

Marilyn B. Fagelson

Partner

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Marilyn B. Fagelson, a Murtha Cullina partner, is chair of the firm's Insurance Recovery practice.

A seasoned trial and appellate lawyer, Marilyn handles complex commercial litigation and represents policyholders in insurance coverage disputes. Since joining Murtha Cullina in 1997, she has successfully prevailed in battles against much of the insurance market — often involving 20 or more insurers at a time. She represents policyholders seeking coverage for a diverse array of claims, including:

- Asbestos and environmental injuries
- Legal malpractice
- Sexual abuse
- Property damage
- Construction defects
- Products liability
- Unfair trade practices

Applying her deep knowledge of insurance law, Marilyn has secured coverage of defense and indemnity under commercial general liability, directors and officers, errors and omissions, title, crime and other types of policies. Many of her cases have attracted national attention, not only for the groundbreaking precedent they set in Connecticut for policyholders, but also for the strength of arguments made on behalf of her clients that have been adapted by the courts.

Marilyn also handles other types of complex commercial disputes, including antitrust and unfair trade practice claims, breach of contract and various business tort cases. She has represented clients in arbitration, administrative proceedings, and in state and federal courts. In addition to trying cases to verdict and arguing appeals, she has resolved matters through mediation and informal settlement negotiations.

A regular speaker on insurance recovery topics at seminars and meetings hosted by bar associations and professional organizations, Marilyn is a frequent contributor to Murtha Cullina's Insurance Recovery News Alerts. She also provides training to clients, colleagues and professional organizations on the fundamentals of state and federal antitrust laws, electronic discovery and other subjects.

Bar & Court Admissions

- New York
- Connecticut
- U.S. Court of Appeals for the Second Circuit

- U.S. District Court, Eastern District of New York
- U.S. District Court, Southern District of New York
- U.S. District Court, District of Connecticut

Education

- Hofstra University (J.D.)
- Wesleyan University (B.A.)

Representative Matters

Insurance Coverage:

- **Rohr, Inc.** (2020) – Prevailed on interlocutory appeal to the Connecticut Appellate Court in this case concerning insurance coverage for environmental claims under California law. The Appellate Court reversed the trial court, adopting our client's construction of the per occurrence limits of multi-year primary policies so as to allow proof of exhaustion of those policies and access to coverage under umbrella and excess policies. 201 Conn. App. 636 (2020)
- **R.T. Vanderbilt Co., Inc.** (2019) – Won interlocutory appeal to Connecticut Supreme Court, which affirmed favorable and precedent-setting rulings concerning the allocation of defense and indemnity for asbestos-related personal injury claims. After wins against dozens of primary, umbrella and excess insurers at a month-long Phase I bench trial held in 2012 and a month-long Phase II trial held in 2013, in 2017 the Appellate Court issued a 250 page decision addressing some 20 issues in which it affirmed and expanded the trial court's favorable rulings, including defeating the insurers' attempt to allocate indemnity to the post-1986 period, when insurance coverage was no longer available. The Appellate Court also rejected the application of the pollution exclusion to asbestos personal injury claims. After certifying a limited number of issues for further appeal, in October 2019 the Connecticut Supreme Court affirmed, adopting more than half of the Appellate Court's "well-reasoned" decision and handing Vanderbilt another important victory on the allocation and pollution issues. 333 Conn. 343 (2019), *affirming* 171 Conn. App. 61 (2017).
- **The Hartford Roman Catholic Diocesan Corp.** (2018) – Won appeal before the United States Court of Appeals for the Second Circuit, affirming our victory in a 2016 bench trial in which the trial court awarded coverage to our client for settlements of sexual misconduct claims. 905 F.3d 84 (2d Cir. 2018).
- **Halloran** (2018) – Successfully defended against motions of more than a dozen insurers to dismiss claims for coverage, bad faith and violation of the Connecticut Unfair Insurance Practices Act brought on behalf of a proposed class of homeowners whose basement walls are crumbling. 2018 WL 5840031 (D. Conn. 2018).
- **The Glastonbury ABC Company, Inc.** (2012) – Successfully moved to stay insurer's declaratory judgment action pending the conclusion of the underlying case in which the insurer was defending the policyholder. (D. Conn. 2012).
- **Maher & Williams** (2010) – Prevailed on summary judgment for our law firm client, when the court concluded that a former partner's knowledge should not be imputed to the firm and therefore the firm received defense and indemnification under its malpractice policy. 2010 WL 3546234 (D. Conn. 2010).
- **R.T. Vanderbilt Co.** (2005) – Prevailed on appeal to the Connecticut Supreme Court construing the meaning of "suit" to require the insurer to provide a defense for an environmental action initiated by a "Potentially Responsible Party" letter sent by the EPA. 273 Conn. 448 (2005).
- **Stanley Works** (2005) – 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. Conn. Super. (2005).

