



# K&L Gates Insurance Coverage Practice

For over 25 years, the lawyers of K&L Gates have been developing and implementing innovative legal strategies to assist businesses and individuals in obtaining insurance coverage for an ever-increasing range of liabilities and losses. Nearly 100 of the firm's lawyers are concentrated in what has become one of the largest policyholder-side insurance coverage practices according to the November 2010 issue of *Business Insurance*.

K&L Gates has represented not only large corporate policyholders but also numerous midsize and smaller companies, and their officers and directors, as well as governmental entities and other organizations, in connection with insurance issues and claims. Policyholders in all industry groups have turned to K&L Gates to help evaluate the role of their insurance policies in their overall risk management program, to analyze policy wordings, to address large and small loss or liability issues, and to provide advice on insurance-related strategic concerns.

Our Insurance Coverage lawyers have counseled clients regarding a host of different types of insurance issues, including those relating to Directors and Officers liabilities, products liabilities, property damage and business interruption losses, employment-related liabilities, toxic tort and environmental liabilities, construction defects, government investigations and professional liabilities, to name a few. Our experience includes dealing with insurance

policies issued from all the world's major insurance markets for non-marine, marine, and aviation risks.

Our lawyers also have raised the judiciary's and the public's understanding of insurance coverage issues through the continued submission to law reviews and leading legal and insurance publications of scores of scholarly articles and papers on complex issues of insurance law.

We stand at the cutting-edge of bringing technological resources to bear on difficult insurance coverage disputes. For example, in complex, multiple-insurer claims matters, we employ the use of sophisticated insurance allocation analyses and models. These tools permit us to assist clients in settlement negotiations and in developing optimal coverage strategies by employing real-time "what if" analysis on a range of variables that are crucial in determining the potential value of a client's insurance policies.

Our practice focuses on two key areas: (i) representing policyholder clients in the analysis, litigation, and settlement of disputed coverage claims; and (ii) providing a variety of insurance counseling services to clients.

## Areas of Practice

### Claims Dispute Resolution—Court Litigation and/or ADR Proceedings

K&L Gates has pioneered insurance-based strategies for some of the largest companies in the world seeking to survive the onslaught of large underlying claims or losses by maximizing the value of their insurance assets.

K&L Gates has successfully prosecuted comprehensive environmental coverage litigation for some of the largest companies in the United States and was at the forefront in accessing, on behalf of its clients, first-party insurance in addition to liability coverage for environmental liabilities. In fact, we filed the first mega-insurance coverage case in the United States against hundreds of insurers seeking coverage for environmental and toxic tort liabilities arising throughout the country.

The firm also has counseled and litigated on behalf of numerous corporations facing substantial asbestos liabilities. In connection with some of these engagements, K&L Gates has conceived and implemented complex, largely insurance-based strategies to work out the clients' substantial asbestos problems.



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With an emphasis on settlement of coverage disputes when possible without litigation, K&L Gates has concluded thousands of settlements on behalf of clients with hundreds of different insurers. These settlements have resulted in billions of dollars of insurance recoveries for clients with respect to liability, property, business interruption, D&O, E&O, employment practices liability policies, and a variety of other insuring instruments.

The firm also has advised some of the largest international corporations regarding their Directors and Officers insurance policies and has litigated D&O claims on their behalf.

K&L Gates' work in developing strategic responses to the liabilities and losses facing clients has arisen in many contexts, from toxic tort and environmental liabilities to losses relating to the worldwide financial crisis, to property damage and business interruption claims arising from man-made and natural disasters.

### **Insurance Policy Review and Analysis**

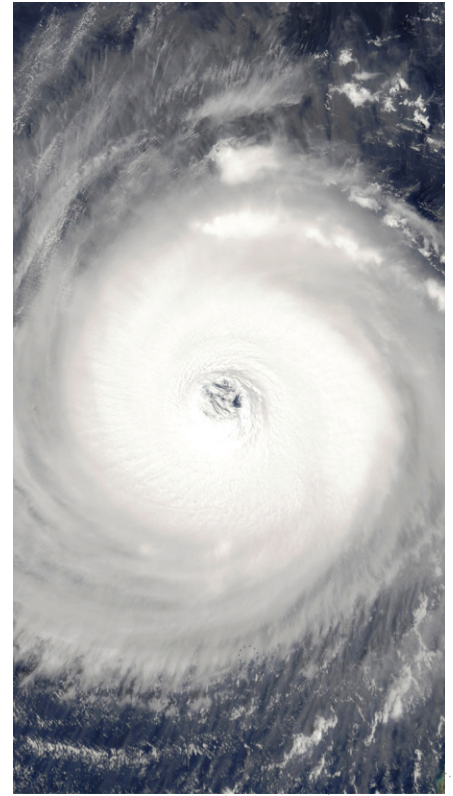
K&L Gates regularly reviews and analyzes existing commercial insurance policies maintained by clients to provide advice regarding language present or missing in those policies that may cause difficulties if and when possible claims arise. Moreover, the firm provides advice regarding alternative coverage or policy provisions that may be sought to be added to those policies to enhance our clients' insurance programs.

