



## Frederic J. Giordano

### Partner

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### OVERVIEW

Fred Giordano focuses his practice on insurance recovery and counseling, complex civil and commercial litigation, and arbitration.

Fred's goal is to help his clients achieve their goals. His insurance coverage practice is limited to representing policyholders. On the front side, he helps clients assess their risks and evaluate potential insurance coverage before claims arise. He reviews insurance policies and programs and advises clients regarding the scope of their existing coverage and implementing potential improvements. He works closely with a policyholder's insurance broker, as appropriate, and has helped draft custom policy language. When claims do arise, Fred helps clients maximize their insurance recovery by negotiating, mediating, litigating, or arbitrating as necessary. Once engaged, Fred collaborates with his clients and seeks the best and most efficient results for their businesses. Often, such results can be achieved through negotiation, but Fred litigates and arbitrates to protect his clients' rights and interests when insurers are unwilling to resolve claims fairly and equitably.

Fred has litigated, arbitrated, and counseled clients with respect to claims under a wide variety of insurance policies, including representations and warranties, private equity fund management liability, management and professional liability, directors and officers liability, errors and omissions liability, fiduciary liability, workers' compensation and employers liability, commercial general liability, business owners, commercial automobile, and owner-controlled insurance programs (OCIPs). Among other things, he has secured insurance coverage for clients for informal US Securities and Exchange Commission (SEC) inquiries, formal and informal SEC investigations, class action securities lawsuits, derivative actions, and lawsuits alleging property damage, serious bodily injury, and construction defects. He also has handled disputes for coverage under homeowners', builders' risk, and property policies, including Superstorm Sandy claims.

Fred further helps companies implement effective risk transfer. He has drafted, reviewed, and revised many contractual insurance procurement and indemnification provisions. He has particular experience with respect to the impact of anti-indemnity statutes and case law that limits the scope of indemnification for construction claims in many jurisdictions.

Fred also litigates and arbitrates a variety of other civil and commercial matters. By way of example, he has handled disputes over BPaaS software services, warehouse lending facilities and other loans, liens, construction defects, defective products, fraud, consumer fraud, and multiple types of breach of contract. He has arbitrated

numerous cases involving breaches of agreements to purchase real property and defended developers, builders, and product manufacturers in personal injury and property damage actions.

Finally, Fred has published and lectured on, and continues to speak and write about, numerous insurance and indemnity-related topics. He served as Chair of the Insurance Law Section of the New Jersey State Bar Association for the 2017-2018 term.

## PROFESSIONAL BACKGROUND

Prior to joining K&L Gates, Fred was a partner at a Newark law firm, where he focused his practice in the areas of insurance coverage and related construction issues. He also served as a member of the Board of Trustees of New Jersey Reads, a nonprofit organization dedicated to improving literacy skills of children and adults in New Jersey.

## ACHIEVEMENTS

- Listed in the *The Best Lawyers in America*® for Insurance Law in Newark, 2024
- Named to the *New Jersey Law Journal* “40 Under 40” list, an annual look at 40 promising young professionals in New Jersey's legal community, 2008

## PROFESSIONAL / CIVIC ACTIVITIES

- New Jersey State Bar Association
- Regis Bar Association
- Fred Giordano currently serves as the Pro Bono Coordinator of the Newark office

## SPEAKING ENGAGEMENTS

- “Smooth Sailing Eclipses Choppy Waters: Navigating Insurance Law Ethical Issues Successfully,” myLawCLE, 17 January 2024
- “Insurance For Natural & Manmade Disasters Including the COVID-19 Pandemic & Highlights of Insurance Facts,” *Association of Corporate Counsel of New Jersey 21th Full Day CLE Conference*, 16 October 2023.
- “Claims Panel and Roundtable,” *Willis Tower Watson 6th Annual Transaction Insurance Roundtable*, 20 July 2023.
- “Insurance 101: A Basic Level Introduction to Corporate Insurance,” *Association of Corporate Counsel of New Jersey 20th Full Day CLE Conference*, 15 September 2022
- “Free Money” Insurance Coverage under Policies Issued to Other Companies,” *Association of Corporate Counsel of New Jersey 19th Full Day CLE Conference*, 9 September 2021

