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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.FI. 2008); *Ganim v. Columbia Casualty Co.*, 2008 U.S. Dist. LEXIS 45251 (N.D. Oh. 2008); *Haney v. Continental Casualty Co.*, 2010 U.S. District LEXIS 3953 (S.D. Miss. 2010).

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 was named in the *2017 New York Super Lawyers®* edition for outstanding work in the area of Insurance Coverage.

Mr. Margulis is admitted to practice before the Courts of the States of New York and Connecticut and the District of Columbia, as well as the United States Courts of Appeals for the Second, Third, Fifth, Sixth, Ninth, Seventh, Eighth and Eleventh Circuits and the United States District Courts for

the Southern, Eastern and Northern Districts of New York, the Trial Bar of the Northern District of Illinois, Eastern and Western Districts of Arkansas, Eastern and Western Districts of Texas, Northern District of Indiana, and the District of the District of Columbia. 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 and the New York City Bar Associations. He is also a member of the Defense Research Institute (DRI).

Practice Areas

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

Education

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

Court Admissions

- ❖ Connecticut
- ❖ District of Columbia
- ❖ New York
- ❖ Trial Bar of the Northern District of Illinois
- ❖ US Court of Appeals for the Eighth Circuit
- ❖ US Court of Appeals for the Eleventh Circuit
- ❖ US Court of Appeals for the Fifth Circuit
- ❖ US Court of Appeals for the Ninth Circuit
- ❖ US Court of Appeals for the Second Circuit
- ❖ US Court of Appeals for the Seventh Circuit
- ❖ US Court of Appeals for the Sixth Circuit
- ❖ US Court of Appeals for the Third Circuit
- ❖ USDC: District of Columbia
- ❖ USDC: Eastern District of Arkansas
- ❖ USDC: Eastern District of New York
- ❖ USDC: Eastern District of Texas
- ❖ USDC: Northern District of Indiana

- ❖ USDC: Northern District of New York
- ❖ USDC: Southern District of New York
- ❖ USDC: Western District of Arkansas
- ❖ USDC: Western District of Texas
- ❖ Washington

Memberships & Associations

- ❖ Claims & Litigation Management Alliance (CLM)
- ❖ Defense Research Institute (DRI)
- ❖ Federation of Defense and Corporate Counsel (FDCC)
- ❖ New York City Bar Association
- ❖ New York State Bar Association
- ❖ Professional Liability Underwriting Society (PLUS)
- ❖ Washington, D.C. Bar Association

Representative Experience

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

Description: The plaintiff, a residential real estate developer, hired the defendant to fabricate, furnish and install granite kitchen counter-tops in a residential building project the plaintiff was developing. The defendant accepted the plaintiff's payments of over \$50,000, but failed to render the appropriate services. The plaintiff then 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: Lawyers, Professional Liability

Key Issues: Legal Malpractice Defense

Venue: New York State Supreme Court, Queens County

Client Type: Defendant Law Firm

Description: Defended a law firm that represented the plaintiff in an underlying medical malpractice action. The trial resulted in a defense verdict and the client sued the law firm for malpractice.

Result: At the close of evidence on the plaintiff's case and after the 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, the 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

Description: Represented an insurer in a 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: Middle District of Pennsylvania

Client Type: Defendant Insurance Provider

Description: Represented the defendant insurance provider in an insurance coverage and bad faith suit arising out of the 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 by the insurer.

Result: 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 Florida

Client Type: Defendant Insurance Provider

Description: Defended an insurance provider in a suit involving insurance coverage and bad faith arising out of the denial of coverage under a professional liability life agent and securities broker/dealer policy. The 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: 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: Employment Litigation and Dispute Resolution

Key Issues: Sexual Harassment, Retaliatory Termination

Venue: JAMS--Arbitration (New York)

Client Type: Global Technology Company

Description: 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: Employment Litigation and Dispute Resolution

Key Issues: Retaliation; Failure to Timely Pay Wages and Bonuses; California Labor Code

Venue: JAMS--Arbitration (Boston)

Client Type: Defendant Global Technology Company

Description: 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 and failure to pay wages and penalties. We also obtained an award limiting the bonus payable to amounts consistent with the company's bonus policy, and awarding no additional compensation or interest.

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

Description: Represented the defendant insurance provider in an insurance coverage and bad faith suit arising out of the denial of coverage under a professional life agent and securities broker/dealer policy. The 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 barred coverage for claims arising out of insolvency of any company in which the client's funds were placed. The plaintiff insured brought suit to obtain coverage and to recover for the alleged bad faith denial of the insurer.

Result: 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: Employment Litigation and Dispute Resolution

Key Issues: Discrimination, EEOC

Venue: EEOC

Client Type: Defendant Leading Technology Company

Description: 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: Obtained a finding from the EEOC that there was no evidence of any violation and the charges of discrimination and retaliation were dismissed.

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

Description: In 2008, an international investment bank filed suit against numerous insurance companies in the Circuit Court of Baltimore City, Maryland, including our client, 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: Directors & Officers, Insurance Services, Other Professionals, Professional Liability

Key Issues: Coverage

Venue: Superior Court of Arizona, Maricopa County

Client Type: Non-Party Insurance Syndicate

Description: 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 in which a "global" settlement between the parties was effectuated and also successfully saved the client over 80% of the available limits of liability.

Practice Area: Intellectual Property, Lawyers, Professional Liability

Key Issues: Attorney malpractice; patent

Venue: US District Court, Eastern District of NY

Client Type: Third Party Defendant Law Firm/Lawyer

Description: Legal malpractice case arising out of a patent application. Plaintiff invented a video game involving targeted in-game advertising and sought patent protection. Patent application was prepared and filed. Plaintiffs alleged that defendant lawyers/law firm made errors in preparing the patent application and failed to follow through with prosecution of the patent application on a timely basis thereby forfeiting plaintiffs' patent rights in their invention. Plaintiffs sought \$150-200 Million as damages consisting of lost royalties and licensing opportunities for the patent they would have obtained.

Result: After nearly a three week jury trial, we moved for a directed verdict following the defendants' case in chief. Immediately prior to the court's ruling on our motion and before the case being delivered to the jury, the defendants withdrew their claims against our clients with no consideration or any amounts being paid to defendants on behalf of our clients.

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

Description: Defended an insurance provider in a case involving 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: 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 our motion for summary judgment on the coverage issues, holding that even if the policy were enforced, no coverage existed and the denial was proper. The bad faith claim was dismissed as well. The case is reported at 2005 U.S. Dist. LEXIS 20562 (N.D. Cal. 2005).

Publications

- ❖ Author, Case Alert - Statutory Damages Under TCPA Are Insurable, April 14, 2013
- ❖ 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, Here Today Gone Tomorrow, *Risk and Insurance*, 04/01/06
- ❖ Author, The Sarbanes-Oxley Act and D&O Insurance - Who Bears the Cost of Corporate Responsibility?, *Andrews*, October 7, 2002

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