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Andrew L. Margulis handles a broad range of commercial litigation and insurance coverage matters, with an expertise in directors and officers and professional liability litigation and coverage including coverage litigation.

Mr. Margulis has defended and provided coverage advice in hundreds of matters involving directors and officers, lawyers, accountants, insurance agents and brokers, and securities broker-dealers liability. Mr. Margulis has also litigated many significant cases involving intellectual property, media and technology liability.

Mr. Margulis has also provided coverage advice to his clients in connection with significant class action securities litigation as well as the IPO Laddering, Enron and WorldCom litigations. Mr. Margulis is also the author of: "D&O Policies Serving Up Choices"(Best's Review, June 2006); "Here Today, Gone Tomorrow—D&O Insurance and the Risk of Rescission" (Business Insurance, April 2006); Inside the Minds, Professional Liability Law, Contributing Author (Aspatore Books 2005); "The Sarbanes-Oxley Act and D&O Insurance —Who Bears the Cost of Corporate Responsibility" (Andrews Publications 2002).

Some of Mr. Margulis's published opinions include: *Butcher v. Gulf Ins. Co.*, 2005 WL 1514086 (N.D. Cal. 2005); *Edwards & Caldwell, LLC v. Gulf Ins. Co.*, 2005 WL 2090636 (D.N.J. 2005); *Smith v. Continental Casualty Co.*, 2008 U.S. Dist. LEXIS 76818 (M.D. Pa. 2008); *White v. Continental Casualty Co.*, 2008 U.S. Dist. LEXIS 39171 (M.D.Fl. 2008); *Ganim v. Columbia Casualty Co.*, 2008 U.S. Dist. LEXIS 45251 (N.D. Oh. 2008).

Mr. Margulis was born in New York in 1963, and attended Cornell University, where he received a Bachelor of Science degree in Industrial and Labor Relations in 1985. Mr. Margulis graduated from St. John's University School of Law in 1988, where he was a member of the Law Review and published a Note, and was on the Dean's List. Mr. Margulis was recognized by the prestigious ranking company Chambers and Partners in its 2010 edition of Chambers USA in the area of "Insurance: Dispute Resolution".

Mr. Margulis is admitted to practice before the Courts of the States of New York and Connecticut, the United States Courts of Appeals for the Second, Third, Fifth, Sixth, Ninth, Seventh and Eleventh Circuits and the United States District Courts for the Southern and Eastern Districts of New York and the Trial Bar of the Northern District of Illinois. Mr. Margulis serves as an arbitrator in the Civil Court of the City of New York. He is a member of the New York State Bar Association and the Association of the Bar of the City of New York.

Practice Areas

- Business And Commercial Litigation
- Fidelity & Surety
- Employment Litigation and Dispute Resolution
- Insurance Services
- Bad Faith
- Coverage
- Intellectual Property
- Professional Liability
- Directors & Officers
- Antitrust

Education

- Cornell University, 1985 B.S.
- St. John's University School of Law, 1988 J.D.

Court Admissions

- Connecticut
- New York
- US Court of Appeals for the Fifth Circuit
- US Court of Appeals for the Second Circuit
- USDC: Eastern District of New York
- USDC: Southern District of New York

Memberships & Associations

- New York State Bar Association

Representative Experience

Practice Area: Employment Litigation and Dispute Resolution

Key Issues: Retaliation and failure to timely pay wages and bonuses, California Labor Code

Venue: JAMS--Arbitration (Boston)

Client Type: Global Technology Company

We defended a global technology company against claims of both retaliation and failure to timely pay wages and bonuses brought by a former senior vice president. The claims sought payment not only of additional compensation and bonuses, but penalties under California Labor Code. The claims were first filed in court and were later submitted to binding arbitration, and were brought against both the company and senior executives of the company.

Result:

After obtaining dismissal of the claims in their entirety as to the senior executives, we successfully defended the company from all claims of retaliation, failure to pay wages and penalties, as well as obtaining an award limiting the bonus payable to amounts consistent with the company's bonus policy, and awarding no additional compensation or interest.