- "Understanding & Managing Cyber Risk," *Association of Corporate Counsel of New Jersey 18th Full Day CLE Conference*, 22 September 2020
- "Free Money: Insurance Coverage under Policies Issued to Other Companies," *Association of Corporate Counsel New Jersey 17th Annual Full Day CLE Conference*, 20 September 2019
- "IC in AC—Insurance Coverage in Atlantic City," 2018 NJSBA Annual Meeting, 17 May 2018
- "Hot Button Issues in Insurance Law: 2018," *New Jersey State Bar Association Insurance Law and Insurance Defense Special Committee*, 20 January 2018
- "A Primer on Directors and Officers and Similar Professional Liability Insurance," *Association of Corporate Counsel New Jersey 14th Annual Full Day CLE Conference*, 16 September 2016
- "Overview, New Developments, and Ethical Considerations: Additional Insured Coverage and Contractual Indemnification," *New Jersey State Bar Association 2016 Annual Meeting and Convention*, 19 May 2016
- "Practical Tips for Mediating Liability and Coverage Claims," *New Jersey State Bar Association Dispute Resolution and Insurance Law sections CLE program*, 7 April 2015
- "A Primer on Directors and Officers and Similar Professional Liability Insurance," *New Jersey Corporate Counsel Association 12th Annual Full Day CLE Conference*, 19 September 2014
- "An Introduction to Corporate Insurance," *New Jersey Corporate Counsel Association 11th Annual Full Day CLE Conference*, 20 September 2013
- "Best Practices in Construction Claims and Disputes Management," *K&L Gates and Marsh Conference: Legal and Insurance Lessons Learned from Major Catastrophic Events and Constructions Claims*, 10 September 2013
- "Are Construction Defects 'Occurrences' Under General Liability Insurance Policies?," *Leading Builders of America General Counsels Meeting*, 15 November 2012
- "Insurance 101: A Basic Level Introduction to Corporate Insurance," *New Jersey Corporate Counsel Association 10th Annual Full Day CLE Conference*, 21 September 2012
- "Major Construction Projects: Key Risk and Insurance Strategies," *K&L Gates & Marsh Sponsored Seminar*, 6 October 2011
- "Contractual Indemnities and Insurance: Not Always Perfect Together," *New Jersey Corporate Counsel Association 9th Annual Full Day CLE Conference*, 23 September 2011
- "Protecting Lender Interest in Borrower Insurance Proceeds: Navigating Insurance and Bankruptcy Issues in Commercial Lending," *Stratford Publications CLE Webinar*, 12 April 2011
- "Insurance Issues in Negotiating and Closing Financing Transactions," *The Association of Commercial Finance Attorneys, Inc. Meeting*, 20 September 2010
- "Saving Money through Risk Transfer: Practical Advice on Effectuating Indemnification and Additional Insured Coverage," *The National Catholic Risk Retention Group, Inc. 19th Annual Winter Meeting*, 2 February 2010

- “Insurance Issues Arising Out of the Financial Crisis – What Should You Do to Protect Your Company,” *New Jersey Corporate Counsel Association 7th Annual Full Day CLE Conference*, 24 September 2009
- “‘Free Money’ Insurance Coverage under Policies Issued to Other Companies,” *New Jersey Corporate Counsel Association 6th Annual Full Day CLE Conference*, 18 September 2008
- “Maximizing Insurance Coverage for Directors and Officers,” guest lecturer in *Mergers and Acquisitions*, Professor Robert T. Miller, *University of Pennsylvania Law School and Villanova University School of Law*, April 2008
- “What Bank Directors and Officers Should Know (And Not be Afraid to Ask) About D&O Liability Insurance Coverage,” presented to *The New Jersey League of Community Bankers, Senior Management Conference*, September 2006
- “Directors and Officers Insurance Issues,” guest lecturer in *Mergers and Acquisitions*, Professor Robert T. Miller, *Villanova University School of Law*, April 2006

