

## OVERVIEW

# INSURANCE RECOVERY



### INSURANCE COVERAGE LITIGATION

Murtha Cullina is one of the few major law firms in New England to take on the insurance industry. We began prosecuting claims for insurance coverage for large environmental liabilities in the mid-1980s and went on to create state Supreme Court precedents on choice of law, whether a potentially responsible party letter is a “suit” and the scope of the pollution exclusion. Since then, we have continued to litigate the important and hotly disputed issues in coverage law for a wide range of clients.

The coverage claims handled by our attorneys have concerned a variety of types of insurance policies, including: primary, umbrella and excess policies for comprehensive general liability; property; directors and officers liability; errors and omissions; malpractice; employment practices liability; environmental impairment liability; life; health and disability; and construction and fidelity bonds.

We aggressively litigate insurance disputes to enforce coverage rights for policyholders and have recovered millions of dollars in insurance coverage and defense costs. We have been successful at every stage of a dispute, from the pre-suit negotiation of settlement, through the verdict at trial, to the judgment on appeal.

We push back early: when our clients receive denial or reservation of rights letters, we work to secure a defense for our clients so that they are not forced to pay legal fees and costs. For example, when a client was served with a complaint that had multiple counts, most of which did not fit within the policy language, the insurance company initially declined to defend, but we persuaded it that some of the claims did fall within the policy and that a defense to the whole suit was required.

### OUR COURTROOM SUCCESSES

At trial, we have had numerous successes on behalf of policyholders:

- After two phases of trial in a case concerning the coverage of asbestos-related personal injury claims brought by our client against dozens of primary, excess and umbrella insurers, we prevailed on several significant allocation issues, including defeating the insurers’ attempt to allocate indemnity to the post-1986 period, when no insurance coverage was available. The trial court also rejected the application of the pollution exclusion to asbestos personal injury claims. *R.T. Vanderbilt Co. v. Hartford Accident & Indem. Co.*, 2014 Conn. Super. LEXIS 699 (March 28, 2014). In an interlocutory appeal, the Connecticut Appellate Court issued an astounding 250 page decision addressing some 20 issues and handed our client a significant victory on allocation, holding that “continuous trigger” and the “unavailability of insurance rule” are properly part of the pro-rata allocation methodology to be applied to coverage obligations for asbestos claims. It also rejected the insurers’ argument that the pollution exclusions barred coverage for personal injury claims arising from exposure to a toxic substance, such as asbestos, in the course of its intended use. The Connecticut Supreme Court affirmed, adopting the Appellate Court’s “well reasoned” opinion on the allocation and pollution exclusion. *R.T. Vanderbilt Co. v. Hartford Accident & Indem. Co.*, 333 Conn. 343 (2019), affirming 171 Conn. App. 61 (2017).
- We won full indemnity from an excess insurer for settlements of sexual abuse claims at the conclusion of a bench trial. This victory was affirmed by the Second Circuit, *Hartford Roman Catholic Diocesan Corp. v. Interstate Fire & Cas. Co.*, 2016 U.S. Dist. Lexis 99369 (D. Conn. 2016), *aff’d* 905 F.3d 84 (2d Cir. 2018)
- We won a jury verdict against an excess insurer to recover post-judgment interest on the underlying products liability action. The case settled on favorable terms before post-verdict motions, including “offer of judgment” interest, were determined. *Stanley Works v. CIGNA*, (Conn. Super. 2005).

- We won a jury verdict against an insurance broker who failed to procure group health insurance for almost 2,000 employees. *Viejas Band of Kumeyaay Indians v. Lorinsky*, (Conn. Super. 2007), *aff'd*, 116 Conn. App. 144 (2009).
- We served as co-counsel to a chemical company that recovered insurance proceeds for environmental liabilities for 23 sites nationwide. During our representation, we went to trial twice and we won two unanimous decisions from the Connecticut Supreme Court that changed how the applicable law is chosen to govern insurance disputes. *Reichhold Chemicals, Inc. v. Hartford Acc. & Indem. Co.*, 243 Conn. 401 (1997) and 252 Conn. 774 (2000).

