

Bermuda Form Dispute Resolution Experience



U.S. and global corporations have increasingly turned to the Bermuda insurance market to provide high-level excess property and casualty coverage. Correspondingly, there has been an increase in disputes regarding the terms and conditions of “Bermuda Form” policies. Bermuda Form policies typically mandate arbitration of coverage disputes in London under the English Arbitration Act, while specifying that substantive coverage issues are governed by the law of the State of New York, subject to certain exceptions. In some cases, however, the form may specify English substantive law. The Bermuda Form’s unique mix

of substantive and procedural law gives rise to numerous complex legal and practical challenges. Our global insurance coverage lawyers, teamed with our London-based international arbitration practitioners, are particularly well situated to assist with these disputes.

OUR EXPERIENCE

We have extensive Bermuda Form experience. K&L Gates’ lawyers have assisted policyholder clients, through London arbitrations and other proceedings, in securing coverage under Bermuda Form policies for bodily and personal injuries, product liabilities, employment practice liabilities, property damage, and business interruption losses. We have arbitrated for, and counseled policyholders on, virtually every significant aspect of the Bermuda excess liability form. We also have extensive experience with other Bermuda Form products, including D&O, E&O, EPLI, Excess Healthcare and Product Recall forms. Bermuda Form engagements handled by our lawyers, exclusively on behalf of policyholders, include the representation of:

- Several pharmaceutical companies in pursuing claims for coverage for underlying pharmaceutical product liability claims alleging drug defects and failure to warn.
- A health care company in coverage dispute arising out of underlying patient care class-action litigation.
- A vehicle component parts manufacturer seeking coverage for liabilities arising out of a third-party recall of vehicles that incorporated the manufacturer’s allegedly defective product.
- A chemical manufacturer in seeking coverage for product liability claims allegedly associated with polybutylene plumbing systems.
- The owner of an entertainment facility to obtain coverage for property-damage and business-interruption losses caused by Hurricanes Katrina and Rita.
- An oil refiner in a series of London arbitrations against its liability insurers seeking coverage for third-party property damage claims allegedly associated with a crude oil spill caused by Hurricane Katrina.

- A coal mine operator against its property insurer in a dispute regarding business interruption coverage arising from an extended mine shutdown.
- A policyholder against its employment practices liability insurer, seeking coverage for defense costs and liabilities.
- A chemical company in multiple arbitrations, seeking coverage for herbicide-related product liability claims.
- The captive insurer of a diversified chemical manufacturer in arbitration against its reinsurers regarding business-interruption and property-damage losses stemming from hurricane damage.
- An energy services company in a series of arbitrations seeking coverage for liabilities arising from an offshore blowout.

K&L Gates' Bermuda Form arbitration practice seamlessly integrates our deep United States-based experience in insurance coverage matters (including the substantive law of the State of New York) with our extensive London-based international arbitration experience (including procedural matters under English Arbitration Act, arbitral custom and practice, and the background, selection, and expectations of tribunal members). We also draw on the experience and insight of our lawyers who have sat as arbitrators and/or co-arbitrators with other leading international arbitrators in Bermuda Form disputes.

We have experience assisting Bermuda Form policyholders with evaluating, obtaining and structuring so-called After the Event Insurance (ATE), which can, in the event an adverse ruling by the Arbitration Tribunal, provide coverage for a corresponding award of the insurer's legal fees, thereby helping reduce or manage the policyholder's risk of pursuing an arbitration governed by the English Arbitration Act. We have worked on behalf of Bermuda Form policyholders with brokers, underwriters, and independent analysts. We understand both the placement process and the tactical benefits and risks associated with ATE, and are well positioned to advise our clients accordingly.

We also have counselled policyholder clients, and worked with brokers, during the placement/renewal process to analyze, explore, and negotiate changes to certain Bermuda-form wording in an effort to better integrate layers of Bermuda Form coverage with other policies and to place our clients in the best position in the event of a coverage dispute.