

INSURANCE CONSULTANT ON INSURANCE COVERAGE AND INSURANCE BAD FAITH



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EDUCATION and SCHOLASTIC ACTIVITIES:

EDITORIAL BOARD – INSURANCE LITIGATION REPORTER

ARIZONA STATE UNIVERSITY COLLEGE OF LAW

(former Adjunct Professor of Insurance Law, 2000-2005)

UNIVERSITY OF ARIZONA: J.D. With Distinction, 1982

- Recipient, Best Oral Advocate Award, Second Year Moot Court Competition
- Member, U of A National Moot Court Team
- Editor, Second Year Moot Court Board
- National Order of Barristers

ARIZONA STATE UNIVERSITY: B.S. Political Science, 1978

Graduated *Summa Cum Laude* and “With Honors”

Honors Thesis — The Panama Canal: A Question of Sovereignty

JUDICIAL LAW CLERKSHIPS and INTERNSHIPS

- Law Clerk to Judge Robert J. Corcoran, Arizona Court of Appeals, 1982-1983
- Legislative Intern to the Chairman of the Committee on Banking and Insurance, House of Representatives, Arizona State Legislature, 1979

PUBLICATIONS:

BOOKS PUBLISHED

- Senior Author, *Couch on Insurance 3d.* (re-writing entire treatise and managing 12 Couch Research Fellowships).
- *Arizona Liability Insurance Law* (705 pages, hardbound), the State Bar of Arizona (published 1998)
- 2001 *Supplement – Arizona Liability Insurance Law* (115 pages)
- 2006 *Supplement – Arizona Liability Insurance Law* (426 pages, hardbound)
- *Construction Defects: Claims and Coverage: “Progressive Losses—Triggers of Coverage, Numbering of Occurrences and Allocation Among Successive Policies,”* (DRI Defense Library Series) (Ch. 3, Part II)
- *CAT Claims: Insurance Coverage for Natural and Man-Made Disasters.* ThomsonWest (forthcoming 2008)

ACADEMIC JOURNALS AND LAW REVIEWS

- *Are State Court Garnishment Actions an Effectual Impediment to Federal Declaratory Judgment Jurisdictions: Is Timing Everything.* CONN. INS. L.J. (forthcoming 2008)
- *The Practical Ramifications of Dual Sovereignty in Prosecuting Declaratory Judgment Actions Against State and Federal Governments.* CONN. INS. L.J. (forthcoming Spring 2008)
- *Prohibiting De Facto Insurance Redlining: Will Hurricane Katrina Draw a Discriminatory Redline in the Gulf Coast Sands Prohibiting Access to Home Ownership?* WASH.& LEE J. CIVIL RTS. & SOC. JUST. (forthcoming Spring 2008)
- *Charting A Course For Federal Removal Through The Abstention Doctrine: A Titanic Experience In The Sargasso Sea Of Jurisdictional Manipulation.* 56 DEPAUL L. REV. 107 (Fall 2006)
- *The Punitive Damages Lottery Chase Is Over: Is There A Regulatory Alternative To The Tort Of Common Law Bad Faith And Does It Provide An Alternative Deterrent?* 37 ARIZ. ST. L.J. 1221 (Winter 2005)
- *Judicial Abstinance: Ninth Circuit Jurisdictional Celibacy For Claims Brought Under The Federal Declaratory Judgment Act,* 27 SEATTLE U. L. REV. 751 (Issue 3, Spring 2004)
- *The Evolving Boundaries Of Damron/Morris Agreements: A Search For The Missing Link, A Judicial Determination Of The Length Of A Reasonable Person's Arm, And Other Progressive Issues,* 35 ARIZ. ST. L.J. 1331 (2003)
- *The Elastic Contours Of Attorney-Client Privilege And Waiver In The Context Of Insurance Company Bad Faith: There's A Chill In The Air,* 34 SETON HALL L. REV. 513 (2003)
- *Disability Under A Judicial Microscope: The Struggle To Define The Rights And Remedies For Claims Brought Under The Rehabilitation Act.* 47 N.Y.L. SCH. L. REV. 269 (2003)
- *Board Of Trustees Of The University Of Alabama vs. Garrett: Is Constitutional Authority For Sale And Is State Sovereign Immunity The Purchase Price?* 13 GEO. MASON. U. CIV. RTS. L. J. 151 (Spring 2003)
- *The Changing Face Of Global Terrorism And A New Look Of War: An Analysis Of The War-Risk Exclusion In The Wake Of The Anniversary Of September 11, And Beyond.* 39 WILLAMETTE L. REV. 31 (Winter 2003)
- *The Changing Landscape Of The Eleventh Amendment Immunity In The Context Of The Americans With Disabilities Act And The Rehabilitation Act After Garrett: Are Arizona School Districts Beyond Suit?* 34 ARIZ. ST. L. J. 873 (Fall 2002)

