

# Mealey's™ Scope of Coverage Conference: All Sums Versus Pro-Rata Allocation, Methods of Exhaustion, Reallocation and Settlement Credits

October 15, 2007, The Westin Grand, Washington, D.C.

Co-Chairs:

**Franklin D. Cordell, Esq.**, Gordon Tilden Thomas & Cordell LLP, Seattle

**Eileen T. McCabe, Esq.**, Mendes & Mount, LLP, New York

## Monday, October 15, 2007

**8:00 Registration and Continental Breakfast**

**8:30 Welcome & Introductory Remarks**

- Why is a conference on “scope of coverage” necessary?
- Roadmap for the day: importance of fundamentals and terminology—is “scope of coverage” the least understood group of insurance-coverage issues?

**Franklin Cordell, Esq., Gordon Tilden Thomas & Cordell LLP, Seattle**

**Eileen McCabe, Esq., Mendes & Mount, LLP, New York**

**8:45 The Fundamentals Part I: “All Sums” Versus Pro Rata Allocation, Terminology, and a Look Ahead**

- “All sums” versus “pro-rata” allocation: the policy-language underpinnings of the competing approaches, and how they play out in practice
- Relationship with the governing “trigger” of coverage and divisibility of covered harm
- Discussion of other allocation approaches.
- Mastering the terminology: all sums, pro-rata, Owens-Illinois, the “spike,” Keene, reallocation through contribution claims, settlement credits, claim-bar orders, and more
- The state scorecard
- Trends in case law and legislative approaches

**Seth Tucker, Esq., Covington & Burling LLP, Washington, D.C.**

**Peter Mintzer, Esq., Cozen O’Connor, Seattle**  
**Elizabeth Hanke, Vice President, Kenesis Corporate and Information Consulting, Washington, DC**

**10:00 Morning Break**

**10:15 The Fundamentals Part II: Exhaustion of Limits and Related Issues—How Triggered Primary and Excess Policies Respond to Claims in an All-Sums Environment**

- Methods of exhaustion: vertical versus horizontal, policy-language underpinnings, case law, and practical results
- “Stacking” of limits—permitted? Effect of anti-stacking clauses
- How do multi-year policies respond to continuous-injury claims?
- Differences between treatment of primary and excess policies

**Douglas Skor, Esq., Larson King, LLP, St. Paul**  
**Robert Firriolo, Esq., Duane Morris LLP, New York**

**11:30 The Fundamentals Part III: Number of Occurrences**

- The impact of number-of-occurrences analysis on scope of coverage
- One occurrence vs. multiple occurrences—policy language, the “cause test,” and the “effects” test
- Specialty coverages: batching mechanisms and the Bermuda forms
- Impact of an all sums or pro rata methodology

**Christie Snyder, Esq., Gordon Tilden Thomas & Cordell, LLP, Seattle**

**Jerome Abrams, Esq., Abrams & Smith, P.A., Minneapolis**

**12:15 Networking Luncheon**

**1:30 Reallocation Options for the “Spiked” Insurer: Contribution Claims and Settlement Credits**

- Is contribution allowed? The policy language and case law bases for reallocation
- Can a non-settled insurer sue a settled insurer for contribution?
- Credit to the non-settling insurer for settled policy limits—methods and practical results
- Credit based on pro-rata limits
- Credit based on actual amounts of settlements

**Marc Mayerson, Esq., Spriggs & Hollingsworth, Washington, D.C.**

**David Schoeggl, Esq., The Law Offices of Mills Meyers Swartling, Seattle**

**2:45 Dealing With Scope Issues in the Settlement Context**

- Differences between litigation results and settlement results—how relevant is the threat of a “spike”?
- The importance of reinsurance, to the cedant and the policyholder
- May reinsurers compel the cedant to seek reallocation?
- The policyholder’s perspective—using reinsurance to facilitate settlement of the complex claim
- The use of technology in analyzing allocation outcomes and facilitating settlement

**Ellen Clarke, Esq., Mendes & Mount, LLP, New York**

**Jennifer Brennan, Esq., Gilbert Randolph LLP, Washington, D.C.**

**Armando Carlo III, Manager - Insurance Litigation & Claims Management, The Boeing Company, Chicago**

**3:30 Afternoon Break**

**3:45 Adopting an All Sums or Pro Rata Approach—Mock Oral Argument on Summary Judgment Motion**

Two of the nation’s leading coverage attorneys will face off in a cross summary judgment argument on whether the court, in a case of first impression, should adopt an “all-sums” or “pro-rata” approach in an asbestos coverage lawsuit. The case involves progressive, latent bodily injury occurring over decades, with some years in which the policyholder is uninsured and other years in which it has significant layers of excess cover.

- What is the law? What is fair?

**David Steuber, Esq., Howrey, LLP, Los Angeles**

**James Rocap, III, Esq., Steptoe & Johnson, LLP, Washington, D.C.**

**Hon. Richard Levie (Ret.), JAMS, Washington, D.C.**

**5:00 Question and Answer Wrap Up**

**5:15 Networking Reception**