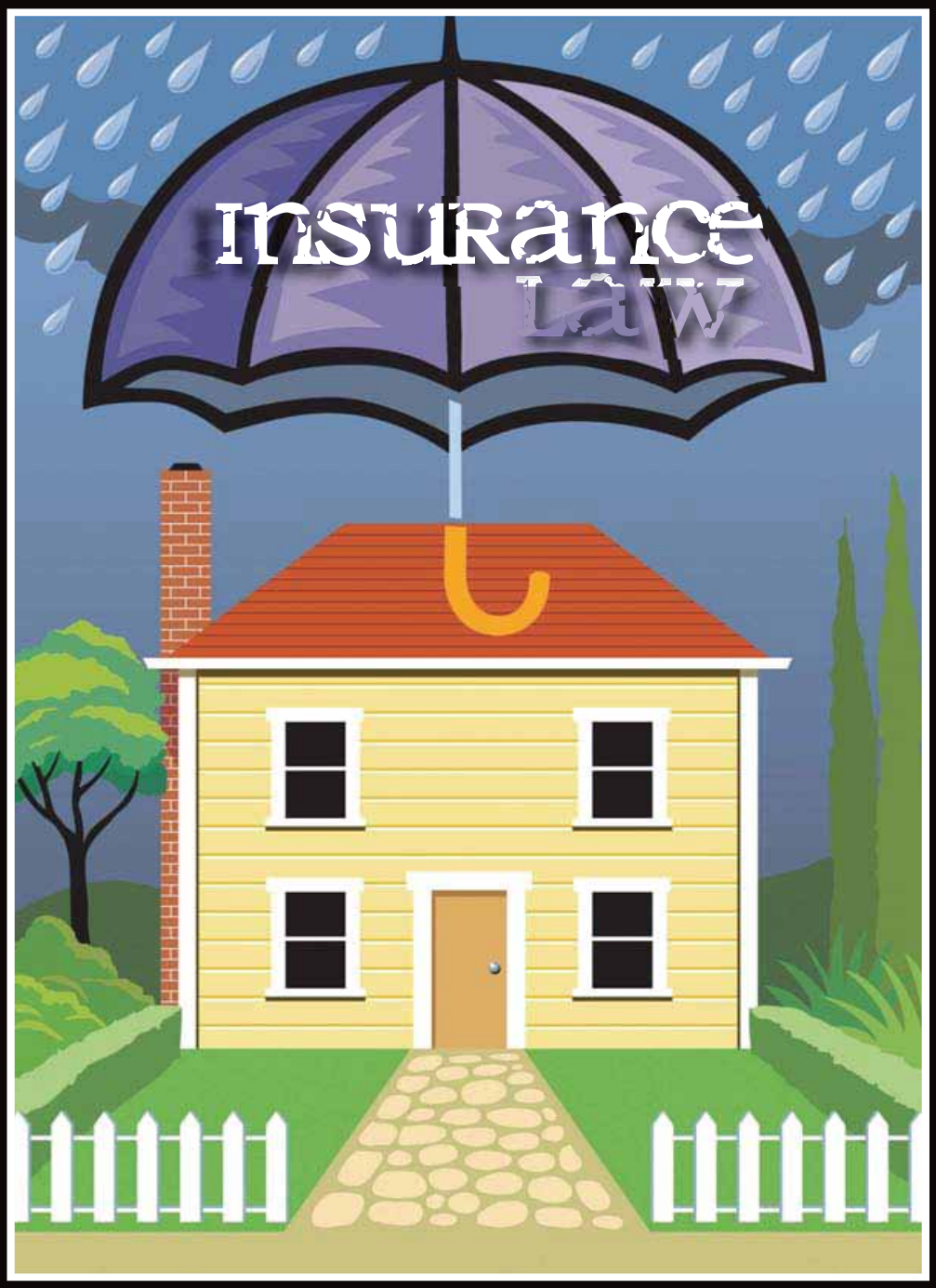
TEXAS LAWYER ROUNDTABLE SERIES







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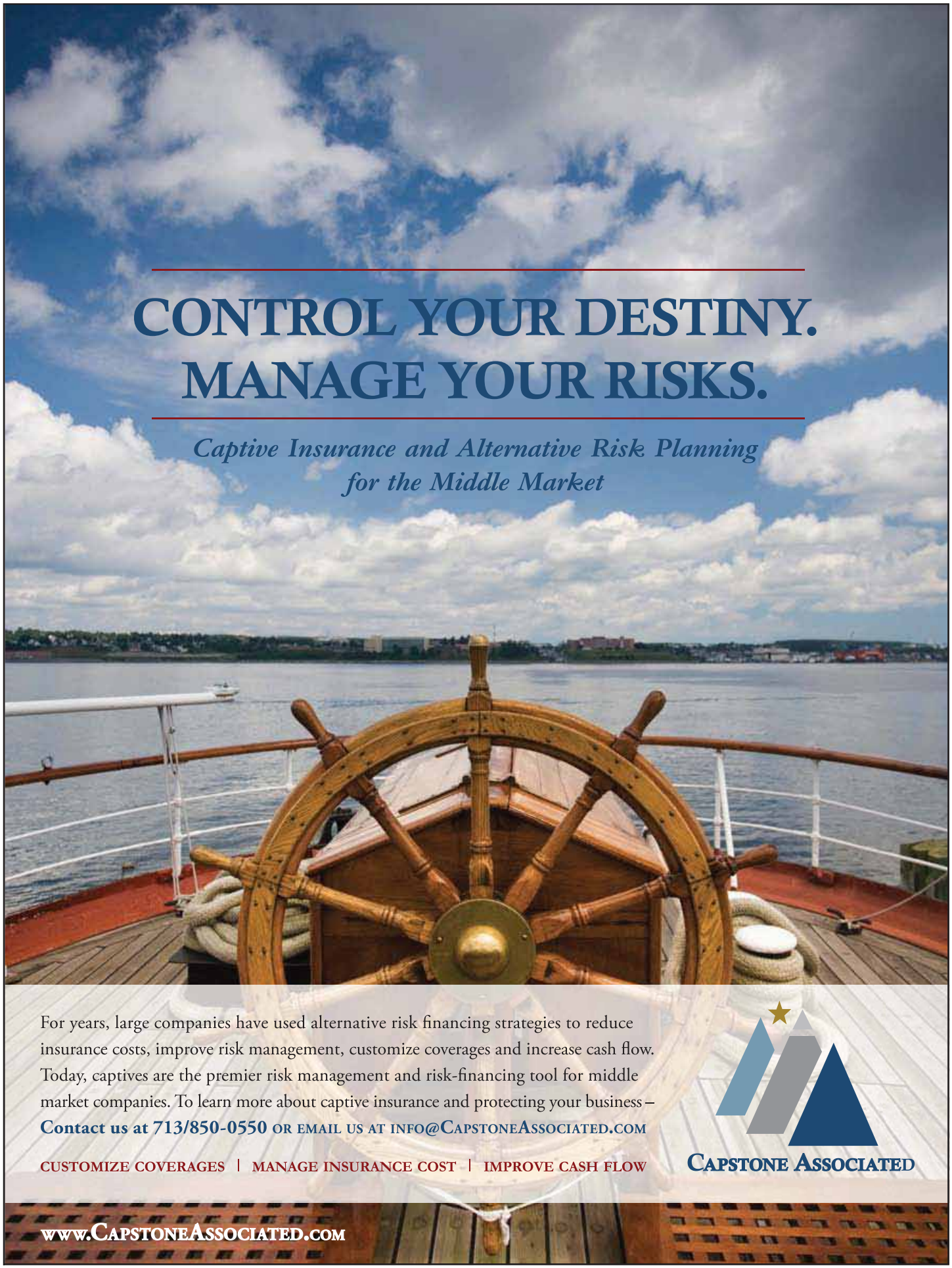

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From politics, to the economy, to global warming. All of these issues in some way affect insurance law. If you want a spirited debate in Texas, all you have to do is get people talking about insurance. That's what Texas Lawyer's business department did when it hosted an insurance law roundtable in Dallas. What follows is the discussion, edited for length and style.