OTHER PROFESSIONAL PUBLICATIONS

- *Federal Preemption of State Statutory Requirements: Written Offers/Rejections of UM/UIM Coverage in the Modern Age.* DRI For The Defense (forthcoming May 2008)
- *Reasonable Expectations for Agents' E&O.* Ins. Journal-National, West Region, Vol. 86, No. 6 (March 24, 2008)
- *The Justicability of Increased Insurance Premium Claims: A Uniformity of Dismissal?* Ins. Lit. Rptr., Vol. 30, No. 2 (March 2008)
- *Analyzing Bad Faith Exposures Arising From the Use of Independent Medical Examinations First Party Coverage Determinations.* In-House Defense Quarterly (forthcoming Spring 2008)
- *Understanding Federal Bankruptcy Court Stays and How to Procedurally Reach Available Insurance Coverage of the Bankruptcy Debtor.* Ins. Lit. Rptr., Vol. 29, No. 21 (December 2007)
- *Directors and Officers Entitlement to D&O Policy Benefits When the Corporation They Served Files Bankruptcy.* Ins. Lit. Rptr. , Vol. 29, No. 20 (December 2007)

- *Attorney's Fees and Declaratory Judgment Actions in Arizona.* DRI National State-by-State Compendium Regarding the Awardability of Attorney's Fees in Declaratory Judgment Actions (December 2007)
- *A Survey of Professional Liability Coverage for Claims Brought Under the Federal False Claims Act.* Ins. Lit. Rptr., Vol. 29, No. 17 (October 2007)
- *Daubert and the Insurance Bad Faith Expert.* In-House Defense Quarterly, Vol. 2, No. 3 (Summer 2007)
- *Colossus Under Attack: The Legal Efficacy of Computerized Evaluation of Bodily Injury Claims.* Ins. Lit. Rptr., Vol. 29, No. 8 (May 2007)
- *Bad Faith Cases: A General Overview of the Advice of Counsel Defense.* In-House Defense Quarterly, Vol. 2, No. 2 (Spring 2007)
- *Claims for Embezzlement of Client Funds,* DRI For The Defense, Vol. 49, No. 3 (March 2007)
- *Regulating Insurance Company Claim Handling Practices: Rethinking the Unthinkable (Abandonment of the Common Law Tort of Bad Faith).* Ins. Lit. Rptr., Vol. 29, No. 1 (2007)
- *Discipline Without Assumptions? A Systematic Approach to Coverage Analysis.* In-House Defense Quarterly, Vol. 2, No.1 (Winter 2006)
- *A Methodical Approach to Analyzing the Application of the Absolute Pollution Exclusion.* Ins. Lit. Rptr., Vol. 28, No. 19 (December 2006)
- *Medical Payments Coverage: A Policy Inside A Policy.* Ins. Lit. Rptr., Vol. 28, No. 14 (November 2006)
- *Building a General Understanding of Directors & Officers Insurance Policy Architecture.* DRI For the Defense, Vol. 48, No. 5 (May 2006)
- *All Things Being Considered Equal: Third Party Bad Faith in Arizona.* Arizona Attorney, Vol. 27, No. 6 (1991)
- *Darner's Neglected Tenant: Abandonment of Ambiguity Doctrine.* Arizona Attorney, Vol. 27, No. 4 (1990)
- *Does Your Insurance Stack Up? Multiple Coverage Problems and the Standard Automobile Liability Insurance Policy.* Arizona Attorney, Vol. 26, No. 5 (1990)
- *Guaranteeing Personal Injury Recoveries: A Practical Guide to Arizona's Property and Casualty Insurance Guaranty Fund.* Arizona Attorney, Vol. 26, No. 2 (1989)
- *Insuring Against an Evil Mind: Punitive Damages Awards and the Uninsured and Underinsured Motorist.* Arizona Attorney, Vol. 25, No. 9 (1989)
- *Let's Make a Deal: A Requiem for Reservation of Rights Defenses in Arizona.* Arizona Bar Journal, Vol. 23, No. 6 (1988)
- *When is a Standardized Insurance Contract Binding: The Development of the Reasonable Expectation Doctrine in Arizona.* Arizona Bar Journal, Vol. 23, No. 5 (1988)
- *The Mode of Operation Rule: A Slippery Issue for the Arizona Trial Bar.* Arizona Bar Journal, Vol. 21, No. 4 (1986) (republished by West Publishing Company, WestLaw National Text and Periodicals—Torts Database, 1986)

SPEAKER/PRESENTATIONS:

- Guest Lecturer (March 6, 2008) (Topic: Discovery Issues in Bad Faith Litigation) Arizona State University College of Law (LAW 691).
- "Arizona Insurance Coverage" (January 25, 2008) (Topic: Complex Coverage Analysis) Sponsored by the State Bar of Arizona.

