



Carolyn M. Branthoover

Partner

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OVERVIEW

Carolyn Branthoover practices in the area of complex commercial litigation and international arbitration. In addition to representing Fortune 100 companies and investors in litigation, including trials, arising out of complex commercial transactions, she has considerable experience with respect to insurance coverage disputes arising under a wide variety of liability and property policies related to environmental, toxic tort, employment, business interruption, and product liabilities. She has represented major industrial and commercial clients in numerous state and federal courts in Pennsylvania, Connecticut, Massachusetts, Delaware, Maryland, New Jersey, Ohio and Washington, and she has acted as lead trial counsel in a number of high stakes disputes before both U.S. courts and international arbitration tribunals under the Rules of the AAA, ICDR and LCIA. In 2006, Carolyn represented an aluminum distributor in securing a \$59.6 million jury verdict in a UCC breach of warranties case tried in federal court in Washington. This verdict was among the top 100 U.S. verdicts of 2006, ranking 27th.

PROFESSIONAL BACKGROUND

Carolyn Branthoover has been a lawyer with the firm since 1982 and has been a partner since 1990. She previously served as the managing partner of the Pittsburgh office and recently completed a term as one of the practice area leaders of the firm's litigation and dispute resolution practice area. She is a member of the firm's insurance coverage and international arbitration practice groups. Carolyn regularly produces articles and podcasts on issues of interest to international arbitration and insurance coverage practitioners, and she has spoken at a number of regional and national seminars on a variety of topics. She has also served as an arbitrator with the American Arbitration Association and in the Allegheny County Court of Common Pleas.

ACHIEVEMENTS

- Recognized by the *Best Lawyers in America*® for Insurance Law, 2015-2020, 2022-2023
- Named to the Pennsylvania Super Lawyers list for Business Litigation, 2014-2023

PROFESSIONAL / CIVIC ACTIVITIES

- American Bar Association
- United Way of Allegheny County (Board Member, 2012-2017)
- Women's Leadership Council of the United Way (Member, 2011-2016)
- Wexford Children's Center (Board Member, 2002-2004; Chair, 2004)
- Wexford Community Presbyterian Church (Elder and Session member, 2006-2011, 2015-2017, and 2023)

SPEAKING ENGAGEMENTS

- "Effectively Managing Risk: Contractual Indemnification and Additional Insured Coverage," National Sand Stone and Gravel Association Annual Convention, Legal Symposium, February 13, 2019 (Indianapolis, IN)
- "Board Member Liability and Risk," Women on Boards 2020, Executive Leadership Development Workshop, October 4, 2018
- "Insurance Policy Rescission: Navigating the Differing Standards Underlying a Misrepresentation Claim or Defense," Strafford Publications webinar, October 13, 2016
- "Issues in E-Commerce Business Interruption Coverage" – ABA Insurance Coverage Litigation Section, Midyear Meeting, March 2, 2002 (Tucson, AZ)
- "Environmental Update" (panel discussion) – ABA Insurance Coverage Litigation Section, Midyear Meeting, March 10, 2001 (Tucson, AZ)
- "First Party Coverage Review" – ABA Insurance Coverage Litigation Section, Midyear Meeting, March 8-10, 2001 (Tucson, AZ)
- "Career Transitions and Exit Strategies" – 2nd Law Firm Associate Management Forum: Training, Supporting and Keeping Your Best Associates, July 15-16, 1999 (San Francisco, CA)
- "Insurance Coverage Litigation Workshop – Influencing a Jury" – 2nd National Conference for Women Insurance Professionals, May 17-18, 1999 (Chicago, IL)
- "Knowledge Management: Building and Leveraging Professional Expertise" – The Law Firm Associate Management Forum: Training, Supporting and Keeping Your Best Associates, February 25-26, 1999 (Washington, D.C.)
- "Distinct Coverage Approaches for Component Part Manufacturers" – 2nd Annual Conference on Insurance Coverage for Tobacco-Related Litigation & Liability, June 9-10, 1997 (Washington, D.C.)

