PALEY ROTHMAN
ATTORNEYS AT LAW

Insurance Recovery

Paley Rothman's Insurance Recovery group represents policyholders in virtually every insurance context. The risks and exposures that give rise to insurance disputes are unbiased in that any company that faces exposures for its own particular business or operations may have insurance available to pay the costs of defense as well as any settlement or judgment. Relevant insurance policies include those designed to cover third party liability as well as government investigations, alleged securities violations, and virtually any activity that puts the company or its directors and officers at risk.

To understand the depth of your coverage requires a deep working knowledge of all policy forms including, among others, general liability, D & O, E & O, Employment Practices Liability ("EPL"), fidelity, first party property and any version in a given comprehensive insurance portfolio. Although insurance policies and an insurance portfolio may seem associated with standard forms, often a closer look reveals nuances that can broaden or narrow the scope of coverage. We have relevant experience that can proactively support navigating an analysis designed to maximize the full benefits of any policy as it relates to a given problem.

Insurance recovery demands the full command of all forms of dispute resolution since any given coverage claim can be highly disputed. The dispute resolution process often begins from the initial engagement with the insurance company. It is critical to control the narrative from the outset of a claim. The process involved in securing coverage begins with the provision of timely notice and continues through any number of channels both in and out of court. To that end, we are prepared to take any dispute through the entire adjudicative process. We have successfully represented our clients in all levels of court proceedings including at trial and on appeal. We have established precedent in the US Courts of Appeal in the Second, Third and Fourth circuits. In the Second Circuit, in a decision of wide reach, we established the precedent that required insurance companies to pay defense costs incurred in responding to government investigations before a suit in court is filed, as well as the obligation to pay special litigation counsel fees in the context of derivative litigation. The obligation to pay defense costs right from the initiation of a government investigation opens up vast amounts of insurance proceeds that might be incurred and lead to a resolution before any suit is even filed. MBIA, Inc. V Federal Ins. Co., 652 F. 3rd 152 (2nd Cir. 2011).

We are also mindful that resolution of insurance recovery disputes is achievable short of trial. Settlement is never the orphan and we are poised to work with the client to seize opportunities at any point in the process. We have negotiated coverage-in-place agreements for companies faced with ongoing underlying litigation such as that historically presented in the context of asbestos. We also make full use of the entire spectrum of dispute resolution such as mediations or private, custom designed ADR to resolve a discreet issue that might allow a global resolution to be fashioned.

Our insurance practice is also national and international in scope. Insurance recovery disputes are contested in state and federal courts nationwide and we are prepared to protect our clients' interests wherever the dispute may take us.

Many insurance portfolios contain what is called the Bermuda form policy. Under that policy, disputes are resolved in the U.K. under New York law. The Bermuda form policy has certain unique provisions that demand a full understanding of the implications of those provisions as they apply from claim to claim. We have extensive experience with the Bermuda form, having been involved in the resolution of disputes from the genesis of the form itself. We have in-depth working knowledge of the unique process that is very much a part of crafting a framework in which to resolve a Bermuda form dispute.

Our insurance recovery lawyers also recognize that insurance disputes are not resolved in a vacuum. It is not just the interpretation of insurance policy terms that drive any given dispute. The application of many terms and conditions as well as how best to position a given claim to maximize coverage is dependent on an understanding of the underlying problem itself. Every problem has its own story and the right insurance recovery story can only be crafted through a keen appreciation of the client's business as well as the nature of the underlying claimant's characterization of its claim and the client's defenses. We work closely with the client as well as underlying defense counsel to ensure a seamless, multi-dimensional representation is in place. With such a comprehensive strategy, we are able to remain flexible and

creative in the effort to achieve the best result for a given client and given problem.

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