## EDUCATION

- J.D., Brooklyn Law School, 1995 (*Brooklyn Journal of International Law*, 1993-1995; *Executive Articles Editor*, 1994-1995)
- B.A., Columbia College, 1992 (*cum laude*)

## ADMISSIONS

- Bar of New Jersey
- Bar of New York
- United States Court of Appeals for the Second Circuit
- United States District Court for the District of New Jersey
- United States District Court for the Eastern District of New York
- United States District Court for the Northern District of New York
- United States District Court for the Southern District of New York

## THOUGHT LEADERSHIP POWERED BY HUB

- 21 December 2023, Another Win for Policyholders as Illinois Reverses Course and Joins the Majority of States Recognizing CGL Policies Cover Property Damage Caused by Construction Defects
- 21 March 2022 , New York Unwinds Some Burdensome Insurance Disclosure Obligations Imposed on Defendants by Amending the Comprehensive Insurance Disclosure Act

- 14 February 2022, The New Jersey Insurance Fair Conduct Act: One Step Closer to Accountability
- 8 February 2022, Litigating In New York Is a Whole New Ballgame: Onerous Insurance Disclosure Obligations Have Businesses And Individuals Subject To New York Jurisdiction On High
- 15 October 2021, Who's to Pay? Trade Contract Rather than Insurance Policy Controls Priority of Insurance Coverage under New York Law
- 6 May 2020, COVID-19: Congress, Pennsylvania, Michigan, and South Carolina Join Other Jurisdictions Proposing Legislation Addressing Insurers' Obligations to Pay for Pandemic-Related Losses
- 6 April 2020, COVID-19: Growing Number of U.S. States Propose Legislation Requiring Insurers to Pay for COVID-19-Related Losses Incurred by Small Companies
- 20 March 2020, COVID-19: New Jersey Assembly Introduces Legislation to Provide Small Companies With Business Interruption Coverage for COVID-19 Losses
- 17 May 2018, The Tenth Circuit's Prediction: New York State Likely to Follow Trend Recognizing Damages Caused by Subcontractor's Faulty Work is a Covered "Occurrence"
- 16 May 2018, The Tenth Circuit's Prediction: New York State Likely to Follow Trend Recognizing Damages Caused by Subcontractor's Faulty Work is a Covered "Occurrence"
- 3 November 2017, New Jersey's Manifestation Destiny: Appellate Division Applies Continuous Trigger to Claims for Progressive Third-Party Property Damage and Highlights Fact-Sensitive Nature of Manifestation Date
- 20 June 2017, Policyholders Beware: New York Court of Appeals Restricts Additional Insured Coverage Under Common Policy Endorsement to Injuries Proximately Caused by Named Insured
- 23 February 2017, Policyholders Win Again: The New Jersey Supreme Court Voids Insurance Policy Anti-Assignment Clauses in Occurrence-Based Insurance Policies for Post-Loss Claims
- 6 November 2015, Maryland General Contractor Wins Coverage Under Subcontractor's Additional Insured Endorsement; Coverage Not Limited to Vicarious Liability
- 13 July 2015, New Jersey Developer Wins on "Occurrence" and "Property Damage"; Appellate Division finds Subcontractors' Faulty Construction within Insuring Agreement; *Parkshore* Abrogated

## OTHER PUBLICATIONS

- "New 'Bad Faith' Claim Law Holds NJ Insurers Accountable," *Law360*, 1 March 2022
- "New Jersey Supreme Court Gives Supreme Win to Policyholders," *Lexology*, 5 August 2016
- "Recoupment of Defense Costs: An Ohio Court Weighs in on the Debate," *FC&S Legal*, 3 April 2016
- "NJ Finally Joins Trend: Consequential Damage Is Covered," *Law360*, 4 August 2015



- “Late Filing Under a Claims-Made vs. An Occurrence-Based Policy: Appellate Division Rejects Precedent,” *New Jersey Law Journal*, July 24, 2014.
- “Real Estate Seller's Duty to Disclose Mold Conditions,” *Mealey's Litigation Report: Mold*, Volume 2, Issue No. 3, March 2002.
- “Selecting Expert Witnesses in Mold Litigation,” *Mealey's Litigation Report: Mold*, Volume 1, Issue No. 10, October 2001.

