Inc. v. Hartford Fire Ins. Co.*, 365 F.Supp.2d 434 (S.D.N.Y. 2005)).
- *Invalidation of COLI Life Insurance Policies: Corporate Beneficiary, Insurers, Intermediaries*, 27 INS. LITIG. RPTR. 475 (July 6, 2005). (*Wal-mart Stores, v. AIG Life Insurance Co.*, 872 A.2d 611 (Del. Ct. Chancery 2005)). This was the second summary judgment after the Supreme Court of Delaware reversed the first. MarshMac was a defendant. The case involves an interesting discussion of the so-called “doctrine of commercial frustration.”
- *Liability Insurers No Coverage, Restitution*, 27 INS. LITIG. RPTR. 478 (July 6, 2005). (*Excess Underwriters Lloyds London v. Frank’s Casing Crew & Rental Tools, Inc.* (Tex. 2005) [2005 WL 1252321]). The case is dealing with *Stowers* payments which can be received through restitution. There was a motion for rehearing, which was granted, and new opinion was issued.)
- *The Ins & Outs of D & O Coverage*, EXECUTIVE LEGAL ADVISER 22 (May 2005). (Published as a thin glossy magazine by THE TEXAS LAWYER, a weekly newspaper).
- *Insurers Breach for Failing to Pay Business Interruption Coverage May Be a Foundation for Consequential Damages*, 27 INS. LIT. RPTR. 380 (May 30, 2005). (New York law: *Hold Brothers, Inc. v. Hartford Casualty Ins.*, 357 F.Supp. 2d 651 (S.D.N.Y. 2005)).
- *Duty to Defend/Business Pursuit Exclusion: Implications and Inferences Matter*, 27 INS. LITIG. RPTR. 225 (March 15, 2005). (Texas law: *Allstate Ins. Co. v. Hallman*, 159 S.W.3d 640, 2005 WL 563110 (Tex. March 11, 2005)).
- *Life Insurance Agents Do Not Have a Duty to Investigate Possible Changes in the Health of Applicants*, 27 INS. LITIG. RPTR. 221 (March 31, 2005) (Texas law: *Banner Life Ins. Co. v. Pacheco*) 154 S.W.3d 822, 2005 WL 43438 (Tex. App.-Houston [14th Dist.] 2005).
- *Reasonable Expectations of Policyholders Even Unambiguous Policy Language Under Pennsylvania Law*, 27 INS. LITIG. RPTR. 185 (March 15, 2005).
- *Policyholder’s Refusal to Take EUO May Defeat Coverage Even If Insurer Not Prejudiced*, 27 INS. LITIG. RPTR. 178 (March 15, 2005).

- *Texas Public Insurance Policy and Punitive Damages*, 27 INS. LITIG. RPTR. 113 (February 28, 2005) (The title focuses on the high publicity issue in the case. There was also another issue concerning whether a policy limits settlement demand was made.)
- *Disability Insurance and the Definition of "Total Disability,"* 27 INS. LITIG. RPTR. 93 (February 28, 2005) (Minnesota law).
- *Disability Insurer Investigations of Claimants Required Notice*, 27 INS. LITIG. RPTR. 89 (February 28, 2005) (Colorado law).
- *Agents, Surety Vendors, and Statutory Bad Faith Damages*, 27 INS. LITIG. RPTR. 88 (February 28, 2005).
- *Independent Adjuster Liability to an Insurer*, 27 INS. LITIG. RPTR. 87 (February 28, 2005). (Texas Supreme Court).
- *"Like Kind and Quality": Meaning Of*, 27 INS. LITIG. RPTR. 61 (January 28, 2005). (*Republic Underwriting Ins. Co. v. Mex-Tex Inc.*, 150 S.W.3d 423 (Tex. 2004).
- *Texas Dwelling Policy, The "Ensuing Loss" Clause and Mold*, 27 INS. LITIG. RPTR. 58 (January 28, 2005).
- *Liability Insurers Utilizing Employees as Defense Counsel for Insureds*, 27 INS. LITIG. RPTR. 49 (January 28, 2005).
- *Dual Agents/"Broker-Agents" and California Statutes*, 26 INS. LITIG. RPTR. 713 (December 3, 2004).
- *Rescission, Claim Denial, Misrepresentations in Application*, 26 INS. LITIG. RPTR. 730 (December 3, 2004). Here, an insurance agent filled out the application and was alleged to be responsible for the misrepresentations.
- *Vendors Endorsements: Doctors As Insured Vendors*, 26 INS. LITIG. RPTR. 733 (December 3, 2004).
- *Vendors Endorsements: Display Item Causes Injury at Retailer*, 26 INS. LITIG. RPTR. 734 (December 3, 2004).
- *Insurer-Principal Is Fiduciary of Broker-Agent*, 26 INS. LITIG. RPTR. 664 (November 17, 2004).
- *Insurance Agent Customers and Malpractice*, 26 INS. LITIG. RPTR. 606 (October 28, 2004).
- *Ambiguities in Insurance Documents and Reasonable Expectations*, 26 INS. LITIG. RPTR. 574 (October 13, 2004).
- *Insurance Agents and General (Not Particular) Instructions from Customers*, 26 INS. LITIG. RPTR. 556 (October 13, 2004).
- *Insurer Entitled to Summary Judgment in Managing General Agent Case*, 26 INS. LITIG. RPTR. 555 (October 13, 2004).
- *Agents & Brokers Have No Duty to Investigate*, 26 INS. LITIG. RPTR. 554 (October 13, 2004).

- *Federal Rule 12(b)(6) Motion to Dismiss “Malpractice” Suit Against Broker*, 26 INS. LITIG. RPTR. 521 (September 29, 2004).
- *ERISA Does Not Preempt State Law Providing Basis for Suing Insurance Agents*, 26 INS. LITIG. RPTR. 519 (September 29, 2004).
- *Assignability of Claims for Professional Negligence Against an Insurance Brokerage Firm*, 26 INS. LITIG. RPTR. 517 (September 29, 2004) (Arizona case).
- *Reinsurance: Retrocession Reinsurance Sold by Broker*, 26 INS. LITIG. RPTR. 471 (Late August 2004).
- *Insurance Broker’s Representations*, 26 INS. LITIG. RPTR. 457 (Late August 2004).
- *When an Insured Requests a Defense From a Liability Insurer. . . .*, 26 INS. LITIG. RPTR. 435 (August 9, 2004) (Texas Supreme Court: *Davalos*).
- *Under Texas Law, Exclusion for Bodily Injury “Due to,”* 26 INS. LITIG. RPTR. 448 (August 9, 2004). (“Professional Services” Exclusion/*Utica National*).
- *Cancellation: Insurer Must Actually Receive Notice of Cancellation from Premium Finance Company Before Cancellation Can Become Effective*, 25 INS. LITIG. RPTR. 311 (May 31, 2003).
- *ERISA/Managed Care: ERISA Does Not Preempt Medical Malpractice Cases Against HMO*, 25 INS. LITIG. RPTR. 316 (May 31, 2003).
- *ERISA/Managed Care: ERISA Preempts Medical Malpractice Claims Against Health Plan and Its Advisors*, 25 INS. LITIG. RPTR. 318 (May 31, 2003).
- *Duty to Defend: Liability Insurer Owes Insured Duty of Reasonable Care in Providing a Defense, Even Though Insurer Is Not Vicariously Liable for the Misconduct of the Lawyer It Hires to Defend Insured; Insured’s Lost Profits Are Compensable Damages for Breach of Duty*, 25 INS. LITIG. RPTR. 283 (May 16, 2003).
- *ERISA/Managed Care: ERISA Does Not Preempt State “Any Willing Provider” Statutes*, 25 INS. LITIG. RPTR. 287 (May 16, 2003).
- *Pollution Exclusion/Notice: Federal District Court Analyzes Whether Insured Met Burden of Proving Sudden and Accidental Pollution Discharges within Exception to the Pollution Exclusion under Michigan Law*, 25 INS. LITIG. RPTR. 247 (April 10, 2003).
- *Insurance Counsel: Counsel for Insurers May Be Held Liable for Misrepresentation in Dealing with Someone Who Has Obtained Judgment against an Insured*, 25 INS. LITIG. RPTR. 235 (April 10, 2003).
- *Excess Insurance: Wrongful Failure to Defend By a Primary Carrier Does not Automatically Trigger a Duty to Defend for an Excess Carrier*, 25 INS. LITIG. RPTR. 232 (April 10, 2003).
- *Agents and Brokers: Insurance Agent Broker Can Be Liable If Negligent in Selecting Carrier*, 25 INS. LITIG. RPTR. 219 (April 10, 2003).
- *CGL Insurer May Owe Duty to Defend for Car Wreck*, 24 INS. LITIG. RPTR. 620 (October 15, 2002).

- *Negligent Adjustment Does Not Warrant Punitive Damages*, 24 INS. LITIG RPTR. 608 (October 15, 2002).
- *Credit Liability Insurer Liable for Bad Faith in Punitive Damages*, 24 INS. LITIG RPTR. 513 (September 20, 2002).
- *Liability Insurance/Intentional Acts*, 24 INS. LITIG. RPTR. 398 (July 10, 2002).
- *Liability Insurance/Intentional Acts*, 24 INS. LITIG. RPTR. 395 (July 10, 2002).
- *Bad Faith/Duty to Settle*, 24 INS. LITIG. RPTR. 299 (June 1, 2002).
- *Bad Faith/Delay*, 24 INS. LITIG. RPTR. 297 (June 1, 2002).
- *Comment* [on DiMugno on a vendor endorsement case], 24 INS. LITIG. RPTR. 156 (March 8, 2002). The case under discussion was *Hartford Fire Ins. Co. v. St. Paul Surplus Lines Ins. Co.*, 280 F.3d 744 (7th Cir. 2002)(Cal. Law). See 24 INS. LITIG. RPTR. 149 (March 8, 2002).
- *Patent Infringement in the Digital Circuitry of a Coin-Operated Video Game Constitutes Neither "Piracy" Nor "Advertising Injury" under Coverage B*, 24 INS. LITIG. RPTR. 140 (March 8, 2002).
- *Liability Insurance/Intentional Harm*, 23 INS. LITIG. RPTR. 680 (December 20, 2001).
- *Bad Faith/Uninsured Motorist Coverage*, 23 INS. LITIG. RPTR. 670 (December 20, 2001).
- *Bad Faith/Duty to Settle*, 23 INS. LITIG. RPTR. 667 (December 20, 2001)
- *Cyber Liability Insurance*, 21 LICENSING J. 25 (November/December 2001).
- *Agents & Brokers/Bad Faith*, 23 INS. LITIG. RPTR.. 360 (August 2001).
- *Bad Faith/Evidence*, 23 INS. LITIG. RPTR.. 364 (August 2001).
- *Bad Faith/Workers Compensation*, 23 INS. LITIG. RPTR.. 370 (August 2001).
- *[Expert] Testimony Usurped Role of Both Judge and Jury*, 23 INS. LITIG. RPTR.. 191 (June 2001).
- *Malpractice Claim Against Lawyer Rejected*, 23 INS. LITIG. RPTR. 187 (June 2001).
- *Software Coverage*, 21 LICENSING J. 30 (May 2001).
- *Commercial General Liability, Coverage B: Redux*, 21 LICENSING J. 23 (April 2001).
- *Trade Secret Misappropriation Liability Insurance*, 21 LICENSING J. 26 (March 2001).
- *Bad Faith: Credit Life Premiums*, 23 INS. LITIG. RPTR. 54 (March 1, 2001).
- *Intellectual Property Insurance*, 21 LICENSING J. 31 (February 2001).
- *Insurance for Cyber Liabilities*, 21 LICENSING J. 34 (January 2001).
- *Grievance Defense and Adversariality*, 1 TLIE LEGAL MALPRACTICE ADVISORY 1 (2001).

- *Advertising Injury Insurance*, 20 LICENSING J. 31 (November/December 2000).
- *Procrastination Plus Underestimates Produce Bad Faith*, 16 BAD FAITH L. RPTR. 244 (December 2000).
- *Liability Insurer Not Liable for Negligence Spoliation*, 16 BAD FAITH L. RPTR. 243 (December 2000).
- *Failure of Credit Life Insurer to Return Unearned Premium Promptly Not Tortious in the Absence of Conspiracy*, 16 BAD FAITH LAW RPTR. 200 (October-November 2000).
- *Liability Insurance and High-Tech Industries*, 20 LICENSING J. 26 (October 2000).
- *Comments of the Chair*, 2 J. OF TEX. INS. L. 1 (2000). (This is a squib of no substantive interest. It is recorded here for Rule 26-type reasons.)
- *Even if Prejudgment Interest On Tort Claims Is Statutory, Insurer Obligations to Pay It Are Contractual*, 16 BAD FAITH L. RPTR. 175 (August-September 2000).
- *Hospital's Billing Agent Can Sue Insurer That Denied Claims for Tortiously Interfering with Agency Agreement*, 16 BAD FAITH L. RPTR. 167 (August-September 2000).
- *Even a Reasonable Basis to Deny Claim Will Not Prevent Bad Faith Liability If Insurer Fails to Identify that Basis Before Denial*, 16 BAD FAITH L. RPTR. 163 (August-September 2000). Written with William T. Barker.
- *Conduct by Excess Carrier Before Primary Carrier Tendered Policy Limits Not Admissible to Show Excess Carrier Was Negligent Unless Conduct Damaged Insured's Defense*, 16 BAD FAITH L. RPTR. 156 (August-September 2000). Written with Stephen Pate.
- *A Reservation of Rights Is Not Always Enough To Preserve Coverage Defenses*, 16 BAD FAITH L. RPTR. 89 (May 2000).
- *Where Insured and Insurer Understood Warranty Differently, [The Insured] Did Not Breach Warranty, But Insurer Was Not Unreasonable in Thinking She Had*, 16 BAD FAITH L. RPTR. 83 (April 2000).
- *Where Policy Govern By New York Law, That Law also Govern Breach of Duty to Settle Claim for Kansas Accident*, 16 BAD FAITH L. RPTR. 56 (March 2000).
- *Statutory Prohibition on Insurer Specification of Parts to Be Used in Repair or of Shop to Make Repair Did Not Require Insurer to Pay for OEM Parts*, 16 BAD FAITH L. RPTR. 54 (March 2000).
- *The Lies Firm Recruiters Tell*, 12 TEXAS LAWYER 13 (December 9, 1996).