MIKE ANDROVETT, moderator, attorney, and owner of Androvett Legal Media & Marketing, Dallas: *I've asked each of our panel members to not only identify themselves and tell you a little bit about where they work, but also the nature of their work and their particular point of view on insurance law and the insurance industry. So Brent, would you mind starting out by introducing yourself to the folks here.*

R. BRENT COOPER, shareholder, Cooper & Scully, P.C., Dallas: Primarily I handle insurance coverage and bad faith work — more from the insured side than from the policyholder side. I also have a very large appellate practice, particularly in the Texas Supreme Court where at any given time we will have five or ten cases awaiting decisions. My practice includes litigation with a concentration on insurance coverage and bad faith as well as appellate practice.

STEWART A. FELDMAN, general counsel, Capstone Associated Services, Ltd., Houston: We offer an alternative to the hazards of relying on the conventional insurance markets. Houston-based Capstone is one of the largest operators of captive insurance arrangements — that is, alternative risk planning —in the United States. We operate more than 70 insurance companies for the benefit of middle market companies. Capstone offers an alternative solution to the myriad of problems associated with working with conventional carriers, many of which only arise when a claim is made.

THOMAS WINSLOW, broker, Insurance Network of America, a professional services group, Dallas: I'm an insurance broker who specializes in providing comprehensive insurance for law firms. I'm thrilled to be here among such a distinguished panel. In fact, I'm the only one on the panel that doesn't have a bar card, even though it's not uncommon for me to be in a room full of lawyers. All my family, grandfather, cousins, uncles, everybody are lawyers. I have a fierce independent streak, which is what led me down a different path than going to law school. However, as independent as I like to think I am, my path didn't lead me very far from my beginnings. While I was attending UT, I worked for a plaintiff's lawyer in Austin, Broadus Spivey. Some of you may know him as the former State Bar president and a noteworthy legal malpractice attorney. While working for him, I became familiar with legal malpractice and the issues that lawyers have to deal with, in terms of the challenges of being involved in lawsuits and in terms of their own liability exposure. Through my involvement with malpractice suits while working with Mr. Spivey, I realized that few people actually really understood legal professional liability insurance. We even relied on a group of experts and individuals who knew about it. In the process, I became a little bit of an expert myself. My mentor now, Gary Beck, for whom I work now, really taught me the trade. He worked for 20 years for Aon and Willis representing big law firms, 500 lawyers and more, and provided them professional liability insurance. About 24 months ago we started up this group and that's all we do. We provide insurance for lawyers. Small firms and medium size firms really need big firm-type representation in today's world. Your legal administrators work very hard, and sometimes they feel they're required to use certain brokers. Maybe it's a client, or a brother-in-law, or somebody like that, and oftentimes you end up dealing with four or five brokers for all the different types of coverage you need. That's a recipe for disaster, and it requires the legal administrator to be an insurance expert, to see those gaps. There's not one person with a 50,000-foot view taking a look at everything and watching everything for you. We provide a single-source solution for law firms and all their insurance needs, and we have lawyers in our group. And we act as your advocate in the event of a claim. I'm very pleased to be here today.

JENNIFER MARTIN, partner, Schell Cooley LLP, Addison: We are a litigation firm and can handle a broad variety of litigation matters. My practice is primarily commercial litigation. I do all kinds of business torts, and I do a lot of insurance bad faith work. One of the things that I hope we can talk about some today that are the kinds of topics that matter to you. Not just the case law that's coming out of Supreme Court, but what we're seeing in the individual cases we are handling, the problems that in-house counsel face every day in determining whether they're going to be surprised and all of a sudden not have coverage for something and be explaining to their boss how that came. So I do encourage you guys to get up to the microphone and ask some questions so we can be sure we talk about what matters to you.

MICHAEL W. HUDDLESTON, partner, Shannon, Gracey, Ratliff & Miller,

R. Brent Cooper, named shareholder of Cooper & Scully, P.C., focuses his practice on appellate law, insurance, and commercial litigation. He has had significant experience in the representation of clients before federal and state trial and appellate courts, as well as in arbitration proceedings. He has tried numerous cases covering areas of products liability, toxic torts and asbestos, business litigation, construction litigation, wrongful death, catastrophic personal injuries, complex litigation, breach of contract, and business tort cases. For over 30 years, he has been at the forefront of Texas law particularly in the area of bad faith. Cooper is board certified by the Texas Board of Legal Specialization in Personal Injury Trial Law. A native of Dallas, Cooper earned his B.B.A., summa cum laude, from Texas A&M University in 1974, and his J.D., cum laude, from SMU in 1977. Cooper is a frequent lecturer, having spoken on insurance litigation, coverage, and bad faith at seminars for the State Bar of Texas, University of Houston Law Center, South Texas College of Law, and the University of Texas School of Law.

INSURANCE LAW

LLP Dallas: I am blessed to be able to work with a number of very experienced coverage lawyers. We've got at least nine insurance lawyers with in excess of 20 years of experience each. We don't get around that fast, but at least we can talk shop. The work that I do is both first party work and third party. Like Brent — in fact, I was with Brent for many years — I do a lot of appellate work as well on a pretty general set of topics. Pretty much whatever is available that has been lost for a fairly significant amount of money. My representation in the insurance area is mixed. I represent a lot of corporate and professional policyholders. The policies of the day seem to be D&O, a lot of commercial first property — some with and threats of arbitration abroad. So it's a very varied practice and very fun. I do a lot of bad faith work as well as risk management work, which, quite frankly, has become a pretty big part of the practice, mainly through the experience of working on the negotiation and drafting of indemnity and insurance provisions in leases and other contracts with some of our real estate and transactional attorneys.

