

## MICHAEL W. HUDDLESTON



Michael Huddleston had thought about working to create a section for some time (having been a founder of the Dallas Bar Appellate Section). He heard that Ernest Martin, Jim Cornell and Mark Lawless were also working on or interested in such a project so everyone gathered forces for a united push. They traveled to a meeting of the Board of Directors for the State Bar in Austin and several other small jaunts to Corpus and San Antonio to meet with Consumer Law officers who were concerned about our formation as a section.

While Michael was Chair, appraisal was being used and abused by many. The fight ended to some extent with *State Farm v. Johnson*, some years later. The mold crisis was in full bloom, requiring the formation of specialty teams to deal with the multitude of claims following the first big policyholder verdict. They were also in the throws of battling about whether a carrier could settle and then seek reimbursement from the insured if a court determined there was no coverage. *Franks Casing* went through two different opinions before the issue was finally resolved. They were also actively involved in fleshing out the *Gandy* decision. Construction defect coverage issues and the CGL trigger for property damage were also hot issues.

Michael had just joined Shannon Gracey and was hired to build a commercial policyholder practice. The insurance section at the firm was young and just getting started like the Insurance Section itself. Michael followed Michael Quinn and his box of section related material and a bunch of ideas, which he passed along. Michael's partner Melinda Burke was treasurer, but she was essentially absent that year because of the mold crisis. Mark Lawless recommended considering Donna Passons to serve as an administrator/director to get everyone organized and on a more solid business footing. Unfortunately, she was hired as Michael was leaving as Chair. Donna and her group have been an enormous help to the section for many years.

Michael loves his colleagues. The section has a great group of people who love insurance and law practice and a lot of other things. Visiting and talking shop with Rusty McMains, Bill Chriss, Mark Lawless, and many others has been great fun and enriching for Michael. Being Chair is still one of the greatest honors he has received while practicing law.

Michael enjoyed his last meeting as Chair because he got to play with his jazz combo at the State Bar Convention/section meeting cocktail party. Seriously, the best part of being Chair was getting to work with great people. The worst part during his time was the lack of administrative help. Michael is most proud of moving to hire Donna Passons and her group because they were critical to the section maturing. That was the best thing he could hope to contribute to for future members. The collegiality among various sides of the insurance bar was a goal of the section. He has seen in many circumstances how it has helped get troublesome cases resolved or at least more bearable. They started a number of projects that have borne fruit in later years. He remembers one small meeting of three or four of them where that they were trying to think of things they could do that would benefit members. Things like Jim Cornell's updates grew from little brainstorming sessions when they were small and loosely organized. Michael would like to see sustained success. He thinks controlling our own seminar to be a focal point for the year and would be wonderful. It has not been achievable for a variety of reasons. During his term, they were too young, and they had great connections with UT that allowed them to flourish quickly without financial risk.

## **PATRICK J. WIELINSKI**



Patrick first became involved with the section through Mark Lawless and Ernest Martin. The primary issue I recall going on when I was chair was that Texas courts were wrestling with was the issue of whether property damage caused by defective workmanship constituted an occurrence. Insurers were routinely denying claims on the basis that defective work amounted to a breach of contract and was not fortuitous. That position was finally rejected by the Texas Supreme Court in *Lamar Homes v. Mid-Continent*.

My practice involved the representation of insureds as to coverage for complex claims, primarily involving property damage, bodily and employee injuries. It included litigation and appeals of coverage issues. I also provided advice on matters such as contractual risk transfer, indemnity, additional insured and other insurance and contractual requirements.

Being chair exposed me to a greater variety of insurance issues that I would not have otherwise encountered in my niche practice. The best thing about being chair was the interaction with all the great people on the council and the broad array of ideas, disciplines and backgrounds that they brought to the table. All of which contributed to our ability to serve the insurance bar.

