



## **Insurance Law**

Insurers face a unique set of challenges in the legal arena. The duties they owe their insureds, which often are broadly construed, present challenges other parties seldom face. To meet those challenges, insurers require proven experience and expertise from their outside counsel.

The attorneys in Seltzer Caplan McMahon Vitek's Insurance Law practice group offer extensive knowledge of and experience with a full spectrum of insurance law issues, ranging from the representation of insurance carriers in high-stakes coverage litigation to the training of insurance professionals whose decisions impact both insurers and their insureds. We value the relationships we have formed, and we are proud of the record of successes we have achieved for our insurer-clients.

### **Insurers' Counsel**

We have represented insurers both as coverage counsel, providing advice and guidance regarding claims and potential claims, and as litigation counsel in state and federal trial and appellate courts and in alternative dispute resolution proceedings. Our litigation assignments have involved, principally, defending insurers in alleged breach-of-insurance-contract and "bad-faith" litigation brought by insureds and/or their assignees. These matters typically have presented a significant exposure risk. Other matters we have undertaken include representing insurers in disputes with other insurers regarding the appropriate allocation of coverage obligations.

Our experience in different lines or areas of business is varied and broad. We have provided coverage analyses and/or defended coverage litigation under commercial general liability, directors and officers, employment practices liability, homeowners and other policy forms or coverage sections.

These claims and/or suits have involved:

- First and third-party property damage, including latent environmental damage claims.
- High-severity bodily injury and personal injury coverage.
- Coverage for consumer, employee, guild member, tenant and other class-action lawsuits.
- Coverage for suits alleging wrongful acts by insured entities or persons.
- A variety of other and diverse issues, including issues of first impression.

The insureds to or by whom claims have been made or by or against whom suits have been filed include the State of California, municipalities and other public or quasi-public entities, trade unions, professional sports teams, attorney insureds and other private entities and/or persons. We regularly have faced determined opposition from aggressive and experienced policyholder counsel.

While our work predominantly has involved California insureds and/or California-based litigation, we also have represented insurers in proceedings in Arizona, Nevada and Washington and provided advice regarding matters originating elsewhere in the United States and Canada.

## Defense of Insureds

We also have been appointed by insurers to represent their insureds in complex litigation, including commercial litigation, class actions and title disputes.

## Professional Training

Our experience representing insurers and our constant attention to changes and trends in insurance law and regulations makes our firm uniquely qualified to train insurance professionals. Careful adherence to applicable claim-handling standards often is an insurer's best defense against expensive and disruptive coverage litigation. Our attorneys are available to train in-house professionals on topics that directly affect their performance.

## Illustrative Successes

The attorneys in our Insurance Law practice group have been responsible for numerous insurer-related successes, a sampling of which are summarized below. We have represented insurers in numerous other and varied matters resulting in favorable resolutions, terminating litigation or the threat of litigation.

### *"Bad Faith" Litigation*

- Defended insurer-client against homeowner's "bad-faith" suit involving novel alleged urine contamination/odor claims. Obtained jury verdict on insurer's behalf, including a \$2 million-plus fee recovery award paid to insurer-client; and thereafter obtained affirmance from the Ninth Circuit Court of Appeals.
- Defended insurer-client -- in the trial court and on appeal -- in a multi-insurer insurance coverage/"bad-faith" action brought in Arizona by assignees of insurers' D&O insureds, which case principally involved "related claims" issues. Obtained summary judgment in insurer-client's favor and an award of attorney's fees and costs. The Arizona Court of Appeals affirmed the judgment and awarded insurer-client additional attorney's fees and costs incurred on appeal.
- Defended insurer-client in Nevada state court against alleged "bad-faith" failure to pay business art theft loss. Obtained trial verdict in insurer's favor, voiding the policy based on a fraud-in-the-application defense; obtained affirmance on appeal.
- Defended insurer-client -- in the trial court and on appeal -- in an insurance coverage/"bad-faith" action brought by a labor guild, which case principally involved coverage, if any, for an award of attorney's fees to class action counsel. The United States District Court for the Central District of California granted summary judgment in insurer-client's favor; the Ninth Circuit Court of Appeals affirmed the judgment and awarded costs on appeal to insurer-client.
- Defended insurer-client in an insurance coverage/"bad-faith" arbitration arising out of two underlying wage-and-hour class-action lawsuits. Successfully defended against insured's pursuit of tort/"bad-faith" damages, attorney's fees and prejudgment interest, all of which was denied, after hearing, in the panel's Final Award. Insured's pre-hearing denial of a reasonable settlement offer caused the panel to impose on the insured the obligation to pay a substantial portion of insurer-client's arbitration costs.
- Defended insurer-client -- in the trial court and on appeal -- in an insurance coverage/"bad-faith" action involving hydrocarbon contamination beneath a public facility. The San Diego Superior Court entered summary judgment for insurer-client after we had proven, through discovery, that the clean-up costs the insured sought to recover already had been reimbursed through facility usage fees the insured had collected. The judgment was affirmed on appeal.
- Defended insurer-client against a homeowner-insured's insurance coverage/"bad-faith" action involving alleged property damage coverage. The matter was successfully resolved after securing, in discovery, evidence that the insured's claim was inflated and overstated and obtaining partial summary judgment for insurer-client.
- Defended insurer-client against an insurance coverage/"bad-faith" action brought by its insured, a municipality in Arizona. The matter was successfully resolved while awaiting a ruling on insurer's motion for summary judgment. The broad scope of the release obtained for insurer-client has since been invoked to preclude coverage in a subsequent matter.
- Defended insurer-client against "bad-faith" action alleging breach of the duty to defend another insurance company, and failure to pay an underlying settlement. Obtained summary judgment on behalf of insurer-client.

