



Coverage

For more than 50 years RMKB lawyers in our California offices, and more recently our New York office, have focused their practices on providing representation and assistance to insurance companies. These attorneys have a breadth of experience in both personal lines and commercial insurance issues, including the following expertise:

- Prosecuting and defending declaratory relief/declaratory judgment actions in both state and federal courts;

- ADR, mediation, and arbitration of insurance coverage disputes. This includes not only direct representation of the insurer in such disputes but also serving as mediators or arbitrators in cases in which coverage expertise is necessary.

- Preparation of comprehensive coverage opinions along with ongoing coverage advice and monitoring of complex litigation when necessary.

- Representation of insurers in the appeals of coverage cases.

NATIONWIDE SERVICE

RMKB lawyers serve as state-wide, regional and national counsel for several insurers providing coverage advice and handling coverage litigation. In this capacity, they advise and oversee local counsel on coverage, bad faith and litigation issues. This approach facilitates efficiency and consistency in coverage positions taken by our clients and in litigation. Companies throughout the world seek the advice of RMKB lawyers for complex coverage opinion work.

Representative Experience

Attorneys: Jennifer E. Acheson, Michael J. Brady

Key Issues: Conversion; Unfair Business Practices; Bad Faith; Negligence

Venue: San Francisco County Superior Court

Client Type: Defendant Insurer

Description: Represented an insurance company who was named as a co-defendant in a lawsuit stemming from an auto collision. The plaintiff sued our client for the loss of his vehicle and unfair business practices when a driver fell asleep at the wheel and struck the plaintiff's vehicle causing total damage to the vehicle's front end.

Result: The matter proceeded to a jury trial in San Francisco Superior Court and our client prevailed. The plaintiff was then unsuccessful in his attempt to appeal the verdict.

Attorneys: Jennifer E. Acheson, Michael J. Brady

Key Issues: Breach of Contract; Bad Faith Claims

Venue: Colusa County Superior Court

Client Type: Defendant Insurer

Description: Represented an insurer against claims for breach of contract and bad faith claims handling. The plaintiff, a regional medical center, hired a construction company insured by our client to install a new roof on the plaintiff's hospital. A subsequent rainstorm caused damage to the property after the construction company failed to take precautions to cover a section of the roof. Our client denied coverage based on policy exclusions based on faulty, inadequate and defective workmanship.

Result: Damages claimed by the plaintiff were in excess of \$1.3 million. The dispute settled before trial for less than half of the damages claimed, a favorable result for our client.

Attorneys: Kathleen Strickland

Key Issues: Dry Cleaner, TCE, Groundwater Contamination

Venue: California Superior Court, County of San Mateo

Client Type: Defendant Cleaning Equipment Manufacturer

Description: A private water provider filed suit against numerous companies involved in the dry cleaning industry, such as equipment manufacturers, chemical manufacturers and retail dry cleaning companies, alleging its groundwater supply in Southern California was contaminated with TCE from the defendants' business operations. The plaintiff sought millions of dollars in remediation costs, as well as punitive damages.

Result: By examining our client's records and public records, we were able to determine that our client did not supply dry cleaning equipment to any company doing business over the aquifer from which the plaintiff obtained its water. We were thereby able to obtain a dismissal of our client prior to responding to the complaint.

Attorneys: Dean A. Pappas

Key Issues: Insurance Coverage

Client Type: Insurance Provider

Description: Represented an insurance provider who was the defendant in an action for specific performance, declaratory relief, and damages for breach of contract and promissory fraud. The insured argued that the use of the words "wrongful detention" or "wrongfully detained" used in case law in connection with interference with rights in personal and real property supported a conclusion that "personal injury" liability coverage applied to a detention of property. The damages alleged to have been caused the insured's breach of a promise to convey title to a 36-acre parcel of real property included anxiety, worry, and aggravation of the plaintiff's pre-existing health afflictions. The insured tendered his defense to the insurer seeking coverage under personal liability coverage including coverage for damages due to the commission of "personal injury" offenses. When the insurer refused to provide a defense, the insured requested reconsideration of his tender and asked the insurer to consult coverage counsel in the matter. The insurer referred the question to Mr. Pappas for a coverage

opinion. Following review of the facts, the policy, and applicable law, Mr. Pappas advised the insurer that the complaint did not seek damages due to “wrongful detention” as defined in the policy. That term, Mr. Pappas explained, was likely to be interpreted to refer to the wrongful detention of a person, not the wrongful detainer of property. Mr. Pappas also noted that the policy limited its applicability to damages resulting from an accident and that the underlying lawsuit did not involve property damage or loss caused by an “accident.”