Commercial Litigation:

- **Briner** (2019) – Successfully represented a member of a Limited Liability Company before the Connecticut Supreme Court, which overturned judgment in derivative suit. 334 Conn. 135 (2019).

- **Connecticut Bar Association** (2015) – The Connecticut Supreme Court adopted arguments propounded on behalf of the Connecticut Bar Association, Amicus Curiae, holding that a surviving spouse's elective "Statutory Share" under General Statutes § 45a-436 should be calculated based upon the value of the estate at the time of distribution. *Dinan v. Patten*, 317 Conn. 185 (2015).

Publications

- "Beware of the Double Wammie!," *Insurance Recovery News* (October 2020)
- "Missouri Court Rules Policyholders State Claim for Coverage of Pandemic-Related Losses," *Insurance Recovery News* (September 2020)
- "Proposed Legislation Related to Business Interruption Insurance and COVID-19," *Insurance Recovery News* (May 2020)
- "Coronavirus and Business Interruption Insurance: What Does The Physical Loss or Damage Requirement Mean?," *Insurance Recovery News* (April 2020)
- "*Cajun Conti LLC v. Certain Underwriters at Lloyd's, London*: The First of the Coronavirus Insurance Recovery Actions," *Insurance Recovery News* (March 2020)
- "Bad Faith Claims Against Insurers: Can They Be "SLAPP'ed?," *Insurance Recovery News* (December 2019)
- "The Connecticut Supreme Court Affirms Policyholder Victory On Allocation Issues In Coverage For Asbestos-Related Injuries," *Insurance Recovery News* (October 2019)
- Quoted, "Vanderbilt Turns Tide in Multimillion-Dollar Insurance Fight Over Asbestos," *Connecticut Law Tribune* (October 2019)
- Quoted, "4 Ways Conn. Justices Set Precedent On Asbestos Coverage," *Law360* (October 2019)
- Quoted, "Talc Co. Needn't Fill Asbestos Insurance Gap: Conn. Justices," *Law360* (October 2019)
- Quoted, "4 Issues Facing Conn. Justices In Asbestos Coverage Fight," *Law360* (November 2018)
- Quoted, "2nd Circ. Gives Church, Insurer Partial Wins In Abuse Row," *Law360* (September 2018)
- Quoted, "Diocese Slams Insurer In Sex Abuse Claims Row At 2nd Circ.," *Law360* (January 2018)
- "CT Supreme Court Issues Punitive Damages Ruling Favorable to Policyholders," *Insurance Recovery News* (December 2017)
- Quoted, "Vanderbilt Needn't Fill Asbestos Coverage Gaps: Conn. Court," *Law360* (March 2017)
- "Murtha Cullina Helps Policyholder Prevail Before Connecticut Appellate Court In Asbestos Coverage Dispute," *Insurance Recovery News* (March 2017)
- "Supreme Court Holds Transfer To A Trust Prevails Over Bequest In A Will," *AppellateInsights.com Blog* (January 2017)
- "Court Considers Subjective Standard to Prove "Knowing Misappropriation" of Clients Funds," *AppellateInsights.com Blog* (September 2016)
- "Choice-Of-Law Ruling In Massachusetts Diminishes Coverage For Rhode Island Public Utility," *Insurance Recovery News* (September 2016)
- "New York Holds Excess Insurers Liable For "All Sums" Related To Long Tail Claims," *Insurance Recovery News* (May 2016)
- "Was it Vandalism or Was it Theft?," *Insurance Recovery News* (February 2016)
- "The Connecticut Supreme Court Affirms Denial of CGL for Electronic Data Breaches," *Insurance Recovery News* (May 2015)
- "Supreme Court Allows Insurers to Seek a Declaration Allocating Defense Costs to Fellow Insurers," *Insurance Recovery News* (August 2014)
- Quoted, "Vanderbilt Scores In Asbestos Coverage Row Of 30 Insurers," *Law360* (April 2014)
- "A "Volunteer" Is Injured At Your Workplace - Are You Insured For That?," *Insurance Recovery News* (April 2014)

