

# Construction Insurance and Disputes

» *What You Need to Know About Coverage, Exclusions,  
Remedies and Bad Faith*

## Birmingham, Alabama

October 9, 2012

### Presented By

Gregory A. Brockwell

Dorsey R. Carson Jr.

Mark M. Hogewood

Larry S. Logsdon

Joseph (Jeb) E.B. Stewart

### Credit Information

CLE - 6.0

*See inside for details!*

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# SEMINAR OUTLINE

## **ANALYZING THE CONSTRUCTION DEFECT CLAIM UNDER A COMMERCIAL GENERAL LIABILITY POLICY**

9:00 - 10:00, *Joseph (Jeb) E.B. Stewart*

- CGL Policy vs. Other Types of a Commercial General Liability Policy
  - Builders Risk
  - What is a CGL and What Circumstances Apply?
- Considerations in Analyzing Coverage Under CGL
  - Choice of Law
  - Four Corners State (Complaint and Policy) on Duty to Defend
  - Resources for Analyzing Coverage
- The Insuring Agreement
  - Suite Against the Insured
  - "Bodily Injury" or "Property Damage"
  - Caused by "Occurrence"
  - During the Policy Period
- Coverage Limitations (Specialized Exclusions) CGL Exclusions
  - Known Loss
  - Classification Limitation
- CGL Exclusions
- Endorsements
  - Examples
- Conditions to Coverage
  - Notice
  - Cooperation
- Practical Pointers

## **INSURANCE-RELATED CLAUSES IN CONTRACTS BETWEEN OWNERS, CONTRACTORS AND SUBCONTRACTORS**

10:15 - 11:30, *Mark M. Hogewood*

- Commercial and Personal Insurance Issues Encountered When Entering Into Contracts
- Hold-Harmless and Indemnification Clauses

## **COVERAGE DISPUTES**

11:30 - 12:00 and 1:00 - 1:45, *Dorsey R. Carson Jr.*

- Does it Constitute an Occurrence?
- Coverage Triggers
- Exclusions and Denial of Coverage
- Determining the Responsible Insurer When Loss Occurs
- Steps to Maximize Insurance Recovery
- Interpretive Arguments Based on the Interplay of CGL and Other Policies

## **MEDIATION AND SETTLEMENT OF COVERAGE DISPUTES**

1:45 - 2:30 and 2:45 - 3:15, *Larry S. Logsdon*

- Enhancing Settlement Possibilities From Day One
- When is the Time Ripe for Mediation?
- Questions the Mediator Will Ask
- Smoothing the Way Through Mediation – Questions That Broaden Perspectives
- Commonly Encountered Landmines
- Strategies for Late in the Day
- Selecting the Right Mediator

## **LITIGATING COVERAGE AND BAD FAITH ISSUES FOR THE INSURED**

3:15 - 4:30, *Gregory A. Brockwell*

- The Interplay of Bad Faith in Construction Claims
- Tort vs. Contract Damages
- Proving Bad Faith
- Significant Case Law

\*If needed, the above agenda may be changed to best accommodate all of our attendees.

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# SEMINAR OVERVIEW

## Be Prepared for Construction Insurance Claims

Are your construction clients properly covered against liability? Do you know the latest interpretations of policy language? Do you have the skills to adeptly handle insurance claims should they arise? Don't wait for a problematic insurance claim to reveal costly coverage gaps. Join our experienced faculty as they review common types of construction insurance and coverage nuances. Then gain valuable tips for handling claims, determining which policy is triggered when loss occurs, the interplay of policies, recent decisions on bad faith, and proven settlement tactics. *Register today!*

## BENEFITS OF ATTENDING

- Maximize your clients' coverage against liability with the policies that best meet their needs.
- Avoid gaps in coverage: know when to offset policy limitations of different types of insurance with additional coverage.
- Study the latest decisions on coverage triggers and what constitutes an "occurrence."
- Take a closer look at insurance-related clauses in construction contracts and how they affect future claim negotiations.
- Confidently determine the responsible insurer when loss occurs.
- Find out how the interplay of CGL and other policies can make or break your claim.
- Keep insurance claims from becoming costly lawsuits with early dispute resolution tactics.
- Minimize litigation costs with thorough preparation and anticipation of common landmines.
- Encourage a successful settlement by coming to the table with reasonable demands.
- Stay up-to-date on the latest court rulings regarding bad faith claims.
- Learn how to handle the ethical conflicts that may arise during insurance disputes.