## NEWS & EVENTS

- 16 October 2023, 21st Annual CLE Conference Program- Insurance for Natural and Manmade Disasters Including the COVID-19 Pandemic and Insurance 101 Highlights, Hosted by Association of Corporate Counsel New Jersey

## MEDIA MENTIONS

- Quoted, “Travelers Can't Duck Payout In Warehouse Fire Reversal”, *Law360*, 23 February, 2024
- Mentioned, “Second Circuit – Ambiguous contract: Ezrasons Inc. v. Travelers Indemnity Co.,” *The Daily Record*, 13 February, 2024
- Mentioned, “Marine Cargo Policy Ambiguous As To Whether Warehouse Was 'Approved Location,’” *Mealey's Daily News Update: Insurance*, 5 January 2024
- Quoted, “Court decision on Hertz will be good for other companies,” *NJ.com*, 4 March 2010

## AREAS OF FOCUS

- Insurance Recovery and Counseling
- Commercial Disputes
- Construction and Infrastructure
- Construction and Infrastructure Dispute Resolution
- International Arbitration
- Real Estate Litigation

## INDUSTRIES

- Energy
- Energy Disputes

## REPRESENTATIVE EXPERIENCE

- Representation of private equity firm in dispute with its private equity fund and management liability insurer over coverage for costs incurred in responding to an initial informal SEC inquiry and a subsequent formal SEC investigation, and in defending a related lawsuit brought by limited partners arising out of the alleged misallocation of fund assets to the limited partners' detriment.
- Representation of publicly traded real estate investment trust in connection with securing insurance coverage for defense of derivative, securities, and other litigations under directors and officers insurance policies.
- Representation of private investment firm in connection with seeking insurance coverage under its private equity fund and management liability insurance policy for multiple suits and claims arising from bankruptcy of portfolio company.
- Representation of directors of private investment firm in connection with securing potential insurance coverage under directors and officers insurance policy of portfolio company for lawsuit alleging breaches of fiduciary duty.
- Representation of private investment firm in negotiation of management and professional liability renewal policy.
- Representation of developer-appointed former directors of country club in pursuit of directors and officers insurance coverage for claims of breach of fiduciary duty and conversion brought on behalf of country club.
- Representation of developer and developer-appointed directors of country club in securing insurance coverage under commercial general liability and directors and officers policies for lawsuit seeking damages for property damage caused by alleged construction defects and breaches of fiduciary duty by directors.
- Representation of developer of New York City high rise in connection with seeking insurance coverage under its commercial general liability insurance policy, and as an additional insured under its subcontractors' commercial general liability policies, for claims by adjacent buildings for alleged property damage caused during construction of client's building.
- Representation of publicly traded restaurant company in connection with securing insurance coverage for settlement of derivative lawsuit.
- Representation of hospital in litigation against insurance broker alleging negligence in connection with failure to place adequate flood insurance prior to Superstorm Sandy.
- Representation of catering company in connection with insurance claim for property damage following Superstorm Sandy.
- Representation of homeowner in litigation against insurance agent alleging negligence in connection with failure to place flood insurance prior to Superstorm Sandy.
- Representation of realty trust in competing declaratory judgment actions regarding insurance coverage potentially available to pay for property damage to realty trust's apartment complex.