Result: Relying on Mr. Pappas’s analysis, the insurer reaffirmed its denial of coverage and its refusal to defend the insured in the underlying action. The insured filed an action to obtain declaratory relief and policy benefits in addition to extra-contractual damages. The trial court and the Court of Appeal agreed with the analysis and conclusion provided by Pappas.

Attorneys: Michael T. Ohira

Key Issues: Breach of Contract; Bad Faith, Insurance Coverage

Venue: Los Angeles County Superior Court

Client Type: Defendant Insurance Provider

Description: The plaintiffs, the insured homeowners, sued the defendant, an insurance provider, for breach of contract and bad faith arising from a first party property damage and bodily injury claim arising from water damage and mold in a residence. The insureds accused the insurer of inadequate investigation, low-balling, and delay which culminated in special damages exceeding of \$400,000 and seven figure extra contractual damage claims.

Result: The case was ultimately settled for a confidential sum.

Attorneys: Michael T. Ohira

Key Issues: Declaratory Relief Action

Venue: Stanislaus County Superior Court

Client Type: Plaintiff Insurance Provider

Description: Represented the plaintiff, an insurance provider, in a declaratory relief action to address whether the insurers (auto, homeowners, and umbrella) had a duty to defend and indemnify an insured for claims of bodily injury and multiple wrongful death claims arising from a van rollover accident. At issue was the business pursuits exclusion, and whether the van constituted an insured vehicle.

Result: Leverage from the declaratory relief action shielded \$2 million in coverage under the homeowner's and umbrella policies, and resulted in a global settlement of the underlying wrongful death and personal injury claims.

Attorneys: Michael T. Ohira

Key Issues: Declaratory Relief Action

Venue: Los Angeles County Superior Court

Client Type: Plaintiff Insurance Provider

Description: Represented the plaintiff, an insurance provider, in a declaratory relief action to address whether the insurer had a duty to defend and indemnify an insured for claims of bodily injury caused by molestation and false imprisonment.

Result: Won motion for summary judgment wherein the court issued a judicial declaration that the insurer did not owe a defense or indemnity obligation for the underlying suit.

Attorneys: Michael T. Ohira

Key Issues: Declaratory Relief Action

Venue: USDC: District of Arizona

Client Type: Plaintiff Insurance Provider

Description: Represented the plaintiff, an insurance provider, in a declaratory action with regard to whether the insurer owed a duty to defend or indemnify an Arizona church, its former minister, his wife and six vestry members in two lawsuits alleging that the minister wrongfully caused two elderly church members to give him personal and real property.

Result: Successfully moved for summary judgment wherein the court issued a judicial declaration that the insurer did not owe a defense or indemnity obligation for the underlying suits.

Attorneys: Michael T. Ohira

Key Issues: Breach of Contract; Bad Faith, Insurance Coverage, Unfair Business Practices

Venue: Los Angeles County Superior Court

Client Type: Defendant Insurance Provider

Description: The insured, a general contractor, sued the insurer for breach of contract, breach of the implied covenant of good faith, unfair business practices and declaratory relief. An investigation revealed a potential for coverage not previously recognized by the third party administrator ("TPA"), and a failure by the TPA to fully reserve the insurer's rights.

Result: The case was ultimately settled for \$25,000 less than our \$73,000 settlement authority.

Attorneys: Michael T. Ohira

Key Issues: Equitable Contribution

Venue: Los Angeles County Superior Court

Client Type: Defendant Insurance Provider

Description: Defended an insurance provider in an insurance recovery action to obtain equitable contribution from a co-insurer that declined to participate in the defense of a mutual insured.

Result: Recovered in excess of \$500,000 in reimbursement and defense contribution on a going-forward basis.