Practice Area: Employment Litigation and Dispute Resolution

Key Issues: Discrimination, EEOC

Venue: EEOC

Client Type: Leading Technology Company

We represented a leading technology company against claims of discrimination and retaliation filed with the EEOC. We participated in the investigation conducted by the EEOC, including submission of all relevant evidence and interviews.

Result:

We obtained a finding from the EEOC that there was no evidence of any violation and dismissing the charges of discrimination and retaliation.

Practice Area: Business And Commercial Litigation

Key Issues: Breach of Contract; Judgment; Execution

Venue: New York Supreme Court, County of New York

Client Type: Plaintiff Real Estate Developer

Plaintiff, a residential real estate developer hired the Defendant to fabricate, furnish and install granite kitchen counter-tops in a residential building project Plaintiff was developing. Defendant accepted Plaintiff's payments of over \$50,000, but failed to render the appropriate services. Plaintiff filed suit alleging breach of contract.

Result:

After failing to abide by multiple discovery orders, the court struck the defendant's answer and entered judgment in favor of plaintiff. After an inquest before the court, whereat plaintiff was able to substantiate its damages, the court entered a final judgment in plaintiff's favor in the amount of approximately \$62,000. We were able to successfully execute on such judgment and recover a substantial amount of the \$62,000 for our client.

Practice Area: Employment Litigation and Dispute Resolution

Key Issues: Sexual Harassment, Retaliatory Termination

Venue: JAMS--Arbitration (New York)

Client Type: Global Technology Company

We defended a global technology company in binding arbitration against claims of sexual harassment and retaliatory termination alleged against both the company and a vice president by a former senior employee.

Result:

After full evidentiary hearings over several days, we obtained an award in favor of both the company and the vice president dismissing all claims in their entirety.

Practice Area: Directors & Officers, Insurance Services, Other Professionals, Professional Liability

Key Issues: Coverage

Venue: Superior Court of Arizona, Maricopa County

Client Type: Non-party Insurance Syndicate

Frank Selna, an employee of the insured devised a Ponzi scheme to defraud over 25 investors out of millions of dollars by recommending that they invest in fictitious investment vehicles. These investors filed suit against a number of defendants, including the insured alleging various causes of action including fraud, conversion and negligent misrepresentation. Based on our review of the allegations in the complaint, we recommended that the client issue a comprehensive reservation of rights letter to the insured noting that Insuring Agreement A - Fidelity, of the applicable policy, was potentially implicated. The reservation of rights letter also stated that certain exclusions were applicable that would limit the amount of Loss subject to coverage.

Result:

On behalf of the insurer and in a coordinated effort with the insured, we participated in a mediation where we were able to help effectuate a "global" settlement between the parties, while also saving our client over 80% of the available limits of liability.

Practice Area: Coverage, Director/Officer Liability (including Non-Profits), Insurance Services, Professional Liability

Key Issues: Enron; Initial Public Offering

Venue: Circuit Court for Baltimore City, Maryland

Client Type: Defendant Insurance Company

In 2008, an international investment bank filed suit against numerous insurance companies, including our client, in the Circuit Court for Baltimore City, Maryland, seeking a declaration that it was entitled to over \$500 million of insurance coverage for defense costs and settlement proceeds incurred in connection with numerous underlying litigations in the following claims: (1) Exchange Fund claims; (2) Enron claims; (3) Tax claims; (4) Boston Chicken claims; and (5) Initial Public Offering claims. In connection with each "group" of claims, the bank asserted the following three causes of action against the insurer defendants: (1) breach of fiduciary duty to pay defense costs; (2) breach of duty to pay settlements; and (3) declaratory relief regarding defendants' duty to pay losses. Our client subscribed to an excess layer multi-line blended Financial Institution Professional Indemnity insurance policy issued to an insured that was later acquired by the investment bank.