EDUCATION

- J.D., University of Pittsburgh School of Law, 1982 (*Managing Editor, University of Pittsburgh Law Review*)

- B.A., Western New England College, 1979

ADMISSIONS

- Bar of Pennsylvania
- Superior Court of Pennsylvania
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Federal Claims
- United States District Court for the Western District of Pennsylvania

THOUGHT LEADERSHIP *POWERED BY HUB*

- 29 August 2022 , Biometric Privacy Statutes and Insurance Coverage: Recent Developments in Illinois and the National Landscape
- 15 June 2022, U.S. Supreme Court Narrows Scope of 28 U.S.C. § 1782 to Proceedings Before "Governmental or Intergovernmental Adjudicative Bodies"
- 29 April 2022, Arbitration World: U.S. Cases and International Arbitration — U.S. Supreme Court Set to Decide Section 1782 Circuit Split
- 24 March 2022, U.S. Supreme Court Hears Oral Argument on Circuit Split Over Scope of 28 U.S.C. § 1782 for Obtaining Discovery in International Arbitrations
- 11 March 2022, U.S. Supreme Court to Review Circuit Split Over Scope of 28 U.S.C. § 1782 for Obtaining Discovery in International Arbitrations
- 24 August 2021, Disaster Preparedness Toolkit
- 14 June 2021, OnRisk: Insurance Coverage for COVID-19 Losses in the United States
- 19 February 2021, Severe Winter Storm In Texas: Insurance Coverage Considerations
- 26 January 2021, COVID-19: COVID-19 Insurance Coverage Developments: The National Landscape and the State of Play in Washington
- 21 January 2021, COVID-19: COVID-19 Insurance Coverage Developments The National Landscape and the State of Play in Pennsylvania
- 23 October 2020, North Carolina Court Rules in Favor of Commercial Property Policyholders: Government's COVID-19 Shutdown Orders Caused "Physical Loss" of Property

- 19 October 2020, The "Tribunals" and Tribulations of Section 1782: What Constitutes a "Foreign or International Tribunal?"
- 5 October 2020, COVID-19: Coronavirus Coverage Litigation For Policyholders, All is Not "Loss," nor Lost
- 14 April 2020, Arbitration World
- 25 March 2020, COVID-19: Insurance Policy Considerations for Higher Education Institutions
- March 2020, COVID-19: Optimal Insurance Coverage Strategies: Do's and Don'ts; Preparation and Protection
- 27 February 2020, COVID-19: Coronavirus Losses: Will Your Commercial Insurance Policies Respond?
- 30 April 2019, Class Arbitration: A Creature of Clear Contractual Consent
- 23 January 2019, An Update on Texas's Hailstorm Bill: Courts Require Careful Compliance
- 9 January 2019, U.S. Supreme Court Rejects "Wholly Groundless" Test and Reminds Parties of the Power of the Arbitration Agreement
- 8 June 2018, OnRisk: Biometric Insurance
- May 2018, GC University - Session One - Managing Risk in a World of Rapidly Evolving Digital Technology
- 21 March 2018, OnRisk: Arbitration Provisions in Insurance Policies
- 14 February 2018, OnRisk: The Misrepresentation Defense
- January 2018, A GC's Primer on Privacy and Cybersecurity
- December 2017, Biometric Data Risks
- 17 November 2017, The Risky Business of Using Biometric Information: Insurance Coverage Considerations
- May 2017, Arbitration World
- 30 June 2016, The Misrepresentation Defense Strikes Again
- 5 February 2016, New York Rescission Law Strikes Again: Lessons Learned From the Voiding of Heinz's Product Contamination Insurance Policy

OTHER PUBLICATIONS

- Settlement (Civil Litigation) Q&A: US (New York), part of Practice Note, Settlement: Cross-Border Dispute Resolution, *Thomson Reuters Practical Law*, July 2020
- "Congress Considers Closing Trade Secret "Discovery Loophole": Section 1782," *IP Litigator*, January/February 2019
- Q&A With K&L Gates' Carolyn Branthoover, *Law360*, 3 May 2016

- “New York Rescission Law Strikes Again: Lessons Learned From the Voiding of Heinz's Product Contamination Insurance Policy,” *FC&S Legal*, 4 April 2016

NEWS & EVENTS

- 18 August 2022, More Than 350 K&L Gates Lawyers Named Among 2023 Best Lawyers in America, Ones to Watch
- 19 August 2021, Nearly 300 K&L Gates Lawyers Named Among 2022 Best Lawyers in America, Ones to Watch
- 6 December 2017, K&L Gates Launches Multidisciplinary Biometric Data Compliance and Defense Practice

MEDIA MENTIONS

- “K&L Gates Launches Multidisciplinary Biometric Data Compliance and Defense Practice,” December 6, 2017
- “In Marketing Its 'Trial Jocks,' K&L Gates Takes a New Approach,” *Am Law Litigation Daily*, October 3, 2017

AREAS OF FOCUS

- Insurance Recovery and Counseling
- Commercial Disputes
- E-Discovery Analysis and Technology (e-DAT)
- International Arbitration

INDUSTRIES

- Consumer Products
- General Manufacturing
- Higher Education Institutions
- Manufacturing
- Metals Manufacturing and Fabrications
- Specialty Chemicals