Attorneys: Andrew L. Margulis

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.

Attorneys: Andrew L. Margulis

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).

Attorneys: Andrew L. Margulis

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).

Attorneys: John A. Koepfel

Key Issues: Breach of Contract

Venue: Judicial Arbitration & Mediation Services

Client Type: Defendant Provider of Telephone, Cable Television and High Speed Internet Service

Description: Defended a provider of telephone, cable television and high speed internet services in a commercial litigation action involving an alleged breach of contract that provided for the construction of a broad band telecommunications network in the Bay Area. Counsel for the parties met to agree on mediation issues, and then participated in extended negotiations during mediation. Upon failure to resolve the case at mediation, counsel negotiated strict limits to discovery, briefing and arbitration time. This action went to binding arbitration over a two week period.

Result: The award was 80% less than the contractor's last settlement demand.

Attorneys: Geoffrey W. Heineman, Jung H. Park

Key Issues: Coverage

Venue: New Castle County, Delaware Superior Court

Client Type: Defendant Insurance Company

Description: Represented an insurance carrier in a \$600 million lawsuit involving a complex coverage action involving the plaintiff, a telecommunication provider, and eight insurance carrier defendants. The plaintiff had sought insurance coverage from the insurers on five different insurance towers for multiple shareholder lawsuits. The multiple lawsuits could be divided into three categories. The first category of lawsuits arose out of the plaintiff's efforts to transform the company from a low growth long distance carrier into a rapidly growing telecommunications giant capable of delivering "bundled services." The allegations were based on assertions that the plaintiff and its individual officers and directors artificially inflated stock price by painting an unrealistically positive portrait of the company's financial condition in an effort to ensure the success of the spin-off of its wireless operation. The second category of lawsuits arose out of the IPO of the telecommunication providers tracking stock. These lawsuits alleged that the plaintiff and certain of its directors and officer misrepresented and/or omitted material facts in connection with the IPO in violation of the federal securities acts. The third category of lawsuits concerned allegations that the plaintiff and certain directors and officers improperly acquired majority ownership control over a now defunct internet service provider and thereafter, misappropriated the provider's technology to the benefit of the plaintiff and to the detriment of the provider, eventually driving the provider into bankruptcy.

Result: Approximately a month before jury selection was to begin, our client and the one other remaining insurer entered into extensive settlement negotiations which resulted in a resolution our client viewed as a very favorable result.

Attorneys: Susan H. Handelman

Key Issues: Punitive Damages

Venue: San Francisco, First District Court of Appeal

Client Type: Defendant Insurance Company

Description: Represented the defendant, and insurance company, in an appeal concerning, among other issues, imposition of millions of dollars in punitive damages.

Result: Successfully obtained a reversal of the punitive damages decision.

Attorneys: Robert M. Forni

Key Issues: Duty to Indemnify, Coverage, Property Damage, Insurable Interest, Commercial, Landlord, Tenant

Venue: Sonoma County Superior Court

Client Type: Defendant Insurance Company

Description: A rain storm damaged part of a strip mall and the improvements that had been made to it that several tenants had leased. When these damages occurred, the owner of the building was an insured under a policy issued by our client, Insurer No. 1. Additionally, the tenants were insured under a policy that a second insurance company, Insurer No. 2, issued to them. Insurer No. 2 paid the tenants for the damages to their improvements. The tenants then vacated the building and sued the owner. Insurer No. 1 defended the owner in this lawsuit until Insurer No. 2 assumed its defense. In response, the owner sued Insurer No. 2 alleging claims for breach of contract and bad faith for withdrawing from its defense in the tenants' lawsuit. While this action was pending, the tenants, the owner, Insurer No. 1 and Insurer No. 2 reached a global settlement of "any and all claims and causes of action" arising out of the events giving rise to the tenants' lawsuit in exchange for Insurer No. 1's contribution to the settlement.

Result: The trial court granted our client's motion for summary adjudication concerning the owner's causes of action for breach of contract and bad faith based on its claim for indemnity for the damaged tenant improvements. The court held the owner had no insurable interest in this property at the time of loss for the same reasons the insurer denied the claim (i.e., the owner did not use, own, or control this property, and did not suffer any direct pecuniary loss when it was damaged.)