Result:

After several years of litigation, the parties agreed to mediate the dispute two weeks before trial was scheduled to begin. During that mediation, the parties agreed to a negotiated confidential settlement that resulted in our client saving over 90% of its available limits of liability.

Practice Area: Lawyers, Professional Liability

Key Issues: Legal malpractice defense

Venue: New York State Supreme Court, Queens County

Client Type: Defendant law firm

Legal malpractice action against law firm that represented plaintiff in an underlying medical malpractice action. Trial resulted in a defense verdict and client sued law firm for malpractice. **Result:**

At close of evidence on plaintiffs' case and after plaintiff rested, we moved for a directed verdict dismissing the action. The court granted the motion and directed a verdict in favor of our client, defendant law firm.

Practice Area: Business And Commercial Litigation, Coverage, Director/Officer Liability (including Non-Profits), Fidelity & Surety, Insurance Services

Key Issues: Directors and Officers; Professional Liability; Fidelity

Venue: Arbitration--JAMS

Client Type: Defendant Insurance Provider

Represented insurer in coverage matter under a blended policy providing directors/officers, professional liability and fidelity coverage issued to a leading insurance company. The insured sought coverage in connection with claims arising out of one of the largest insurance/bond frauds perpetrated by an officer of the insured's subsidiary. Holders of the bonds with values in excess of \$120 million sought payment on the bonds. Coverage was denied and the parties submitted the matter to binding arbitration.

Result:

The matter was ultimately resolved after approximately five years of litigation on terms favorable to the insurer.

Practice Area: Bad Faith, Coverage, Insurance Services

Key Issues: Professional Liability; Coverage; Bad Faith

Venue: USDC: Northern District of Ohio; US Court of Appeals, Sixth Circuit

Client Type: Defendant Insurance Provider

Insurance coverage and bad faith suit arising out of denial of coverage under a professional liability life agent and securities broker/dealer policy. Insured was a securities registered representative involved in providing investment recommendations and the sale of investment products to clients. The insured opened his own business with a long time client and the client invested funds to get the business started. After a dispute between the partners, the insured's business partner filed an NASD arbitration against the insured alleging that the insured was negligent in advising the client to invest in the insured's business. The insurer denied coverage as the claim did not allege any covered professional services since the investment was in the insured's own business and not in any securities or products approved by the insured's broker/dealer. The insured brought suit to obtain coverage and to recover for the alleged bad faith denial of the insurer.

Result:

We obtained summary judgment dismissing the claims for coverage and bad faith. The court held that no coverage existed and that the denial of coverage was proper, and that the insurer acted reasonably in denying coverage so that no claim for bad faith was supported. The case is reported at 2008 U.S. Dist. LEXIS 45251 (N.D. Oh. 2008). The case was appealed by the insured and the dismissal was affirmed by the U.S. Court of Appeals for the Sixth Circuit, reported at 2009 U.S. App. LEXIS 16174 (6th Cir. 2009).

Practice Area: Bad Faith, Coverage, Insurance Services

Key Issues: Professional Liability; Coverage; Bad Faith

Venue: USDC: Middle District of Pennsylvania

Client Type: Defendant Insurance Provider

Insurance coverage and bad faith suit arising out of denial of coverage under a professional life agent and securities broker/dealer policy. Insured was a securities registered representative involved in providing investment recommendations and the sale of investment products to clients. The insured was sued by a client whose investment in an offshore asset protection trust was lost when funds were invested in an investment management business, which ultimately filed for bankruptcy. The insurer denied coverage on the grounds that the policy only provided coverage for specified professional services, which services did not include investment activities in connection with unregistered offshore investments or products that were not approved by the broker/dealer. Coverage was also denied pursuant to an exclusion that excluded coverage for claims arising out

of insolvency of any company in which the client's funds were placed. The insured brought suit to obtain coverage and to recover for the alleged bad faith denial of the insurer.

