

PRACTICE

INSURANCE COVERAGE

Coverage & Program Analysis

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OVERVIEW

Many clients see value in doing everything they can to avoid disputes with their insurance carriers. We help them with this by analyzing their insurance programs before a loss arises. For example, we help identify gaps in coverages; inconsistencies amongst policies; and unfavorable terms/conditions or endorsements.

EXPERIENCE

- *Indiana Restorative Dentistry, P.C., v. Laven Ins. Agency*, 27 N.E.3d 260 (Ind. 2015) (holding that an insurance agent can be liable to a policyholder for a breach of contract and a tort and addressing when a special relationship with an insurance agent exists requiring the agent to advise the policyholder)
- *Thomson Inc. v. XL Ins. Am., Inc.*, 22 N.E.3d 809 (Ind. Ct. App. 2014) ("known loss" doctrine only bars coverage when policyholder has actual, subjective knowledge that a loss has occurred or is certain to occur; knowledge of contamination, prior to strict liability statute's enactment, did not bar coverage).
- *Thomson Inc. v. Ins. Co. of N. Am.*, 11 N.E.3d 982 (Ind. Ct. App. 2014) (policyholder's payment of defense costs when insurer has wrongfully denied coverage raises presumption costs were reasonable and necessary).
- *Steinberger v. Cont'l Cas. Co.*, No.: 1:11-cv-01524-TWP-TAB, 2013 U.S. Dist. LEXIS 1337 (S.D. Ind. Jan. 4, 2013) (finding long term care policy terms "Benefit Period" and "Period of Care" ambiguous and holding that insurer must provide long term care coverage for successive four-year Benefit Periods)
- *State Auto. Mut. Ins. Co. v. Flexdar, Inc.*, 964 N.E.2d 845 (Ind. 2012) (finding the "absolute" pollution exclusion ambiguous and unenforceable)
- *City of South Bend v. Century Indem. Co.*, 821 N.E.2d 5 (Ind. Ct. App. 2005) (declaratory

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action against insurers of polluter not a "direct action")

- *PSI Energy, Inc. v. Home Ins. Co.*, 801 N.E. 2d 705 (Ind. Ct. App. 2004) (addressing the ability to pursue future cleanup claims against excess insurers, late notice, lost policies, subjective "expected and intended" to cause pollution standard, "injury-in-fact" trigger)
- *Allstate Ins. Co. v. Dana Corp. (Dana II)*, 759 N.E.2d 1049 (Ind. 2001) (finding an "all sums" allocation of environmental damage spanning multiple policy periods, inapplicability of owned property exclusion to cleanup claims, and an "injury-in-fact" trigger)
- *Employers Ins. of Wausau v. Recticel Foam Corp.*, 716 N.E.2d 1015 (Ind. Ct. App. 1999) (addressing *forum non conveniens* and choice-of-law issues in the insurance context);
- *Travelers Indem. Co. v. Summit Corp. of Am.*, 715 N.E.2d 926 (Ind. Ct. App. 1999) (addressing choice-of-law for multiple sites, "personal injury" coverage for environmental claims, governmental demands are "suits," cleanup costs as "damages," and the interpretation of pollution exclusions)
- *Hartford Accident & Indem. Co. v. Dana Corp. (Dana I)*, 690 N.E.2d 285 (Ind. Ct. App. 1997) (finding governmental regulators' demands are "suits" and cleanup costs as "damages")
- *Am. States Ins. Co. v. Kiger*, 662 N.E.2d 945 (Ind. 1996) (addressing the inapplicability of "sudden and accidental" and "absolute" pollution exclusions)

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