

## Insurance Coverage and Bad Faith Litigation

### Partners

Jennifer Ellis Burke  
Michael P. Duffy  
Timothy O. Egan  
Lindsey A. Gil  
Scarlett M. Rajbanshi  
Lincoln A. Rose  
Tamara Smith Holtslag

### Associates

Alexandra Marlowe Beaton  
Jared R. DiNicolantonio  
Rory Hanrahan  
Joseph C. Robinson  
Matthew T. Westhoff

### Of Counsel

George W. Barker  
Amanda T. DiMatteo

### Senior Counsel

Allen N. David

### Achieve Optimum Results Cost-Effectively

Peabody & Arnold has the deep experience required to tackle any coverage issue, both in and outside the courtroom. We represent many of the world's largest insurance companies in state and federal courts throughout New England and across the nation. In partnership with our clients, we evaluate claims and determine the appropriate strategy in each case, including whether a negotiated settlement or vigorous defense through trial is the best course of action.

### Top Trial and Dispute Resolution Counsel

We are trial lawyers, and when your case requires a courtroom presence our trial teams are ready to assist. We regularly handle pre-litigation coverage disputes and counsel clients on best practices to minimize (or eliminate) bad-faith exposure. From class actions to multi-district litigation, we represent our insurer clients on the most complex coverage issues.

Because we take the time to understand your business, we can provide coverage analyses and recommendations on policy wording to insurers in the major insurance markets. We work with you to develop and improve products, or assist in drafting specialized/manuscript policy language.

Our lawyers advise on all types of policies, including:

- Cyber liability
- Comprehensive general liability
- Construction defects
- Commercial crime and fidelity
- Employment practices
- Environmental exposures
- Managed care
- Products liability
- Professional liability and other errors and omissions
- Advertising injury
- Transactional (M&A liability) and property risk

Our coverage litigators also stay on top of the current issues in insurance law and share that knowledge with clients and the legal community. We regularly present client seminars, and speak at industry and bar association conferences. Our lawyers also regularly write on topics of insurance law and trial

practice.

A few of our most recent successes include:

- *AIG Property Casualty Company v. Lee Rosenthal & Ryan Denver*, No. 22-CV-11401-ADB, 2024 WL 1075157 (D. Mass. Mar. 12, 2024) (summary judgment for insurer holding that insurer did not have a duty to defend insured who breached duty to cooperate by refusing to sit for examination under oath.)
- *Nahant Pres. Tr., Inc. v. Mount Vernon Fire Ins. Co.*, 78 F.4th 48 (1st Cir. 2023) (affirming district court's dismissal of lawsuit where insured provided late notice under claims-made policy.)
- *Zurich American Insurance Company v. Baez*, 2022 WL 392824 (D. Mass. Feb. 9, 2022) (Summary judgment for insurer holding sexual assault not covered under commercial auto policy because intent to harm was inferred as a matter of law).
- *Mary Alexandre v. National Union Fire Ins. Co. of Pittsburgh, PA*, 514 F. Supp.3d 375 (D. Mass. Jan. 20, 2021) (Affirmed on appeal to the First Circuit, 22 F. 4th 261 (Jan. 3, 2022) (Obtained summary judgment ruling in favor of insurer client in federal court, holding that claim administrator's decision to deny AD&D benefits under an ERISA plan was supported by the substantial evidence in the record, and that its decision was neither arbitrary, capricious nor an abuse of discretion; the case concerned the definition of "Injury" in the Plan and the correct disclaimer of benefits under the Plan's "Intentional Self-Inflicted Injury" Exclusion, as well as the appropriate framework utilized by the First Circuit when interpreting the term "accident" in AD&D insurance policies.)
- *Springstone, Inc. v. Hiscox Insurance Co.*, 2021 WL 4240779 (6<sup>th</sup> Cir. Sept. 17, 2021) (affirming dismissal of action seeking coverage under D&O policy for cost of responding to government investigation into potential False Claims Act violations)
- *Selective Insurance Company of the Southeast v. Steadfast Insurance Co.*, 2021 WL 5052718 (Aug. 30, 2021) (Obtained summary judgment for client insurer on issues of insurance coverage under a Commercial General Liability policy, where auto exclusion applied to preclude coverage for accident arising out of "use" of van, where "completed operations rule" applied).
- *XL Specialty Ins. Co., et al. v. AR Capital, LLC*, 2021 WL 353853 (N.Y. Sup. Ct. Feb. 2, 2021) (summary judgment for insurer in declaratory judgment action regarding coverage for securities fraud and derivative litigation)
- *Day Kimball Healthcare, Inc. v. Allied World Surplus Lines Ins. Co. et al.*, 857 Fed.Appx. 685 (2<sup>nd</sup> Cir. 2021) (affirming dismissal of claim against excess insurer based on claims made and reported grounds)
- *Ark Underwriting v. Lexington Insurance Co.*, (D. Mass. 2020) (Obtained summary judgment for insurer in federal court on issues relating to additional insured coverage, where court found firm's client did not have an obligation to defend or indemnify contractors on a large Boston-based project as they did not qualify as "additional insureds.") (Appeal pending).
- Resolved large insurance coverage dispute for commercial insurer client in which coverage for underlying claims against a healthcare company were in dispute; case involved issues of insured cooperation, notice to the insurer, and lack of coverage for the type of claims and damages alleged under a manuscript policy.
- *Mount Vernon Fire Ins. Co. v. Visionaid, Inc.*, 477 Mass. 343, 76 N.E.3d 204 (2017) Following summary

judgment for insurer, the First Circuit certified the insurance coverage at issue to the Massachusetts Supreme Judicial Court for an opinion on whether Massachusetts' law requires an insurer to prosecute affirmative claims on behalf of its insured. The SJC answered all certified questions, holding that an insurer's duty to defend does not extend to the obligation to prosecute counterclaims.

- *Philadelphia Indem. Ins. Co. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 34 Mass. L. Rptr. 367 (2017) (summary judgment granted for client in coverage action interpreting Employer Liability/Worker's Compensation Policy).
- Obtained summary judgment ruling in the First Circuit that an insurer's duty to defend does not extend to the obligation to prosecute counterclaims. The First Circuit certified the issue to the Massachusetts Supreme Judicial Court for an opinion on whether Massachusetts' law requires an insurer to prosecute affirmative claims on behalf of its insured. The matter has been argued and is pending.
- Obtained summary judgment holding that an insurer does not commit an unfair claims practice by conditioning the offer of policy limits on claimant's releasing the insured.
- Recently obtained summary judgment for our client in an insurance coverage action in New Hampshire. The case involved application of various exclusions to a commercial business policy.
- Resolved a multi-million-dollar insurance coverage fee dispute for commercial insurer client. The case concerned the propriety and multi-million-dollar expense associated with the defense of an underlying antitrust action against large healthcare company in New York.
- Rhode Island state court granted motion to dismiss in favor of our client, where claimant impermissibly tried to assert a direct action against insurer where there had been no underlying judgment.
- Obtained summary judgment for our client under a CGL policy on the grounds that mold exclusion was applicable to the underlying loss.
- Obtained summary judgment denying a \$28 million insurance claim under a managed care professional liability policy based on the argument that the policyholder failed to provide sufficient notice of the underlying claim.
- Under a crime policy, obtained summary judgment ruling for our insurer client holding that exclusion applied to the underlying theft.
- Peabody & Arnold's insurance coverage lawyers have been recognized in the "Best Law Firms," *U.S. News & World Report* Rankings as a National Tier 1 Firm for Insurance Law.