The things I found least appealing were issues relating to the financing and economics of a still young section. That process was greatly aided by solidifying the section's ties to Donna Passons and TICLE which eased the growth pangs considerably. My favorite accomplishment while chair was the development of the ability of the section to sponsor CLE programs, primarily the Advanced Insurance Law Seminar.

I would like the section membership to continue to grow so as to expand its sponsorship of educational and charitable efforts.

## RUSSELL H. McMAINS



Russell High “Rusty” McMains was born in Dallas, Texas and raised in Lancaster. He received a full academic scholarship to the University of Houston, earning a B.S. in the Honors Program in 1968, and in 1971 a J.D. with honors. During college and law school, he found his love for debate, advocacy and jurisprudence, winning the National Championship with the Moot Court team.

After graduating from law school, Rusty joined Fulbright & Jaworski in Houston, and found his calling in appellate work. Soon after, he opened his own firm. Over his 38-year career, he would become one of the most magnificent legal minds and appellate lawyers in Texas. His long-time friend and colleague, Bill Chriss, described Rusty’s legacy:

History will record that Rusty was the greatest Texas appellate lawyer of the twentieth century. He was chair of the appellate law section of the State Bar of Texas, he helped found the insurance law section, and he served with distinction on the Pattern Jury Charge Committee and the Supreme Court Advisory Committee for decades. After several years I figured out that one reason Rusty could so easily turn the tables on our opponents was not just his penchant for intellectual jiu jitsu, but the simple fact that he had actually written most of the rules of the game himself. Especially in the 1980s, his was the winning brief in a long series of watershed decisions by the Texas Supreme Court, decisions that removed archaic burdens and limitations on the rights of ordinary working people to recover damages from large multinational corporations, the rich and powerful: *Sanchez v. Schindler*, *Hofer v. Lavender*, *Duncan v. Cessna*, *Bedgood v. Madalin*, and a host of others. But he was also sought out by defendants, and perhaps the most fun he ever had as a lawyer was masterminding the salvation of Texaco after it had been hit with the biggest jury verdict in the history of the universe. One reason for this was that he was able to work on the case (and dine and tour New York by limousine) with several of his good friends, including Mike Hatchell and Bill Dorsaneo. My good friend, retired Chief Justice Jack Pope, a man of incredible dignity and intellect, often said that the best oral arguments he ever heard in his 35 years on the appellate bench were Rusty’s.

Rusty was an adjunct professor and debate coach for the University of Houston Law School from 1973-1979 and a Director on the University of Houston Law School Foundation for a number of years.

## Obituary

Bright and ambitious even at an early age, he received a full academic scholarship to the University of Houston, earning a B.S. in the Honors Program in 1968. During his tenure at the University of Houston, he found his love for debate, advocacy and jurisprudence, winning the National Championship with the Moot Court team and leading him to continue his education with the institution, earning his J.D. in 1971 with honors. Shortly after beginning his legal career, he discovered his calling in the world of appeals and over the next 38 years would become one of the most magnificent legal minds and appellate lawyers the State of Texas has ever known. An active member with the State Bar, he served on a variety of committees and associations including being on the Texas Supreme Court Advisory Committee for 15 years and chairing both the Appellate Practice Section and Insurance Law Section on different occasions. Devoted to the institution where he learned so much, Rusty was an adjunct professor and debate coach for the University of Houston Law School from 1973-1979 and a Director on the University of Houston Law School Foundation for a number of years.

Rusty's pastimes ran the gambit from a love of great wine and puffing on a good cigar, to his constant drive to improve his golf game, to his obsession with the great sleuths of literature, particularly the most famous detective of all, Sherlock Holmes. His true passion, however, was the law, something that was only surpassed by his love for his three children. His life touched many and his passing is mourned not just by the profession he gave more than 40 years of his life to, but by all of those who knew him. Rusty is survived by his three children, Steve McMains, Bill McMains and Katie McMains all of Corpus Christi, and his cousins Eva Newsom of Houston, Texas, Donna McMains of Forney, Texas, and Elizabeth McMains of Washington, D.C. A Memorial Service will be held Thursday, July 2, 2009 at 3:00 p.m. at First Methodist Church in Corpus Christi, Texas.