ANDROVETT: *Panel, you've given life to one of my early claims this morning and that is that this is a very diverse panel. And so I'm interested some views from 80,000 feet. We will spend most of our time down there on the ground with you, but to start out with, just maybe some macro questions. For most people insurance is one of those things you never think about and you hope you never need and you only really think about it when you need it, and I'm sure that's part of your experience in your work. But that sort of implies a greater truth, which is at various intersections in all of our lives insurance intrudes or becomes an important part. And so things that happen on a large scale in society or in our economy ripple through the insurance industry and through insurance law affecting all of us. So my question is: Over the last couple of years we've seen insurance companies get into trouble. Maybe the paradigm example would be AIG. Short answers to the long question, the difficulties in the insurance industry nationally, have they translated into different practices or a different culture there on the ground where you all operate?*

COOPER: The first area we're going to see an impact from what's happening on a national basis is going to be in our jury attitudes. If you remember in the '30s there were a ton of movies where there were bank robbers like Bonnie and Clyde, and they were very popular. And they became folk heroes to the public. And the reason they were becoming folk heroes to the public was because most Americans in the late '20s and early '30s lost a lot of their money to the banks. And so anybody that goes in there and does something to the banks was a hero to the public, and Hollywood encapsulated that in a lot of the movies that they were making. We're seeing right now the same effect with respect to the financial industry. There is, I dare say, hardly anybody in the United States that has gone untouched by what has happened in the last 12 months. And consciously, unconsciously, or whatever — we are seeing that in the attitudes of our jurors and to a lesser extent we're seeing it translate into attitudes in our trial judges and our appellate judges that they have touted not just necessarily insurance companies, but to everybody that's involved in the financial industry. A lot of insurance companies, banks, and people in the financial industry did nothing wrong, but got caught up in the wrongdoings of others. However, that's not going to make a difference. They're going to be painted with the same broad brush that the people who perhaps were primarily responsible for the mess that we find ourselves in. So, first off, we're going to see the attitudes reflected in juries and their opinions. Second, we're seeing the attitudes translated also into our appellate judges and even our Supreme Court. You look in the last probably four to five years, there's a definite trend in the opinions. There has been an expansion in the remedies that are available to policyholders. There has been less favorable treatment of insurance companies. In fact, it's been just the opposite. If you add up in the Supreme Court what's happening, typically it's going to be the insurance companies who have lost. And so we're seeing part of that overall public attitude translate to our appellate courts as well.

If you recall, in 2003 there was this huge publicity campaign for Proposition 12. There was about $9 million spent by the TTLA and about $12 to $15 million spent by the insurance industry, hospital industry, medical industry to promote the fact that juries were running away. They were giving away too much money. That phenomenon that we saw in 2003-2005 was that jurors were very conservative because they had been conditioned by all the publicity. That has worn off. Whatever impact from the media blitz that occurred in Proposition 12 is now gone, and you're sort of dealing with blank slates with your juror's minds now, and we're seeing it. We're seeing that translate into many very large verdicts. Dallas used to be a bastion of conservatism as far as judges, juries, and everything else. And we're seeing the same thing happened in 2006 Dallas election — all the Republican judges got voted out. In 2008 it happened in Houston. And we're seeing some very large verdicts now that are coming out against people that you would normally think they would be sympathetic to. Case in point, in February of this year, a physician saved the life of some man literally, but there were some adverse consequences. The jury hit him for $17 million, and that was here in Dallas County, so it is a different world. And for people who are thinking that the world in the 2000 to 2003 is the world we're living in today, it is not. The attitudes are different, and the rules that you're playing with are totally different.

MARTIN: I agree. We're seeing a problem with juries looking for a pound of flesh from someone, and the insurance companies are a good target. I can tell you I've got cases in South Texas where it's even worse because you couple that with the folks that have been through all the hurricanes time after time and everybody knows somebody who didn't get their claim paid timely. So insurance companies have an even bigger target on their back. I'm seeing a lot more claims that wind up in litigation that maybe wouldn't have before because of the economic circumstances. An insured who might have thought it isn't worth the trouble, didn't want to deal with a lawyer, didn't want to go through all those hassles to get a little bit more money, is now going to think well, especially if I can find a lawyer who will do it on contingent fee, it's probably worth doing because they'll put a little more money in my pocket. I've got a case right now that I swear the apartment complex figured the best way to get its roofs fixed that had been old and worn out was to sue its last four insurance companies and figured they're insurance companies, one of them is going to pay. So I do think we're going to see a lot more litigation as times get tougher.

HUDDLESTON: There is a different twist on this issue for those of us who have been practicing for some time. The biggest impact of the financial services industry has been their involvement with carriers in the first place. For many years they were not permitted to be a part of the insurance industry. When that happened, what many of us saw was old relationships where we had represented carriers for years began to just evaporate. You had a series of mergers with major carriers. And with one carrier, I knew and had worked with probably numerous vice presidents in the home office at one point in time, but within a year's time of a merger, they were all gone. And now they've been replaced within the last three years with yet another, different group as a result of yet another merger. So in terms of practical impact, the unwinding of the financial industries market certainly has some limited impact more again from the jury perspective, less from the financial because the insurance companies are for the most part properly reserved. AIG is strong, robust. People should not be worried about getting their claims paid except for the same reasons that they were always worried about insurance companies paying their claims. But the real problem has been for those of us who practice, if you're an insurance defense lawyer or if you're a lawyer who's represented carriers, the old loyalty evaporated over the last ten years and that has not returned. And one would hope that perhaps some of these changes in financial services will lead to fewer mergers and acquisitions and sort of pure raw financial view

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Michael W. Huddleston is a senior partner with Shannon, Gracey, Ratliff & Miller, LLP, and practices primarily in Dallas, Fort Worth, Austin and Houston. He provides counsel and litigates insurance coverage and bad faith cases involving all lines of insurance. Huddleston also handles appeals in insurance cases and other matters involving catastrophic losses, including a number of landmark appellate decisions including State Farm v. Gandy (Tex. 1996); Christophersen v. Allied-Signal (5th Cir. 1990)(en banc); Rose v. Doctors Hospital (Tex. 1990); St. Paul Fire v. Convalescent Services (5th Cir. 1999); State Farm v. Williams (Tex. App.—Dallas 1990, writ denied). Huddleston has also served as an expert witness and a mediator/arbitrator in complex insurance cases. Huddleston was recently selected as a "Top-Notch" insurance lawyer for inclusion in the Texas Lawyer "Go-To Guide." He is a frequent lecturer and speaker, and has served as the Course Director for a number of Texas insurance law seminars.

of the insurance industry as just a pawn or a set of assets and go back to the old method, which was really one that was based more on relationships, particularly with lawyers, and yielded for the carriers a lot more fruit in terms of the ultimate product delivered to its policyholders.

WINSLOW: From my perspective, what we're seeing with these giants wavering, or what appears to be wavering, is that some of the smaller insurance companies are really stepping up. We're getting a lot of calls from carriers saying, "look, if any of your clients are nervous about their particular insurance company, we'll honor that premium, we'll take them over if they want to move now." So really what we're seeing and what should be, according to trend, is a hardening market. It's still quite soft. I'm sure, because of the financial fall-out, that it will harden in the near future. But we're seeing quite a bit of movement. Some of the smaller insurance companies are willing to do more in order to get larger clients that they necessarily wouldn't have had access to before.

FELDMAN: You folks could be the marketing department for Capstone. The problems that have existed with the conventional carriers' recalcitrance in responding to claims especially in recent years — certainly you could cite back to 2000 as the pendulum swung in Texas in favor of the insurance companies — is one of the factors that fuels the growth of captive insurers. Still, our work tends to be more national than statewide and so we see the growth of captive insurers throughout the country. Long ago major insureds got tired over the years in dealing with conventional carriers. When the Wal-Marts of this world have a claim or a slip and fall in their parking lot or some type of battery or assault on its premises or even a robbery or fire in one of its facilities, Walmart doesn't have a staff of people that submit claims to State Farm or a Geico or a Liberty Mutual to argue with these conventional carrriers about paying the claim. It's uneconomical because at the end of the day the only thing that the insurance industry does is a transfer of risk and a distribution of risk from insureds to insurers. There's no free money in the system. The insureds pay the premiums to the insurance companies which then distribute the risks, take their profits, marketing, commissions, and their legal fees out, and then pay a portion back in claims, whether it is 10, 20 or 30 percent. But certainly a relatively small percentage of the premium dollars end up being paid back to insureds on a direct basis. If you look at the system as a whole, about half of the property and casualty market of the United States is not done through the conventional markets. It's done through captives. There are six-thousand plus captives in the world and most of them are affiliated with U.S. companies. Why? Because when a large company has a risk, it is not going to employ a staff to argue with the insurance company and then having to sue for every 10 or 20 or 50 or 100,000 thoussand dollar claim or for every million dollar claim.

