KILPATRICK TOWNSEND

Barry J. Fleishman

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Services

Litigation; Insurance Recovery

Barry Fleishman focuses his practice on complex policyholder insurance coverage issues. His insurance coverage experience includes representation before federal and state courts, arbitral tribunals, and judicial and private mediators, focusing on corporate policyholder claims for insurance coverage arising out of liability and loss from property damage, bodily injury, personal injury, and alleged wrongful acts of directors and officers. Mr. Fleishman has represented major corporations seeking insurance coverage with respect to liabilities and losses incurred as the result of catastrophic property damage, defective or misused products, environmental damage, alleged discrimination, and directors' and officers' activities in cases involving natural disasters, including major hurricane and cyclone-related losses, fires and explosions, mold and moisture, and alleged corporate wrongful acts.

Mr. Fleishman was recognized in *The Best Lawyers in America*® for Insurance Law in 2013 and the three years immediately preceding. He was recognized as a 2011, 2012 and 2013 Washington D.C. "Super Lawyer" in the area of Insurance Coverage and a "Top 100 Washington, D.C. Super Lawyer" in 2013 by *Super Lawyers* magazine. In 2011, Mr. Fleishman was recommended in the area of Insurance by *Legal 500 US*. He is also member of the Washington, D.C. team recognized as a Tier 1 practice in Insurance Recovery in 2011 by US News - Best Lawyers® "Best Law Firms."

Experience Highlights

Complex coverage matters involving environmental losses for city *
Served as lead counsel for a New England city government with respect to complex coverage matters involving environmental and other liabilities and losses.

Insurance litigation for suppliers of vanilla extract
Insurance litigation for one of the world's leading suppliers of vanilla extract regarding losses from cyclone.

Insurance litigation for recognized leader in apartment development
Represented the owner and developer of a 400-unit apartment complex on Long Island in litigation seeking insurance coverage for losses resulting from water intrusion and entrapment.

Insurance coverage litigation for Formosa Plastics Corporation for explosion and fire loss
The firm served as lead counsel for Formosa Plastics Corporation in litigation regarding coverage for property damage and other losses suffered at one of its operating plants as a result of an explosion and fire. We obtained a multimillion dollar settlement for our client.

Insurance litigation for Canada's largest bank *
Lead counsel for Canada's largest bank regarding their property loss, business interruption, extra expense and other 9/11 losses.

Insurance litigation for leading defense contractor regarding property damage and business interruption losses *
Lead counsel for defense contractor in coverage dispute involving catastrophic hurricane losses.

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Counsel for Poarch Band of Creek Indians
Provide counsel to the Attorney General of the Poarch Band of Creek Indians regarding litigation matters and provide risk management and risk exposure services to the Tribe. Serve as ongoing insurance counsel for the Tribe including policy renewals and risk management for Tribal activities.

Insurance coverage litigation for investment company regarding professional liability losses
Represent investment company in litigation regarding coverage under errors & omissions policies for professional liability losses.

Complex coverage matters involving environmental losses for global pharmaceutical company *
Lead counsel for global research-driven pharmaceutical company with respect to complex coverage matters involving environmental and other liabilities and losses.

Insurance litigation for leading investment consulting firm
Lead counsel for recognized leader in investment consulting regarding alleged director and officer wrongful acts.

QBE Insurance Corporation v. Archstone
Serves as lead insurance coverage counsel for Archstone-Smith Operating Trust (Archstone) in a dispute involving losses in excess of $50 million involving property, general liability, pollution liability, and additional insured coverage and arising from multi-building property damage and alleged liability to former residents. Coverage cases are pending in state court in New York and state court in Colorado, involving more than 20 potential policyholders and additional insureds, and their respective insurance carriers. QBE Insurance Corporation v. Archstone, Case No. 601695/2009, 2011 WL 3505475 (N.Y. Sup. Apr. 5, 2011). In the New York action, the firm succeeded in having the court grant summary judgment declaring that several of the "additional insured" insurance carriers had a duty to defend Archstone in underlying litigation brought by former residents. When those carriers refused to reimburse Archstone for defense costs incurred to date in excess of $9 million, the firm moved for partial summary judgment on a breach of contract claim against one of those carriers. The court granted the motion, finding that each carrier was jointly and severally liable for all of the defense costs. The court also granted Archstone leave to amend its complaint to add a bad faith claim based on that carrier's alleged baseless refusal to pay the defense costs.