Our pre-trial victories also have helped to establish law favorable to policyholders:

- We won summary judgment for a law firm client when the court agreed that a former partner's knowledge should not be imputed to the firm when the firm filled out its insurance application, and the firm received defense and indemnification. *Maher & Williams v. ACE Am. Ins. Co.*, 2010 U.S. Dist. LEXIS 91934 (D. Conn. 2010).
- We defeated a motion for summary judgment brought by an insurance carrier that argued that claims for breach of warranty and breach of contract for turnkey accounting system software were not covered under an errors and omissions policy. The case settled before trial on terms favorable to our client. *AMS Services, Inc. v. Royal Surplus Lines Insurance Company* (Conn. Super. 2005).
- We often have successfully moved to transfer coverage cases to allow their presentation in a forum of the policyholder's choosing. An example is: *Travelers Indemnity Co. v. Longview Fibre Company*, 2007 U.S. Dist. LEXIS 45972 (D. Conn. 2007).
- We also have moved to stay coverage litigation to require the insurer to defend the underlying claim while the facts that will impact the determination of coverage are established in that underlying claim. An example is: *Western World Ins. Co. v. The Glastonbury ABC Company, Inc.* (D. Conn. 2012).
- We secured summary judgment requiring defense coverage under a title policy for a complicated Native American land claim. *Chicago Title Ins. Co. v. The Kent School*, 361 F. Supp. 2d 4 (D. Conn. 2005).
- We defeated a summary judgment motion brought by an insurance carrier that claimed its policy was not triggered for millions of dollars in potential liability for alleged mold damage to a hotel in Las Vegas. The client ultimately received full defense and indemnification. *Travelers Prop. Cas. Co. of Am. v. Laticrete Int'l, Inc.*, 2006 Conn. Super. LEXIS 2268 (Jul. 27, 2006).

## APPELLATE ADVOCACY

Over the more than 30 years of representing policyholders, Murtha Cullina often has been involved in precedent setting appeals. We have appeared before the Connecticut Supreme Court nine times since 1997 on major insurance coverage issues. On four of these occasions, we persuaded the Supreme Court to reverse adverse trial courts' rulings. In other instances, we prevailed by affirming favorable lower court rulings.

- *R.T. Vanderbilt Co., Inc. v. Hartford Accident & Indem. Co.*, 333 Conn. 343 (2019), affirming 171 Conn. App. 61 (2017) (holding that "continuous trigger" and the "unavailability rule" are part of the pro rata allocation methodology applicable to long-tail personal injury claims and rejecting application of pollution exclusions to such claims).
- *Riley v. Travelers Home and Marine Ins. Co.*, 333 Conn. 60 (2019), affirming 173 Conn. App. 422 (2017) (prevailed at Appellate Court and Supreme Court to defend \$1.5 million jury verdict for breach of contract and negligent infliction of emotional distress where insurer denied coverage for house fire and accused policyholder of arson and fraud although fire department had concluded fire was accidental; issue on appeal concerned "waiver rule" when trial court reserves decision on motion for directed verdict).
- *Hartford Roman Catholic Diocesan Corp. v. Interstate Fire & Cas. Co.*, 905 F.3d 84 (2d Cir. 2018) (affirming judgment after bench trial that assault and battery exclusions and definition of occurrence did not preclude coverage for sexual misconduct claims).
- *R.T. Vanderbilt Co., Inc. v. Continental Cas. Co.*, 273 Conn. 448 (2005) (construing the meaning of "suit" to require defense for an environmental action initiated by a "Potentially Responsible Party" letter sent by the EPA)
- *Buell Industries, Inc. v. Greater New York Mut. Ins. Co.*, 259 Conn. 527 (2002) (interpreting 'sudden and accidental' pollution exclusion)
- *QSP, Inc. v. Aetna Cas. & Sur. Co.*, 256 Conn. 343 (2001) (analyzing duty to defend based upon the allegations of the complaint, not the facts, in a trade defamation case)
- *Metropolitan Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 255 Conn. 295 (2001) (ruling that multiple asbestos cases each were separate "occurrences")
- *Reichhold Chemicals, Inc. v. Hartford Acc. & Indem. Co.*, 252 Conn. 774 (2000) (reaffirming choice of law from an earlier decision)