ANDROVETT: *Stewart, describe a little bit how a captive works. What is it? How is it different from a traditional insurer?*

FELDMAN: A captive in many ways is similar to a traditional insurer, except that the captive has a close relationship with the insureds. Let's say you're a construction company and you have various construction sites. The company, the insured, might decide to write certain coverages directly through the captive because, for instance, the conventional markets are pricing coverages way too high, or more likely, the conventional markets have too many exclusions to coverages, which make the insureds uncomfortable. That is, the things that are likely to happen in the event of a loss are things that are not covered under the policy. So as a result, the insured, or an affiliate of the insured, forms a private insurance company and pays premiums to that company, deducts the premiums currently, and puts those premiums into the captive. The captive may or may not be tax exempt, but certainly even where it's not tax exempt the large amount of premiums that go into the captive are not currently taxable. So what the insured is saying is, "The conventional markets are mispricing coverages" or "I don't have coverage in certain areas that I would like to have coverage". The insured currently deducts those coverages from its federal income tax return

and pays premiums into its captive insurance company. Like every insurance company, the insurer hopes that the insured losses won't take place. A large reason that we've seen an increase in our markets for captives is simply because of all these problems the panel is talking about here today. An insured puts a claim into the insurance company. Perhaps it's an advertising injury case and the insurer says it is intentional conduct and therefore excluded. Because the insured actually said what the underlying plaintiff is claiming, there's no coverage available; or sorry, you didn't notify us on time and because you notified us three or four months after the suit was filed and we think that we the insurance company was prejudiced; or we think it's covered on account of an exclusion. Because from a practical standpoint, what is seen is the "expectation gap" between what the insured thinks is covered and what actually is covered. And if there weren't that expectation gap, I guess people like Brent wouldn't be able to make a living on coverage litigation. So as a result, companies form captive insurance companies to cover risks. Again, there are about 6,000 captive insurance companies in the United States; they are very common. They are ubiquitous among larger companies and they're very common among the middle market companies, which is where Capstone operates.

ANDROVETT: *To the extent that you know or have an opinion, is the captive the trend of the future? Are there are other facets to this that bear some scrutiny?*

HUDDLESTON: Well, one of the things with captives is that it's not a blank check in terms of what's covered or not covered. Most of the time they're using some kind of basic ISO form.

ANDROVETT: *Which is a what, Mike?*

HUDDLESTON: Insurance Services Offices is a national organization that basically prepares the form that is used for most CGL policies in the country.

FELDMAN: ISO IS the scrivener for policies, at least for the first draft for the insurance companies throughout the United States.

HUDDLESTON: With obvious input from consumer sources who have membership with ISO and are part of the drafting process as long as well as industry sources. But the main thing is the language is there, and they can't just write a check. In fact, there are fiduciary duties that are owed by the insurance company because it is a separate entity. And that entity relationship has to be respected because if it's not, you're going to have alter ego problems and all sorts of other issues that come up. So at least in my experience, captives have to carefully evaluate coverage issues and determine coverage exists, and not just simply do the bidding of their ultimate corporate owners.

FELDMAN: But certainly in the situation where Wal-Mart has a captive, there's a tremendous amount of flexibility in Wal-Mart's chairman, who's also the chairman of the captive, to say, "Go ahead and pay that darn claim" or "we're not going to argue about it," or "we're going to enter into some accord and satisfaction" as opposed to entering into years of litigation where the insured also is facing an underlying case that it is defending, while at the same time it is fighting its insurance company on a declaratory judgment action.

HUDDLESTON: Yes, again, the coverage issues don't evaporate. They're still there. They still have to be analyzed, and there is some discomfort with the conflict of the same corporation seeking coverage and serving in some capacity as an owner or board member of the captive determining whether coverage is or is not available. Because any time you have an interlocking directors, you've got potential problems. And it's a solution that is for big companies. It's not going to be for the smaller to medium size companies, at least in my experience. Now, there are some opportunities where you have industries banding together, industry members. I've seen it in the health care industry where you have maybe six or seven large providers of health care who put their own industry captive, if you will, together. In this setting, independence in decision-making is easier given the fact multiple corporations or entities are sharing the risk. I'm just curious, do you think in the captive market that the cost savings are there to

Jennifer Martin is a partner with Schell Cooley LLP. Martin focuses her practice primarily on first-party insurance disputes and complex commercial litigation matters. She advises insurance carriers and insureds regarding a broad range of insurance matters, including complex coverage questions, claim handling issues, and allegations of statutory violations and bad faith. She also represents business owners in litigation of commercial torts and breach of contract actions. She has successfully litigated numerous cases in state and federal courts throughout the State of Texas. Martin graduated from Baylor University School of Law in 1995, where she served on the editorial board of the Baylor Law Review. She is admitted to practice in Texas and before the U.S. District Courts for the Northern, Eastern, and Southern Districts of Texas.

Thomas Winslow, director of sales for the Professional Services Group at Insurance Network of America, specializes in insurance brokerage services for law firms. As a fifth generation Texan and grandson of the late Hon. Joe J. Fisher, U.S. District Judge in the Eastern District of Texas, as well as his involvement in an administrative capacity for several Texas law firms, he has a deep understanding of the challenges facing Texas lawyers today. He provides a single source solution for the lawyers serving all their insurance, risk management and employee benefits needs. He offers valuable advice and services such as claims evaluation, contract analysis, existing policy review and insight along with a deep understanding of the insurance marketplace. This consultative approach enables him to act in difficult and time-sensitive situations. He resides in Austin and is married to Elizabeth Mehaffy, daughter of Hon. James Mehaffy from Beaumont, and has two children, Tess and Liam.

the same extent for an individual company? Because they're all reinsuring. We know that's there. Are they going to get the same bargains on reinsurance that a larger company, such as AIG is going to get, on reinsurance? Is that savings going to be substantial? Because it would seem like they're at least a smaller player. And I'm not sure they're going to get the same deal from the reinsurers that they're going to get from somebody else, for example.

FELDMAN: Well, what we see is certainly when an AIG provides coverage, more likely than not, AIG is not reinsuring the risk; it is holding the risk in its portfolio. By definition the insurer, here AIG, is an insurance company. That's, of course, at the large size insurer level. By way of example, look at the State Bar of Texas with its health insurance trust, which is in substance a captive. Or for those in the medical area, look at the Texas Medical Liability Trust. TMLT is a captive insurance company that is holding a portion of the risk and at some level reinsuring the excess. The market that Casptone is in is the closely-held business market, or the nonpublic company market. Revenues of our clients will run anywhere between $20 to $750 million per year. These captives, generally speaking, are not reinsuring their risks. They're pulling out risks that are appropriate for the captive and they're holding such risk because, just like the earlier analogy of Wal-Mart, Wal-Mart is not going to necessarily reinsure the first $5 or $10 million of a fire at one of its distribution centers since they have several thousand locations in the U.S. by which Walmart can average out its risks. Recognize that a relatively small portion of the premiums that insureds pay to the insurance company over a period of years actually result in the payment of direct losses. The other dollars end up in profits, marketing fees, attorneys to fight you on not paying the claims, constructing buildings, paying off TARP money, and paying for bad investments. So really the captive is a much more efficient vehicle for the appropriate clients to obtain coverages. It's unusual that you'll see, for instance, a community-based hospital that doesn't have a captive.

