

## Insurance Coverage Litigation

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### Related Services

Litigation

Trusts & Estates

### Areas of Expertise

- Business interruption policies
- Claims presentation
- Coverage advice
- Coverage opinions
- Directors & officers' policies
- Dispute resolution
- Employment practices liability policies
- Environmental liability
- Excess/umbrella coverage
- First party property policies
- General liability policies
- Life and disability policies
- Policy negotiation
- Policy reviews

### Dispute Resolution

Our handling of insurance disputes always involves consideration of alternatives to full-blown litigation.

#### Negotiation

Approaching an insurer with experienced insurance coverage counsel and the willingness to pursue litigation if necessary can often persuade an insurer to negotiate a resolution.

#### Alternative Dispute Resolution

Insurance coverage disputes are often well suited for alternative dispute resolution (ADR) procedures. We consider all disputes for possible resolution by using arbitration, special masters, mediation, or other forms of ADR.

## Trial

When litigation is necessary, we have the skill and experience to take the cases through resolution by dispositive motions or trial before a jury or a judge, and subsequent appeals.

## Claims

### Coverage Opinions

Before presenting a potential claim, we analyze the merits of the claim and recommend whether and how to proceed with the claim.

### Claim Presentation

Early mistakes made by policyholders in presenting claims to the insurer can later be used by the insurer as a basis for denying the claim. For example, proper notice must be given to the insurer, both at the time of loss and possibly earlier when the policyholder first learns that a loss may ultimately occur. Failure to present claims in time may bar coverage. How the claim is characterized at the outset may also affect coverage. By assisting policyholders early in the process, we help develop an overall claim strategy to maximize the potential recovery.

## Coverage Advice

We advise clients on insurance issues in a wide variety of contexts to address their insurance coverage needs and to help prevent future coverage disputes.

### Policy Reviews

We can help to ensure that our clients' insurance policies are appropriately tailored to meet the unique risks that their businesses may face. We review new policies and any language proposed by insurers at the time of a policy renewal and assess the significance of any proposed coverage changes.

### Policy Negotiation

The insurance industry is constantly developing new specialty coverages, addressing areas such as e-commerce, environmental and employment liabilities. Unlike standard form policies, these new coverages often are written on a "manuscript" basis, allowing the parties to negotiate the terms and conditions of the policies. We are experienced in negotiating complex coverage matters on behalf of policyholders.

## Real Estate Transactions

Increasingly, real estate transactions involving contaminated property turn to insurance as a way of managing the tremendous risk of environmental liability. We help identify possible insurance solutions and negotiate the terms of policies that are used to address environmental liabilities.

## Mergers & Acquisitions

We advise corporate clients on insurance issues that arise during mergers and acquisitions, such as: the use of insurance to address liabilities that are allocated among parties to the transaction; the transfer or retention of insurance rights as part of the assets of the transaction; and the use of "tails" to extend coverage for the liabilities of the transferring corporation.

## Specific Insurance Policies

### Directors' & Officers' Policies

Directors' & Officers' (D&O) policies are the first line of defense for businesses and executives facing increasing liabilities for securities law claims and employment-related claims. The most important attribute of these policies is that they may pay the legal expenses of the company, or its directors and officers, when sued for covered claims.

We address issues that arise under D&O policies, including the need for coverage for regulatory actions, the allocation of defense costs between the company and its directors and officers, and the need for ensuring that defense costs will be paid as incurred by the insurance company, rather than at the end of the case. We can assist policyholders with negotiating D&O policies and, if the need arises, securing all available rights under the policies when a claim is brought.

### General Liability Policies

The comprehensive general liability (CGL) policy is the staple of corporations' insurance programs. Our attorneys have handled countless claims and cases involving CGL policies, and have litigated many key coverage issues and exclusions contained in these types of policies.

### First Party Property & Business Interruption Policies

"All-risk" policies and other types of first-party insurance policies protect policyholders against damage to their own property and business incomes. We advise clients and litigate many of the complex issues that arise under these types of policies including whether a loss is "fortuitous," what is the meaning of "property damage" and the proper scope and application of the many exclusions that exist in these policies.

## Environmental Liabilities

Insurance coverage for environmental liabilities is one of the most complex and hard fought areas of insurance litigation. The stakes can be enormous. We assist policyholders in pursuing claims for insurance coverage against the costs of cleaning up contaminated property, even by securing coverage under decades-old policies that have been long forgotten and discarded. We also deal with and understand the environmental insurance products that have recently emerged.

## Employment Practices Liability Policies

Insurance companies now offer coverage for employment-related claims under standalone employment practices liability (EPL) policies or under endorsements added to CGL policies. The coverage generally contains many exclusions and usually is offered only on a "claims made" basis. Coverage disputes often arise.

## Life & Disability Policies

Professionals often protect their earning capacity through life and disability policies purchased individually and/or obtained as part of a group policy. Numerous coverage issues can arise under disability policies, including whether the disability was caused by a preexisting condition, the nature of the insured's "regular occupation," and the effect of the policyholder's ability to work in different occupations.

## Experience

- The Office of the Comptroller of the Currency (OCC) pursued claims for civil money penalties against the directors and officers of a bank over allegedly improper loans that the directors had authorized. After the D&O carrier initially disclaimed its obligations under the policy, we persuaded the carrier that the claims by the OCC were covered, that the carrier had to pay all legal expenses in connection with the claims, and that the expenses would have to be paid as incurred. We also persuaded the D&O carrier to cover defense costs in connection with a criminal investigation of the directors.
- Our client's office was flooded during the "100-year" rainstorm. A flood exclusion purported to bar coverage for the property damage, but a comma in that exclusion rendered the clause ambiguous. We consulted a professor of linguistics who agreed. On behalf of our client, we filed suit and obtained summary judgment for the entire amount of the policy when the judge agreed that the flood exclusion was ambiguous.
- When a church was sued because its pastor had, unknown to the church, allegedly sexually molested certain members of the congregation, the church's insurer refused to provide coverage, arguing that the "intentional acts" exclusion in the policy precluded coverage. We successfully argued in the Minnesota Court of Appeals that the pastor's conduct could not be imputed to the church itself

and that, although the pastor was not entitled to insurance coverage, the church was.

- After a crude oil pipeline ruptured, federal regulators limited the operation of the pipeline and required extensive testing of many hundreds of miles of the pipeline, causing an enormous loss of production. We brought suit after the London market insurers refused to pay the resulting business interruption losses. The policyholder ultimately received a multi-million dollar recovery.
- We represented a manufacturer whose many facilities across the country were in operation for decades, and who faced environmental liabilities in different states by both state and federal regulators, and claims by individuals. We commenced suit against all of the insurers that provided insurance coverage over a forty year period, and negotiated a global settlement in which each insurer agreed to fund its fair share of the policyholder's environmental liabilities.
- We assisted a client with negotiating the terms and conditions of a "cost cap" policy that protected the buyer of a contaminated parcel of property from cost overruns incurred in the cleanup of the property.
- After a company was sued by a former employee who alleged that an officer had sexually harassed her, the employment practices liability insurer denied coverage and refused to provide a defense. Negotiations with the insurer were fruitless, and we commenced a declaratory judgment lawsuit. The insurer quickly changed its position and agreed to pay all of the company's defense costs and to fund the settlement with the claimant.
- An emergency room physician suffering from a progressive illness could no longer continue with that strenuous occupation and slowly transitioned into an administrative position at a hospital. The insurer refused to pay disability benefits, claiming that the doctor was an administrator, not a physician, at the time the disability became manifest. We brought suit on behalf of the physician and, after a jury trial, recovered all benefits owed to the physician.