Speeches, Lectures & Panels (The abbreviation "TDI/ICE" means that the Texas Department of Insurance awards continuing education credit to insurance professionals for this function. Its absence does not entail or imply the opposite. It only means MSQ doesn't know.) (A number of these speeches have been videotaped, and some special videotapes have been prepared on legal ethics by the Texas Center for Legal Ethics, as well as at least one by UT-CLE.) A few of the following are to be found on my expert witness website: www.michaelseanquinn.com.

- “Use and Abuse of Expert Witnesses in Insurance Cases,” 15th Annual Texas Insurance Law Symposium at South Texas College of Law §P (2011). This was an experiment in providing a practical guide as to how expert witnesses in insurance cases should “look” in many sorts of ways. (No cases were cited.) The focus was on adjustment processes and standard plus bad faith problems, as well as how testifying about insurance contracts might be permitted and how challenges to motions to disqualify can be defeated. There were three dimensions: (1) adjustment patterns, (2) experts and proposed experts (3) as well as how lawyers should handle insurance [at least] proposed] experts. Obviously, this sort of thing cannot be encyclopedic, but only partial. A more legalistic exhibit was attached.
- “Coverage Opinions” 15th Annual Insurance Law Institute [UT] Done with Kim Steel (Sedgwick, Deter Moran & Arnold, Dallas Office of national firm) Lasted 45”: half lecture, half discussion. Material: Older paper Steel and published together, and new paper addressing a hypo prepared by the chairman of the conference
- Invited Lecture, UT Class: Advanced Civil Procedure –“On Insurance and Litigation.” September 27, 2010. Over the Years since the late-ish 1990 I have given about 10 or so of these types of advanced class at the law school or another theres. (I have not listed them before because it never occurred to me. Recently, however, I noticed that other experts were doing this, so I thought I should. I am going to count them all as one, since I cannot remember details about them.
- “Main Principles of Useful Discovery in Insurance Cases,” UT-CLE: “Fundamentals of Insurance” Dallas (July 29-30, 2010). (.67”). Also given at the Houston version of this conference (August 12-13, 2010.
- “Reserving Rights Correctly,” Same Conferences (1’) Accompanied by new revision of an old published paper.
- “Expert Witnesses in Insurance Cases,” Same Conferences (1’). Accompanied by a new version of a fairly new paper.
- “The *Stowers* Demand—Meaning, Uses, and Problems” Luncheon Meeting of the Dallas County Bar Association, Tort and Insurance Section, April 6, 2010. This was a symposium-type presentation consisting of three persons. I was the mediator/commenting-speaker.
- “The Claims Process—Both Sides: First Party First, Third Party Second.” This was a symposium type presentation; it lasted for 1 1/2 hours, and the participants were Mark Lawless, Vince Morgan, & myself. Mark was the moderator and constructor of questions; Vince was the policyholder; and I was the insurance company. We worked from two hypos. Vince invented the property case, and I invented the liability case. April 8, 2010 State Bar of Texas, Advanced Insurance Law Course 2010
- “The Broker’s Role—for the Carrier or Insurance Agent.” This was a 45” lecture the exact title of which was *Problems of Policy Procurement*. The paper discussed theories of liability, and included the latest revision of the *Omni Metals* case. The speech also included a discussion of the oddity of why insurance intermediaries, as a whole, seek to have themselves reconceived as a profession, and not just as a groups of salesmen, and yet would resist liability for failing to give advice and resist having anything like having anything resembling anything remotely resembling a fiduciary duty to clients or customers. 14th Annual Texas Insurance Law Symposium, January 21-22, 2010, South Texas College of Law.
- “*Stowers*—Looking Back”: This was a short historical discussion of the original *Stowers* cases and and they lead to the now significant insurance decision. We some little knows facts, such as the existence

of a dissenting opinion in case before the Commission on Appeals. I gave this presentation with Vince Morgan, who was the principal, and it was based on our paper *Damn Fools—Looking Back at Stowers After 75 Years*, 6 J. TEX. INS. L. 1 (MAY 2005). (This joint presentation was given at the same CLE program as the preceding presentation.)

- *Builder's Risk Insurance*, 14th ANNUAL INSURANCE LAW INSTITUTE OF THE UNIVERSITY OF TEXAS SCHOOL OF LAW, San Antonio, October 15-16, 2009. The speech was given on the afternoon of October 15, and lasted for 30”.
- *Prodigy Communications Corporation v. Agricultural Excess & Surplus Lines Insurance Company and Financial Industries Corporation v. XL Speciality Insurance Company*, Supreme Court Update Telephone Seminar, Sponsored by the Insurance Law Section of the State Bar of Texas (May 28, 2009. 12:00-1:30 PM, so 1.5 hrs CLE credit). Done with Mike Huddleston. Of course, began with a discussion of *PAJ, Inc. v. The Hanover Insurance Company*, the 2009 Texas Supreme Court case upon which the cases under discussion were based.
- *DO (OR, MAY) INSURANCE DEFENSE LAWYERS ALSO REPRESENT DEFENDING INSURERS? [and if they do, with respect to what, how, and what does this imply?]* Practice Law Institute, “Insurance Coverage 2009: Claim Trends and Litigation,” New York City (May 4-5, 2009), 1 hr. on May 4th.
- *Agents & Brokers Liability*, UNIVERSITY OF HOUSTON LAW FOUNDATION CLE 2009, It was given live first in Houston (April 16, 2009) and then live in Dallas (April 23, 2009). Each lecture was scheduled to last 45”, but I went on to 50” in Houston. The topic was at least as much about the structure and nature of the the “intermediary industry,” as anything else, although there was a discussion the applicable Texas laws, and their possible changing nature.
- *Ethics in Settlement Negotiations*, TexasBarCLE: ADVANCED INSURANCE LAW COURSE 2009, Given live in Dallas on April 2-3, 2009m, and later by video in Houston and Austin. The presentation lasted about 35”; it discussed several “virtues” legal ethics requires with respect to negotiation and mediation, some of which are to be found in Texas cases; however, it focused on honesty and lying, and the paradox presented by Tex Rule 4.01 and ABA Rule 4.1, and the Comments as to exceptions to one of the rules requiring honesty. In addition there was a discussion about how the theory of negotiation formulated by Roger Fisher at the Harvard Negotiation Project does not work well in negotiations in litigation between insureds and insurers in first-party insurance disputes.
- *Legal Ethics & Banking Ethics*, 35th Annual Texas Bankers Association Legal Conference, March 26-27, 2009, San Antonio. The theme of this 45” speech was to compare and contrast codes of ethics for bankers with rules of professional conduct, i.e., disciplinary rules for lawyers. The argument was that they are quite similar—with some exceptions—so that bankers supervising in-house lawyers or to whom out-house lawyers are reporting can use their own codes as a starting point for judging the relevant lawyers. Two significant exceptions are the nature of conflicts of interest as conceived by the different types of codes and the legal status of each. I also discussed a significant case decided by the Ohio Supreme Court which illustrates the point—impliedly, at least. The CODE OF ETHICS AND BUSINESS CONDUCT devised by USbank and rules devised by Monroe Bancorp were by banking paradigms. The ABA MODEL RULES OF PROFESSIONAL CONDUCT (2009) was used for legal ethics, and the case was *Groob v. KeyBank*, 843 N.E.2d 1170 (Ohio 2006) was the case.
- *Eleven Commandments of Legal Ethics & Two Related Principles of Prudence*, an invited after lunch speech of about 50”, followed by individualized discussions, given to the Smith County Bar Association in Tyler (January 9, 2009). The “Handout” for 100 or so people had a front an back; the

front summarized the commandments and principles; the back stated key works and one major principles of fiduciary duties.

- *Fiduciary Duties of Texas Lawyers*, CLE course given by the Texas Center for Legal Ethics and Professionalism at the State Bar of Texas, Austin (December 10, 2008). This speech was an hour long, 8:30-9:30, while the course itself lasted from 8:30 to 12:30.
- *Liability of Insurance Intermediaries*, 13TH ANNUAL INSURANCE LAW INSTITUTE 2008, Austin (October 22-24). This half hour speech was given on the morning of the 23rd. Several papers on insurance intermediaries from INSURANCE LITIGATION REPORTER (2007-08) were distributed in the notebook. The speech concerned the tension between two Texas cases: *May v. United Services Ass'n of Am.*, 844 S.W.2d 666 (Tex. 1993) and *Insurance Network of Texas v. Kloesel*, ___ S.W.3d ___ (Tex. App.—Corpus Christi, April 3, 2008). I chaired the morning session on the next day.
- *Bad Faith Insurance Claims: Strategies for Prosecuting and Defending Against Claims of Insurer Misconduct*. This was a live, interactive 90” teleconference program on June 11, 2008, presented by Stafford Publications. Robert Horkovich from the Anderson, Kill & Olick firm of New York city and I did this presentation together.
- *The Expert Witness in the Context of Insurance Litigation*, TexasxBarCLE, ADVANCED INSURANCE LAW COURSE 2008. Dallas, March 27-28,2008. The half hour speech was given Friday morning. It concerned how to understand Rule 702 outside of the areas of the natural sciences and engineering. It also concerned the argument of Allen Windt regarding the relationship between testifying as to insurer bad faith and testifying as to matters of law, i.e., the meaning of words in contracts. The the material provided in the CLE notebook included a revised and partially new paper, on which Olga Seelig was listed as the co-author, and several exhibits, including two older papers on the same or related topics. (On that Friday I also announced the “Legend” awards by the State Bar ‘s Insurance Section and “Chaired” the afternoon session.)
- *The Eleven Commandments of Ethics*. This is a system of eleven different lectures, each of which is an hour or so long. I am told that there are actually 12 videos, since one of the lectures ran long. These videos are available from the Texas Center for legal ethics, and they apparently went on-line in February 2008. These videos were made one at a time, one per week, a year or more ago. Each separate lecture provides ethics credit required by the State Bar of Texas. The lecture are not simply about rules of professional ethics, whether enacted, adopted, model, customary, or advocated. The also concern the law governing lawyers. This is especially true since most tort actions against lawyers lap over into ethical considerations.
- *The Use and Abuse of Experts in Insurance Bad Faith Cases*, 12th Annual Texas Insurance Law Symposium, South Texas College of Law. January 24-25, 2008. My talk lasted 35”. The focus was upon testifying about law, testifying about facts, and testifying about mixed questions. To some degree this was an explication of Chapter 26A in Volume II of Allan Windt’s 6th Edition of INSURANCE CLAIMS DISPUTES, and to some extent it was a critique of his presentation, although I think he is in essence correct. Also, I discussed the role of industry values and ethics in expert witnessing about insurance adjusting; something which is not usually present in science based and focused expert witnessing. Finally, I discussed the lack data from the social sciences about insurance adjusting.
- *Thirteen Commandments of Legal Ethics*, State and Local Tax Committee of the Tax Section of the State Bar of Texas CLE designed for its members and billed as a “Meeting with the Texas Comptroller of Public Accounts,” and people from that Office. Given in Austin. Speech designed to help satisfy the Bar’s CLE requirement. Given: October 26, 2007 from 4:05 to 4:40, or so.

- Moderator and Commentator on a luncheon speech and paper given by Lee Taft and entitled, *Innovations in Litigation: Apology as a Litigation Resource*, UT-CLE, 12th Annual Insurance Law Institute, October 10-11, 2007. The speech was 50” and my response was about 10” or so, over Friday lunch. Thereafter, I was the Chair of the Institute for the remainder of the program.
- *Legal Malpractice & the Liability Insurance Industry: An Introduction with a Focus Upon Texas*, UT-CLE, 12th Annual Insurance Law Institute, October 10-11, 2007. It was a 30” speech.
- *Eleven Commandments of Legal Ethics + Two for Paralegals Only*. Capital Area Paralegal Association (July 25, 2007). This was a 50” speech. It covered the usual 11, and another two more, these are rules of prudence. Rule (12) Insist upon being taught and supervised right. (13a) If you are working in a law firm for three years and you are not happy, go elsewhere. (13b) If you have been in three law firms or more and for three years are more, and you are not pretty much happy, you are in the wrong type of job and you should try something else.
- *Recodification of the Insurance Code: Substantive Changes for Insurance Litigation?* State Bar of Texas Annual Meeting, Insurance Section. (June 21, 2007) This was a 30” speech in which I argued that there were at least two significant substantive changes: (i) the use of the word “interest” in §542 and (ii) the addition of the work “broker” to S 4001. The hand out was prepared by Vince Morgan, whose speech this was suppose to be. I was a mere substitute.
- *The 10 Commandment of Sound Adjusting*, 4th Annual Advanced Insurance Law Course, INSURANCE LAW COURSE, Sponsored by the Insurance Law Section of the State Bar of Texas. This 30” lecture was scheduled for the afternoon of March 30, 2007, but it was moved to the afternoon of the previous day. The lecture mainly focused upon *Look for Coverage!* and three other principles.
- *The AIG-Greenberg Story and Its Legal Consequences*. 2007 Insurance Coverage Committee CLE Seminar, Section of Litigation, American Bar Association. March 2, 2007. Given for 1.5 hours at a roundtable luncheon, or a little less, in Tucson, Arizona with Vincent Morgan at a luncheon. (The hand-out--with the exhibits attached to it, as opposed to those which were distributed separately around the table—can be found on my expert witness website.
- *Some Ethical Issues in Defending an Insured in a Construction Defect Case*, The Construction Law Section of the State Bar of Texas. March 1, 2007. Given for ¾ of an hour at this CLE: Provided Bar approved ethics credit and included a discussion of “inference rules” for lawyers “caught” in the current *Franks Casing* situation. (The hand-out—minus exhibits--can be found on my expert witness website.
- *The Eleven Commandments of Professional Responsibility Governing Lawyers: When a Non-Profit Should Fire a Lawyer—Rules One Through Eight*, National Committee on Planned Giving: Central Texas Chapter. Given for an hour at a luncheon conference on Monday, February 19, 2007.
- *The Fiduciary Duties of Lawyers ----> Clients*, Solo and Small Business Practice Group, Austin Bar Association. January 25, 2007. This was a 45” CLE speech exploring some of the dimensions of fiduciary duties of lawyers running to clients. (The hand out can be found on my expert witness website. Some of the discussion focused on divorce work.)
- *The Eleven Commandments of Professional Responsibility Governing Lawyers When A Non-Profit Is a Client*, 24th Annual Nonprofit Organizations Institute, UTCLE (January 12, 2007). The speech follows a standard organization around 11 principles of legal law ethics (which overlap the

law), although it is specially devised to focus on concrete examples and hypothetical derived from problems facing lawyer representing nonprofit organizations, and the problems such organizations have in dealing with lawyers. (The talk was an hour long.)