## WHO SHOULD ATTEND

This **basic level program** provides a comprehensive overview of construction insurance and disputes for:

- Attorneys
- In-House Counsel
- Construction Executives
- Insurance Professionals

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**GREGORY A. BROCKWELL** is a business trial lawyer with Leitman, Siegal, Payne & Campbell, P.C. His practice focuses on representing local individuals and businesses in disputes with their business partners, banks, insurance companies, competitors, and the like. His general practice areas include business torts and corporate litigation, contract litigation, securities litigation, trust and estate litigation, insurance/bad faith litigation, and shareholder disputes. Mr. Brockwell frequently represents Alabama insureds against their insurers in litigating issues of insurance coverage, claim mishandling, and bad faith.

**DORSEY R. CARSON JR.** is a partner with Burr & Forman LLP, where he practices in the firm's construction law and commercial litigation groups. He has represented numerous developers, owners, general contractors, subcontractors, sureties, architects and engineers within the construction industry. Since 2010, *Chambers USA* has named Mr. Carson as a "Leader in their Field," in the area of construction litigation. He is admitted to practice before the U.S. Court of Appeals for the Fifth Circuit; and U.S. District Courts for the Northern and Southern districts of Mississippi, the Northern and Middle districts of Georgia, the Southern District of Illinois, and the Eastern District of Wisconsin. Mr. Carson has held memberships with the Mock Trial Board, Blue Key, Who's Who: American Law Students and Outstanding Young Men of America. He is currently a member of The Mississippi Bar; the State Bar of Georgia; and the American Bar Association, where he serves on a Steering Committee for the Forum on the Construction Industry; the Association of General Contractors; the Associated Builders & Contractors; the American Subcontractors Association; the Construction Specifications Institute; and the Lawyers Club of Atlanta. Mr. Carson earned his bachelor's degree, magna cum laude, from Mississippi State University; and his J.D. degree from the University of Georgia, where he served as vice-president of the Student Bar Association, as well as articles editor for the *Georgia Journal of International and Comparative Law*.

**MARK M. HOGWOOD** is an attorney with Wallace, Jordan, Ratliff & Brandt, LLC, where his practice is primarily in the area of civil litigation, with an emphasis on corporate and insurance defense, as well as insurance coverage litigation. He joined Wallace, Jordan, Ratliff & Brandt, LLC in 1997. Mr. Hogwood is a member of the Alabama State Bar, the Alabama Defense Lawyers Association, the American Bar Association and the Defense Research Institute. He is an adjunct professor of insurance law at Cumberland School of Law at Samford University, and he has served on the State Bar's Task Force on Adult Literacy. Mr. Hogwood also is a frequent speaker at seminars related to insurance coverage. He is admitted to practice before the U.S. Court of Appeals for the Eleventh Circuit, the U.S. District Court Middle District of Alabama, the U.S. District Court Northern District of Alabama and the U.S. District Court Southern District of Alabama. Mr. Hogwood earned his B.A. degree, cum laude, from Wake Forest University; and his J.D. degree from Vanderbilt University School of Law

**LARRY S. LOGSDON** is a partner in the law firm of Wallace, Jordan, Ratliff & Brandt, LLC, where he practices in the area of general commercial litigation and also represents contractors, subcontractors, owners and suppliers involved in all aspects of the construction industry. Mr. Logsdon co-wrote "Alabama Construction Law: What Do You Do When..." for National Business Institute in May, 2003 and May, 2004. He also presented the National Business Institute's seminar titled "Mechanic's Lien Law and Strategies in Alabama." Mr. Logsdon earned his B.S. degree, summa cum laude, from the University of Alabama; and his J.D. degree from The University of Alabama School of Law, where he was inducted into the Order of the Coif. He also was a senior editor of the *Alabama Law Review*. He is a member of the Association of General Contractors, the American Subcontractors Association and the Alabama State Bar.

**JOSEPH (JEB) E.B. STEWART** is a partner in the Birmingham, Alabama branch of Austill Lewis & Pipkin, P.C. His practice areas include insurance law, construction law, products liability, transportation and trucking, and general defense. Mr. Stewart is a member of the Alabama State Bar, the Defense Research Institute (DRI) Insurance Law Committee and its Commercial General Liability Subcommittee, the Council on Litigation Management (CLM), the Alabama Defense Lawyers Association (ADLA), and the Birmingham Bar Association. He is a graduate of the Cumberland School of Law of Samford University.

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SEMINAR TIME 9:00 am — 4:30 pm

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