

Insurance Coverage

Pioneers in litigation and management of diverse and complex insurance disputes on behalf of policyholders and related business counseling.

Although Hollingsworth LLP skillfully handles settlement and litigation of single large-loss claims for our clients under a broad range of coverages, we are best known for our management of complex insurance disputes defined by factual and procedural complexity, legal uncertainty, and large sums at stake. For example, our work in the various Stauffer coverage cases involved litigation in state and federal courts in California, Delaware, and Illinois, including matters before the California appellate and Supreme Courts, the Delaware Supreme Court, and the Seventh Circuit—and recoveries to our client in the nine-figure range. We are able to draw upon the expertise of our Pharmaceutical Products and Toxic Torts & Products Liability practices in pursuing insurance recovery for claims involving complex scientific issues, such as liability claims for naturally occurring radioactive materials, environmental contamination, and product failure. We have successfully secured a mid-eight figure recovery for a property damage claim resulting from unusually heavy weather activity, and a nine-figure recovery for a business interruption, property damage, and personal injury liability arising from a chemical plant explosion.

AT THE FOREFRONT OF INSURANCE RECOVERY

Our attorneys have litigated coverage claims involving single and multi-site environmental liabilities, asbestos bodily injury, pharmaceutical products, medical devices (heart valves, breast implants), plastic vent pipes, noise-induced hearing loss, etc. We have pursued coverage under the following, among others:

- Comprehensive and Commercial General Liability policies
- Business Interruption policies
- Environmental Impairment Liability and Pollution Liability/Clean-Up Cost-Cap policies
- Builder's Risk policies
- Architects and Engineers policies
- Broad Form Property Damage Coverage
- Directors & Officers Liability policies
- Fiduciary coverage
- Employment Practices Liability policies
- Errors and Omissions policies

We have proceeded to arbitration under English rules seeking recovery under high excess liability policies, such as those offered by ACE and X.L., specifically regarding the key issues of “batch” clauses and “maintenance deductibles” as applied to substantial product-liability losses. Our attorneys also are at the forefront of efforts to recover for products and non-products asbestos exposures, having represented clients both in litigation and arbitration. And whenever the facts merit, we aggressively pursue actions against insurance companies for bad faith.

We excel at the difficult challenges of pursuing novel or cutting-edge insurance claims in litigation in state and federal courts across the country. We are especially effective written and oral advocates in guiding judges, often new to complex insurance issues, through the thicket of defenses offered up by recalcitrant insurance companies. As an example, one amicus curiae brief on our client's behalf successfully persuaded a California appellate court to adopt a new and favorable framework (not suggested by the parties) for analyzing whether defense costs incurred before notice to the insurance company were fully recoverable. We have served as general insurance-coverage counsel for several of our larger multinational clients for nearly three decades. This work has involved long-term management of insurance recovery efforts for substantial mass liability claims (both in the US and abroad), working on disputes across all lines of coverage, guiding our clients on avoiding problems before they arise, and providing consistency of approach and institutional memory for our clients.

In working with our clients on a broad range of claims and policies, we have:

- modified their contracting processes to secure improved access to coverage as additional insureds under policies purchased by their contracting parties.
- pursued recovery for losses associated with genetically modified crops and foodstuffs.
- worked with structuring product-replacement programs so as to maximize coverage for “product recall” expenses.
- advised directors and officers regarding corporate indemnities and D&O insurance coverage.
- assisted clients in obtaining recovery under Employment Practices Liability Insurance policies for discrimination-related claims.
- obtained recovery for our clients under general liability policies for worker-exposure claims—we represented a university concerning coverage and bad faith against its insurers for a toxic-exposure claim by a graduate student working in a university laboratory.
- assisted corporate and nonprofit clients regarding substantial fidelity and crime insurance claims stemming from embezzlement, money laundering, and fraudulent practices.

COUNSELING FROM A BUSINESS POINT OF VIEW

Our practice is not limited to resolving claims under insurance policies, but also includes assisting clients in structuring their own insurance programs. In partnership with jointly retained London solicitors, we audited the wordings in the liability, directors and officers, ERISA fiduciary, and fidelity programs for a multinational bioscience company. Our work also involves reviewing and revising policies our clients wish to purchase that involves environmental clean-up cost-overrun protection, as well as loss-portfolio transfers of historic liabilities. Similarly, we have advised clients about integrated risk, finite risk, and other alternative risk transfer devices, as well as drafted guidelines for in-house counsel and risk managers on identifying and providing notice to the appropriate insurance companies in their coverage program, including providing sample letters, etc.

Assisting companies in connection with corporate transactions, we have been tasked with spearheading the due diligence efforts regarding potential liability and offsetting insurance recoveries of a multibillion-dollar merger partner. We also have assisted transactional attorneys concerning liability flows and corresponding insurance recoveries including drafting key elements of the transaction documentation and implementing corresponding changes to extant insurance policies. Our expertise in structuring corporate transactions to convey or retain insurance rights grows out of our substantial experience litigating the consequences for antecedent insurance rights of mergers, asset acquisitions, spin-offs, roll ups, and seller-provided after-insurance indemnity obligations. We have worked with clients also concerning the implications of bankruptcy on insurance recovery for environmental, medical device, and asbestos liabilities.

DIVERSE TALENT, TOOLS & RELATIONSHIPS

With a diverse and complex insurance-coverage practice, our attorneys routinely invited to speak and write on cutting-edge coverage issues. Several partners have written leading articles on settlement, pre-notice defense costs, managing complex coverage disputes, defense coverage and recoupment, and insurance bad faith. Our lawyers have taught the insurance-law class at a leading Washington, D.C. law school, and are active in the American Bar Association's groups on insurance law.

With a goal of driving cost-effective and business-like resolutions to insurance disputes, we always consider ways to leverage technology, including to manage electronic-discovery cost effectively. We have also utilized state-of-the-art policy analysis and retrieval tools, sophisticated insurance allocation models in which liability and expense are allocated to particular policies and periods under a variety of scenarios, and decision-analysis software to aid client management in evaluating coverage litigation and settlement options. As in other areas of the firm's practice, we have worked with software vendors and developers to customize and improve their insurance-related applications.

As insurance claims become more complex and insurers seemingly more prone to contesting coverage, we have recommended that some clients retain specialized accountants to better document and, if necessary, defend the amount of their coverage claims. As supervising coverage counsel, we work extensively with the consulting practice of a major international accounting firm on behalf of our clients, and to help train their people and further develop their already advanced systems for analyzing insurance-coverage claims. We also have worked closely with specialized forensic accountants regarding fidelity and other claims and have similar close relationships with other professional firms that augment and complement our expertise.