Insureds Versus Intermediaries: Principles, Conflicts, and Evidence, 11th Annual Insurance Law Conference of the University of Texas School of Law. December 7, 2006. The paper is 63 single spaced pages, and the speech lasted 45”.

- *Taking and Defending Adjuster’s Depositions*, 11th Annual Law Conference of the University of Texas School of Law. December 8, 2006. I prepared the paper some time ago, and it was delivered elsewhere, a while back. This time the speech was given by Thomas C. Wright. Needless to say, Some of the time Mr. Wright disagreed with assertions and arguments in the paper.
- Telephone Conference Presentation: *GuideOne, the Texas Duty to Defend, and the “Eight Corners Rule.”* This was scheduled for 1.5 hours, though it stretched out to nearly 2 hours. The topics were as stated in the title, except there was an ethics component, mostly pertaining to lawyers for policyholders helping plaintiffs trigger coverage and similar topics. Catherine Hanna and I were the principal leaders of discussion, and there were 30 or so lawyers involved. The questions coming from the participants were especially stimulating. I distributed by ILR squib on *GuideOne*, and Seelig’s paper on duty-to-defend principles. Catherine distributed a paper written by her partner on external evidence. Friday, August 18, 2006; scheduled: 11:30 AM-1:00 PM + a pre-seminar conference and a lengthy question and answer section.
- *Rules of Professional Responsibility and Administrative Law*, 2006 UT-CLE on Administrative Law (July 27-28, 2006). This speech was 1.25 hours long; it was given on the afternoon of 7/28. Its principal focus was on the meaning of “tribunal,” “adjudicative proceeding,” the contrast of the latter term with “nonadjudicative proceeding,” and how to think about Rule 3.10 in the Texas rule, emphasizing the oddity of omitting 3.03 from the list of rules incorporated by 3.10. There was also a discussion of Cmt c and its “incorporation” of still other rules.
- *Conflicts of Interest and Settlement Issues*, MEALEY’S Insurance Coverage Disputes Concerning Construction Defects. Chicago, Ill. April 25, 2006. The speech which pertained to insurance companies and lawyers lasted 1.25 hours, from 9:00 AM until 10:15 AM.
- *The Eleven Commandments of Professional Responsibility—Part I: Commandments I-VI*, UT-CLE: 10th Annual Land Use Planning Law Conference. Austin, Texas. April 6, 2006 (1 hour in the late afternoon). “*Part II: Commandments VII-XI*” [also one hour] was given the next day as a luncheon speech. It focused on C-VII, which concerns conflicts of interest which face lawyers, and are extensively regulated by Texas Professional Rules 1.06—1.12, 3.08, common law doctrines of fiduciary duties, and bits of case law.
- *Crazy Coverage Cases*, State Bar CLE: Third Annual Advanced Insurance Law Course. Dallas, Texas. March 31, 2006. Olga Seelig and I presented a dialogue on unusual insurance coverages cases to a luncheon crowd. The presentation took a little less than an hour.
- *Practical Principles of Sound Adjustment*, State Bar CLE: Third Annual Advanced Insurance Law. Dallas, Texas. March 30, 2006. This was a 30” speech on fundamental principles of adjustment. It explored the proposition *Look for Coverage!*, its principle-siblings, and criticized other propositions sometimes said to be fundamental principles of adjustment.
- *Malpractice and Grievance Avoidance*, The Ethics Course. Houston, Texas, March 23, 2006. This lecture was 1:15 (or so) in length, focused on the topics expressed in the title. The students were mostly experienced lawyers, and the sponsor—the Texas Center for Legal Ethics, which is somehow

connected to the State Bar--indicated that it was a course in “advanced” legal ethics. The structure of much of my lecture utilized in my “11 Commandments” approach, though tied to civil action avoidance for the lawyer and proceeding in a somewhat different way than a related lecture often deploys. More than usual attention was paid to legal ethics and the law of lawyering as applied to non-litigation lawyers handling business problems.

- *Unauthorized Practice of Law*. Advanced Real Estate Drafting Course. (Dallas, March 10, 2006). This was a half-hour ethics speech. I focused on the real estate industry and so discussed not only §81 of the Government Code but also its §83 and §1101 of the Occupational Code. The paper, which was also written by Susan Hayes, also discussed a variety of cases and ALR entries.
- Panel Discussion: *Ethical Principles for Lawyers: “Impeach Justice Douglas!* State Bar of Texas February 24, 2006. This began with a two hour “play” featuring Graham Thatcher as Justice William O. Douglas. His performance was followed by an hour-plus panel discussion. The whole thing was both attended and broadcast over the internet. The panel consisted of four people. Besides me, there was Dagmar Hamilton, Mike Godfrey, and one other. My contribution mainly concerned the ideas of conscience and “professional conscience” in the context of legal ethics and the idea of the relationship between judicial reasoning and personal experience.
- Panel (ABA/TIPS) Discussion: *The Cat Loss: The Integral Roles of Adjuster and Expert*. WINDSTORM INSURANCE CONFERENCE (Orlando, Fla., February 10, 2006). This was the 7th annual conference of the Windstorm Insurance Network. There were more than 1000 people in attendance from various parts of the insurance industry. The participants in the panel also included Steve Pate, Sandra Carter (Lexington), Tim Penn (St. Paul-Travelers), and Jim Wiethorn (Haag). The morning discussion lasted 1 ½ hours.
- Workshop Lecture: *Look for Coverage: The Mueller Principle*. Same Conference; same date. There were two 1½ lectures in the afternoon. One had a huge audience, while one was more like a small seminar. (What happened was, as I came to understand later, not what was supposed to happen. There was supposed to be one lecture in two parts: *Look for I* and *Look for II*. The first lecture was to be 1½ hours, as was the second. I didn’t get the plan or the instructions right, so I shortened the talk and gave the same “class” twice. Interestingly, there were questions and discussion in each. Either I didn’t ever understand what I was supposed to do; I got the wrong instructions, which I forgot anyway; or I got the right instructions, and negligently forgot them—Alas! A Lack! . . . The basis for the lectures was, in any case, the Quinn article *Look for Coverage*, published in the INSURANCE LITIGATION REPORTER in 2005 as noted elsewhere herein. It was made available to those registered at the conference.
- *The State of the Economic Loss Rule and Coverage for Construction Claims*, Cooper & Scully: First Annual Construction Symposium, January 27, 2006 (Dallas Texas). This discussion consisted of Brent Cooper and myself. It lasted about an hour (or a little more, perhaps). The focus was one insurance case and its tort-law pre-history: *Lamar Homes Inc. v. Mid-Continent Casualty Co.*, 428 F.3d 193 (5th Cir. 2005). In that case the 5th Cir. certified questions to the Texas Supreme Court regarding whether defective construction could constitute an “occurrence” or “property damage” under a CGL policy. The “Economic Loss Rule” of torts was a crucial part of the insurance decision in the district court decision which was appealed. There was also a 21.55 question.

- *The Paradoxes and Commandments of Legal Ethics*, November 2005 Luncheon of the Oil, Gas & Mineral Law Section of the Austin Bar Association (December 14, 2005). (This was a speech emphasized three paradoxes and Eleven Commandments.)
- *Rules of Construction*, Tenth Annual UT Insurance Law Institute (December 9, 2005). (This was a speech and discussion with R. Brent Cooper, and it lasted approximately three-quarters of an hour. I substituted for Richard Arnold, the selected participant who was ill and hospitalized.)
- *The Sound and the Fury: The Coverage Wars in the Wake of Katrina & Rita*, Tenth Annual UT Insurance Law Institute (December 9, 2005). (This was a panel discussion in which I participated with several other lawyers. The discussion concerned the history of hurricane litigation, the already filed Katrina cases, and the (new) legal theories likely to be seen over the next several years. The panel discussions-debate lasted two hours.)
- *Moderator: Insured Versus Insurer Debate Regarding Katrina Suits*, Tenth Annual UT Insurance Law Institute (December 8, 2005). (The debate lasted approximately one hour. My role was to introduce the two participants and to raise questions about the meaning of the phrase “storm surge” and whether the word “flood” had any ambiguity.)
- *Look for Coverage*, National Association Public Adjusters--2005 Mid-Year Meeting. December 3, 2005 (Philadelphia, Pa). (This was a 1':15" (or so) speech designed to explore basic maxims and principles of (insurer and public) adjustment, and to explore paradoxes between the consequences of the basic norm and some of the basic idea of the market economy.)
- *Speculative-Instructive-Inspiring: Fiduciary Duties Constitute the Heart and Essence of Lawyer Ethics and Obligation*, October 13, 2005. Given by invitation at Baker & Hostetler LLP, Houston, Texas: 12:00 noon to 1:15 p.m. or so. (Argument most of legal ethics and the law governing lawyers can be reasonably derived, if not actually deduced, from the center of the law of fiduciary duties. There was also a discussion of several large pending cases against lawyers in various states.)
- *Don't Let Ethics (or Their Lack) Be Your Waterloo: The Fiduciary Duties of Lawyers and More...* UT-CLE Texas Water Law Institute 2005 (September 28-30, 2005) (Austin, Texas). Mostly, “The More,” as it were: this short 30” talk focused on recent malpractice cases of new and threatening sorts.
- *Conflicts and Other Ethical Issues Faced by Administrative Lawyers*, UT-CLE: 2005 Administrative Law (July 28-29, 2005) (Austin, Texas). This speech was 1.25 hours in length. Some of it was devoted to client-lawyer conflicts, and there was a special focus on Texas Rule 1.10 and problems of interpretation, especially involving Comment #2 and Title 1.09, when Rule 1.10(f) is involved. As usual, the speech was structured in terms of “The Eleven Commandments.” Quite a short outline was used, with special reference to problems of administrative lawyers.
- *Multiple Clients: Concurrent and Successive Conflicts Problems*, HOUSTON FEDERAL BAR ASSOCIATION (July 21, 2005). 1 hour lecture on Rule 1.09 hypo.
- *Legal Practicality Versus Abstract Theories of Law: Edwards v. Levinson*, UT LAW SCHOOL: RICHARD MARKOVITZ'S SENIOR SEMINAR (April 26, 2005 - 1¼ hours; Again: April 25, 2005). Some focus on moral philosophy and fiduciary duties; some focus on legal reasoning in business contexts and what lawyers are expected to know in business contexts, especially in the second presentation.
- *A Successive Conflict Problem*, HOUSTON BENCH & BAR CONFERENCE (Galveston, Saturday, April 23, 2005). The panel discussion was called “Ethics Potpourri.” My specific conflict problem was this: L₁ represents only D₁ on paper in a large case with many defendants. However, L₁ does significant

central work for $D_2 \dots D_n$ (i.e., all defendants) in the same case, as part of an informal joint defense arrangement. Can L_1 represent L_5 against his named client, D_5 , in a subsequent suit where L_5 is trying to recover fees from the original big suit. L_5 hires L_1 because of his extensive knowledge of the underlying case.