COOPER: Well, but one of the points Mike made is, if they're in a risk purchasing group or risk retention group there are other members who have interests that are affected if you pay out something that's not covered.

FELDMAN: That's correct.

COOPER: And so there are those obligations. Now, the other aspect that I've seen from the insurance side is typically risk person groups, risk potential groups are unregulated. Most of them are offshore. And I've had clients who have had environmental claims that they thought were covered. We got a judgment. All the assets are outside the U.S., and we literally had to chase them to Bermuda, to the Isle of Man, all over the world to track down the assets in order to get a judgment paid. Which if it was AIG or Zurich or one of the admitted carriers, you have a lot more regulatory oversight and they would not be able to move assets, headquarters, or board of directors' meetings to avoid paying. So there are certain cost savings, otherwise people wouldn't get into risk person groups or risk retention groups. But, the lack of regulation also poses some additional risk to the insured.

FELDMAN: By definition a "risk retention group" or an RRG must be based in the United States under U.S. tax law. There's no such thing as a risk retention group outside the U.S. Nonetheless, it's important whenever you buy a product from another company that you do due diligence on it. Usually in a captive situation, the captive is owned by or affiliated with the operating business. So the company is left to decide whether to incorporate in the UK versus Vermont versus South Carolina. This is a decision to be made by the common management of the insured and the insurer.

HUDDLESTON: From a risk management standpoint, if you're a landlord or tenant, you don't want this kind of coverage. You want a domestic carrier. That's what's going to be required in the contract. So this coverage is not that portable at least in the ordinary business context.

ANDROVETT: *Jennifer, you know that there are problems in-house counsel encounter that you hoped we would talk about here. I'm going to assign you to be*

proxy to pose those questions and some of those answers. What are the big issues, the big problems that you would like to talk about? And Thomas, with your perspective dealing with law firm administrators and general counsel, perhaps you can piggyback on some of the insights that Jennifer has.

MARTIN: What I have to say really does dovetail into what Thomas and Stewart do and to some extent the idea of why folks might want a captive. Part of it is all those pesky exclusions and the coverages that you thought you had that you don't have. I was amazed when I first started doing insurance coverage litigation at the number of insureds who get to their deposition and say, "I thought I had this coverage. My agent told me I had this coverage or my agent should have known that I needed this coverage." But when you get down to the nitty-gritty of it, they don't have any idea what's in their policy. They have some vague ideas of the kinds of coverage that they hope they have. But sit down and read the policy is something most of them have never really done. They listen to their agents' general explanation. I have some agent clients, but they're not lawyers. They're ultimately salespeople and very knowledgeable salespeople and who can guide you in the right areas. But how horrible to be the in-house counsel who's explaining to the CEO why you've got this million dollar loss that anyone could have seen was coming, but it was very clearly excluded by your policy. And that's something that I wanted to talk about today is the fact that everyone assumes somebody else is doing their job, and unfortunately there's some case law out there that says that the insured has the obligation to read their policy if they're in possession of it and are charged with knowledge of what's in it.

WINSLOW: Right. The standard of care clearly states that the insured can't just say, "Well, I didn't know." The standard of care states that they should know. And that's why it's important when you're purchasing your insurance, that you really use a true expert and not a brother-in-law or a cousin or a neighbor who may do three or four businesses a year that are your type of business, specifically with the legal industry and law firms. With professional liability, you're essentially just purchasing back an exclusion that was excluded out of the general liability policy in the form of a new separate policy. And somebody who does that three times a year is not going to have any idea actually the bases of these policies and the intricacies of them with regard to career coverage and that type of thing. And that's just one small industry among many. And there are brokers that work in all types of fields. And this is truly where the problem comes about. People are convinced to use someone that they know, someone that is very heavy in the property and casualty business, maybe residential, and they call them up. And they say, well, this guy does insurance. I know this guy. And, of course, he's going to say, "Yeah, sure, I can do that." But it may be the first time that he's ever done it. And that's why it's real important that

Mike Androvett is in business to make sure that his lawyer clients get positive news coverage and their law firms are marketed effectively through advertising and public relations. Androvett is the founder of Androvett Legal Media & Marketing, the largest public relations and advertising firm in the Southwest exclusively devoted to lawyers and the legal profession. Established in 1995, Androvett Legal Media serves the specialized needs of law firms in communications with outside audiences, including news media coverage, brochures and Web sites, and sophisticated advertising of all kinds. Androvett's firm assists lawyers in virtually all areas of practice while observing the highest ethical standards. Lawyers and their clients who receive media training from Androvett Legal Media are much better prepared to deal with reporters and TV camera crews. And, as a former chairman of the State Bar of Texas Advertising Review Committee, his expertise and experience is essential to firms seeking to comply with the state rules governing lawyer advertising. Androvett and his team take the mystery out of public relations and advertising by recognizing law firms' true goals and providing the know-how to make them happen. He can be reached at 214-559-4630 or mike@legalpr.com.

if you're in a specialized business, you're requiring special types of insurance because it's excluded from your general liability, you truly choose the appropriate expert and not just somebody that does it every now and again. That's the very foundation of that issue is that most of the brokers just don't know what they're talking about. And they convince the insured that you have everything you need and just pray and cross your fingers and hope there's not any type of claim.

FELDMAN: Let me underscore what you're saying because I agree with the other panel members on this point. I can think of situations that we faced in Houston with Hurricane Ike. There were many businesses that had business interruption coverage. Or the businesses thought they had such coverage. I've always described business interruption (BI) coverage as a lawsuit waiting to happen. I know that one of these days in my career — and I've been practicing for 30 years — I'm going to see a BI claim that's actually paid without a lawsuit, however, its just that I haven't seen one yet. What happens under the BI policy is that the insured needs a physical claim in order to trigger coverage. There's got to be physical damage. Well, in Houston we had Hurricane Ike and a lot of people, such as myself and my family, were without electricity for 12 days. And, of course, there were a lot of businesses with outages for a week or two. Without electricity, these businesses weren't operating, but yet there was no physical damage to the business, and therefore there's no business interruption coverage. Zero. But the insured says, "Gosh, I had business interruption coverage, and I was interrupted from doing business because I didn't have any electricity." Well, that's tough because under the ISO form that Michael mentioned, there's no coverage without physical damage. Another thing that we often face in Houston is under commercial general liability coverages. Again, in Houston we see a lot of businesses that are "machine shops," These folks are building a widget, which may cost $10,000 and may be 6 inches by 6 inches, is being built for Halliburton or Nabors and is going 15,000 feet down to the ocean floor and maybe another 15,000 feet below that. The machine shop is charging $10 or $15 or $20,000 for each small widget. While the insured has commercial general liability coverage, it would usually exclude "products" coverages. So the insureds think they have coverage for those issues, but in reality there's no coverage. This is the "expectation gap." One project I worked on this week was a high volume medical facility that provides physical therapy. The insured had a therapy pool. However, the policy excludes "slip and fall", that is, anyone getting into the pool or out of the pool. Once you're in the pool, if you're hurt, that's fine. I guess if a molecule of hard water hits you, you've got coverage. But when getting into the pool and getting out of the pool, there's no coverage.

