



304:A Primer on Insurance Coverage: Avoiding Common Traps & Pitfalls

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Faculty Biographies

Joseph J. Catalano

Joseph J. Catalano currently serves as senior vice president and general counsel of Bay View Capital Corporation. Among his responsibilities, he supervises litigation, insurance procurement, and claims management. He has managed numerous complex litigation matters, both in cooperation with insurers and also after tenders of defense have been rejected. He has been successful in managing the recovery of millions of dollars for Bay View on claims that were initially rejected by insurers under fidelity bond, directors and officers, and general liability policies.

Mr. Catalano has been employed as in house counsel by various financial institutions, including First Nationwide Bank of San Francisco, and American Savings of Stockton, California. Before joining American Savings, he was engaged in the private practice of law in Stockton.

He currently serves on the board of directors and is treasurer of ACCA's San Francisco Bay Area Chapter and is a member of the executive committee of ACCA's Litigation Committee. He previously served as president of the San Joaquin County chapter of the American Trial Lawyers Association, chair of the Bar Association Lawyer Referral Service, and was the cofounder of the San Joaquin County Family Law Clinic.

He received a BA from Manhattan College and his JD from McGeorge School of Law in Sacramento.

Rhonda Mims

Rhonda Mims is vice president and counsel with ING Americas, US Legal Services and is a member of the state government affairs team ("SGA"). In this capacity, she serves as the ING US PAC treasurer, ethics officer, and conducts government affairs for some of the mid-western states. Prior to joining SGA, she was counsel with the ING USFS litigation team overseeing outside counsel for risk management/litigation issues.

Prior to joining ING, Ms. Mims served as a civil litigation attorney with the United States Department of Justice and as a senior attorney with the National District Attorney Association's American Prosecutor's Research Institute. Before that, Ms. Mims was the head of the prosecution division for the State of South Carolina Office of Attorney General. In that capacity, she oversaw the prosecution of securities and tax violations and other general session's offenses.

Ms. Mims has written published articles on "Hate Crime Prosecutions," "Corporate Officer Responsibility," the concept of community prosecution, and environmental crimes. In 1997, she received the Daniel R. McLeod Award for outstanding service to the State of South Carolina and for her efforts in prosecuting white-collar crimes for the States' Department of Revenue.

Ms. Mims received her BS and JD from the University of South Carolina. She currently holds NASD series 7 and 66 designations.

David B. Rocklin

David B. Rocklin is an assistant vice president and the employment practices liability claims supervisor for Chubb Group's Western Region (US). His responsibilities include the supervision of claims activity in that region, as managed by a staff of attorneys and claims professionals who handle a wide spectrum of employment litigation.

Prior to joining Chubb, Mr. Rocklin worked in the Enforcement Division of the US Securities and Exchange Commission.

He received a BA from Indiana University and is a graduate of Chicago Kent Law School.

Steve Shappell

Director Legal Aon Financial Services Group
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Avoiding Common Traps in Insurance Coverage and Claims

Presented by:

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History of Carrier

■ Current Claims Attitude

- Hard market
- Flurry of coverage litigation .
- Major allocation decisions.
- 11th hour settlements.
- Substantial legal bills.
- Poor results.
- Distasteful process.

Severability of Application/Rescission

- Limiting Application
- Agreements as to:
 - materiality
 - reliance
- Imputation limitations
 - knowledge and information
 - representations

New Risk/ Old Coverage

- Void gaps in coverage for new unique exposures
 - SARS
 - Terrorism
 - Sarbanes-Oxley (Corporate Reform)

■ Control Claim Process

- Duty to defend?
- Retention / waivers. Did not work
- Panel counsel.
- Hammer clause.
- Right to associate in the defense.

■ Control Dispute Resolution Process

- Arbitration provision.
- Forum selection clause.
- Choice of law provision.

■ Allocation

- Policy language.
- Jurisdiction.
- Underlying facts.

■ Negotiate Directly With Plaintiff's Counsel

- Building Relationships.
- Highly sensitive approach.
- Defense counsel defenseless.

■ Encourage Early Settlement

- History .
- Significant contribution.
- Retention incentives.

■ Scrutiny of Defense Counsel

- Quality of firm.
- Expertise of attorneys.
- Multiple counsel.
- Conflicts contested.
- Non-panel firm.
- Experience with firm.

■ Question Reasonableness of Settlement Agreement

- No liability.
- Lack of information.
- Scrutinize negotiations.
- Initial offer important.
- No / minimal skin in the game.
- Willing to try the case.

■ Settlement Dynamics

- Friction between carriers.
- Hammer letter.
- Law firms' justifying existence / differing agendas.
- Hiding behind counsel.
- Breaches of confidentiality.
- Business considerations.

The Claims Process

Effective Claim Service & Maximum
Claim Recovery

Avoid Desired or Accidental
Ignorance

■ Establish Claims Management Procedures

- Tailor procedures to company.
- Who reports claims.
- Time constraints.

■ Provide Notice to Insurers

- Timely notice.
- Occurrence vs Claims Made/reported
- Coordinated effort.
- Designate drafter.
- Content of notice.
- Request to incur defense costs.

■ Emphasize Early Coverage Response

- 30 to 60 Days reasonable.
- No later than 120 days.
- Use diary system.

■ Coordinate Response to Coverage Letter

- Key coverage issues.
- Defense issues.
- Respond to document and information requests.

■ Analyze Coverage Letter

- Rationale.
- Team effort.
- Quick and firm response.
- Denials.

■ **Keep Carrier(s) Informed**

- Defense bills.
- Significant litigation documents.
- Periodic status reports.
- Details of settlement negotiations.

■ **Arrange Meeting(s) With Insurer(s)**

- Lines of communication.
- Discuss coverage issues.
- Consent to incur defense costs.
- Advancement of defense costs.
- Defense strategy.

■ Negotiate Favorable Claim Resolution

- Coverage stance.
- Business interests.
- Innovative claim resolution strategies.
- Claim release / policy release.
- Written agreement to pay.

■ Requesting Consent to Settle

- Consent to settle / reasonableness of amount.
- Understand settlement parameters.
- Participation from carrier(s).
- Bad faith posture.

Management Liability Claims

The following are the 12 most common errors committed by Insureds and/or their representatives in the claims process. These errors typically include the insureds' and/or their representatives' failure to:

- ✍ Understand how the policy should respond in the event of a claim .
- ✍ Address claim issues as part of the underwriting process.
- ✍ Provide timely notice of claim or circumstance together with necessary information and documentation.
- ✍ Identify all applicable insurance policies and effectively coordinate the claim process where multiple policies are triggered.
- ✍ Obtain the underwriter's prompt consent to incur defense costs and selection of counsel.
- ✍ Establish lines of communication that permit the insured to control the information flow while also ensuring an exchange of information that is conducive to successful claim resolutions.
- ✍ Fully comprehend the content and objective of the underwriter's coverage letter, typically a "reservation of rights" letter.
- ✍ Develop an appropriate response to the underwriter's coverage letter which reserves the rights of the insureds under the policy.
- ✍ Aggressively pursue underwriters regarding outstanding issues such as delinquent payment of defense costs.
- ✍ Understand the allocation issues, its nuances and related legal issues which often lead to frustrating and unproductive negotiations.
- ✍ Obtain underwriter's approval to settle a claim and commitment to contribute its proportionate share prior to finalizing a settlement of the underlying matter.
- ✍ Effectively leverage the business interests involved in order to achieve a favorable claim resolution.