

IN-HOUSE LITIGATION COUNSEL'S ROLE IN INSURANCE CLAIMS AND RISK MANAGEMENT



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Presenter:



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Finley Harckham is a senior litigation shareholder in the New York office of Anderson Kill and serves on the firm's Executive Committee.

Finley regularly represents and advises corporate policyholders and other entities in insurance coverage matters. He has successfully litigated, arbitrated and settled hundreds of complex coverage claims. His areas of particular focus include property loss, environmental, business interruption, directors and officers liability, construction, professional liability, aviation liability, cyber and general liability claims.

Finley also founded two Anderson Kill non-legal subsidiaries: Anderson Kill Insurance Services, LLC, and Anderson Kill Loss Advisors, LLC. Those companies provide insurance consulting and property and business interruption loss quantification and settlement services.

Finley also has extensive experience in the field of international arbitration. His arbitration clients include government contractors, consumer products companies and manufacturers which Anderson Kill has represented in a wide range of disputes involving, among other things, service contracts, the purchase and sale of components, raw materials and products, and licensing agreements. He has successfully prosecuted and defended arbitrations in European countries and the United States under the London Arbitration Act, and the AAA, ICC and UNCITRAL arbitration rules.

Since 2009, Finley has been recognized by Super Lawyers for Insurance Coverage. In addition, since 2012, he has been recognized by Chambers USA for policyholder insurance dispute resolution in New York and has been described as "a tenacious litigator and a real gentleman" and "reasonable, confident and as adept at taking a hard line as he is at finding workable compromises." Legal 500 USA also recognized Finley for insurance advice to policyholders and has described him as being a "leading practitioner in the field of insurance and reinsurance for natural disasters."



Presenter:



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Arthur R. Armstrong is a shareholder in Anderson Kill's Philadelphia office. Mr. Armstrong's practice concentrates in Corporate and Commercial Litigation and Insurance Recovery exclusively on behalf of policyholders.

Mr. Armstrong regularly represents private and publicly traded companies against primary and excess insurers to recover losses under property, commercial general liability, umbrella, product liability, D&O, E&O and other insurance policies. Mr. Armstrong has also represented financial institutions, real estate developers, technology companies, and other business entities in litigation matters involving corporate governance, employment discrimination, commercial and residential property development, creditor's rights and various contract disputes. Mr. Armstrong has also handled appeals before the state and federal courts of Pennsylvania and New Jersey.

Since 2014, Mr. Armstrong has been recognized by Pennsylvania Super Lawyers as a "Rising Star."

While attending Temple University Law School, Mr. Armstrong was a recipient of the Albert H. Friedman Prize for excellence in legal research and writing. As an undergraduate at St. Joseph's University, Mr. Armstrong was inducted into The Phi Beta Kappa Society.



Presenter:



Jonathan Margolis, Esq. Vice President and Counsel Toll Brothers (215) 938-3052 jmargolis@tollbrothers.com Jonathan Margolis is Vice President and Counsel at Toll Brothers, where he covers litigation and general commercial work for the operating divisions of the Company and several subsidiaries. He also serves as General Counsel of TBI Mortgage Company.

Prior to joining Toll Brothers, he was a litigator in New York, where he focused on securities, corporate and other complex litigation, as well as internal investigations and corporate counseling. He is currently serving on his second term as an ACC-Greater Philadelphia Board member, and as a cochair of the Litigation and Career Management/In Transition committees.



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OVERVIEW

- Relationship between in-house litigation counsel and risk manager
- Counsel's role in obtaining and evaluating coverage
- Insurance policy interpretation
- Pursuing coverage claims
- Settlement of coverage claims

RELATIONSHIP BETWEEN LITIGATION COUNSEL AND RISK MANAGER

- Clearly define roles
- Communicate
- Work collaboratively



COLLABORATION

- When?
 - New projects
 - Placing policies
 - Defining risks
 - Claims
- Exchange lessons learned

LITIGATION COUNSEL'S ROLE IN OBTAINING INSURANCE COVERAGE

- The Insurance Application
 - Disclosing pending claims and occurrences
- Warranties and representations

ADDITIONAL INSURED STATUS

- Contract review
- Insurance policy review

Insurance Policy Review:

- Scope of coverage and exclusions
 - Do they correspond with the risk profile?
 - May require legal analysis



- Manuscript provisions
 - Require careful analysis
 - May not be interpreted in policyholder's favor



- Dispute Resolution Clauses
 - Arbitration?
 - Where?
 - Which Arbitration Rules?



- Choice-of-Laws
 - Which jurisdiction?
 - Significance?
 - Modifications to legal principles?



This Policy shall be governed by and construed in accordance with the internal laws of the State of New York; provided, however, that the provisions, exclusions and conditions of this Policy are to be construed in an even-handed fashion as between the Insured and the Company; without limitation, where the language of this Policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant provisions. (without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the Insured or the Company and without reference to parol evidence).

INSURANCE POLICY INTERPRETATION

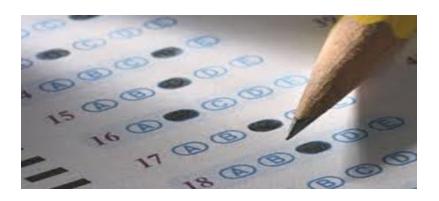
- General Principles:
 - Reasonable expectations doctrine
 - Contra proferentum
 - Coverage grants construed broadly
 - Exclusions interpreted narrowly

INSURANCE POLICY INTERPRETATION (CONT'D)

- The importance of applicable law
 - Insurance policies are governed by state law
 - Interpretations of standard forms can vary significantly
 - Examples:
 - Coverage for subcontractor negligence
 - Enforcement of anticoncurrent causation clauses
 - "Sudden and accidental"

INSURANCE POLICY INTERPRETATION (CONT'D)

- Choice-of-laws tests vary
- Each court applies its own test



THE PURSUIT OF COVERAGE CLAIMS

- Protection of sensitive information
- When counsel should communicate directly with insurers
- Roles of in-house and outside counsel



NOTICE OF CLAIM/OCCURRENCE/CIRCUMSTANCE

Shotgun approach or targeted?

CLAIM PURSUIT – BEST PRACTICES

- Identify all potential sources of coverage
 - Different lines of coverage
 - Different years of coverage
 - Other parties' coverage



WHEN TO PURSUE CLAIMS

The importance of the insurer providing a defense.

- Perform a coverage analysis
 - Include choice-of-laws considerations
 - Consider retaining outside counsel



CLAIM PURSUIT – BEST PRACTICES

- Satisfy all conditions to coverage
 - Prompt notice
 - Cooperation
 - Consent to settle



- Assemble the right team
 - Broker
 - Risk manager
 - Outside professionals



- Develop a plan for moving the claim to prompt resolution
- Document everything



- Dealing with reservations of rights
 - Incomplete coverage positions
 - Conflicts of interest



RESOLVING COVERAGE DISPUTES

- Bad faith claims
 - Can be very powerful
 - Examples



RESOLVING COVERAGE DISPUTES (CONT'D)

- Arbitration
 - London and Bermuda arbitrations
 - Unique proceedings
 - Loser pays attorneys fees
 - Is the deck stacked against you?



RESOLVING COVERAGE DISPUTES (CONT'D)

- Settlements
 - Releases and indemnifications
 - Address before the payment is agreed
 - Scope of release
 - Claim
 - Occurrence
 - Policy



RESOLVING COVERAGE DISPUTES (CONT'D)

- Settlements
 - Scope of Indemnification
 - Parties
 - Claims



QUESTIONS.



THANK YOU.



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