ANDROVETT: *Well, we see the problems. What are the solutions? What is the advice, Jennifer, to general counsel who are representing large entities who have very complex insurance issues? And I want everybody on the panel to weigh in on this.*

MARTIN: What you do first and foremost is you get a good agent. You don't get your brother-in-law. Because why buy insurance if it's not really going to cover what you need. Then you read your policy. And if there are questions that occur to you as someone who is not sophisticated in insurance practice, put them in writing to your agent and make them answer you in writing because you're going to give yourself an extra layer of protection. If you have losses that you're particularly concerned about, that are particularly scary to you, and you read that policy and you have any doubts about it, go talk to a coverage lawyer. Pay for a few hours of time to have someone give you an opinion and buy yourself some extra protection in that way because there are things in policies that really smart people have trouble figuring out. And so that the idea that the insured is supposed to be able to read their policy and know what coverage they have is a little bit absurd, but it is the law. And so I say make sure you understand your policy. I can tell you I've got cases where the insured's idea of reading the policy was to skim all of the different sections of coverage. I had a case where the insured had a business interruption from a hurricane — it's been a few years back, so it was a Rita case — and they thought they had coverage for that because in flipping through their policy they saw a section that was called "Business Income." But the language in that section of the policy says you have coverage under this part if there is a limit stated on the declaration page for this coverage. Well, guess what wasn't on the declaration page, there was no limit listed for business interruption. In that case, the agent made an error and didn't include it. But that's something that an insured who had looked back through their policy probably would have noticed if they had carefully reviewed it — and frankly in that case an agent who had looked back through the policy to make sure that it had what it was supposed to have should have caught it and didn't. And not that that case didn't ultimately get settled, it took many years for that insured to realize their payment. I guarantee you someone is wishing they would have read that policy and asked someone to help them understand the parts that they didn't understand.

WINSLOW: We've all said several times, chose an agent or a broker that has an expertise in that particular area. There are experts in every single area. Read your policy. Have your lawyer read your policy. Any questions put in writing, of course. It happens on a regular basis actually that we sell a particular policy with features. And then when the policy actually comes out, those features aren't in there. So then if you have a broker or an agent that really pays attention to that type of stuff, they can act then before you have that type of claim where you would be left out in the cold, we can go back to the insurance company and say look, really, this is what we discussed. These are the particular features of this policy that were supposed to be in place and they're not and they need to be in place. We have lawyers in our group that help us to do that. In the event of claims, our lawyers step in as well. We settled all of our business interruption claims. Unfortunately in Houston, they all did have damages to their buildings. The claims' representatives are

not friendly. It's their job to pay as little money as possible. And when you really have that additional frontline in front of you, be it a lawyer or broker who knows what they're talking about, some of these issues you don't even really realize they're coming up. They're killed before they even get back to you. So choose appropriately your agent and your broker and many of these issues will be completely alleviated.

HUDDLESTON: There are also some things that you can do in contracts. Whether it's a lease, or a construction contract, any time you're obliged to procure insurance or you're trying to get somebody else to procure that insurance for you, there are things you can do in the contract that at least will give you greater safety. For example, one of things that we're typically including in our contracts is what I call a deemer clause. If my client is the one who is supposed to be going to procure the insurance, typically additional insured status, then we want to have a mechanism by which a certificate of insurance or the policy is available to the person we're procuring the insurance for so that they have the opportunity to review it and decide whether it's satisfactory. Then we work in a timing clause that says, look, within 15 days if you have not complained about what you see when you've had the opportunity to look at it, it will be deemed to have satisfied the procurement provisions of the contract so that you're just not having that fight. Also, care must be taken in selecting the agent who is going to procure the insurance. Given the financial exposure of errors to the insured, it is critical to hire an agent with ample errors and omissions coverage. And so you've got to make sure that not only you get somebody who is competent, but that you're also allocating and spreading the risk there as well. The funny thing is people enter into contracts all the time, whether it is a lease or construction contract, that have these additional insured provisions and all sorts of other insurance obligations, but they don't get the agent a copy of the contract. If you want to put tag on the agent to make sure they do their job and that you've got at least a paper trail that shows that you gave them the necessary information to do the job, send the contract to them before they assist in placing the coverage. Have it there so that you have some proof that you have submitted to them, that they know what the procurement provisions are, and so they have the opportunity to do something about it. One other thing that we're seeing is, is that a lot of people are now restricting the type of insurance in terms of the carriers, both as to Best ratings as well as whether they're admitted or not. If you're the party who's seeking the insurance, you don't want to have somebody satisfy that insurance that they're procuring for your client with surplus lines coverage that could have any number of exclusions and other provisions that are totally atypical of what you would expect from an admitted carrier.

FELDMAN: Well, all the points that you folks have made are good ones. Unfortunately at the end of the day, what the insureds often face is the expectation gap between the coverages that were bought and what actually exists. That is, you can do all kinds of due diligence before buying a $100,000 policy. You can spend $10- or $15,000 of lawyer time on professional fees to analyze each policy and each exclusion. Obviously, the client needs to have the coverage lawyer get very much up to speed on the client's manufacturing or distribution operation. The coverage lawyer must understand the client's business to be able to imagine what the possible range of claims are and which of those may or may not be covered. But unfortunately what happens at the end of the day is that there's often a fight that takes place, whether it's based on coverage issues, or whether it be based on exclusions, or carve outs or exceptions to coverage. And that's one reason that captives came about. Now, a captive may provide primary coverages. It may be there just to cover the policy exclusions. The client may keep its conventional insurance in place, but the captive may exist to cover the situations where there is an expectation gap where the items that were thought covered are not covered. And that's what we usually see in the middle market. I'm sure in Dallas, just as in Houston, as we see in San Francisco, New York, Maryland, and other areas, closely-held businesses with tens and tens of millions of dollars of profit want to protect those profits by having adequate insurance coverage. If coverage is not being provided by the conventional markets, coverage needs to be provided by captives.

ANDROVETT: *Jennifer, when you said earlier that many people purchase their coverage. They don't really understand the policy. A lot of folks out here nodded their heads. In the headlines over the last week this notion that President Obama wants to create a consumer protection agency for the financial services industry. Is part of the*

solution here just some sort of requirement at some level that insurance contracts be written in very plain English?

MARTIN: Well, I don't know that I believe there is such a thing as very plain English when you're always going to have lawyers involved. What someone's very plain English is, is not someone else's very plain English. In the property area we spent many years trying to decide what it meant when a policy said it "excluded mold," if it really meant it excluded mold. And ultimately got an opinion from the court that the policy actually meant what it said. But even the opinion the court wrote us was one that you had to read three times to make sure you understood that the court actually really did say that and why they said it. I don't believe you can do it. I don't believe you can take litigation out of the world. And I will say I'm never a fan of more government. I say let the free markets fight it out. Captives are there for a reason. People need to take more responsibility for taking care of their own business. And so I do think that if you as the insured don't want the headache of reading and understanding your policy, one, you're probably going to be sorry at some point in time. And two, if you don't want to do it yourself, you sure better pay someone to do it or why bother buying the insurance. There are so many exclusions, and I just cannot tell you the number of times that insureds sit there and say, "Wow, I really thought I had coverage for that."