- “Insurance Coverage and Claims Institute” (April 11-13, 2007, Chicago, Illinois) (Topic: Expert witnesses and Insurance coverage litigation) Sponsored by DRI.
- “*Daubert* and Use of Expert Witnesses in the Insurance Bad Faith Content” (April 4, 2007) Sponsored by Arizona Association of Defense Counsel.
- “Arizona Insurance Coverage” (January 25, 2007) (Topics: Complex Insurance Coverage Analysis and Directors & Officers Coverage) Sponsored by the State Bar of Arizona.
- “Insurance Coverage and Practice Symposium” (December 7-8, 2006, New York, NY) (Topic: Dirty Sox and Clean Directors: The Impact of Enron on D&O Issues) Sponsored by DRI
- “Western Regional Claims Counsel Conference” (October 25, 2006, San Diego, CA) (Topic: Effective Use of “Colossus” Injury Analysis and Advice of Counsel to Avoid Bad Faith Liability Exposures) Sponsored by Progressive Insurance Group
- “Complex Insurance Coverage Analysis” (September 20, 2006, Hartford, CT) Sponsored by Thomson/West Publishing
- “Federalizing Catastrophic Insurance Losses” and “The Evolution of Disclosure Obligations Regarding Disseminating Health Information to Applicants by Life, Health & Disability Insurance Companies” (September 20, 2006, Hartford, CT) Sponsored by Thomson/West Publishing
- “2005 NDDLA/SBAND Seminar” (September 23, 2005) (Topic: Discipline Without Assumptions, A Systematic Approach To Coverage Analysis) Sponsored by State Bar Association of North Dakota
- “Insurance Coverage Topics” (February 9, 2005) (Topic: Use of Demonstrative Exhibits for Bad Faith Trials) Sponsored by Arizona Association of Defense Counsel
- “Arizona Liability Insurance Coverage” (May 14, 2004) (Topic: Analyzing and Litigating Insurance Coverage Cases) Sponsored by the State Bar of Arizona
- “Learn at Lunch” (January 14, 2004) (Topic: Waiver of Attorney Client Privilege and Advice of Counsel in the Context of Insurance Bad Faith) Sponsored by Arizona Association of Defense Counsel
- “Tort Law” (December 5, 2003) (Topic: Insurance Bad Faith Analysis and Litigation) Sponsored by State Bar of Arizona
- “The Nuts and Bolts of Litigating Insurance Coverage Questions” (January 8, 2003) (Topic: Discipline Without Assumptions, A Systemic Approach to Coverage Analysis) Sponsored by Arizona Association of Defense Counsel
- “Arizona Liability Insurance Coverage” (September 20, 2001) (Topics: Damron/Morris Agreements and Third-Party Bad Faith) Sponsored by the State Bar of Arizona
- “Insurance Litigation in Arizona” (October 20, 2000) (Topic: Morris Agreements and Third-Party Bad Faith) Sponsored by Lorman Education Services
- “Advanced Litigation Techniques Seminar” (December 10, 1999) (Topic: Bad Faith and Coverage Issues) Sponsored by the Arizona Association of Defense Counsel
- “The Most Advanced Insurance Seminar of the Year” (October 1, 1999) (Topic: Morris/Damron Agreements – How to Avoid the Often Subtle and Serious Pitfalls) Sponsored by the Arizona Trial Lawyers Association
- “Arizona Liability Insurance Coverage” (April 30, 1999) (Topic: Insurance: Developments in Judicial Rulings on Reservation of Rights Defenses and *Morris* Agreements) Sponsored by the State Bar of Arizona
- “The Phoenix Mini-Bar” (June 19, 1998) (Topic: How to Understand and Litigate Insurance Coverage in Arizona) Sponsored by Continuing Legal Education Options (CLE-Ops)
- “The Law of Insurance Bad Faith: A Balanced Perspective” (April 24, 1998-Tucson; May 1, 1998-Phoenix) (Topic: Third-Party Bad Faith) Sponsored by the State Bar of Arizona