### **Claims Audit**

K&L Gates reviews and assesses pending liability claims being incurred by clients to determine if those claims are being handled in a manner so as to maximize insurance recovery. Specifically, the firm will review pending claims and losses in connection with the details of a client's insurance program to analyze whether the claims are being defended in a manner to promote coverage and to consider whether applicable policy terms and conditions are being satisfied to avoid potential loss of coverage otherwise available to respond to the claims.

### **Phase One Claims Dispute Analysis**

If a client has received notice from an insurer of a denial of coverage or a reservation of rights for a particular claim, K&L Gates will perform a Phase One Analysis to determine the prospects for obtaining coverage nonetheless. A Phase One Analysis typically consists of a written report that reviews: (a) the relevant facts of the claims situation, (b) the relevant insurance policy language, and (c) the applicable state insurance law. Based on this review, the Phase One Analysis provides recommendations on whether and how best to pursue insurance recovery for the claim at issue.



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### **Transactional Due Diligence Relating to Insurance Rights**

Frequently, in a company's purchase or sale of another business, insufficient attention is paid to insurance issues in the transaction. K&L Gates can assist the company's transaction team by: (1) reviewing a target company's ongoing liabilities and corresponding insurance coverage to determine if coverage is available to respond to those liabilities, and (2) providing advice regarding whether the transaction is structured in a manner to best effectuate the parties' intent regarding the assignment of insurance rights and proceeds. Most insurance policies contain language addressing how insurance rights may be assigned, and there is significant and evolving case law that addresses whether and under what circumstances rights under an insurance policy may be assigned. These policy provisions and the relevant case law must be analyzed in the context of actual and foreseeable claims situations, and K&L Gates is well experienced in such analysis to help clients avoid discontinuity in insurance coverage as a result of the transaction.

## Claims Prosecution in Insurance Company Insolvencies

K&L Gates works closely with clients to track and ultimately pursue claims in connection with the insolvency and liquidations of domestic and foreign insurance companies, many of which have resulted from London Market failures and inadequate reserving practices. Upon the creation of insurance company receiverships, on request, we advise clients in submitting timely proofs of claim, monitoring and negotiating schemes of arrangement, and working with various creditor committees.

## Counseling Regarding Insurance Issues in Bankruptcy Proceedings

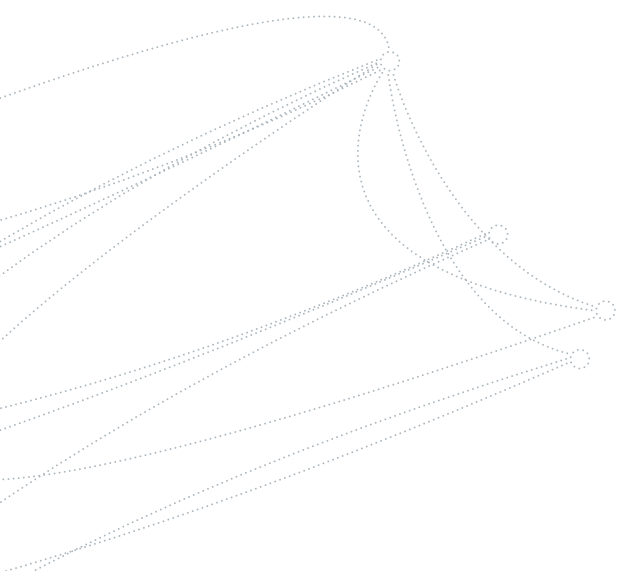
Insurance policies are often among the most important assets of a debtor's bankruptcy estate, particularly in bankruptcy filings precipitated by mass tort liabilities. K&L Gates' Insurance Coverage practice, working closely in conjunction with the firm's bankruptcy, business reorganization, and restructuring group, is actively engaged in representing a variety of clients in connection with insurance-related issues in asbestos-related and other bankruptcies.

## Captive Insurance Company Strategies

K&L Gates provides multi-disciplinary, policyholder-oriented counseling to clients on a wide range of captive insurance company issues. Our lawyers counsel clients on insurance, corporate and transactional, finance, regulatory, securities, and tax issues relating to captives. Firm lawyers review and assist in negotiating direct insurance contracts and reinsurance and retrocession agreements, and represent captives in the litigation and resolution of such disputes.