HUDDLESTON: Well, constructional conflicts are not something that always favors the insurance company. The fact of the matter is you look at punitive damages coverage and the way it was handled for years before we had *Fairfield* — of course, *Fairfield* took seven or eight years to get decided in terms of insurability and punitive damages. But the fact was that the marketplace — people entering into contracts, both insureds and insurance companies — knew that that issue was in play. And everybody was like, well, why don't you just put an exclusion for punitive damages in it? Nobody wanted to. They are sometimes bargaining *for* the constructional conflict. For the insured, the *chance* of getting coverage by winning a disputed constructional fight costs less than purchasing the coverage.

COOPER: TDI wouldn't let you — for admitted companies wouldn't let you put it in.

HUDDLESTON: Right. But even the non-admitted carriers were providing the coverage through marketing and not through direct amendment of the forms. They were doing it because the marketplace needed coverage for punitive damages. They were contracting for a fight if it came to that. And so from an insured standpoint it is — particularly with Dallas in particular becoming much more pro-plaintiff, much more pro-policy holder, the Supreme Court going that direction, you know the lack of precision is something that is an advantage for many policyholders if they're willing to take the risk.

FELDMAN: And the insureds need to be willing to spend a couple of years fighting the claims, both the underlying claim and then the declaratory judgment action.

HUDDLESTON: Yeah, but the end result is that — and I know there are some who are out in the audience who have done this — you get a lot of things covered that an insurance professional will probably tell you was never intended to be covered because of the inexactness of the language that's used. So that's an advantage, that has real financial impact, and it's something you're buying in the market.

MARTIN: And potentially an investment rate at 18 percent.

ANDROVETT: *Many of the folks here today are interested in your take on not only what is happening in the courts, but then also in the legislature. Mike, I happen to spy your schedule and I see coming up here at the end of the month you're doing a seminar where you're basically answering the question about what the Texas Supreme Court is saying. Talk a little bit about that.*

HUDDLESTON: I picked a few quotes up this morning going through some of the cases and with the good, comes the bad. We've got a number of cases that are pro-policy holder, *Lamar* and some others. We have the condition cases, *PAJ*, *Prodigy Communications*, *Excel*, which are very pro-policy holder, requiring prejudice as a requirement. But then you get these sort of strange things that if you're a policyholder lawyer you get a little worried about. And I quote Justice Brister, from *USF&G vs. Goudeau*: "If sympathy were a rule of contract construction, there would soon be no law of contracts left." Well, that certainly warms your heart. Another one from last year was: "An insurance company is not an eleemosynary institution." Most of us had to go look that up. Translation, an

insurance company is not a charitable institution, and that was not exactly a news flash. What you see is this is a Supreme Court that likes and favors big business over insurance business. It still likes insurance business. And one of the places where we have seen no movement against the carriers is in the context of tort and extra- contractual liability in liability cases. And that's probably where captives become more appealing. With extra-contractual liability basically limited to *Stowers*, which involves a negligent failure to settle, there is very little available legally to encourage carriers to settle claims. Now, we've got the 18 percent penalty under Section 542 on duty to defend issues, but that's not being applied even in the context where you've got a judgment and a failure to indemnify the judgment later. But the other thing you see is, for example with the *Goudeau* decision, that in the context of personal lines claims, homeowners and personal automobile, the insured seldom prevails. So when it's big business versus the insurance company, very predictable results, the insureds are winning. But when it's the personal lines insured who is suing, who you would think would get more sympathy, then we get quotes like sympathy is not a rule of construction.

COOPER: Well, Mike, actually *Progressive vs. Kelly* was a personal lines insured. It came out the end of March of this year, and it was going back in favor of the insured as far as letting the insured go back and put on evidence of what the intent was. And they disagreed with the insurance company's construction of how the policy was fashioned or whatever. Now, the other thing I would take exception with one thing you said, and that is the Supreme Court still has protected the insurance companies. If you look though back to the last, oh, five to ten years, they've retreated dramatically from prior cases. The withdrawal from what seemed to be a very hard fast rule in *Gandy* that no judgment was going to be binding against an insurance company unless it was the result of actual litigation. I don't know what's left of that after the *AtoFina* case, or *Evanston* case. They seem withdrawn. *Lamar Holmes* when they put the 2155 and they applied that to defense fees. Nobody that I was aware of thought the Supreme Court was ever going to go there. There had been prior cases come up. You had been involved in some and I've been involved in some where the Courts have said, no, we're not going to do it. The Supreme Court went that way. *Maryland vs. Head* where they said there is no duty of good faith and fair dealing with respect to liability policies, now that's been legislatively overruled. We've seen a shift dramatically toward the insurance liability to perhaps hold the insurance company's feet to the fire. There's been expansion, not only of the liability remedies available, but also the damage remedies that are available as well.

AUDIENCE MEMBER: *My name is Estie Whitaker. Just given the last few opinions of the Texas Supreme Court, even within the last year, and the recent round of legislation we just went through and the current administration, what trend, if any, do you-all anticipate in tort and insurance coverage litigation in the next few years? More or less litigation? Have you identified any particular hot areas, so to speak?*

COOPER: Look at the legislation first. To understand that you've got to understand the shift in demographics that's occurring in Texas. In this session, the Republicans held the House by one vote. They held the Senate, I believe, by 11 votes. Nothing happened in this session. And the reason nothing happened in this session was because everybody got loggerheads over the voter ID bill that the Republicans were trying to push forward. There was a well-funded attempt — in fact, in this session TTLA spent $9 million trying to push through some repeal of the 2003 tort reform legislation. They did not get as far in this session as they did in 2007. In 2007 the Paid and Incurred Bill got out of the House, got out of the Senate, got to the Governors' desk where it was vetoed. This time it got hung up in the House primarily because there was this closer vote and the hang up over the voter ID bill. The TDI Sunset legislation, a bunch of the amendments were attached to that which were basically to try to re-appeal certain aspects of the 2003 House Bill 4. First and foremost of which was the repeal of the Paid and Incurred, which is Section 41.015 of the Civil Practice & Remedies Code, and that means in a personal injury case you can't recover what was billed by the hospital because nobody ever pays typically what was billed by the hospital or billed by the doctor. You get what was actually

paid by the insurance company, paid by Medicare, Medicaid, whatever, which usually is about 50 percent of what was billed. It's a huge issue as far as tort litigation is concerned. There are two bills now that are sitting on Governor Perry's desk. One is House Bill 3485 which did pass, which has some repealing provisions that are hidden in there, which he's supposed to make a decision tomorrow if he's going to veto or not. He's being pressured by some sides to veto it. Other sides he's being pressured not to veto. It's House Bill 2905 which also is an end run on the Payner and Kurd. Basically we couldn't get a repeal so we're going to make it difficult to get the information from the hospital or the doctors. That also is sitting on Perry's desk to be signed at this time. But this year not much happened because of voter ID bill. You can count that in 2011 a couple of things are going to happen. One is, in the House it will be controlled by democrats. Texas is heading that way without question, no doubt about it. So the House in 2011 will be controlled by the democrats. The gap in the Senate will be much narrower. There's a big question about whether or not we'll have a Republican govern in 2011 because Perry is up for re-election, obviously, Kay Bailey Hutchinson is going to run against him and then we'll see who the democrat contender is going to be. But there is going to be a continued effort to repeal what was done in House Bill 4 back in 2003. It's well orchestrated. It's well funded. It's well organized, and that's going to continue to take place just because it's more money. The second thing is there are attacks in the Courts. There are currently several attacks to declare portions of House Bill 4 unconstitutional. If you can't win the legislature, you go to the Courts. There's the big case that's pending out in Marshall, Texas before Judge Ward where they're attacking various aspects of House Bill 4, not under State constitutional grounds but under Federal constitutional grounds as well. In a $17 million case in Dallas there are constitutional issues raised there. So we're going to see attacks come both not only in the legislature, but they're also coming in the Courts as well on a constitutional challenge as well.