- Defended insurer-client against “bad-faith” property insurance claims involving soot/fire damage. Prevailed on summary judgment, principally on a failure-to-cooperate argument, and obtained an affirmance on appeal.
- Defended insurer-client against an insurance coverage/“bad-faith” action brought by homeowners’ association insured which had been sued for failure to enforce covenants and conditions. The matter was successfully resolved after moving to dismiss the suit on late-notice grounds.
- Defended insurer-client against “bad-faith” litigation involving underlying data-loss (theft) under “malicious programming” policy provisions. Resolved matter well beneath available policy limits.

### *Coverage Litigation/Disputes*

- Provided coverage advice and helped successfully resolve high-profile class and individual claims in coverage action, involving multiple years and towers, related to underlying \$1 billion-plus claims for systematic grave desecration (profiled on “60 Minutes”).
- In two separate cases, brought successful motions to dismiss claims by professional sports teams seeking coverage under D&O policy for alleged Telephone Consumer Protection Act violations (pre-TCPA specific exclusion).
- Defended insurer-client for liability claims arising from multiple-fatality helicopter crash during reality TV filming in Los Angeles; currently defending insurer-client in related claims against Business Travel and AD&D policies.
- Provided coverage advice and helped resolve multi-hundred-million-dollar-plus claim against tower of insurers for alleged liability of insured arising from large-scale wildfire.
- Provided coverage advice regarding nationwide (state and MDL) claims arising from personal injuries alleged to have been caused by innovative athletic shoes.
- Provided coverage advice and mediated claims against insurer-client for coverage of insured’s multi-million-dollar resolution of alleged Equal Credit Opportunity Act violations filed by U.S. Government; case involves application of anti-discrimination exclusion. Case ongoing.
- Defended insurer-client and obtained order granting motion to dismiss under Washington law based upon contractual-liability exclusion against underlying tort claims; obtained affirmance from Ninth Circuit Court of Appeals.
- Provided coverage advice and assisted with settlement of class-action complaint for alleged wage-and-hour violations against insured under non-profit organization policy. Case principally involved defense costs reimbursement and allocation issues.

### *Intra-Insurer Disputes*

- Represented insurer-client -- in the trial court and on appeal -- in a contribution action in which insurer-client sought to recover defense fees/costs and a settlement payment from a second insurer. The United States District Court for the Southern District of California determined that the other insurer must reimburse our insurer-client in full for all defense costs it had incurred. The judgment was affirmed on appeal.
- Defended insurer-client as a defendant in a contribution/subrogation action, brought by a second insurer. Obtained summary judgment in favor of insurer-client.
- Provided coverage advice to insurer-client, as primary carrier, against alleged breach of duty to settle asserted by excess carrier, with judgment in the underlying matter well in excess of primary limits.
- Defended insurer-client in claim involving land subsidence. Obtained a dismissal for insurer based upon failure to establish exhaustion of a primary policy.

## **Services**

- Coverage and “bad faith” litigation
- Coverage evaluation and advice
- Coverage disputes and resolution
- Insurers’ defense of insureds