- *Expert Testimony in Property Insurance Cases: An Only Mostly Abstract Discussion*, A.B.A. Tort Trial & Insurance Practice Section (Property Insurance): Symposium on Experts and Ethics (April 14-16, 2005-San Antonio). My speech concerned expert witnesses in property insurance cases resulting from fire. I discussed *Daubert*, *Kumho Tire*, and NFBA 921 (This book is a source important in fire testimony. It is entitled GUIDE FOR FIRE AND EXPLOSION INVESTIGATIONS (2004 Edition).) The speech lasted about 45”.
- *The Duty to Defend: Texas History, Fifth Circuit History, and the Meaning of Hallman*. COOPER & SCULLY CONTINUING EDUCATION SEMINAR (April 1, 2005). These were two hour-long panel discussions for adjusters. Approximately 300, or so, attended this seminar in Dallas. Three Cooper & Scully lawyers were also on the panel.
- *Depositions of Adjustment Fact & Expert Witnesses (Including Many Adjusters Themselves) in Insurance Cases*, State Bar of Texas, SECOND ANNUAL ADVANCED INSURANCE LAW COURSE, Ch. 11 (Dallas, March 31, 2005).
- *Ensuing Loss Debate*, SOUTH TEXAS COLLEGE OF LAW, TEXAS INSURANCE LAW SYMPOSIUM (January 27, 2005). The participants in this one hour speech were William J. Chriss and Michael Sean Quinn.
- *Disability Insurance: An Elaborate Introduction and Some Other Reflections*, ABA/TIPS: LIFE, HEALTH, AND DISABILITY INSURANCE (January 14, 2005). (The paper was not the speech. Instead I gave a 20-minute speech on desirable qualities in expert witnesses in bad faith matters. I emphasized the role of the sociology of insurance ethics in testifying on bad faith topics. I also participated as “Mr. Witness” in a sample deposition performance. The entire presentation was two hours in length. Evan Koch was junior author on the long paper distributed by the ABA on a CD, not paper.)
- *Disability Insurance: An Elementary and “Puristical” Introduction*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 9TH ANNUAL INSURANCE LAW INSTITUTE. (This speech was given on November 12th, 2004. It was a short speech but a long paper. The former was 30-minutes, the latter was 110+ pages. Evan Koch helped with the research and writing. In the morning I chaired the session.)
- *The 75th Birthday of Stowers*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 9TH ANNUAL INSURANCE LAW INSTITUTE (November 11, 2004 luncheon speech). The speakers were Vincent E. Morgan and Michael Sean Quinn. (This is a historical treatment of the times and players in the *Stowers* decision from 1929. The original idea was that of Vince Morgan, and he did most of the work. I helped out with some research and some writing. He was probably also the lead speaker. I mostly talked about the little-known (or hitherto unknown) dissent and its jurisprudential significance. The speech lasted about 45 minutes. This paper and the joint presentation was given a second time at the STATE BAR OF TEXAS SECOND ANNUAL ADVANCED INSURANCE LAW COURSE (August 1, 2004, a luncheon speech). It was preceded by a short *Keynote Address* given by Quinn in response to receiving an honor.
- *Happiness, Unhappiness, and Legal Professionalism*, THE NOBLE LAWYER: ETHICS, FULFILLMENT, AND SUCCESS (1) (Houston, October 7, 2004). I was also the Chair of the Houston symposium, since William J. Chriss, its founder and designer was unable to come. I participated from time to time in group discussions and gave *The Eleven Commandments* in the afternoon. The new speech took a bit more than an hour, as did the old one. (2) Done again (Austin, December 1, 2004). I made the same two ethical presentations but did not otherwise participate. I also designed the notebook.

- *The Eleven Commandments of Professional Responsibility (The Briefer Version Revised)*, 2004 FARM CREDIT SYSTEM ATTORNEYS CONFERENCE (October 4, 2004). Evan Koch is co-author of the paper. This speech was 1½-2 hours long, or so. A video of this presentation has been included in a complex program characterized by UT as “online courses in family law, advocacy and practice skills and ethics[et all].” This program was “advertised” over the internet on 2/10/2011, along with a number other videos.)
- *Damages in Suits Against Lawyers: Several Recent Developments*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW THE DAMAGES INSTITUTE (Dallas: October 1, 2004 & Houston: October 14, 2004). Olga Seelig was co-author of this paper. A new paper consisting of 49 pages was distributed. Both the Dallas and the Houston speeches were a ½ hour long, or so, although the Houston delivery was somewhat better than the Dallas delivery, even though the Dallas version better covered the implications of *Alexander v. Turtur*.
- *The Eleven Commandments of Professional Responsibility (The Briefer Version Revised)*, THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER, THE UNIVERSITY OF TEXAS SYSTEM 4TH ANNUAL LEGAL CONFERENCE (October 1, 2004). Evan Koch is co-author of the paper. (A relatively updated but shortened version of the longer paper was used. It is 134 pages long. The hour-long speech was for the General Counsel’s Office(s); many of the lawyers work in the medical divisions.)
- *Conflicts and Ethical Issues in Partnership Transactions*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW CURRENT ISSUES AFFECTING PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED LIABILITY COMPANIES (July 16, 2004). (Evan Koch was co-author of the paper.) UT is sponsoring a video version of this course in August. Evan Koch and I have revised the paper-part outline to make it a little better, we hope.
- *Civil Liability of Lawyers*, Video, approximately 1.0+ hours. (University of Texas School of Law CLE, May 6, 2004.) (There was no audience. This was a video only. There is somehow connected to this video a similar version of *The Eleven Commandments*. I recorded these at UT’s request at UT itself in the first quarter of 2004.)
- *Agents, Lawyers and Duality*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW THE LEASING INSTITUTE (April 1, 2004). (Evan Koch was co-author of the paper.) (The paper was a short summary of the rules governing the responsibility of agents to principals, plus some quoted material on negotiation. The argument of the 45” speech concerned several things: Should lawyers really be through of as agents, through and through, given their independence, the way agency is distinguished from being an independent contractor, and the allocation of responsibility between lawyers and clients? What limits are there on dual representations given the *utmostness* and *solely* elements integral to fiduciary duties? And how can lawyers structure a role as an intermediary between clients given the *best interest* component built into Rule 1.07?)
- *The Eleven Commandments of Legal Ethics*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 30TH ANNUAL ERNEST E. SMITH OIL, GAS & MINERAL LAW INSTITUTE (March 26, 2004). (In this talk I focused on the problems of lawyers doing business with clients, although that was embedded in a more general talk. To some degree my talk focused on Rule 1.08. Evan Koch assisted in the preparation of the outline.)
- *The Eleven Commandments of Legal Ethics*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 26TH ANNUAL CORPORATE COUNSEL INSTITUTE in Houston (March 26, 2004). (In this talk, I focused on Rules 10, 12 and 1.06 of the Texas Rules, especially as they affect corporate counsel. Evan Koch assisted in the preparation of the outline. UT-CLE did this again in 2011 in a CLE video “program” entitled “Best of Ethics Outline.” For several reasons, Evan’s name was listed first.)

- *Panelist: The Insurer Agrees to Defend, But Who Picks [and Controls] the [Defense] Lawyer?* TEXAS BAR CLE ADVANCED INSURANCE LAW COURSE 2004 (March 25, 2004). (The panel consisted of Elizabeth Gilday and Ernest Martin, Jr. in addition to me. The written seminar material consisted of my paper, *Reserving Rights Rightly* (1997) and a newly revised paper entitled *May Insurance Defense Lawyers Also Represent the Defending Insurers?* Evan Koch participated in preparing this revision. I argued that, contrary to the majority rule, if a liability insurance contract provided that insurers could control the defense, we should be able to do so even if a reservation of rights had been issued. Of course, they would do so at their peril. Ms. Gilday presented a more orthodox position, and Mr. Martin argued that my view was inconsistent with significant Texas law.)
- *Mold and Ethics.* TEXAS BAR CLE MOLD, INSURANCE, AND TORT REFORM UPDATE (March 12, 2004). (Lectured for one hour on the relationship between the law governing lawyers and legal ethics-morals, with reference the extent to which this distinction is hidden but animates the rules of professional conduct.)
- *Counseling in the Gray Areas: Where's the Edge?*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 6TH ANNUAL TELECOMMUNICATIONS LAW CONFERENCE. (March 12, 2004). (Spoke briefly on the problems of inside counsel created by the law governing lawyers together with the obligations of an officer of a corporation, then a panelist on a legal ethics hypo based on access fees.)
- *The Civil Liability of Lawyers*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 8TH ANNUAL LAND USE PLANNING LAW CONFERENCE. (March 5, 2004.) This was an hour and a half speech. The paper was a revised version of the briefer, cut down ELEVEN COMMANDMENTS OF LEGAL ETHICS (with Evan Koch).
- *Prompt Performances*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 19TH ANNUAL SCHOOL LAW CONFERENCE (February 27, 2004). This was an hour speech. The paper was a revised version of the briefer, cut down ELEVEN COMMANDMENTS OF LEGAL ETHICS (with Evan Koch).
- *Some Ethical Dimensions of the New Residential Real Estate Construction Commission Act*, TEXAS BAR CLE, THE NEW RESIDENTIAL REAL ESTATE CONSTRUCTION LAW RULES UNDER THE NEW TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT. (February 20, 2004). The paper was a revised version of the briefer, cut down ELEVEN COMMANDMENTS OF LEGAL ETHICS (with Evan Koch).
- *The Ethical Dimensions of Eminent Domain Practice: A Dialogic Presentation*, CLE INTERNATIONAL 3RD ANNUAL CONFERENCE! EMINENT DOMAIN TAKINGS, VALUATION AND BEYOND. (February 19, 2004.) The paper was a revised version of the briefer, cut down ELEVEN COMMANDMENTS OF LEGAL ETHICS (with Evan Koch).
- *Extra Expenses*, SOUTH TEXAS COLLEGE OF LAW, TEXAS INSURANCE LAW SYMPOSIUM (January 22-23, 2004). Pamella A. Hopper was the co-author on the paper. (This paper was about an aspect of business income/business interruption coverage.)
- *Buybacks*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, 8TH ANNUAL INSURANCE LAW INSTITUTE (November 13, 2003). Evan Koch was the co-author of the paper.
- *Ensuing Losses*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, 8TH ANNUAL INSURANCE LAW INSTITUTE (November 12, 2003). Olga Seelig who was the co-author of the paper presented the speech.
- *Lawyers and Confidentiality: The Fischel Challenge*, AMERICAN CORPORATE COUNSEL ASSOCIATION (SOUTH/CENTRAL TEXAS CHAPTER), 6TH ANNUAL ETHICS CONFERENCE (WHICH HAT TODAY?) (November 6, 2003). (This was a half-day conference held in San Antonio. The other speakers were William Ide and Elizabeth Kefer.)

- *Do Insurance Defense Lawyers Also Represent the Defending Insurers?* STATE BAR OF TEXAS INSURANCE SECTION, Telephone Symposium on “[Legal] Ethics and Insurance Law” (November 4, 2003). The 2 hour teleconference involved the following participants: William Chriss (Moderator), Rusty McMains, David Disere, and me. I contributed the paper listed above. It is a revision and update of a paper earlier published in the J. OF TEX. INS. LAW under a slightly different title.
- *Blasting Caps*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, 27TH ANNUAL PAGE KEETON PRODUCTS LIABILITY AND PERSONAL INJURY LAW CONFERENCE (October 31, 2003). (This was a 25-minute speech on possible strategies for circumventing or removing caps on punitive-exemplary damages. The caps are provided by § 41 of the Civil Practice and Remedies Code.)
- *Proportionate Responsibility: The New Law*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, LAW PRACTICE AFTER HB4-WHAT EVERY PRACTITIONER NEEDS TO KNOW (October 10, 2003). (This was a 45 minute speech based upon a paper prepared by Kirk Watson. The speech focused on the new Chapter 33 of the C.P.R.C.)
- *Avoid Malpractice: 10 Commandments*, Video: Available from the Texas Center for Legal Ethics On-Line. Release Date: September 30, 2003. 1.0 Hour.
- *Malpractice Scenarios & Discussion*, Video: Available from the Texas Center for Legal Ethics On-Line. Release Date: September 30, 2003. 1.0 Hour. I was one of two participants.
- *The Eleven Commandments of Professional Responsibility (The Briefer Version)*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, RESIDENTIAL CONSTRUCTION LAW (September 4-5, 2003). (I spoke for 1.5 hours. The paper distributed was a revision of the shorter version of the longer outline.)
- *Do's and Don'ts in the Courtroom—Mistakes Lawyers Make*, STATE BAR OF TEXAS, 26TH ANNUAL ADVANCED CIVIL TRIAL COURSE (August 27, 2003). (I was an invited panelist for a luncheon symposium. Judge Dietz was the Moderator. My assignment was to talk about opening statements and preserving error, especially through offers of proof. This was a quickie. I spoke only for about 15 minutes. I did not distribute a paper.)
- *Statutorily Regulated Offers of Settlement in Texas 2003: A New Day with Some New Problems for Lawyers--Questions, Quandaries, & Qualms*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, LAW PRACTICE AFTER HB4 (August 22, 2003). A revised version of this speech was given again in Dallas on September 3, 2003. The paper was slightly revised. Another version with another revision in the paper was given in Houston on September 25, 2003. The speech was given again on October 10, 2003 in McAllen. This speech focused on attorneys' fees. The paper was not revised for the McAllen presentation, though it was substantially revised for the next presentation, since the Supreme Court of Texas published a new Rule 167 on October 9, 2003. That presentation took place in San Antonio on Friday, October 17, 2003. The speech again revolved around attorney's fees, although not solely.
- *Enron & the Exquisite Temptations of the Byzantinely Clever*, SOUTH TEXAS COLLEGE OF LAW, THE ENERGY LAW INSTITUTE FOR ATTORNEYS AND LANDMEN (August 21, 2003). (The handout was an outline which has been evolving over the last year or so. It is now 161 pages single-spaced.)
- *Three Cardinal Virtues of the Ethical Lawyer*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW: ADMINISTRATIVE LAW IN TEXAS, A GUIDE FOR LITIGATORS, BUSINESS LAWYERS, GENERAL PRACTITIONERS AND THE CURIOUS (August 1, 2003). (This was a 2-hour speech; planned to be an hour and a half speech. In addition to an outline of the talk and some cribbed maxims, the paper was quite a lengthy rendition of *The ANALECTS for Texas Lawyers*. This paper is an imaginative reconstruction of the classic text of Confucius, adapted for lawyers in general and Texas lawyers in particular.)