Insurance litigation for leading energy industry firm
Lead counsel for *Fortune* 500 energy firm regarding alleged director and officer wrongful acts.

Insurance litigation for one of the largest traders of U.S. Treasuries regarding losses from domestic terrorist attacks *
Lead counsel for one of the largest traders of U.S. Treasuries regarding their property loss, business interruption, extra expense and other 9/11 losses.

Insurance litigation for prominent mechanical construction firm *
Lead counsel for prominent mechanical construction firm regarding construction-related liabilities and losses.

Insurance litigation for prominent mechanical construction firm
Lead counsel for prominent mechanical construction firm regarding construction-related liabilities and losses.

Complex coverage matters involving property damage and environmental loses for world's largest supplier of unsaturated polyester resins *
Lead counsel for world's largest supplier of unsaturated polyester resins for composites with respect to complex coverage matters involving property damage, and environmental and other liabilities and losses.

Insurance recovery litigation for naval shipbuilding and repairing manufacturer
Successfully represented a naval shipbuilding and repairing manufacturer in a dispute regarding coverage for substantial property damage and business interruption losses sustained as a result of Hurricane Katrina.

Insurance litigation for world's leading cruise operator *
Lead counsel for world's leading cruise operator regarding catastrophic hurricane losses.

Insurance litigation for major provider of back office services for residential housing industry.
Lead counsel for major provider of back office services for residential housing industry regarding insurance coverage with respect to claims of wrongful use of intellectual property and proprietary information.

*Experience gained by attorney prior to joining Kilpatrick Townsend

Publications, Articles and Speaking Engagements

Expert Q&A on Insurance Coverage for Catastrophic Losses
Practical Law, January 01, 2013

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Maximizing Catastrophic Loss Insurance Recovery: Priority Action Items for Winning the Coverage Battle
Practical Law Company Webinar, December 18, 2012

Insurance Coverage and Alternative Project Delivery
4th Annual Transportation Construction Law and Regulatory Forum, October 25, 2012

Insurance Policies and Coverage Toolkit
Practical Law - The Journal, September 01, 2011

Evaluating Policies After Japan's Earthquake
Risk Management Magazine, June 01, 2011

LITIGATION AND POKER: The Winning Power of Strategic Thinking
DC Bar Event, May 10, 2011

The litigation process, for good reason, is often described in poker terms. Large firms frequently advertise their specialization in "bet the firm" litigation. When dealing with opposing counsel, lawyers are advised to "keep their cards close to the vest." When "the hand you are dealt" is weak, you hope the opponent will think you have an "ace in the hole" and won't "call your bluff." In this entertaining and informative event, participants will explore some of the ways that poker and poker theory can contribute to a richer understanding of the subtle and not-so-subtle nuances of effective litigation.

Business Interruption Claims and the Unique Effect of a Catastrophe
American Bar Association Tort Trial & Insurance Practice Section, Property Insurance Law Committee Annual Spring CLE Meeting, April 30, 2011

When a catastrophe damages an insured's property, the insured's business may be affected by more than just the insured property damage. This session discusses the affect of the market/economy following a catastrophe and measuring a period of restoration following a catastrophe, including the effect of limited supply of materials and delays in the adjustment process.

Insurance Tutorial: How to Negotiate and Settle Claims
ACC 6th Annual CLE, February 11, 2011

ACC Mountain West Chapter 6th Annual CLE and Ski Event
ACC Mountain West Chapter, February 01, 2011

Legal Representation Of Failed Banks, Bank Holding Companies And Their Decision Makers
American Bar Association 2010 Midyear Meeting, August 10, 2010

Resolving Catastrophic Multi-Party Construction Insurance Cases — Is Mega-Million Dollar Litigation The Only Solution?
American Bar Association 2010 Midyear Meeting , August 10, 2010

D&O Insurance Update - Foundational Concepts and Current Issues
ABA -2nd Annual National Institute on Internal Corporate Investigations and Forum for In-House Counsel, May 05, 2010

Insurance 101 - Insights for Young Lawyers: The Perils of E-Discovery -- Landmines for the Client and the Counsel
Coverage, April 01, 2010

Case Study: Fortney V. American Manufacturers
Law 360, March 26, 2010

ACC Mountain West Chapter 5th Annual CLE and Ski Event
ACC Mountain West Chapter, February 26, 2010

ABA Torts Trial and Insurance Coverage Section, Builder's Risk Coverage - A Summary
ABA Property Insurance Law Committee Annual Spring Meeting, May 16, 2009