## **KAREN L. KELTZ**



Karen Louise Keltz (1957-2017) grew up in Oregon and graduated from Medford Senior High School in Medford, Oregon in 1975. Karen served in the United States Navy from 1975 to 1979 and received the Secretary of the Navy Meritorious Unit Commendation.

After serving in the Navy, Karen earned her Bachelor of Science (B.S.) degree summa cum laude from Southern Oregon University in Ashford, Oregon. She enrolled in University of Notre Dame Law School, where she was a Thomas J. White Scholar, the Student Director of the Notre Dame Legal Aid and Defender's Office, and recipient of the Dean Konop Legal Aid Award for her contributions to providing legal services to the community. During law school she also volunteered at the local South Bend homeless shelter, and served as Senior Editor of the Notre Dame Journal of Law, Ethics and Public Policy and authored an article for the Journal; she earned her Juris Doctor (J.D.) degree in 1985 and was admitted to the State Bar of Texas on November 8, 1985

Karen served as our Section Chair in 2007 through 2008. She was the Section's second female chair. Her colleagues admired Karen, particularly what she did for the growth of the Section. Karen elevated the Section's continuing legal education to new heights. "Although Karen served as Section Chair, the thing that I remember most is how she got there – she earned it. In my view, Karen's biggest contribution to the growth of the Section was those several years that she chaired our CLE Committee." --Mark Lawless

During the time that Karen served as CLE Chair the Section The State Bar of Texas Insurance Law Section Remembers Former Chair, Karen Keltz 1957-2017 made major strides in developing our relationship with UT, and later with the State Bar. From her CLE work, the Section's leadership elevated Karen to the officer ladder. Karen set an example to other Council members that we truly honored. Karen worked hard and we are grateful. The strides Karen made for the Section are an enduring mark of her intelligence and work ethic. We miss her and remember her fondly.

## **BRIAN S. MARTIN**



When Jim Cornell and Ernest Martin circulated the petition to start the Insurance Law Section, Brian Martin gladly signed. Brian did not join, however, until they had completed the hard work of getting it approved!

At the time Brian was Chair, coverage law was in a time of flux as to issues such as trigger, bad faith and allocation. It was a time of frequent cases of great moment.

Brian's practice began during the turbulent period following the enacting of the wide-reaching environmental laws such as Superfund while at the same time courts across the country found that liability policies long-expired could be liable for claims brought years later (long-tail claims). This led to a crisis in the insurance industry that rocked both insurance and reinsurance markets. The problems were still resonating in the industry during my time as chair. Due to the widespread litigation over environmental and toxic tort claims, the coverage bar attracted many of the state's best attorneys. One of the Section's key functions in that period, and one of Brian's heartfelt goals, was to foster better relations and communication between the carrier and policyholder bars. He thinks the Section did a great job of creating collegiality between these two very talented and driven groups of coverage attorneys.

Being Chair was a great opportunity to meet coverage lawyers from around the state and from areas of practice with which Brian normally have no contact. It gave Brian a broader and deeper appreciation and perspective on the coverage bar than he would ever have had otherwise.

It was great fun Chairing Section meetings with the best coverage lawyers in the country. Sharing ideas with Rusty McMains, Michael Quinn, Mark Lawless, Mike Huddleston, Jim Cornell, The Martin Brothers (Ernest and Chris), and on and on, was a great treat for Brian. Brian doubts there has ever been a gathering of better coverage lawyers anywhere than at those meetings.

Brian is most proud when chaired the committee to set up the Ben Love Memorial Scholarship in Insurance Law at SMU. Ben was a good friend and announcing the first scholarship with his wife and daughter present was a very great joy.