- *Metropolitan Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 249 Conn. 36 (1999) (ruling that policyholder's files were attorney-client privileged and need not be shared with insurer)
- *Reichhold Chemicals, Inc. v. Hartford Acc. & Indem. Co.*, 243 Conn. 401 (1997) (announcing new approach to choice of law for Connecticut insurance coverage disputes)

## SAMPLE SETTLEMENTS

Some of our most important victories on behalf of our clients are settlements. For example:

- We convinced a primary insurance carrier to defend, at the cost of millions of dollars, four lawsuits in Michigan, New York and Connecticut in which the client's curtain wall product was alleged to have caused property damage in the eight figures, and we prevailed upon the primary and excess insurance carriers to pay multimillion dollar settlements and a judgment.
- We recovered more than a million dollars in coverage for environmental liabilities sustained by a manufacturer at its former facilities in New York and Utah.
- We represented policyholders in a coverage action to recover millions of dollars for the defense and settlement of an antitrust class action.
- We recovered millions of dollars in indemnification under a D&O policy for claims of emotional distress and wrongful termination.
- We successfully obtained defense and indemnity coverage under a wide range of professional liability policies.
- We have secured substantial insurance recoveries for product liability claims.
- We recovered clean-up expenses for environmental spills at an airport facility.
- We recovered several million dollars in past defense costs and an agreement to pay future defense costs for a client facing Superfund liability in Rhode Island.
- We obtained insurance funding for a Connecticut company that was the subject of a Florida DEP order to clean up its Florida plant.
- We have recovered defense and clean-up costs for a wide range of companies that were the subjects of federal or state environmental orders.
- We negotiated a multi-million dollar settlement through mediation for a general contractor and its subcontractors seeking coverage under a Builders Risk policy for damage caused by Hurricane Wilma.
- We obtained additional insured coverage under Commercial General Liability policies for a construction manager from 26 different insurance companies insuring various subcontractors on a public works project for a multi-million dollar construction defect lawsuit.
- We persuaded a healthcare insurance company to reverse its denial of coverage for additional treatment of its insured who had suffered a traumatic brain injury.

*Disclaimer: Each case has its own specific facts and legal issues. We cannot guarantee success in every individual matter.*

## INSURANCE AND RISK MANAGEMENT COUNSELING

Murtha Cullina also provides insurance and risk management counseling to our business clients, including real estate owners and developers and general contractors, among others. We work with our clients' general counsel, risk managers and insurance brokers to lower costs, limit liability, transfer risk and maximize insurance coverage.

*With offices throughout Connecticut, Massachusetts and New York, Murtha Cullina LLP offers a full range of legal services to meet the local, regional and national needs of our clients. Our practice encompasses litigation, regulatory and transactional representation of businesses, governmental units, non-profit organizations and individuals.*

**Marilyn B. Fagelson, Chair**  
203.772.7725  
mfagelson@murthalaw.com

**George A. Dagon, Jr.**  
860.240.6039  
gdagon@murthalaw.com

**Michael J. Donnelly**  
860.240.6058  
mdonnelly@murthalaw.com

**Deirdre D. Foley**  
617-457.4156  
dfoley@murthalaw.com

**David P. Friedman**  
203.653.5438  
dfriedman@murthalaw.com

**Rachel Snow Kindseth**  
203.772.7774  
rkindseth@murthalaw.com

**James F. Radke**  
617-457-4130  
jradke@murthalaw.com

**Emily McDonough Souza**  
203.772.7711  
esouza@murthalaw.com

**Kristen L. Zaehring**  
203.653.5406  
kzaehring@murthalaw.com

**MURTHA  
CULLINA**  
ATTORNEYS AT LAW