- *Statutory Construction and Administrative Law*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW: ADMINISTRATIVE LAW IN TEXAS, A GUIDE FOR LITIGATORS, BUSINESS LAWYERS, GENERAL PRACTITIONERS AND THE CURIOUS (July 31, 2003). (This was a longish paper and a very short talk. Evan Koch assisted with the preparation of the paper and should be thought of as its co-author.)
- *Enron & Several Temptations of the Byzantinely Clever: New Issues of Partnerships and the Ethical Problems of Business Lawyers*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW: CURRENT ISSUES AFFECTING PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED LIABILITY COMPANIES (July 18, 2003). (Paper only. The speech was given by Tom Watkins.)
- *The New Texas Offer of Settlement Statute: Ethical and Insurance Implications*. BEFORE THE INK IS DRY - AN INSIDER'S LOOK AT THE NEW TORT AND INSURANCE LEGISLATION (June 19 & 20, 2003). (I did not prepare a discursive paper. Instead I prepared an 8-page double-spaced set of questions for discussion. The presentation was more of a panel discussion than a series of speeches.)
- *Mold and Insurance: The Case of Texas*, LORMAN EDUCATION SERVICES: SOLVING WATER INTRUSION AND MOLD PROBLEMS IN TEXAS (June 5, 2003). (Veronica Carmona Czuchna and Olga Seelig were the co-authors of this outline.)
- *The Legalization of Legal Ethics: Natural Law v. Legal Positivism, Problems and Principles, & Some Helpful Meta-Commandments*, CLE INTERNATIONAL 13TH ANNUAL CONFERENCE! TEXAS WETLANDS (February 10-11, 2003). The paper was a shortened version of THE ELEVEN COMMANDMENTS OF PROFESSIONAL RESPONSIBILITY.
- *Jurisprudence, Legal Ethics, and the Law of Lawyering*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 7TH ANNUAL CONFERENCE ON LAND USE PLANNING LAW (February 6-7, 2003). The paper was a shortened version of THE ELEVEN COMMANDMENTS OF PROFESSIONAL RESPONSIBILITY. The speech was nearly two hours long. It discussed the interpenetration of law and morals plus it considered The Eleven Commandments.
- *Jurisprudence, Legal Ethics, and the Law of Lawyering*, CLE INTERNATIONAL 2ND ANNUAL EMINENT DOMAIN CONFERENCE (February 6-7, 2003). The paper was a currently shortened version of THE ELEVEN COMMANDMENTS OF PROFESSIONAL RESPONSIBILITY. The speech focused upon a synthesis of ethics and law.
- *Rescission, D&O Insurance, and the Enron Fiasco*, SOUTH TEXAS COLLEGE OF LAW TEXAS INSURANCE LAW SYMPOSIUM (January 31, 2003). I was also the moderator with an hour and a half session on financial insurance.
- *Rescission and Surety Bonds: The Morgan-Chase-Enron Problem*. SOUTH TEXAS COLLEGE OF LAW TEXAS INSURANCE LAW SYMPOSIUM (January 30, 2003). I was a substitute speaker. Someone was called away. I did not write a paper.
- *Client Conflicts: Concurrent and Successive*. CLE INTERNATIONAL 3RD ANNUAL CONFERENCE LAND USE LAW (November 21-22, 2002). The paper distributed was a current shortened version of THE ELEVEN COMMANDMENTS OF PROFESSIONAL RESPONSIBILITY. (This speech focused on one part of one of the commandments and emphasized Texas law.)
- *Temptations of the Byzantinely Clever: Enron, Andersen, & God Knows Who Else*, UNIVERSITY OF OKLAHOMA COLLEGE OF CONTINUING EDUCATION: EUGENE KUNTZ CONFERENCE ON NATURAL RESOURCES OF LAW & POLICY (November 1, 2002).

- *Lawyerly Madness: The Case of Enron*, UNIVERSITY OF OKLAHOMA LAW SCHOOL (November 1, 2002). This was a law school sponsored lecture to about 250 first-year law students. I think they may have been registered in a course, perhaps entitled “Legal Process.”
- *Successive Conflicts*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, 11TH ANNUAL ADMIRALTY AND MARITIME LAW INSTITUTE, Houston, Texas (October 18, 2002). (The paper distributed was a revised and shortened version of THE ELEVEN COMMANDMENTS OF PROFESSIONAL RESPONSIBILITY. This speech focused on one part of one of the commandments and emphasized Texas law.)
- *Risk Management by Insurance: The Proper Role of Corporate Counsel*. (October 10, 2002.) This was a one-hour luncheon speech given to the Corporate Counsel Section of the Travis County Bar Association in Austin, Texas.
- Video Presentation: *In-House Counsel, The Law of Lawyering, and Legal Ethics*. (September 20, 2002.) This was a 45-minute presentation at the request of the Office of General Counsel of the University of Texas System. It was to be part of their 2-day CLE program for 2002.
- Luncheon Talk: *Top 10 “Most Important” Texas Insurance Decisions*. THE UNIVERSITY OF TEXAS SCHOOL OF LAW 7TH ANNUAL INSURANCE LAW INSTITUTE, September 6, 2002, San Antonio, Texas. Speakers: Honorable Catharina Haynes and Michael Sean Quinn. I prepared an outline. I couldn’t get the announced topic to work, so the outline discussed several topics of a jurisprudential nature I think might be important. Judge Haynes and I discussed a variety of insurance litigation-related matters, before the assembled throng.
- *Legal Ethics*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 7TH ANNUAL INSURANCE LAW INSTITUTE, September 5, 2002, San Antonio, Texas. A cut-down, slightly amended version of *The Eleven Commandments* was distributed.
- *Effective Deposition Techniques*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, August 22, 2002, Austin, Texas. This is an all-day CLE course. It involves mostly discursive presentations, a few formal but more informal demonstrations, lots of questions, and a little audience participation in doing mock depositions. William J. Chriss and I usually do it together. I was the principal author of an outline of varying length. There was a second presentation in El Paso on September 19, 2002. The outline was slightly revised. Veronica M. Czuchna presented with Michael Quinn. There was a third presentation in Dallas on September 26, 2002 by William J. Chriss and Michael Quinn. The outline was not revised. The material was resented in Austin on January 24, 2003 by Chriss and Quinn in Austin. The outline revised somewhat. It was presented again in Houston on January 31, 2003 by Quinn and Chriss. The outline was revised again. The next presentation was on August 20, 2003 at UT-Austin-LS. The outline was slightly revised. It was presented again on September 4, 2003 in Dallas. The outline was slightly revised by me again for the Dallas presentation and then yet again for a presentation by William Chriss in Houston on September 26, 2003. I gave the presentation alone in McAllen on October 9, 2003. William Chriss and I did it together again with a slightly different form in San Antonio on October 16, 2003. It was presented again in Dallas on September 16, 2004 by Quinn, Chriss and a new addition: Vernon Hartline. The outline was revised yet again. At the October 7, 2004 “edition” of this course in Houston, I gave but one hour-long (or so) speech: the one on “Maxims.” Beforehand I revised and expanded slightly the outline. At the December 2, 2004 session, I participated, as usual, more extensively. There have been 12 presentations. A video of one of this 2-part program—together lasting 3 hours—I did with Bill Chriss has been included in a UT video program entitled, in part, *Family Law: Children, Money, Property Advocacy, and Ethics*.” That program was first “advertised over the internet on 2/10/11.
- *The Eleven Commandments of Professional Responsibility: With Some Reference to Estate Planning (The Briefer Version)*, THE UNIVERSITY OF TEXAS 4TH ANNUAL INTERMEDIATE ESTATE PLANNING,

GUARDIANSHIP AND ELDER LAW CONFERENCE, August 15-16, 2002, Galveston, Texas. (100+ page revised paper provided.)

- *Enron, Andersen, and The Temptations of the Byzantinely Clever*, SOUTH TEXAS COLLEGE OF LAW ENERGY LAW INSTITUTE FOR ATTORNEYS AND LANDMEN, August 15-16, 2002, Houston, Texas. (Updated outline provided.)
- *Insurance Bad Faith and the Attorney-Client Privilege: Waiver and Exception/Process and Stasis*, AMERICAN BAR ASSOCIATION 2002 ANNUAL MEETING, August 8-10, 2002, Washington, D.C. (Part of this paper was written by John S. Torigian. The paper concerned, mainly, two cases: *State Farm v. Lee*, 18 P.3d 1169 (Ariz. 2000) and *Boone v. Vanliner Ins. Co.*, 744 N.E.2d 154 (Ohio 2001). The Quinn-Torigian discussion was a debate about erosions to the attorney-client privilege in the area of insurance bad faith. The paper was included in a booklet created by the TIPS section of the ABA entitled USE IT OR LOSE IT: THE ATTORNEY-CLIENT PRIVILEGE UNDER SIEGE (2002)).
- *Enron and the "Special Purpose Entity": Of Partnerships & Financial Chicanery— "Where Were the Lawyers?"*, THE UNIVERSITY OF TEXAS SCHOOL OF LAW, CURRENT ISSUES AFFECTING PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED LIABILITY COMPANIES, July 18 & 19, 2002. (I was one member of a three person panel which included William Freivogel and Robert Keatinge. My talk was accompanied by an 83 pp. plus exhibits outline.)
- *Legal Ethics and the Government Lawyer*, THE ATTORNEY GENERAL STATEWIDE CONFERENCE ON CHILD SUPPORT (Dallas--July 17, 2002). This was nearly a 3-hour lecture modeled on the *Eleven Commandments*, to some degree adapted for the problems of the government lawyer. A revised version of that paper was provided.
- *Bankruptcy's Impact on Insurance Cases*, ANNUAL MEETING, INSURANCE SECTION, 2002 STATE BAR OF TEXAS (Dallas--June 14, 2002). The speech focused on the *UNR* case decided in the 7th Circuit, 11 U.S.C. § 524(g) and *Fuller-Austin v. Fireman's Fund*, No. BC 116835, "Statement of Decision," February 26, 2002 (2002 WL 398672). (The last case is a trial court decision. Can neither be reported nor cited in California but which is of cardinal significance, at least for the present.) At the presentation, an updated version of Quinn and Martin, *Insurance in Bankruptcy*, 36 TORT & INS. L. J. 1025 (2001), was distributed, it having been updated by Olga Seelig who was listed as the co-author of the presentation in Dallas.
- *Ethics in Your Lloyd's and Equitas Practice*, LLOYD'S AND EQUITAS 2002, SECOND ANNUAL CONFERENCE (May 14-15, 2002--Chicago, Illinois). This conference was sponsored by the American Bar Association and the Illinois State Bar Association. Michael Flaherty also spoke. In fact, our co-presentation was interactive.
- *Ethics: Multi-Jurisdictional Practice (MJP) of Law*, CORPORATE COUNSEL INSTITUTE (April 26, 2002--Dallas). This conference was sponsored by the University of Texas Law School.
- *Creating the Explosive Enron Implosion: The Semi-Hidden Involvement of Lawyers: Reports, Queries, Conjectures & Provocations* CORPORATE COUNSEL INSTITUTE (April 18, 2002--Houston and April 25, 2002--Dallas) . This conference was sponsored by the University of Texas Law School. The paper was a 75-pp. outline emphasizing the problems for lawyers and especially for in-house counsel presented by the Enron mess.
- *Insurance Ethics: The Problem of Temptations*, CPCU LOCAL CHAPTER MEETING, Austin, Texas (March 26, 2002). (This was an "Ethics Month" invited presentation.)

- *End-Run and Its Lawyers: A Cautionary Tale*, TRAVIS COUNTY BAR: OIL, GAS AND MINERAL LAW SECTION LUNCHEON (March 13, 2002--Austin). This luncheon was sponsored by the State Bar of Texas.
- *The Eleven Commandments of Professional Responsibility: With Some Reference to Telecommunications (The Briefer Version)*, 4TH ANNUAL TELECOMMUNICATIONS LAW CONFERENCE (March 8, 2002--Galveston). This conference was sponsored by the University of Texas School of Law. The paper was 127 pp. long. Charlene Brownlee at Fulbright & Jaworski was the co-author and co-presenter.
- *Terrorism Exclusions and Specialized Insurance*, SECURITIES REGULATION AND BUSINESS LAW PROBLEMS (February 21, 2002--Galveston). This conference was sponsored by the University of Texas Law School. I placed a 45+ page paper (double spaced) in the conference notebook. It concerned the insurance controversies and litigation following 9/11; it discussed the new ISO terrorism exclusion; and it discussed existing insurance arrangements to deal with terrorist activities, such as terrorism policies, kidnap insurance, and so forth.
- *Land Use Planning, The Law of Lawyering, and Legal Ethics*, 6TH ANNUAL CONFERENCE ON LAND USE PLANNING (February 8, 2002--Austin). This conference was sponsored by the University of Texas Law School. The paper was an updated version of *The Eleven Commandments*. The updating consisted in inserting material on legal ethics and land-use planning. The speech consisted of a discussion of a significant recent Texas case regarding conflicts, public service, and real estate law.
- *Eminent Domain, Imminent Problems, and Emanate Wisdom*, EMINENT DOMAIN CONFERENCE (February 8, 2002--Austin). This conference was sponsored by CLE International. The paper in the seminar notebook was an adapted version of the *Eleven Commandments*. The talk focused mainly on conflicts problems which might arise for lawyers involved in eminent domain proceedings and other problems at the intersection between local government and real estate.
- Moderator [and Provocateur], *Coverage Cafeteria*, THE SOUTH TEXAS INSURANCE LAW SYMPOSIUM (February 1, 2002--Houston, Texas). This symposium was sponsored by South Texas College of Law. (I gave a talk on subrogation, since the designated speaker could not attend, and organized a discussion of various topics which might be raised by insurance litigation which might arise out of the World Trade Center bombing, e.g., additional insureds, coinsurance, other insurance clauses, plus insurance for construction companies, architects, engineers, and the like.)
- *Lying and Negotiations*, NEGOTIATING LEASES CONFERENCE: PRACTICAL ADVICE IN A DISTRESSED MARKET (January 28, 2002--Austin). This conference was sponsored by CLE International. The paper in the seminar notebook was a version of *Eleven Commandments* adapted somewhat for real estate issues. The speech--which was more of a dialogue with the group--focused on one of the commandments.
- *Preparing for the Adjuster's Deposition*, MEALEY'S BAD FAITH CONFERENCE 2001. (September 13-14, 2001). (My speech was scheduled to be a 45-minute speech on the afternoon of September 13. It stretched out some. It might have been right over an hour.)
- *International Mass Tort Coverage Litigation*; CPCU SOCIETY 2001 ANNUAL MEETING (Seattle Washington, October 21, 2001). This was a mock trial involving a coverage issue based upon the Bridgestone-Firestone problem. I participated as counsel for the insurer.
- *Bad Faith and Other Extra-Contractual Liabilities*. I was the moderator of this section which included two other lawyers. I contributed a 100+ page paper entitled *Insurance Bad Faith: Principles, Philosophy,*

and Pragmatics. (Some parts of the paper had been used and published before. The paper was updated.)