## LEE H. SHIDLOFSKY



Lee Shidlofsky got involved with the section early on through various mentors. He knew Ernest Martin, Mark Lawless, Mike Huddleston and others and he joined as soon as he could. Lee suggests that Ernest, Mark, and Mike were his elders.

The Insurance Section was still in a growing phase and Lee sought to expand CLE's, webinars, telephone conferences, etc. The Journal had been our traditional mode of communication and the Section was looking to increase its recognition and cyber presence.

Lee's practice was devoted to commercial policyholder work with a special emphasis on construction-related matters. I don't think my personal practice necessarily influenced my approach to being Chair since the Board and the Section as a whole was a mixture of policyholder and carrier lawyers with diverse backgrounds.

I viewed being the Chair as a culmination of several years of actively participating in the Section, attending all the functions, CLE's, etc. The only downer is that I was Chair before turning 40 so it has been all downhill from there.

The best thing about being chair was the great responsibility that comes with being the Chair. My least favorite thing was the media and fake news.

I am most proud that the Section survived (and thrived) while I was Chair.

I would like to see the Section do pro bono work for catastrophe victims (e.g., wild fires, hurricanes, weather events).

## JOHN C. TOLLEFSON



John was a charter member of the SBOT Insurance Law Section.

Don's Building was a key case while John served as the SBOT Insurance Law Section.

When John was Chair, John's practice was smaller than now. Being a partner in a small firm is a lot like being Chair – dealing with other board members and trying to meet their needs.

Being Chair made a difference to John because it was an honor to be recognized at the State level.

John loved getting the Insurance Law Journal up and running again but was not crazy about dealing with petty problems and tactics raised by the “litigators” in the leadership at the time.

The journal is John's great source of pride from his time as Section Chair.

John looks forward to seeing the Section's continued collegiality.

## VINCENT E. MORGAN



Vincent became involved with the Section while he was still in law school due to mentors such as Mike Huddleston and Michael Quinn. It was around the time the Section was created and it was an exciting time in the field of insurance law.

Insurance law at the time had a lot of developments during Vincent's term as Chair as the volume of insurance decisions continued to rise. Some of the battles going then were issues such as whether prejudice is required to deny coverage due to violation of a policy condition, appraisal, the scope of CGL coverage for breach of contract claims, disputes among carriers and the right to independent counsel. Of course, some of these remain battlegrounds today.

Then, as now, Vincent's practice focused on representing corporate policyholders in all aspects of their insurance and risk management needs, starting with the placement of coverage and continuing to the submission of claims as well as the litigation of coverage disputes that arise.

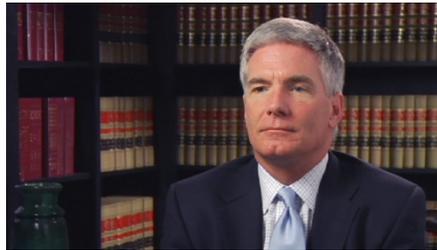
Being Chair was a great opportunity to serve Vincent's colleagues in the Bar, strengthen relationships with many lawyers and make new friends along the way.

Vincent enjoyed working with lots of great lawyers but did not enjoy the rise of politics in the section's affairs.

Membership during Vincent's term as Chair was the highest it has ever been in the section, and it was wonderful to see so much interest in our field.

Vincent hopes the section will continue to serve Texas lawyers, along with law students who may have an interest in this area. Vincent also hopes the section will expand its outreach to non-lawyers who care about insurance law as much as we do.

## MARK A. TICER



My initial involvement began when Ernest Martin asked several others and myself to prepare and present pro bono like seminars for the public dealing with basic insurance matters. We began (and ended) with a seminar in Austin that turned out to not be successful. Nevertheless, the motives and ideas were well intentioned and began the start of the Section's outreach.

In addition to the public seminar idea, I spoke at various Section CLE events a variety of topics including the use of staff counsel, appraisal, and other insurance issues.