## Representative Experience

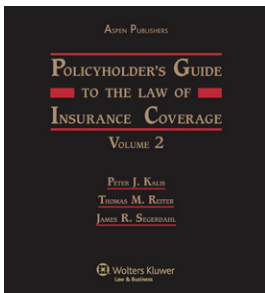
- Representation of the policyholder in the three largest asbestos coverage settlements entered into by Equitas/Lloyd's Underwriters, with recoveries totaling over \$1.4 billion.
- Representation of a major chemical manufacturer in coverage litigation in both the United States and an international arbitration regarding insurance for liabilities arising out of allegedly defective polybutylene household plumbing systems.
- Representation of one of the world's leading manufacturers of paper, building products, and related chemicals for recovery of losses resulting from a chemical explosion at one of its plants.
- Representation of a worldwide oil and gas exploration and production company in connection with recovery of losses stemming from a crude oil spill at a refinery caused by Hurricane Katrina.
- Represented a global oil production company in coverage issues and disputes arising out of one of the largest on-land oil spills in U.S. history due to Hurricane Katrina.
- Represented a major off-shore oil producer in property damage and wreck removal coverage claims and litigation arising from downed platforms in the Gulf of Mexico as a result of Hurricanes Ivan and Katrina.
- Representation of one of the largest wireless telecommunications companies regarding property damage and business interruption losses arising from Hurricanes Katrina and Rita.
- Representation of a leading global manufacturer of colors, flavors, and fragrances in a lawsuit against its historical comprehensive general liability and umbrella liability insurers regarding environmental claims asserted against a former plant operated by a predecessor.
- Representation of one of the world's leading financial services institutions with respect to a large property and business interruption insurance claim arising out of losses related to the September 11, 2001 terrorist attacks.
- Representation of Fortune 100 company in multiple litigations regarding its and others' rights to insurance coverage under historical policies as a result of complex mergers, acquisitions, and divestitures during the past thirty years.
- Representation of a leading financial institution in insurance coverage litigation in a federal district court with respect to a multimillion-dollar D&O insurance claim arising out of underlying governmental and private party claims based on allegedly misleading financial statements and public filings.
- Representation of a large publicly traded retailer (that eventually filed for Chapter 11 bankruptcy relief) in connection with a D&O insurance claim arising out of underlying securities class actions, derivative action lawsuits, and an SEC investigation triggered by a restatement of financial statements, which resulted in recovery of policy limits.
- Representation of a major investment adviser with respect to an E&O claim against numerous insurers in its tower of coverage arising from claims of clients alleging errors with respect to class-action settlement filings made by the adviser on behalf of such clients.
- Representation of a major manufacturer of nuclear plant components in matters regarding nuclear liability insurance coverage in connection with underlying claims alleging injuries resulting from alleged exposure to harmful radioactive emissions from nuclear fuel processing plants.
- Representation of one of the United States' largest financial institutions in an employment liability coverage action seeking coverage for a gender discrimination class action brought on behalf of more than 900 current and former employees.
- Representation of one of the world's largest aluminum products manufacturers in connection with comprehensive environmental property damage claims at industrial facilities across the United States.



- Representation of a large industrial manufacturer in connection with the resolution of an EPLI claim regarding an underlying employment discrimination class action in which one of the named plaintiffs had filed an EEOC charge prior to the inception of the EPLI policy at issue.
- Representation of a nonprofit organization seeking coverage for loss arising from former executives' misuse of funds, including charging personal expenses to the company and making excessive expenditures.
- Representation of a worldwide supplier of engineered oil and gas drilling products in connection with a pre-packaged Chapter 11 bankruptcy successfully resolving all of the company's silica-related bodily injury liabilities.
- Representation of several condominium associations against multiple insurers in Florida State Court in order to obtain coverage for water damage claims that included mold remediation in connection with the 2004 hurricanes in Florida.
- Representation of a national homebuilder as an additional insured on a subcontractor's general liability insurance policy for recovery of defense costs and legal fees expended in a coverage action resulting from a serious personal injury action brought by the subcontractor's employee.
- Representation of a project manager in the recovery of multi-million dollar policy limits for reimbursement of defense costs and settlement payments from project-specific and primary professional liability insurance in connection with claims asserted for project cost overruns.

## Representative Clients

Alcoa Inc.  
 Allegheny Technologies Incorporated  
 CBS Corporation  
 Crane Co.  
 Duke Energy Corporation  
 E.I. du Pont de Nemours and Company  
 Halliburton Company  
 Honeywell International Inc.  
 Man Investments, Inc.  
 Merrill Lynch & Co., Inc.  
 Microsoft Corporation  
 PNC Financial Services Group, Inc.  
 PPG Industries, Inc.  
 Sprint Nextel Corporation  
 T-Mobile USA, Inc.  
 United Technologies Corporation  
 Viacom Inc.



K&L Gates wrote the book on insurance coverage law. We authored the *Policyholder's Guide to the Law of Insurance Coverage*,

updated annually, which is recognized as one of the leading treatises on insurance coverage law in the United States.

- Published by Aspen Law and Business

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[www.klgates.com](http://www.klgates.com)

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