- *Ethical Obligations of Insurance Defense Counsel.* This was an hour-long symposium in which I was a participant with three other lawyers.
- *Disability Insurance: An Elementary Introduction, 6TH ANNUAL INSURANCE LAW INSTITUTE* [presented by the University of Texas--Austin Law School (September 7, 2001)]. (This was a 30 minute speech. I provided a 51-page double spaced paper for inclusion in the course book.)
- Moderator and Symposiast, *Gandy Aftermath, 6TH ANNUAL INSURANCE LAW INSTITUTE* (September 6, 2001). (This was a discussion of the current state of declaratory judgment law in Texas.)
- Participant and Moderator, *Reservation of Rights Workshop, 6TH ANNUAL INSURANCE LAW INSTITUTE* [presented by the University of Texas--Austin Law School] (September 5, 2001).
- *Privileges, STATE BAR OF TEXAS: ADVANCED CIVIL TRIAL COURSE* (Dallas) (August 31, 2001 in Dallas, October 5, 2001 in Houston). (I did not prepare the paper. Alex Albright did. I just lectured.)
- *The Eleven Commandments of Professional Responsibility: General Principles with Special Reference to Real Estate Transaction Problems, CLE INTERNATIONAL: REAL ESTATE DEVELOPMENT* (Austin, August 3, 2001). (This was an hour-long Socratic discussion, backed up a 150-page outline adapted for the occasion.)
- *Holdings and Dicta: Some Problems, Dallas Bar Association--Appellate Section* (June 21, 2001). (This was a 45 minute talk followed by some Q & A and discussion with audience members.)
- Debate, *When Negligence Blindly Assists Deliberateness, Insurance Section: Annual Meeting State Bar of Texas* (Thursday, June 14, 2001) in Austin. (Arguing the affirmative: that those accused of negligence should receive a defense from a liability carrier when someone else is accused of participating deliberately and causing the same injury. I was opposed by Chris Martin.)
- Panelist, *Is the Matagorda County Case Really Bad for Insurers? COOPER & SCULLY SYMPOSIUM FOR CLAIMS PEOPLE, March 30, 2001* in Dallas. (Arguing the negative.)
- *Bankruptcy and Insurance: Does It Change Everything? ULTIMATE INSURANCE SEMINAR* (Dallas, March 29, 2001). (Brian Martin was the co-author of this 70 pp., small print, double-columned essay. It is a revision of a previous essay on roughly the same topic.)
- *1998 Coverage B--Personal and Advertising Injury Liability, ABA-LITIGATION-INSURANCE COVERAGE COMMITTEE ANNUAL MID-YEAR PROGRAM* (March 8-10, 2001). (I was a speaker and a panelist on Coverage B.)
- *Duty of Good Faith and Fair Dealing: Is the Duty to Settle Allocable? ABA-TIPS, INSURANCE COVERAGE LITIGATION COMMITTEE ANNUAL MID-YEAR PROGRAM* (February 22-24, 2001). (I was originally scheduled to be a panelist, but I could not attend. The forum was something like a mock mediation and a moot court. I wrote the problem, *Raging Plants*, and wrote the mock *Mediation Statement* for one of the (fictional) policyholders.)
- *The Eleven Commandments of Professional Responsibility, THE HOUSTON COMMERCIAL FINANCE LAWYERS' FORUM* (February, 2001). (This was a discussion group lasting approximately 1½ hours. A paper entitled *The Eleven Commandments of Professional Responsibility: The Semi (Sort Of)*

Stripped-Down Texas Tease was distributed. This is a somewhat shorter version of what has been formerly known as the *Gallimaufry* paper.)

- *Ethics 2000: Revisions for the 21st Century*, UT LAW SCHOOL, 23RD ANNUAL CONFERENCE ON SECURITIES REGULATION AND BUSINESS LAW PROBLEMS (February 16, 2001). This was a 23-page single-spaced paper describing and evaluating some significant portions of the ABA suggested revisions to the MODEL RULES OF PROFESSIONAL CONDUCT. (The presentation was a 2-hour panel involving Charles “Hank” Still, Amon Burton, Charles Wolfram, and me.)
- Panelist, *Our Lives as Lawyers*, TEXAS DISCIPLINARY SYSTEM: LAWYER REGULATION IN TEXAS--2000 STYLE (Austin, November 17, 2000). Steven Keeva was the luncheon speaker at this conference. Mark Perlmutter and I served on a reaction panel which lasted about an hour. The CLE notebook included my squib-review of Keeva’s TRANSFORMATIVE PRACTICES (1999) entitled *Spiritual Lawyering*.
- *Equity Investments in Clients, Ethical Issues, Malpractice Pitfalls and Current Practices*, 5TH ANNUAL PATENT LAW INSTITUTE--University of Texas School of Law (November 16-17, 2000). The CLE booklet included a 33-page paper entitled *Investments in Clients: Dangerous Liaisons*. Matt Baab was the junior author of the paper. Donald E. Bradley, of Palo Alto, California also participated in this program. Each of us gave short speeches and then responded to one another. (A revised version of this paper was included in the materials provided at the UT Law School, 23RD ANNUAL CONFERENCE ON SECURITIES REGULATION AND BUSINESS LAW PROBLEMS (February 15-16, 2001). It was discussed, to some degree, by the panel and the audience at the 2-hour session on the afternoon of the 16th.)
- Panelist, *Coverage Cafeteria: A Buffet of Hot Coverage Issues*, THE TEXAS INSURANCE LAW SYMPOSIUM--SOUTH TEXAS COLLEGE OF LAW (November 9-10, 2000). I presented part of a paper on D&O coverage, which Andrea Levin and I had written. It is partly a revision of a previous paper, and partly new. I also presented coverage issues pertaining to employment law. Other panelists were J. Mark Lawless (CGL: toxic torts), Mark R. Zeidman (CGL: construction), Beth D. Bradley (CGL: advertising liability), and Andrea Levin (D&O: dangers).
- Panelists, *Restore and Respect! The Ethics of the Legal Profession*, by St. Edward’s University (November 8, 2000) (I was a symposiast along with Tom Watkins and Judge Jan Patterson).
- *Appellate Paralegal Activities*, CAPITAL AREA PARALEGAL ASSOCIATION (October 25, 2000). This was a one-hour noontime speech on how paralegals can be used effectively in appellate advocacy.
- *Role of the Expert Witness in Coverage and Bad Faith Litigation*, ANNUAL MEETING OF THE CPCU SOCIETY (October 24, 2000). (This was an afternoon-long program involving a mock trial, in which I appeared as the expert witness for the insurance company and subsequently discussed the trial and coverage problems as part of a panel.)
- *Lying and the Law of Lawyering*, 9TH ANNUAL ADMIRALTY AND MARITIME LAW INSTITUTE--University of Texas School of Law (September 21-22, 2000). A 179-page outline entitled THE ELEVEN COMMANDMENTS OF LEGAL ETHICS: A GALLIMAUFRY was distributed to those in attendance as part of the CLE notebook. The speech lasted 45 minutes and concerned only Commandment Two. At some point, Matt Baab became the junior author of this outline.
- *Hard-Nosed Holdings vs. Dizzy Dicta: Appellate Rhetoric and the Rule of Law*, 14TH ANNUAL ADVANCED CIVIL APPELLATE PRACTICE COURSE--State Bar of Texas (September 14-15, 2000, Richardson). (The already-published paper *Argument & Authority in Common Law Advocacy and Adjudication* was included in the CLE notebook. The speech itself concerned the “Holding Theory of Precedent” vs. the “Scalia Theory of Precedent” (a/k/a “The Imperial Theory”), and these ideas were

applied to the reasoning in *Grapevine Excavation, Inc. v. Maryland Lloyds*, 35 S.W.3d 1 (Tex. 2000), a case involving awardability of attorneys' fees in insurance breach of contract cases.

- *Insurance and Bankruptcy*, 5TH ANNUAL INSURANCE LAW INSTITUTE--University of Texas School of Law (August 24-25, 2000, Austin). An 82-page single-spaced paper with roughly this title was included in the seminar notebook. I chaired the morning session on August 25th.
- *The Eleven Commandments of Legal Ethics*, State Bar of Texas sponsored CLE given in person at Sheinfeld, Maley & Kay in Austin and by telephone at Sheinfeld, Maley & Kay in Houston for SMK lawyers and the general legal public. A 130-page outline entitled THE ELEVEN COMMANDMENTS OF LEGAL ETHICS was distributed to all of those in attendance. (May 24, 2000).
- *Liability Claims People: Problems and Temptations in Dealing With Defense Counsel--Tilley & Traver*, a panel discussion, Cooper & Scully 7th Annual Bad Faith Seminar for Claims People. (Dallas, May 5, 2000). I participated in an hour-long panel discussion with Brent Cooper and Mark Ticer. I also contributed a 38-page paper entitled "Insurance Defense Lawyers, Insurance Adjusters, and the Monica Lewinsky Affair" to the seminar. (TDI/ICE).
- *A Real Joy/Real World*, was a two-hour telephone CLE for ethics credits sponsored by the State Bar of Texas. The participants were John McShane, Michael Quinn, Mark Perlmutter, and Steven Keeva, from the American Bar Association in Chicago. The seminar was a discussion of Steven Keeva's book TRANSFORMING PRACTICES (1999). Written material distributed to the seminar participants included a short essay by Quinn entitled, "Spiritual Lawyering."
- *Stowers Problems and Rational/Prudent Claims Adjustment*, 14th Annual SMK Insurance Program. (Houston: April 27, 2000). This was a program for 750, or so, claims people around Texas. (TDI/ICE).
- *Lawyering By the Numbers: A Workshop on Ethical and Practical Issues Related to Insurer Cost Containment Measures*, Texas Tech University School of Law (April 20, 2000). The sponsor was Professor Susan Fortney. It was designed for law students and the bar. I was the opening speaker. The other participants were Veronica Carmona Czuchna and John Tollefson.
- *Finding Coverage for Very Bad Things*, Consumer Law Section of the State Bar of Texas, 9TH ANNUAL ULTIMATE INSURANCE SEMINAR, Dallas, Texas. March 30-31, 2000 (Video Presentation: Houston, Texas, May 4-5, 2000). This was a half-hour lecture on the second day of the conference. The paper is § U in the seminar notebook, and it is entitled *Criminality, Fortuity, and Insurance*. The paper was 36-pages long, single-spaced, double-columned, plus footnotes. (Parts of the paper were drawn from other work.)
- *Ethics Round Table: Tough Issues in Security and Business Law Practice*, University of Texas School of Law, 22ND ANNUAL CONFERENCE ON SECURITY REGULATION AND BUSINESS LAW PROBLEMS, February 17-18, 2000 (Dallas, Texas). This was an hour-long panel discussion on the second day of the conference involving Richard C. Jones (Managing Partner, Baker & Botts), Larry Schoenbrun (Managing Partner, Gardere & Wynne), Michael W. Tankersley (Bracewell & Patterson), and me. A 150 pp. single-spaced outline, plus an Appendix consisting of Corporate and Securities Hypos was included in the conference notebook. (Lee Polson at Sheinfeld, Maley & Kay helped with the hypos.) The title of the outline-paper is "The Eleven Commandments of Professional Responsibility: A Gallimaufrey." (Edition dated February 11, 2000).
- *The Tort of Negligent Representation by Lawyers*, State Bar of Texas--Construction Law Section, 13TH ANNUAL CONSTRUCTION LAW CONFERENCE, February 17-18, 2000 (Houston, Texas). This was a half-hour lecture on the second day of the conference. In the conference brochure, it was entitled

“Applings and Dumplings: ‘Is’ to ‘May’ and ‘Will’ to ‘Might’.” A 25 pp., double-spaced paper was included in the conference notebook. The paper used the straight, as opposed to the cute, title.