It was Lee Shidolfsky who got me started with the Insurance Council. Lee called me out of the blue one day and asked if I wanted to be on the Insurance Council. When I asked out what the Council did and what was expected, Lee replied, "insurance stuff." I said ok. Lee then advised he would be back in touch. Weeks or months later, Lee called again to tell me I was on the Council.

Storm related claims, the extensive use and misuse of appraisal, and case running of some lawyers (none whom had any real affiliation with insurance or the Section) predominated not only insurance claims and law but activity in the Texas Legislature. The initial attempt by the tort reformers to pass a blue tarp bill failed. The bill sought to impose additional requirements to make and recover on a storm damage claim (roofs) and minimize or limit prompt pay remedies. The tort reformers promised to be back the next session and they were.

This was also a time when we were trying to hang on to the statutes in place to protect insureds. It was no time to increase protections or add remedies although both were needed.

My practice included a significant dose of homeowner's claims which would also cover storm damage matters. Consequently, the hot areas of insurance law directly intersected with my practice.

We had many well-meaning and committed Chairs while I was on Council. While we did a good job of balancing Council members between insurer and insured members, we did a poor job of balancing leadership between women and men. That had to change as men overwhelmingly predominated leadership.

Before I became Chair, I, along with many others, made a concerted effort to be sure women were placed in significant positions of leadership and most obviously as Section Chair. By the

time my term ended, three of the four succeeding officers were women—meaning during the next four (4) years, three women would be Section Chairs.

Additionally, CLE attendance had been consistently poor when my term as Chair began. It was perhaps due to tired topics, the same speakers as presenters, and the uninspiring location for the CLE events.

Instead of repeating the past, I appointed a new CLE Chair, Pam Hopper, and simply asked her not to duplicate the past—do something different. I would not be involved and asked she find new people to speak. Pam, along with the assistance of Tracy Nuckols from the State Bar, turned around CLE in one (1) year—taking the Section to a new venue (San Antonio), adding a Casino Party for entertainment, and offering fresh topics and new speakers. It was a noticeable success and started a new tradition that produced positive results. The two (2) women that followed me as Chair produced great success with CLE.

Lastly, while I was Chair, we were also able to make important internal and structural changes including bylaws, elections, budgets, use of committees, Council membership, and the Journal. I was extremely fortunate to have many many Council members make my term as Chair very successful.

I disliked listening to my friends when they complained about not being selected as CLE speakers. In addition, there were noticeably hard feelings concerning the promotion of women on the Council, the replacement of some Council members with new members, and a general overall change in approach. Few like change and the results achieved were tempered with those who were unhappy that things were no longer the same.

Conversely, I was very pleased with the results of the changes made—including material and significant changes in leadership with women predominately assuming leadership over Council, the success of CLE, the participation of new people in Section matters—leadership, CLE, elections, nominations, etc., and creating new approaches and overall planning.

The Section should not be stagnant and continue to adopt and explore positive change. It should find new Council members from new sources and regions and reject relying on obtaining members from the same firms simply because other firm members were previous Council members. Regional diversity should be a priority and Council should reject heavy reliance from venues such as Dallas, Houston, Austin, and San Antonio. Women should continue to lead the Council. Lastly, the Council needs to focus on ethnic diversity, as it has been heavily composed of white/Caucasian persons to the exclusion of all others.

## **J. JAMES COOPER**



Vince Morgan invited Jim Cooper to be a member of the Insurance council in 2003. Prior to that Jim was an active speaker at the UT and South Texas Insurance seminars.

During Jim's term as SBOT Insurance Law Section Chair, Mark Kincaid passed. Jim and the Insurance Law Section put together a special edition of the Journal in Mark's honor. They expanded insurance CLE to communities that don't normally get insurance programs by presenting a seminar in the Brownsville/Harlingen area. Council members also organized and presented at the State Bar and University of Texas insurance seminars during Jim's term. These seminars allowed Jim and other Council members to meet more section members and better serve the insurance needs of Texas lawyers. Also, the Insurance Law Section expanded committees to get more non-Council section members involved.