Result:

We obtained summary judgment dismissing the claims for coverage and bad faith. The court held that no coverage existed and that the denial of coverage was proper, and that the insurer acted reasonably in denying coverage so that no claim for bad faith was supported. The case is reported at 2008 U.S. Dist. LEXIS 76818 (M.D. Pa. 2008). The case is currently on appeal to the U.S. Court of Appeals for the Third Circuit, and decision is pending.

Practice Area: Bad Faith, Coverage, Insurance Services

Key Issues: Professional Liability; Coverage; Bad Faith

Venue: USDC: Middle District of Florida

Client Type: Defendant Insurance Provider

This suit involved insurance coverage and bad faith arising out of denial of coverage under a professional liability life agent and securities broker/dealer policy. Insured was involved in selling coverage under national group health insurance plans that were purported to be qualified ERISA plans, but were actually multiple employer welfare plans. The plans ultimately became insolvent and were unable to pay submitted claims. Three separate underlying actions were filed against the insured by clients whose medical claims were unpaid. The insurer denied coverage on the grounds that the claims were excluded by two exclusions, one that barred coverage for claims involving multiple employer welfare plans and another that barred coverage for claims arising out of the insolvency of any benefit plan or company in which the client's coverage was placed. The insured brought suit to obtain coverage and to recover for the alleged bad faith denial of the insurer.

Result:

We obtained summary judgment dismissing the claims for coverage and bad faith. The court held that no coverage existed and that the denial of coverage was proper, and that the insurer acted reasonably in denying coverage so that no claim for bad faith was supported. The case is reported at 2008 U.S. Dist. LEXIS 39171 (M.D. Fla. 2008).

Practice Area: Bad Faith, Coverage, Insurance Services

Key Issues: Rescission; Professional Liability; Bad Faith

Venue: USDC: Northern District of California

Client Type: Defendant Insurance Provider

Case involved claims for coverage under a Professional Liability General Partnership issued to a real estate development company. Three separate claims were brought against the insured. One claim was brought by a former partner arising out of certain lost partnership opportunities. The second claim was brought by the founder of the company for breach of fiduciary duty and fraud arising out of a prior settlement between the parties. The third claim arose out of the insured's development of an apartment complex and involved the parties' interests in the property as well as claims that the project was negligently built. The insurer denied coverage for all three claims on various grounds, including as to the first two claims that they were brought by "insureds" and were excluded by the insured v. insured exclusion, and as to the third claim based on the property damage exclusion. During discovery, it was learned that the insured were aware of the potential claim by the former partner before the policy was issued, and the insurer brought a counterclaim for rescission of the policy based on material misrepresentations.

Result:

We obtained summary judgment granting the insurer's claim for rescission based on material misrepresentation and breach of warranty in the application based on the insured's failure to disclose the dispute with the former partner. The court also granted out motion for summary judgment on the coverage issues, holding that even if the policy were in force, no coverage existed and the denial was proper, and dismissed the bad faith claim as well. The case is reported at 2005 U.S. Dist. LEXIS 20562 (N.D. Cal. 2005).

Publications

- Author, *Govori v. Goat Fifty*: Court's decision sides with wanna be moms , *Employment Case Alert*, 4/29/2011
- Author, Red Alert - New York Court Of Appeals Grants Summary Judgment Based On Insured's Breach Of Consent To Settle Provision Of Policy, 03/13/08
- Author, The Sarbanes-Oxley Act and D&O Insurance - Who Bears the Cost of Corporate Responsibility?, *Andrews*, October 7, 2002

Speaking Engagements

- Insurance & Casualty Litigation 2011 - 2012: The Year in Review, May 23, 2012
- Insurance & Casualty Litigation 2011 - 2012: The Year in Review, May 22, 2012

News

- RMKB's Richard Charnley & Andrew Margulis Recognized in 2010 CHAMBERS USA, 7/6/2010
- Andrew L. Margulis is a panelist in the Seminar: LEGAL MALPRACTICE LITIGATION & RISK MANAGEMENT: WHAT EVERY ATTORNEY MUST KNOW TO MANAGE & REDUCE THESE CLAIMS., 12/03/07