- *Liability Insurance: An Introduction*, On-Line CLE sponsored by the Law School at the University of Texas--Austin. (This was a four-hour taped lecture. The CLE office intends to divide it into two 2-hour lectures. The first one will be accompanied by some general written material. The second lecture will be accompanied by more specific materials.) Some of the material to accompany the second lecture was written by Veronica Czuchna, and some of it was written by Beth Bradley.
- *Insurer Bad Faith and Other Extra-Contractual Liabilities*, The American Law Institute-American Bar Association, INSURANCE COVERAGE IN THE NEW MILLENNIUM (Washington, D.C., January 13-14, 2000).
- *Whom Does the Insurance Defense Lawyer Represent?* The American Law Institute-American Bar Association, INSURANCE COVERAGE IN THE NEW MILLENNIUM (Washington, D.C., January 13-14, 2000).
- *Weird Risks, Strange Policies, and Unusual Insurers: New Dimensions for Helpful Lawyers?* 1999 TEXAS INSURANCE LAW SYMPOSIUM § F, (Houston, Texas, November 11-12, 1999). This was a 45-minute speech on surplus lines insurance in Texas, including materials relating to regulation, policy forms, adjustment practices, and the applicability of bad faith law. It was accompanied by a 41 pp. paper and a number of exhibits, including some fairly exotic insurance policies. (Janis Detloff was the co-author of the paper, and gave a substantial portion of the speech. My portion of the speech pertained to the practices, customs and liabilities of insurance intermediaries in the surplus lines market.)
- Panelists: *Traver* and the Problem of Two Masters. 1999 TEXAS INSURANCE LAW SYMPOSIUM, South Texas College of Law (November 11-12, 1999). I was the moderator of this panel and a participant. The other participants were Veronica C. Czuchna, Michael W. Huddleston, and Werner A. Powers. I contributed a foundational paper entitled “The ‘Tripartite Relationship’ in Texas.” This paper was a revision of the paper previously presented to the 22ND ANNUAL ADVANCED CIVIL TRIAL COURSE, STATE BAR OF TEXAS (1999).
- *Faithless Fiduciaries Forfeit Fees*, 23RD ANNUAL PAGE KEETON PRODUCTS LIABILITY & PERSONAL INJURY LAW CONFERENCE sponsored by the University of Texas School of Law (October 21-22, 1999, Austin). This was a one-hour speech devoted to *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999) and *Arce v. Burrow*, 958 S.W.2d 239 (Tex. Civ. App.--Houston [1st Dist.] 1998, modified). (It was accompanied by an outline of 90+ pages entitled “The Eleven Commandments of Professional Responsibility: A Gallimaufry.” This outline is a revision and expansion of a similar outline with roughly the same title.)
- *Directors and Officers Liability Insurance*, 4TH ANNUAL INSURANCE LAW INSTITUTE--University of Texas School of Law (October 7-8, 1999, Dallas). (A 70-page paper with the same title was included in the seminar notebook. I chaired the morning session on October 7th.)
- Panelist: *The Law of Lawyering, Legal Ethics, and the Immigration Lawyer*, The University of Texas School of Law, 23RD ANNUAL CONFERENCE ON IMMIGRATION AND NATIONALITY LAW (September 20, 1999). (A paper entitled *The Eleven Commandments of Professional Responsibility for the Immigration Lawyer* was contributed. I was the senior author; M. Nicole Morrison was the junior author; she made most of the immigration-related contributions. We also solicited and received hypotheticals from Bruce A. Hake.)
- *Defendant-Insureds, Liability Insurers, and Defense Lawyers: Perspective at Individual Insureds: Who Was a Friend and Who is a Foe?*, 22ND ANNUAL ADVANCED CIVIL TRIAL COURSE, STATE BAR OF TEXAS, September 3, 1999 (Fort Worth). (A 22-page single-spaced, double-columned paper was included in the course materials. Michael Sean Quinn and Michael J. Crowley were listed as the

authors. The materials are to be found at Chapter HH in the course materials.) (Quinn gave it a second time on October 1, 1999 in Houston and for a third time in San Antonio on November 3, 1999.)

- *Use of Experts: The Kumho Tire Revolution*, Lorman Educational Services Seminar: *Insurance Bad Faith Claims in Texas*, Dallas, Texas, August 26, 1999. (This was a 1-hour speech mainly concerning practical problems of selecting, monitoring, and credentializing expert witnesses in insurance bad faith cases.) (TDI/ICE).
- *The Eleven Commandments of Professional Responsibility*, was a 2-hour lecture given to a small audience at the UT Law School on August 6, 1999. The lecture was videotaped, and the UT CLE office presents it “on-line” and at other UT-LS-CLE functions from time to time. Both the lecture and the on-line presentation are accompanied by an 85-page outline.
- *Economic Analysis of Attorney Conflicts of Interest and Confidentiality Rules*, June 24, 1999. This was a two and a half hour presentation to some members of the faculty of the Law School of the University of Texas at Austin.
- *Ethical Habits of Insurance Professionals*, National Association of Insurance Women 58th Annual National Convention, June 14-15, 1999, Las Vegas, Nevada. Pamela Richey and I gave this hour-long speech-demonstration three times over two days. The topic was how codes of professional conduct can be used and misused in the depositions of insurance professionals, including agents and brokers. (TDI/ICE).
- *Coverage Disputes in the Context of Bad Faith Including the Legal Problems Created by Unethical Lawyering*, presented at the Insurance Law in Texas seminar given by the Lorman Business Center, Inc. in Austin, Texas on May 25, 1999. This hour long lecture mostly concerned the role of lawyers in the insurance claims process. (TDI/CLE).
- *Fortuity and Insurance* was a 45-minute speech concerning how insurance policies capture fortuity in various ways given to a continuing education symposium for 600, or so, insurance people sponsored by Sheinfeld, Maley & Kay in Houston, Texas on May 25, 1999. A paper accompanied the talk. (TDI/ICE).
- Panel member. *Key Ethics, Professional Responsibility, and Malpractice Issues for Technology Lawyers*, presented at the 12th Annual Computer Law Conference given by the University of Texas School of Law on May 21, 1999. There was a give-and-take discussion. I gave a 30-minute lecture on lawyers advertising on the Internet.
- *Insurance: Some New Directions*, a thirty minute speech presented to the 21ST ANNUAL CORPORATE COUNSEL INSTITUTE sponsored by the University of Texas Law School on April 23, 1999 in Houston, Texas and May 14, 1999 in Dallas, Texas. There was a 29-page bullet-point hand out distributed, with attachments. Janis Detloff, an associate with Sheinfeld, Maley & Kay, wrote part of the paper and presented part of the speech.
- *Legal Malpractice: Some New Directions*, a one hour speech given to the Dallas Bar Association, Torts and Insurance Section, on April 22, 1999. A short handout was distributed.
- *Expert Testimony, No-Evidence Appellate Review, and Insurer Bad Faith*. This paper was distributed in typescript to the 11th Annual Meeting of the ABA Section of Litigation Insurance Coverage Litigation Committee Mid-Year Meeting (March 4-6, 1999). No speech following the paper was delivered. However, I gave a ten-minute talk based on part of the paper as part of a Panel Discussion on the moral aspects of insurer bad faith, related punitive damages, how those aspects should shape discovery and trial presentation. This talk was given on March 5, 1999.

- *Bugs, Lugs, Slugs and Thugs: Insurance Aspects of the Y2K Problem--The Legal Dimension*, a half-hour lecture at the symposium entitled LITIGATING THE YEAR 2000 ISSUE sponsored by the Review of Litigation of the University of Texas School of Law on February 12, 1999.
- *Y2K and Insurance Coverages*. This was an hour-long invited lecture given at the February 4, 1999 meeting of the Austin Claims Association. (TDI/ICE).
- *Legal Ethics for the Consumer Lawyer*, a half-hour lecture given at the 10th Annual Conference on the Texas Deceptive Trade Practices Act, December 17-18, 1998 in San Antonio, Texas. This seminar was sponsored by the University of Texas School of Law. I discussed two cases in some detail: *Latham v. Castillo*, 36 TEX. S. CT. J. 994 (June 27, 1998) and *State Farm v. Traver*, 997 S.W.2d 229 (Tex. 1998) (opinion subsequently withdrawn and revised). I also briefly touched upon *Commission for Lawyer Discipline v. Benton*, 41 TEX. S. CT. J. 1250 (July 14, 1998) and *Steinberg v. Am. Nat'l Fire Ins. Co.*, No. 01-97-00913-CV (Tex. App.--Houston [1st Dist.] November 12, 1998). The speech was accompanied by a 46 page outline entitled "Ten Commandments for Professional Responsibility: Legal Ethics for the Consumer Lawyer."
- *Human Element of Claims Adjusting*, given at the 35th Annual Texas Farm Mutual Seminar, February 1, 1999 in Austin, Texas. This seminar was sponsored by the Texas Association of Mutual Insurance Companies. (TDI/ICE).
- *Avoiding the Problems*, a 50-minute lecture given at The Ethics Course, December 10, 1998 at the South Texas College of Law, Houston, Texas. (This CLE was sponsored by the Texas Center for Legal Ethics and Professionalism.)
- Panel Member and Moderator, *Restating Who, What & Why* (We gave comments on a speech by Professor Thomas D. Morgan on *The New Restatement: How It Affects You*). This was part of a program entitled LEGAL ETHICS AND THE BOTTOM LINE, which was put on by the Texas Academy of Advanced Legal Ethics which is somehow part of the Texas Center for Legal Ethics and Professionalism, which--in turn--is somehow connected with the State Bar of Texas.
- *Ethics, Adjusting, and Insurer Bad Faith*, was a 3-hour lecture/seminar given to the San Antonio Claims Association on October 22, 1998. Brian Martin also participated. (TDI/ICE).
- *Denials and Doubts: Getting to No*, was an hour-long invited speech given to the Texas Claims Association's state-wide annual meeting held in Austin, Texas on October 17, 1998. (TDI/ICE).
- *Pleading Texas Insurance Cases*, was a 45-minute speech given at the 3rd Annual Insurance Law Institute presented by the University of Texas School of Law on September 24-25, 1998 in Austin, Texas. This speech was accompanied by a 75-page double spaced paper, which was included in the Institute's proceedings.
- Moderator and Participant, Symposium: *Trial of the Coverage Suit*, an hour long panel discussion was part of the 3rd Annual Insurance Law Institute sponsored by the University of Texas School of Law on September 24-25, 1998 in Austin, Texas.
- *The Ten Commandments of Legal Ethics*. This paper was given at the 7th Annual Admiralty and Maritime Law Conference sponsored by the University of Texas School of Law on September 18, 1998. I spoke for 30 minutes. The paper in the CLE notebook was a version of "Ten Commandments for Professional Responsibility," adapted and expanded for maritime and admiralty situations. The speech, however, was not a review of the paper. Instead, I discussed *State Farm*

Mut. Automobile Ins. Co. v. Traver, 980 S.W.2d 625 (1998), and to a lesser extent, the issues in *Burrows v. Arce*, 997 S.W.2d 229 (Tex. 1998).

- *The Ethical Habitat of Adjusting*. This was a two hour long lectures delivered to the National Association of Insurance of Women at their Texas State Council Meeting on September 12, 1998 in Austin, Texas.
- Participant, Symposium: *Lawsuit Futures: Identifying and Dealing with Conflicts of Interest*. I provided the paper for this panel discussion. It was a substantially expanded and updated 55 page version of the outline “Ten Commandments for Professional Responsibility.” It was also adapted to include problems which typically face lawyers in the area of managed healthcare. This symposium occurred at the Second Annual *Suing and Defending Managed Health Care Providers: Risk, Reward and Liability in Health Care Delivery*. This CLE Program was sponsored by the University of Texas Law School and given on September 10-11, 1998.
- *Foundation Claims*, was a 30-minute speech on *Baladrán* given to the Independent Insurance Agents Association of San Antonio, Texas on August 20, 1998. (TDI/ICE).
- *Expert Witnesses in Insurance Bad Faith Cases, a One Day CLE Course: Bad Faith Litigation Texas*, Dallas, Texas (August 14, 1998). (I spoke for approximately 45 minutes. This CLE course was sponsored by Lorman Educational Services.) (TDI/ICE).
- Moderator and Participant, Symposium: *Conflicts, Defense Council, and Legal Fees*, Texas Insurance Law Symposium at South Texas College of Law (somehow affiliated with Texas A&M University, Houston, Texas) July 30-31, 1998.
- *Insurer Bad Faith, Expertise, and Appellate Review*, was a paper given at the ABA National Meeting for 1998 in Toronto, Canada. It was part of a symposium entitled *Insurance Litigation in the New Millennium*, and it was sponsored by The West Group Presidential CLE Program Track on August 1, 1998. (A 24-page single spaced paper was distributed.)
- *The Advisory Society and the Insurance Intermediary*. This invited, half-hour speech was given to a group of Austin insurance agents and brokers on July 15, 1998. It concerned some legal problems facing insurance agents as they not only execute orders but provide advice. (TDI/ICE).
- *Ten Commandments of Professional Responsibility*. This was an invited two-hour lecture expounding simple ethical principles which, if followed consistently, would avoid most violations of the laws governing lawyers. The speech was presented to the Computer Law CLE Conference sponsored by the University of Texas on May 13, 1998. The talk was adapted to computer law problems.
- *Conflicts of Interest and Insurance Defense Lawyer*. This was a half-hour lecture at a CLE Institute sponsored by the Houston Bar Association on May 1, 1998. It was entitled “Everything You Need to Know About Insurance Law” and was held at the South Texas College of Law in Houston, Texas. There was a handout. It was an anthology of materials Professor Charles Silver and I prepared, together with the latest edition of § 215 of the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS (1998).
- *The Extra Contractual Exposure of Liability Carriers*. This was an hour-long lecture given to the San Antonio Claims Association on April 29, 1998. It was part of a two-hour package entitled “Bad Faith Exposures and the Texas Adjuster.” Pam Nielson and Brian Martin of Sheinfeld, Maley & Kay gave the other two sections. (TDI/ICE).