Jim enjoyed the opportunity to create new programs and provide different experiences for the Council and section members. He was not a fan of the dissension that was sometimes present at Council meetings.

Jim created and planned a combined reception at the Bob Bullock Museum in Austin for the Texas Supreme Court (all justices attended), Third Court of Appeals, and all members of the Insurance Council. The group took over the first floor of the museum and provided an opportunity for interaction between judges and council members. Jim's hope was that this event would create goodwill between the justices and the Insurance Section. Jim also organized a reception for the justices of the First and Fourteenth Courts of Appeal and Council members.

Jim wants to see more opportunities for seminars and roundtables.

## MARK KINCAID



### *“MARK KINCAID TRIBUTE -- NOTES FROM A FORMER STUDENT” By V. Morgan*

I first met Mark Kincaid when he was my professor for a course on Texas Insurance Litigation at The University of Texas School of Law. At the time, he wasn't a whole lot older than the rest of the class but he'd already achieved professional accomplishments befitting a career's worth of work. Although he started that semester as my teacher, by the end of it he was one of my mentors. Over the years we became colleagues, and ultimately, friends. Each of these roles are worthy of tribute, but I want to focus most on his work as a teacher and how it helped make his students better lawyers.

I remember him explaining complicated concepts in ways that were easy to understand—something great trial lawyers can do. He also knew that sometimes humor was as good an aid as any in helping keep an afternoon class on insurance law interesting even to those who didn't love it. He explained why he fought for policyholders. Those who had a different leaning at least came away with a healthy respect for his side of the docket. The universe of insurance cases wasn't as large then as it is now, so Mark covered the old and the new but none of it ever seemed like it was old to him. He taught ethics too, and made sure we knew that they were as important to being a lawyer as knowing the facts of your case or what a statute said.

At the end of the semester, he took the whole class out to Scholtz Garten. Maybe he did this because he needed it before grading our papers, or maybe he thought we needed it after his exam, but mostly I think he did it to reinforce the point that we were becoming part of a community. There was no suitable textbook at the time so Mark hand-picked key cases, statutes and regulations for our materials, and then sprinkled practical tips on lawyering in between. Many years later, one of those tips came in handy in my own practice and I called Mark the next day to thank him for it. He was gracious as always and acted like it was no big deal, but I hope it gave him some idea of how much his students valued the things he taught us.

Years later, I served as head of the Nominating Committee for the Insurance Law Section. We looked for candidates with different backgrounds such as policyholder vs. carrier, geographic location, big firm vs. small firm, etc. In the middle of that process, something made me think of

Mark. Our committee could not think of any lawyer besides Mark who had made more of an impact on Texas insurance law but never served on the Council. Although there are often many more qualified individuals than there are open slots on the Council, nominating him was an easy choice. I don't know if Mark found it worth his time, but I do know that the Council and the Section were better off with him there and we are worse off now that he is not.

We can't avoid missing him, but we can make sure we don't forget Mark proved that being a good lawyer and a good person are not incompatible, and that was the most valuable lesson he taught his students.

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Vince Morgan is a litigation partner in the Houston office of Pillsbury Winthrop Shaw Pittman LLP. He represents clients in a wide variety of industries on all aspects of insurance and risk management issues but has a particular emphasis on helping clients deal with claims involving man-made and natural catastrophes. Over his career, he has helped clients recover billions of dollars in negotiations, litigation and arbitration. Mr. Morgan is a past Chair of the Insurance Law Section of the State Bar of Texas and has been selected by his peers for more than a decade in rankings such as Texas Super Lawyers, Best Lawyers in America and EuroMoney's Insurance and Reinsurance Expert Guide. He has been named "Insurance Lawyer of the Year" by US News & World Report and has had a top ranking for several years in Chambers USA's "Band 1" for Insurance in Texas.