- “Sing a Song of Six Torts” (April 18, 1997) (Topic: First Party Bad Faith) Sponsored by the State Bar of Arizona
- “Recent Developments in Insurance Coverage Litigation: Environmental Coverage, Common Negligence and Bad Faith” (June 13, 1996) (Topic: Bad Faith) Sponsored by the Arizona Association of Defense Counsel
- “Essentials in Insurance and Bad Faith” (March 31, 1995) (Topic: Insurance Bad Faith from the Defense Perspective) Presented at the Arizona Statewide Minority Lawyers Bar Convention
- “Law of Insurance Bad Faith: A Beginning, but Not the End” (March 10, 1995) (Topic: Third Party Bad Faith) Sponsored by the State Bar of Arizona
- “Tort Reform: The November 8 Vote, What's Law? What's Not” (November 10, 1994) (Topic: Insurance Bad Faith, the Defense Perspective) Sponsored by the Arizona Association of Defense Counsel
- “Insurance Coverage Issues” (March 1, 1994) (Topic: Reservation of Rights Defenses and Morris Agreements) Sponsored by the Arizona Association of Defense Counsel
- “Insurance Coverage Litigation: An Overview of Key Areas of Concern to Lawyers” (November 18, 1993) (Topic: The Concurrent Causation Doctrine and the Standard Automobile Liability Policy) Sponsored by the State Bar of Arizona
- “Auto Insurance” (November 15, 1991) (Topic: Arizona’s Property and Casualty Insurance Guaranty Fund) Sponsored by Arizona Trial Lawyers Association
- “Insurance Coverage Litigation: An Overview of Key Areas of Concern to Lawyers” (March 9, 1990—Phoenix; April 20, 1990—Tucson) (Topic: Multiple Coverage Problems and the Standard Automobile Liability Insurance Policy; Arizona’s Property and Casualty Insurance Guaranty Fund) Sponsored by the State Bar of Arizona
- “Arizona Bad Faith Insurance Law: What Every Practitioner Should Know” (December 14, 1990) (Topic: Third-Party Bad Faith) Sponsored by the State Bar of Arizona
- “Contemporary Problems in Insurance Related Litigation” (May 5, 1989) (Topic: Developments in the Law Regarding Uninsured and Underinsured Automobile Liability Insurance Policies) Sponsored by the State Bar of Arizona
- Provided in-house training seminars on claim handling, bad faith, insurance regulations, Unfair Claim Settlement Practices Act, and Advice of Counsel to the following insurance companies:
 - Aetna Casualty & Surety Co. (AZ and CO)
 - United States Fidelity & Guaranty Co. (AZ)
 - The Hartford (AZ and CT)
 - Metropolitan Property & Casualty Co. (MI)
 - MetLife Auto & Home (TX)
 - Guaranty National Insurance Co. (AZ and CO)
 - Colonial Insurance Company of California (CO)
 - Universal Underwriters (CO)
 - Industrial Indemnity Co. (AZ)
 - Orion Specialty (AZ, CO and UT)
 - American States Insurance Co. (AZ)
 - Royal & Sun Alliance/Royal Specialty (UT)
 - Legacy Insurance Services (AZ)
 - St. Paul Travelers (CT)

PROFESSIONAL ACTIVITIES:

- Admitted to the State Bar of Arizona, 1982; U.S. District Court (Arizona), 1982; Ninth Circuit Court of Appeals, 1983; U.S. Court of Appeals (D.C. Circuit), 1989; U.S. Supreme Court, 2002
- Licensed Insurance Broker, Arizona, 1974 to present (Property and Casualty; Accident and Health; Life)

- Chairman, CLE Committee, Young Lawyers Division, Arizona State Bar Association, 1990-1992
- Member, Arizona State Bar Association, CLE Committee, 1990-1993; 2001-2004.
- Recipient, Outstanding Contribution to Continuing Legal Education Award, Arizona State Bar Association, 1999
- Listed in “*Who’s Who* in American Law” (5th Edition)
- Listed in “*Who’s Who* Among Students in American Universities and Colleges” (1978-1979).
- Listed in “*PHOENIX MAGAZINE*®” as one of Phoenix’s Top Lawyers
- Listed in “*THE BEST LAWYERS IN AMERICA*®”
- Listed in “*SOUTHWEST SUPERLAWYERS*®”; selected as one of the top 50 lawyers in Arizona.
- Listed in “*CORPORATE COUNSEL ALMANAC*” as one of the top lawyers in the field of insurance law in the United States