- *Layered Coverages and Choice of Law Problems.* This was a half-hour lecture at the Ultimate Insurance Seminar sponsored by the Consumer Law Section of the State Bar of Texas on March 27, 1998. There was an essay in the course book discussing choice of law issues in the context of layered coverage conflicts.
- *Malpractice, Grievance, and Other Exposures of Corporate Counsel.* This was an hour-long luncheon lecture to the March 15, 1998 meeting of the Houston Chapter of the American Corporate Counsel Association. There was a handout. A revised version of this lecture was given again on March 26, 1998 (in Houston) and on April 2, 1998 (in Dallas) at the Corporate Counsel Institute sponsored by the UT Law School CLE office.
- *Of Depositions and Claims People.* This was an hour-long interactive speech given to the Austin Claims Association on March 5, 1998. Pam Nielson participated. We distributed an outline and involved the audience by having some of them act as witnesses in “mock” deposition fragments. We gave a second version of this talk to the April 14, 1998 luncheon meeting of the San Antonio Claims Association. We gave it for a third time at a day-long continuing education seminar for claims people sponsored by Sheinfeld, Maley & Kay and held in Houston on April 30, 1998. For this particular occasion we created some snazzy videotapes demonstrating the right way and the wrong way to get deposed, and there was a 10-page handout. (TDI/ICE).
- *The Primary, The Excess, & The Insured: A Stacked Deck or an Oblique Triangle? Some Texas Twists.* (This was a 30-minute speech delivered to the Torts & Insurance Practice Section of the American Bar Association on February 20, 1998 in Scottsdale, Arizona. There was a 60+ page paper which was distributed at the time of the speech. At the same conference, I was a co-moderator of a bad faith luncheon discussion group, and I was a moot court judge for a problem involving the use of extrinsic evidence.)
- *Problems in the Tripartite Relationship.* This is an approved Texas CLE course offered by CLE Online. I have been an instructor three or four times since 1998, along with others.
- *Insurance Law.* This was a day-long course given in Austin on January 29, 1998, and in San Antonio on January 30, 1998. I gave about half the lectures. There was a study book distributed to the students. I wrote approximately 60% of it. (Much of my contribution was drawn from material either already published or designated for publication elsewhere in the near future.) (TDI/ICE).
- *Lawyers and Lawyering: Principles and Character.* This was a longish speech delivered to the 1997 symposium entitled “The Foundations of Legal Ethics,” which was sponsored by The Texas Academy for Advanced Legal Ethics, which is in turn an initiative of The Texas Center for Legal Ethics and Professionalism. The conference lasted two half days and all of the third. The speech itself was given on November 14, 1997. (This was a “last minute” affair. The designated speaker was Edwin J. Delattre, Dean of the School of Education at Boston University, but he was taken ill.)
- *The Ethical Habitat of Adjusters.* This was a speech delivered to the 1997 Insurance Law Institute sponsored by the Law School of the University of Texas at Austin. This speech was given on October 10, 1997. I also contributed a 95 page double-spaced paper with the above name. At the same program, I was a panelist for a program entitled “Hard-Ball Insurance Litigation,” and I was the presiding officer for the opening session.
- *The Nona Byington Case.* I taught a 2-hour ethics CLE seminar for UT-LS faculty members on the above matter. (July 3, 1997). Amon Burton led the way and provided materials.
- *Advance (Client) Consent.* This was a speech delivered to an institute sponsored by the Professional Development office of the State Bar of Texas. The institute was entitled “Recognizing and Resolving

Conflicts of Interest.” I gave the speech live in Houston on May 9, 1997, live in Dallas on May 23, 1997, and it is to be shown by videotape in 38 other locations. The paper distributed by the institute concerned the Texas Disciplinary Rules, The Model Rules, The Model Code, and the (draft) RESTATEMENT insofar as they pertain to an attorney obtaining consent--usually, the consent of the client--as a way of defeating prima facie prohibitions. In addition, the paper discussed several Texas Supreme Court cases, including *National Medical Enterprises*, *Barcelo*, *Huie v. DeShazo*, and *Anderson Producing v. Koch Oil*.

- *Reserving Rights in Texas*. This was a speech given to a shade under 600 claims people at a seminar entitled “Law Update 1997.” The session was held on May 8, 1997 in Houston, and was sponsored by the law firm of Sheinfeld, Maley & Kay. (TDI/CLE).
- *The Duty to Defend--Some Recent Texas Developments*. This was a speech to a continuing education meeting at the Austin Claims Association on April 16, 1997. It concerned *Merchant's Fast Motor Lines*, *Griffith*, and *Head*. (TDI/ICE).
- *Bad Faith Avoidance and the Claimsperson*. I was a panelist on a program with Phil Maxwell and Brent Cooper at a state approved continuing education program for adjusters sponsored by Cooper, Aldous, and Scully. The program occurred on March 21, 1997. (TDI/ICE).
- *The Tripartite Relationship*. I was a speaker/panelist on a program devoted to the law governing insurance defense lawyers. The session was part of the 9th annual mid-year meeting of the Insurance Coverage Litigation Committee of the American Bar Association's Section of Litigation in Tucson, Arizona. The session occurred on March 15, 1997.
- *The ALI Restatement (Third) of the Law of Lawyering: Its Impact on the Profession*. This speech concerned recent Texas Supreme Court cases on the law governing lawyers and how they fit with the *Restatement*. Instead of presenting a prepared text, I distributed several sections of the *Restatement*. I gave the speech on February 28, 1997 at the South Texas College of Law “Advanced Civil Trial Law Conference.”
- *Reimbursement of Defense Expenses -- A Moot Court*. I was assigned to write a brief and argue for the policyholder. The exercise was conducted at the Midwinter meeting of the Insurance Coverage Section of TIPS on February 21, 1997.
- *Grievance and Malpractice Avoidance*: This speech is often about an hour long or so. It is part of some program sponsored by The Texas Center for Legal Ethics and Professionalism. One course is tantamount to being required by the Supreme Court and by the State Bar for new lawyers. The entire program is—or at last has been--entitled “A Guide to the Basics.” Other times, the speech is given as a part of a CLE program entitled “The Ethics Course.” This course resembles the other one, but is designed for older lawyers, although some young ones come. The speech has evolved. No paper is distributed with it, although at many of the sections copies of the manual were distributed and at some points a CD was distributed with the manual on it. Versions of this speech have been given on November 16, 1996 (Baylor), January 22, 1997 (St. Mary's), February 21, 1997 (UT-LS--Austin), April 12, 1997 (Baylor), September 24, 1997 (St. Mary's), September 19, 1997 (Austin), October 18, 1997 (Baylor), January 16, 1998 (South Texas College of Law [STCL]--Houston), January 23, 1998 (Austin), February 14, 1998 (Baylor), September 23, 1998 (Trinity), October 2, 1998 (Texas Tech), October 16, 1998 (SMU), and October 17, 1998 (Baylor), October 23, 1998 (Austin), February 5, 1999 (STCL-Houston), March 18, 1999 (Trinity), March 20, 1999 (Baylor), March 26, 1999 (St. Mary's), September 17, 1999 (Texas Tech), October 15, 1999 (Houston--STCL), November 4, 1999 (Austin), November 18, 1999 (Trinity), February 25, 2000 (Houston--STCL), March 2, 2000 (Texas Tech), April 7, 2000 (Austin), October 6, 2000 (Austin), November 10, 2000 (Houston--STCL), December 14, 2000 (SBOT Law Center--Austin), February 10, 2001 (Baylor--Waco), October 5, 2001 (SBOT-

Austin), November 30, 2001 (Houston- STLS), January 18, 2002 (Austin), February 15, 2002 (Houston--STCL), February 22, 2002 (Lubbock-Texas Tech) [Experimental-Ironic Version], March 22, 2001 (San Antonio), April 19, 2002 (Houston-STCL), August 2, 2002 (Houston-STCL); October 4, 2002 (Austin-State Bar of Texas); October 18, 2002, Austin-LBJ School); November 15, 2002 (Dallas-SMU), December 13, 2002 (Houston-STCL), February 7, 2003 (Austin-LBJ Library), February 21, 2003 (Houston-STCL), November 7, 2003 (Austin-LBJ Library), December 5, 2003 (Houston-STCL), February 27, 2004, March 26, 2004 (Dallas, Texas), December 2, 2005 (Houston, Texas--South Texas College of Law), March 17, 2006 (Dallas, Texas—Dallas Bar Association Bldg.--Belo Mansion), April 13, 2007 (Houston—South Texas College of Law), April 27, 2007 (Dallas—Dallas Bar Association/Belo Mansion), November 9, 2007 (Dallas—Belo), and December 7, 2007 (Houston—South Texas College of Law, October 10, 2008(Austin, Texas—Texas Conference Center. Presentations: 55 (or so).

- *Archetypal Ethical Problems and the Youngish Lawyer.* I was a panelist at an American Inns Court Meeting in Austin (Justice Garwood Chapter) during the Winter of 1996/1997.
- *Liability Insurance Contracts: A Primer.* This speech was delivered to the 1996 Insurance Law Institute sponsored by the Law School of the University of Texas at Austin. The speech was given on September 26, 1996, and it was accompanied by a 57-page, single spaced paper. At this conference, I was also the presiding officer for the closing session.
- *Litigating With Insurance Companies.* This speech was delivered twice at the 1996 Meeting of the State Bar of Texas in Dallas: once on June 19, 1996, and once on June 20, 1996. It was part of the “CLE Super Store.” The speech was accompanied by an 8-page, single-spaced outline on the use of declaratory judgments in insurance litigation.
- *Sex, Drugs, and Insurance Disputes.* This speech was delivered twice at the 1996 Ultimate Insurance Seminar. The State Bar sponsored this program once in Dallas on March 1, 1996 and once in Houston on March 8, 1996.
- *The Claimsperson's Reliance Upon Coverage Opinions of Counsel and the Company's Bad Faith Exposure -- Some Practical Considerations.* I gave a speech to a state accredited continuing adjuster education program presented by Cooper, Aldous and Scully on February 8, 1996. (TDI/ICE).
- *Texas Insurance Update: 1994-95.* This speech was delivered to the 1995 Conference on Products Liability sponsored by the Law School of the University of Texas on November 2-3, 1995. The speech was based, in part, on a paper by Professor Mark Gergen, although the organization of the speech varied considerably from the plot-line of the paper and added discussions of several new cases.
- *Insurance Coverage Opinions.* This speech was delivered to the 3rd Annual “Advanced Issues in Insurance Bad Faith Litigation” CLE program at South Texas Law School on October 12-13, 1994. The speech was accompanied by a 66 page contribution to the program loose-leaf book. Another version of this speech was given to the Appellate Section of the Dallas Bar Association on April 20, 1995.
- *Authority and the Common Law: Holdings, Dicta, and Miracles -- Reflections on Meta-Doctrine and Appellate Advocacy.* This speech was delivered to the Appellate Section of the Dallas Bar Association on May 21, 1992. The accompanying hand-out was a new 33 page, single-spaced essay which discussed the nature of precedent in Texas.
- *Closing Arguments: Rhetoric and Rationality.* This speech was delivered to the Dallas Bar Association on March 13, 1992 at a Friday Clinic. The hand-out was a new 78 page essay below.

- *Insurance Fraud in the Age of Bad Faith.* This speech was given to the 1991 Fall Seminar of the Texas Independent Adjusters Association. It was accompanied by a 12 page outline plus a statutory appendix concerning 21.55 and 21.21. James Speier was listed as the second author.
- *The Unruly Judge.* This speech was delivered to the Dallas Bar Association on November 8, 1991 at a Friday Clinic. There was a hand-out. The paper was also presented and discussed at a Dallas Chapter meeting of the American Inns of Court, on November 13, 1991, where I appeared as a panelist.
- *Aggressive Good Faith.* This was a program designed for claims people on the Texas law of insurer good faith. It usually lasted two or three hours and involved the distribution of a hand-out, which consisted of an outline and a series of exhibits. The outline was approximately 20 pages long, and the exhibits were approximately 40 pages long. The hand-out passed through several revisions. I was the architect and principal author, but I was assisted by one or two associates. The speech was given to the Dallas/Ft. Worth Area Claims Council in 1991 and to several different insurance companies during 1990-91. Another version was given in March 1992, to the Litigation Section of the Dallas Association of Legal Assistants. Subsequent versions of the speech, together with the hand-out were distributed to various insurance companies for their continuing education meetings. (TDI/ICE).
- *Handling the Unruly Judge,* National Association of Railroad Trial Counsel Annual Meeting. Delivered twice: February 19, 1991 (Naples, Florida) and May 4, 1991 (Pebble Beach, California). The hand-out was an 80 page, 1½ spaced original paper written by Quinn and Caldwell.
- *Pollution and Property Policies,* CLE Symposium: ENVIRONMENTAL LAW AND INSURANCE, Executive Management Institute. Houston, Texas. October 1990. A 33 page, single-spaced outline was included in the CLE ring-binder.
- *Ambiguity, Sophistication, and the Limited Pollution Exclusion.* Environmental Insurance Law Institute, Executive Management Institute. Houston, Texas. April 1991. An 89 page, 1½ spaced paper was included in the CLE ring binder. That paper was written by Quinn and Caldwell.
- *Post-Employment Agreements Not to Compete.* RECENT DEVELOPMENTS IN BUSINESS TORTS, Southern Methodist University. November 19, 1989. A 109 page, single-spaced typescript was included in the CLE manual.
- *Quinn on Closing.* National Association of Railroad Trial Counsel Annual Meeting. Delivered twice: February 1989 (Palm Beach Gardens, Florida) and June 1989 (Pebble Beach, California). A revised version of the speech was published in 35 THE CHRONICLE 74 (1990).
- At various times from the mid-1980's through the early 1990's, I participated a half-dozen times, or so, in teaching NITA Trial Advocacy courses both in Minnesota and in Texas. This involved providing practical critique and instruction. (I took the course myself before I participated in teaching it.)
- *Attorneys' Fees in Divorce Cases: An Overview with Emphasis on Property Considerations.* H. Campbell Zachry was the senior author and I was the second listed author. We were both then at the Dallas law firm of Durant, Mankoff, Davis, Wolens, & Francis. It passed out of existence some years later. Cam Zachry, probably in 1981, actually gave the speech to the then Friday Clinic of the Dallas Bar Association. I helped research and write it. (To tell the truth, I cannot remember who did what with regard to preparation.)