Top Eight Insurance Recovery Tips in the Wake of Natural Disasters
National Underwriter's Insurance Buyer's Report, May 06, 2009

10 Tips for Dealing with Insurance Coverage for Hurricane Losses
Risk Management, April 01, 2009

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Securing Coverage for Contamination Claims
Insurance Law360, February 20, 2009

An Overview of Insurance Coverage for Losses from Hurricanes
White Pages, January 01, 2008

Policy Clauses That Limit Lawsuits Create Pitfalls
Business Insurance, October 23, 2006

Impacts from Katrina and Other Disasters
Marsh's Hospitality & Gaming Practice Conference, October 01, 2006

What If a Hurricane or Catastrophic Event Hits New York: Insurance Preparation and Recovery
John E. Osborn PC and Maxons Restoration, September 01, 2006

Additional Insured Coverage - Practicalities
Mealey's Additional Insured Conference, June 01, 2006

Not Just an Ordinary Day in Court: The Insurance Coverage Jury Trial
American Bar Association, 2006 Insurance Coverage Litigation Seminar, March 01, 2006

Hurricane Property Insurance Claims
National Association of Insurance Commissioners, December 01, 2005

Absolute Pollution Exclusion? 'Not!' - Say the Courts
Coverage, March 01, 2004

Consideration Before Bringing a Coverage Action
Practising Law Institute, February 01, 2004

Insurance Coverage Issues Facing Today's Multifamily Housing Owner
NMHS White Papers, May 07, 2001

Protecting Against Y2K Liability Exposure
Signature, May 01, 1999

Electric Power's Future in the Courts
CCH Power and Telecom Law, November 01, 1998

The New Electric Power Industry
Units, October 01, 1998

When the Power Goes Off: Emerging Liability and Insurance Issues in the New Electric Power Industry
CCH Power and Telecom Law, July 01, 1998

Emerging Liability Issues for the New Electric Power Industry
The Electricity Journal, March 01, 1998

Electric Utilities Making Major Cuts in R & D Spending
Power Quality Assurance Magazine, January 01, 1997

The Basics of the New Customer/Supplier Electric Power Relationship
Power Quality Assurance Magazine, September 01, 1996

Using Legal Decisions to Help Prevent Products Liability - the 'Sophisticated Buyer' Defense
Power Quality Assurance Magazine, March 01, 1996

Whose Fault Is It?
Power Quality Assurance Magazine, November 01, 1995

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Power Quality and Products Liability Law Emerging Issues
International Conference and Exhibition, September 01, 1995

Insurance Coverage for Latent Injury Claims - EMF Litigation
Power Quality Assurance Magazine, September 01, 1995

British High Court Rejects Attempt to Force Regulation on Regulation of EMF
Power Quality Assurance Magazine, July 01, 1995

Punitive Damages - What's Behind All the Commotion?
Power Quality Assurance Magazine, July 01, 1995

Defective Power: Is It a Product Liability Issue
Power Quality Assurance Magazine, May 01, 1995

The Essential Connection Between Loss Prevention and Liability
Power Quality Assurance Magazine, March 01, 1995

Emerging Insurance Coverage Issues in the Electric Power Industry
Power Quality Assurance Magazine, January 01, 1995

Duty To Warn
Power Quality Assurance Magazine, November 01, 1994

Professional & Community Activities

Anti-Defamation League's Washington, D.C. Regional Board, Member

Review of Law and Social Change, Note and Comment Editor, New York University School of Law. Serves on Law360's 2009 Insurance Editorial Advisory Board

American Bar Association, Vice-Chair, Insurance Coverage Committee, Tort, Trial and Insurance Practice Section (2009-2010).American Bar Association member, Standing Committee on the Law Library of Congress (2009-2010)

American Bar Association, Past Chair, Committee on Professionalism of the Tort and Insurance Practice Section (1999-2000)

American Bar Association, Past Chair, Energy Law Committee of the Tort and Insurance Practice Section, Energy Law Committee (1997—1998)

American Bar Association, Past Chair, Coordinating Group on Energy Law (1998—1999)

Advisory Board, Past Member, Power Quality Assurance Magazine

Pro Bono Committee, Chair, Dickstein Shapiro (2001-2009)

Education

New York University School of Law, J.D. (1981)

New York University, B.A., Political Science and Journalism (1976)
magna cum laude

Bar Admissions

District of Columbia (1985)

Pennsylvania (inactive) (1981)

Admissions

U.S. Supreme Court (2000)

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