HUDDLESTON: Areas you're going to see pushed, at least from the Court's standpoint, are the issues raised by *Mid Continent vs. Liberty Mutual*, both in terms of allocation and also in terms of the stalemate created by multiple carriers disagreeing as to whether to settle liabiity claims or not. In *Liberty,* Mid-Continent was found to have been in bad faith by the jury for refusing to settle the case. Liberty was found to have acted in good faith in going forward in settling without Mid-Continent's participation, but the Supreme Court said that the good carrier couldn't recover from the bad. And, again, I do disagree with Brent as to there being an expansion of tort liability for liability carriers. The court has rejected a duty of good faith for liability carriers when given the opportunity. Now, are there some angles? Yes. And that will be the area that you see exploited, particularly in jurisdictions like Dallas where you have a judiciary that is going to be a little bit more willing to fully consider and reconsider some of these issues. They're going to try new things where not definitively foreclosed by prior caselaw. If there is a hole in the case, the opportunity will be there in terms of expanding prior case law. We're going to see a lot of use of things that are showing up in the Court's opinions. For example, the case *Progressive County vs. Kelly* that Brent was talking about, I don't think ultimately that it is a pro-insured case just because of the fact that there you had a situation of where there was a question as to whether there were two policies or one policy applicable. If there were two policies, then you had to look at an anti-stacking clause. The insurance company in that case presented extrinsic evidence in the form of and underwriter to describe why it was that under their computer system that only one policy, not two, was issued. The expert she explained that the computerized underwriting system automatically listed the policies in a fashion suggesting more than one policy was issued, but in fact only one policy issuaqnce was intended. Well, the fact of the matter is you had two different policy numbers and two listings. Now, one would think under a typical application of rules of construction that that would mean the plain meaning is there are two policies. But the Supreme Court said no. You're going to have to say that we can't use extrinsic evidence to create an ambiguity, but we do find that there is ambiguity here. And because there is an ambiguity you *can* look at this extrinsic evidence and then you're sitting there going, well, wait a minute, what happened to the rule of the strict construction. Because if it's a latent ambiguity, the court says you can go forward with this battle. So the homeowner gets to now battle the underwriters in the trial court. Now, the reason that I think ultimately that will result in a judgment in favor of the insured is, who is the jury going to favor when they try that case. But they're going to have to go through a lot of pain to get there. So rules of construction are important. There are some things in *Prodigy* as well as in *PAJ* suggesting that constructions that reach absurd

results cannot be adopted even if a given construction is what the policy actually says. This will become a focus of much constructional mischief. We are seeing it used extensively in rebutting many of the exclusionary provisions intended to drastically limit additional insured coverage, such as provisions attempting to limit coverage to situations where the named insured is vicariously liable for the additional insured. And so it's what I call the absurd result rule, is going to also get some play. And finally, uniformity. The Supreme Court keeps talking about the fact that we need to have this, sort of, national view. That the policies, particularly CGL policies that we need uniformity and we need to be in line with other jurisdictions. So the whole notion if you've got a majority in favor of a policyholder position or frankly a carrier position, you're probably in a pretty good position in your case because the court seems to be favoring that.

ANDROVETT: *Thomas, I would like for you to plot out quickly a road map for lawyers who might be looking for professional liability coverage, the kinds of issues that they should be navigating.*

WINSLOW: Well, like I mentioned earlier with regard to professional liability, you're just buying back an exclusion from the general liability policy. And by the very nature of insurance carriers, they've even made it more complicated than that. With your coverage what I see on a day-to-day basis, which is very dangerous for attorneys, is that when they fill out their application, there are questions about coverage: How far do you want to go back? How far you need to go back? Switching firms and that type of thing. And career coverage is a very dangerous issue because a lot of people give it up. They simply don't think it is necessary based on statute of limitations and that sort of thing, and I was with this firm over here and I'm covered for that period. But what people don't realize is that if that firm switches carriers, if that firm dissolves that you were previously with, well, you've lost all your coverage for that time period. You simply don't have it. So with regard to professional liability, the most important thing is career coverage. Make sure you guys are covered 100 percent of the time. There are no gaps. If you form a new firm, you want to go back as far as you possibly can. With the insurance companies, it's completely negotiable. They'll say from the outset, if you form a new firm we'll cover you from this date that you formed the firm forward. That's not good enough. You want to go back as far as you can. If a firm dissolves or you have a split from a firm and it's a tumultuous break up and you're piggybacking essentially off of your old firm's coverage. If a claim does arise, which it can 10, 12, 14 years down the road just based off the discovery rule, you have the potential to really be thrown under the bus there. You will be dragged into that suit. The firm that you worked for will be protected, but it's not necessarily clear-cut that you will be. And you may have additional expenses that will have to come out of your own pocket to take care of that. So career coverage is the upmost important thing with regard to professional liability insurance today.

COOPER: Thomas, one of the things that you mentioned that is excellent, right now, really applies to all tort claims. There is a case that's coming out of San Antonio involving legal malpractice where an accountant got sued. It had to do with setting up an ERISA plan. Flack is the plaintiff's name. Anyway, they sued the accountant. Well, the statute of limitations ran against the two law firms, two San Antonio firms. Okay. But they've got a lot more E&O coverage than the accountant does. So what they do is they settle with the accountant, but as part of the settlement they agree to designate the two law firms as responsible third parties under Chapter 33.004. And then the plaintiff has 60 days to sue them and the statute won't be barred. And so essentially they resurrected the statute of limitations against these two law firms. The San Antonio court of appeals they were arguing, well, this is collusion. This is fraud. This is nefarious. And the San Antonio court said there's nothing wrong with having that as part of a settlement. That if you want to have as part of the settlement that you designate these other parties who have not been timely sued to resurrect the statute of limitations, you can do it. There's nothing against public policy that prevents you from doing that. And it's on rehearing en banc now, and the case is going to the Supreme Court. But it demonstrates that just because two years passes or three or four years passes doesn't mean you're off the hook now given our responsible third-party statute. And that can apply to products defendants, premises defendants, or health care defendants. Perhaps though there's one case that indicates that it may not apply to them, but it's something that can really extend out the statute of limitations.

WINSLOW: Yes, and that's just one of the intricacies of the professional liability policy. There are many of them that allow mutual consent to settle. There's a major carrier that I'm sure a lot of you guys are with that there's no mutual consent to settle. Those are the kind of things you want to pay attention to in your policies, those very definitions, how they define them, and how they're going to carry that out. Oftentimes these issues don't come up until there's an actual claim. And like we've discussed this whole time, it's too late at that point. And that's why you want to make sure you read your policy; make sure that you understand all the definitions; if you have any questions at all, don't hesitate to talk to your broker, to the insurance carrier, to their lawyers. See how they say it. You want to get everything in writing as well. But that's the benefit of having lawyers in our professional services group that we really watch out for that sort of stuff for you. Every proposal we issue has a comparison of your current policy versus a proposed policy, and those are the things absolutely you want to pay attention to. ❖