Attorneys: Stephen J. Erigero

Key Issues: Insurance Coverage; Landlord Tenant Claims

Venue: Sonoma County Superior Court

Client Type: Defendant Insurance Company

Description: Retained as coverage counsel by an insurer to evaluate a landlord tenant litigation. The rental property was in the rural Russian River area. The allegations included mold, retaliatory eviction, failure to repair, damage to personal property, relocation costs and attorney fees. The policy only covered third party property damage, excluded mold and did not cover rent rebate claims.

Result: Successfully evaluated the case and assisted in settling the case at an MSC, convincing the insured to contribute to the settlement and dismiss rent claims. We were able to convince the settlement judge and the plaintiff's counsel of coverage issues which would impact the collection of any potential judgment.

Attorneys: Stephen J. Erigero

Key Issues: Environmental Insurance Coverage; Judgment Debtor Collection Action; Insurance Code Section 11580.

Venue: Orange County Superior Court

Client Type: Defendant Insurance Carrier

Description: Our client, an insurance company, insured a metal plating facility for several years. The insured was sued by its neighbors for contribution as a prp for groundwater contamination at a Superfund site. The insurer settled with the insured and obtained a policy release. The third party neighboring property owner proceeded to trial against the insured and obtained a large judgment. The insurer failed to satisfy the judgment, having disbursed the settlement proceeds from our client's settlement. The third party judgment creditor brought suit under Ins. Code section 11580 against the insurer.

Result: Negotiated a stay and tolling agreement pending the insured's litigation with a non-settling co carrier. The third party judgment creditor may bring suit in the future if the judgment remains unsatisfied.

Attorneys: Stephen J. Erigero

Key Issues: Architects; Construction; Design

Venue: Los Angeles Superior Court

Client Type: Defendant Residential Home Architect/Designer

Description: Defended a home architect/designer in an action for construction defects at a multi million dollar single family residence. We represented the architect that designed the residence. Issues included the vicarious liability of the architect for the structural engineering and the errors of the framing contractor and general contractor in failing to build to the approved plans and specs. The architect was alleged to be responsible for the failure of others including city inspectors to note the failure to construct to the approved design drawings.

Result: The case settled for a confidential amount, with the insurer paying the settlement, waiving the deductible and paying additional amounts to settle the insurance coverage action prosecuted by different counsel.

Attorneys: Michael J. Brady

Key Issues: Bad Faith

Venue: USDC: Central District of California

Client Type: Defendant Insurance Company

Description: Defended an insurance company in a bad faith for failure to pay the fidelity claim brought by one of Italy's largest banks. The underlying claim arose out of the activities of the famous sports entrepreneur Bruce McNall, who allegedly swindled various Southern California banks out of millions. We arranged for the insurance company to do an extensive investigation of countless witnesses, including experts and built a strong case for the validity of the denial.

Result: A federal judge ultimately granted summary judgment based upon the "thoroughness" of the investigation, even though mistakes may have been made by the company. The matter was completely dismissed, and the dismissal was affirmed by the Ninth Circuit.

Attorneys: Andrew L. Margulis

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.

Attorneys: Andrew L. Margulis, Eric C. Weissman

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.

Attorneys: Jennifer E. Acheson, Michael J. Brady

Key Issues: Breach of Contract; Fraud; Unfair Business Practices

Venue: San Francisco County Superior Court

Client Type: Plaintiff

Description: Represented a plaintiff in an action for breach of contract, fraud, and unfair business practices against the owner of a consignment piano shop. The defendant sold the plaintiff's piano without permission and did not turn over the proceeds from the sale.

Result: A default judgment was entered against the defendant for money damages and the return of the piano to our client. Following the defendant's declaration of bankruptcy, the matter resulted in the criminal prosecution of the defendants by The San Francisco District Attorney for felony counts of grand theft, embezzlement, and restitution.