EMERGING ISSUES

- Hydrogen

REPRESENTATIVE EXPERIENCE

- Represented policyholder (transportation industry) in related set of confidential ad hoc arbitrations (London and Bermuda seats) and litigation (US state court) seeking coverage under tower of excess liability policies for large truck accident liability verdict.
- Represented aluminum distributor in obtaining a US\$59.6 million jury verdict following three week trial in suit alleging breach of UCC implied warranties of merchantability and fitness for particular purpose in connection with the sale of an aluminum alloy used in the manufacture of boats. Following jury verdict, court further awarded US\$16.1 million prejudgment interest.
- Obtained US\$16.3 million jury verdict for policyholder following six week trial in suit seeking first-party insurance coverage for environmental property damage at two manufacturing facilities; also obtained bad faith jury verdict against insurer following bifurcated three week trial, which led to a US\$16 million punitive damages award and a US\$2.6 million award of attorneys' fees.
- Represented policyholder metals manufacturer in suit seeking first party insurance coverage for environmental property damage at numerous sites located throughout the country. Following first phase jury trial, appeal to the Washington Supreme Court and discovery in preparation for retrial, the case settled favorably.
- Represented policyholder in suit seeking insurance coverage for environmental liabilities at numerous sites located throughout the country. Following discovery and summary judgment rulings, the case settled favorably.
- Represented policyholder (industrial equipment manufacturer) in complex asbestos insurance coverage action involving over US\$1 billion of underlying liabilities and over forty excess insureds. The matter resulted in a nine figure recovery and placed under agreement over US\$1 billion of policy limits.
- Represented technology company in pursuing claim to recover fees owed under software licensing agreement. Matter proceeded through a one week evidentiary hearing and was thereafter favorably resolved through settlement.
- Confidential Arbitration between service industry company and insurer. Represented policyholder seeking coverage under Bermuda Form policy for employment related liabilities. Matter concluded following two week evidentiary hearing and arbitrators' award.
- Confidential Arbitration between industrial equipment and parts manufacturer and insurer. Represented policyholder in seeking insurance coverage for recall and property damage caused by defective device installed in braking systems of numerous trucks. Following two week hearing and post-hearing briefing, the case settled favorably.
- Confidential Arbitration between chemical manufacturer and insurer. Represented policyholder in seeking to secure first-party insurance coverage for extensive property damage and business interruption loss caused by Hurricane Ike. Matter proceeded through two week evidentiary hearing and arbitrators' award.

- In suit seeking insurance coverage for asbestos liabilities under historic general liability policies, obtained summary judgment dismissal of indemnity claim against third party based on prior settlement agreement. On appeal, the Sixth Circuit Court of Appeals upheld the judgment of the district court.
- Represented pesticide manufacture in pursuit of Fifth Amendment taking claim associated with EPA action. Matter was resolved by summary judgment.
- Represented investors in senior living facility in action brought to resolve dispute with co-investors arising under an equity purchase and sale agreement. Following discovery and the exchange of expert reports, the case settled favorably.
- Represented chemical manufacturer in obtaining summary judgment dismissal of action brought by sulfur supplier alleging wrongful termination of requirements contract.
- Successfully represented potentially responsible party at Superfund cleanup site in contribution action seeking allocation of response costs among generator, arranger and transporter of waste. Case presented question of first impression regarding transporter liability under CERCLA. On appeal, the Third Circuit Court of Appeals upheld the favorable judgment of the district court.
- Successfully represented tear gas manufacturer in securing dismissal, on jurisdictional grounds, of wrongful death claims brought by surviving family members of nine Palestinians who allegedly died as a result of exposure to tear gas utilized by Israeli Defense Forces in uprisings in the Occupied Territories. Case involved novel question of citizenship of Palestinians residing in the Israeli Occupied Territories.
- Confidential Arbitration commenced on behalf of Chinese investor against Brazilian metals and mining company (LCIA, London) regarding the development of an iron ore mining operation in South America and breach of share purchase agreement. Following initial exchange of information, the parties amicably resolved their dispute.
- Counseled international distributor of cell phones regarding insurance recovery under crime policy for multi-million dollar employee theft loss occurring in the Middle East. Following submission of proofs of loss and examinations under oath, the parties reached an amicable settlement.
- Counseled sports equipment distributor, following warehouse roof collapse, regarding recovery under property policy for multi-million dollar loss involving property damage, business interruption and leasehold interest coverage. Following submission of proof of loss, the parties reached a favorable settlement.
- Counseled a wide variety of clients regarding coverage under commercial property policies for business interruption and civil authority coverage for losses associated with the COVID-19 pandemic.
- Counseled manufacturer of biometric timekeeping technology regarding coverage under technology and privacy injury liability policy for liabilities alleged in class action filed under Illinois Biometric Information Privacy Act (BIPA).