- "Reaching Excess Layers Of Insurance," *Connecticut Law Tribune's Special Insurance Section*, Vol. 40, No. 6 (February 2014)
- "The Connecticut Appellate Court Limits CGL Coverage For Electronic Data Breaches," *Insurance Recovery News* (January 2014)
- Quoted, "Hartford Diocese Sues Insurer Over Abuse Cases," *Connecticut Law Tribune* (November 2012)

Speaking Engagements

- Speaker, "Getting to Yes - Negotiating Settlement of Coverage for Long-Tail Claims," American College of Coverage Counsel Annual Meeting (May 11, 2023)
- Speaker & Moderator, "Can You Climb the Excess Tower and Enjoy the View From Up There?," American College of Coverage Counsel Annual Meeting (September 23, 2021)
- Moderator, "Contra Proferentem: A Vanishing Doctrine?," American Bar Association Insurance Coverage Litigation Committee Annual Meeting (March 6, 2020)
- Speaker & Moderator, "The Allocation Game: A Practical Look At Who Wins Under All Sums, Pro Rata And The New ALI Restatement," American Bar Association Insurance Coverage Litigation Committee Annual Meeting (March 1, 2019)
- Moderator, "The Revolution Is Now - Big Data in Claims and Underwriting," American Bar Association Insurance Coverage Litigation Committee Annual Meeting (March 2, 2018)
- Speaker, "What You Don't Know CAN Hurt You: Identifying the Minefields in Professional Liability Claims," American Bar Association Insurance Coverage Litigation Committee, Women in Insurance Networking CLE Meeting (October 2016)
- Moderator, "Let's Get Rid Of Discovery!," American Bar Association Insurance Coverage Litigation Committee Annual Meeting, (March 4, 2016)
- Speaker, "Getting to Less: A Symposium On Strategies For Reducing Discovery In Insurance Coverage Cases," Connecticut Bar Association Insurance Law Section and University of Connecticut Law School Insurance Law Center (February 26, 2016)
- Moderator, "Symposium on Claims Handling: Rights, Wrongs and Remedies," Connecticut Bar Association and University of Connecticut Law School Insurance Law Center (February 2015)
- Speaker, "Insurance Coverage 101 – Commercial General Liability Policies," Connecticut Bar Association and University of Connecticut Law School Insurance Law Center (January 2014)
- Moderator, "Storm Law: Snow, Hurricanes, Earthquakes, What's Next?," Insurance and Other Resources Explored, Connecticut Bar Association (January 2012)
- Speaker, "Business Interruption Insurance – Causation," Connecticut Bar Association (January 2010)

Recognitions

- Holds an AV Preeminent® Martindale-Hubbell® Peer Review Rating™
- Listed in *The Best Lawyers in America*® as 2024 "Lawyer of the Year" in the area of Insurance Law for New Haven
- Listed in *The Best Lawyers in America*® in the area of Insurance Law (2014-2024)

Memberships

- American Bar Association, Litigation Section, Insurance Coverage Litigation Committee
- American College of Coverage Counsel, Fellow
- Connecticut Bar Association,
 - Insurance Law Section Executive Committee, Chair (2016-2018), Vice Chair and Treasurer
 - Federal Practice Section Executive Committee

- Lawyers for Children America, Board of Directors
- New Haven County Bar Association
- New Haven Inn of Court, Treasurer



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