Attorneys: Dean A. Pappas

Key Issues: Insurance Coverage

Venue: USDC: Northern District of California

Client Type: Insurance Company

Description: Defended our client, an insurance company, in a case in which the court found that the incorporation of a defective product does not result in physical injury to the host product. A manufacturer of disk drive storage devices for personal computers and small business machines was insured under excess umbrella liability policies including commercial general liability coverage. A United Kingdom corporation purchased the insured's disk drives for its product's personal computers. As sales began of the UK corporation's personal computers into which the insured's drives had been incorporated, the UK corporation experienced a high level of customer complaints and returns arising out of hard disk drive failure. The UK corporation incurred substantial expenses as a result of the efforts to correct problems with the disk drives. Revenue was also lost due to the effect on sales and the price at which the computers could be marketed after lengthy delays. Litigation was initiated by the UK corporation against the insured disk drive device manufacturer first, in the United States and, second, in the United Kingdom. A judgment of in excess of \$100 million was ultimately entered against the insured manufacturer in the foreign action. Their tenders of defense of the lawsuits were denied by the insurer and the manufacturer sued the insurer seeking payment for its defense and indemnification of damages assessed against it.

Result: The court granted the insurer's motion for summary judgment agreeing that the incorporation must result in actual damage to other parts of the host product for "property damage" liability coverage to apply.

Attorneys: Andrew L. Margulis, Enrique Marinez

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).

Attorneys: Dean A. Pappas

Key Issues: Insurance Coverage

Venue: USDC: Eastern District of California

Client Type: Insurance Provider

Description: Represented an insurer in a declaratory relief action seeking a determination of their obligations. The United States District Court concluded that a commercial general liability policy does not require an insurer to defend an insured in a "citizen suit" based on violations of the Clean Water Act. A protection alliance that advocates for California's fisheries sued a lumber manufacturer based on their alleged ongoing violations of section 505 of the Clean Water Act (33 U.S.C. section 1365) at a lumber mill in Northern California. The mill operator was insured in a policy providing commercial general liability coverage. The insurer provided a defense to the mill operator subject to a reservation of rights.

Result: The public advocates sought dismissal of the insurer's action on the grounds that it was a "strategic lawsuit against public participation" ("SLAPP") suit; i.e., a lawsuit brought primarily to chill a person's valid exercise of the right to petition or exercise freedom of speech. (Calif. Code of Civ. Pro. §425.16.) We opposed this motion and the court agreed that the declaratory relief action was not a SLAPP suit. Judgment was ultimately entered in favor of the insurance company following a motion for summary judgment. The federal trial court agreed that a defense was not owed to the insured in the underlying lawsuit.

Attorneys: Robert M. Forni

Key Issues: declaratory relief, covered auto, insurance coverage, bad faith, med-pay, underinsured motorist, rental car,

Venue: U.S. District Court, Northern District of California

Client Type: Plaintiff Automobile Insurance Company

Description: Prosecuted declaratory relief action on behalf plaintiff automobile insurer against claimant arising from the denial of his claim for underinsured motorist ("UIM") and medical payments ("med-pay") benefits under the insured's policy. The insured submitted his UIM and med-pay claim following an accident in June 2003, in which he was injured while occupying a rental car driven by the insured in Florida. At the time of the accident, the claimant was as neither an insured nor injured in an insured in a "covered auto," he did not reside with the

insured. The insured alleged that the rental car was a temporary substitute for the insured's Lexus, which was operated and garaged in California, where the insured and the claimant resided. The insurer denied the claims on the grounds that the claimant was not an "insured" under the policy, because the rental car in which he was injured was not a "temporary substitute" for the insured vehicle. Thus, the central issue of the case was whether the claimant was entitled to UIM and med-pay benefits even though neither he nor the rental car was covered by the policy.

Result: The district court granted our client's motion for summary judgment and denied the insured's cross motion for partial summary judgment on grounds that the rental car was not a "covered auto" under the insurance policy. The court concluded that California's uninsured/underinsured motorist statute, California Insurance Code §§ 11580.1 and 11580.2, did not expand coverage beyond the terms stated in the policy. The court then held that the rental car was not a temporary substitute for the insured's vehicle under the terms of the policy, because the claimant failed to meet his burden to prove both that the insured vehicle was inoperable, and that the insured vehicle's normal use involved the same use in Florida as the rental car.