- Representation of large real estate developer in pursuit of insurance coverage under OCIP for lawsuit by condominium association alleging property damage resulting from purported construction defects and in related dispute with OCIP insurer over application of policy deductibles and collateral requirements under payment agreement.
- Representation of a national home builder in litigation seeking insurance coverage under its own general liability insurance policies for multimillion-dollar property damage claims of a large New Jersey condominium association.
- Representation of a national home builder in litigation seeking insurance coverage as an additional insured for bodily injury and property damage claims of 40+ homeowners allegedly caused by water intrusion and mold in a North Carolina townhome development.
- Representation of a fire retardant treated lumber producer in litigation seeking millions of dollars of insurance coverage from its liability and excess insurers for hundreds of claims for property damage allegedly caused by premature degradation of fire retardant treated plywood.
- Representation of leading national heating and air conditioning systems supplier in a multiparty subrogation action arising out of property damage to a large Native American casino's data and surveillance center allegedly caused by the shutdown of a prefabricated chiller plant, while also securing insurance coverage for client as an additional insured under installer's commercial general liability insurance policy.
- Representation of a medical device manufacturer in litigation seeking millions of dollars of insurance coverage from its liability insurers for hundreds of claims for bodily injury allegedly caused by latex-containing products.
- Representation of a telecommunications company in litigation seeking insurance coverage from its fiduciary liability insurers for a multimillion-dollar settlement of ERISA class action lawsuits.
- Representation of a recycling facility in a lawsuit against its liability insurer seeking damages for insurer's bad faith failure to settle claims for wrongful death and bodily injury arising from an explosion.
- Representation of a beverage company and trucking company in separate lawsuits involving disputed workers' compensation insurance premiums.
- Representation of a drug manufacturer with respect to insurance coverage for lawsuits arising from alleged manufacturing errors.
- Representation of leading heating and air conditioning manufacturer in securing insurance coverage for automobile wrongful death lawsuit.
- Representation of leading heating and air conditioning manufacturer in securing insurance coverage for subrogation claims arising from fire in shopping center.
- Representation of consumer products supplier in securing complete defense by independent counsel and contribution to settlement for lawsuit involving copyright infringement as advertising injury under commercial general liability policy.



- Representation of life sciences company in a New York-based International Chamber of Commerce arbitration involving breach of a distribution agreement. Client prevailed after a full hearing.
- Representation of physician in arbitration concerning separation from partner and division of partnership assets.
- Representation of recycling company in litigation seeking damages from plastics supplier for delivery of nonconforming goods.
- Representation of a wholesale mortgage lender in litigation to recover damages from a warehouse lender and guarantors that defaulted on a significant line of credit.
- Representation of a building owner in a lawsuit seeking damages from its property insurer for damage caused by a building collapse.
- Representation of a national home builder in litigation seeking indemnification and damages for breach of contract from subcontractors that negligently constructed a home in Virginia.
- Representation of a national home builder in litigation seeking insurance coverage as an additional insured for a property damage claim allegedly caused by water intrusion and mold in Florida.
- Representation of hospital in negotiating insurance and indemnity provisions in contract with anesthesia group.
- Representation of hospital in dispute with insurer over coverage for employee's medical treatment under stop-loss health insurance policy.
- Representation of electronic company in seeking insurance coverage for phishing cyber insurance claim.
- Representation of professional basketball team in dispute over insurance coverage under media liability insurance policy for alleged copyright infringement by client when including licensed sound recordings in video highlights posted to the internet.
- Counseling various clients in construction and other industries regarding potential insurance coverage for COVID-19 related business interruption losses.
- Representation of health insurer in AAA arbitration seeking damages for technology outsourcing vendor's fraudulently inducing client into contract and damages resulting from breach of contract.
- Representation of leading global apparel and accessories company in federal court litigation and appeal against its property insurer seeking coverage for property destroyed in fire at third-party warehouse facility.
- Representation of facility planning and management company in Representation and Warranty insurance coverage claim.
- Representation of leading global water and housing products manufacture in German Arbitration Institute (DIS) arbitration seeking to recover of insurance coverage from excess insurer under Warranty & Indemnity insurance policy, as well as representation of same client in pursuit of coverage from higher excess coverage layers.

- Representation of leading US plumbing fixture manufacturer in securing insurance coverage for settlement of serious motor vehicle accident claim.
- Representation of national real estate developer in declaratory judgment action regarding insurance coverage for property damages caused by alleged construction defects at New Jersey condominium complexes.
- Representation of owner in seeking insurance coverage under its commercial general liability insurance policy, and as an additional insured under its subcontractors' commercial general liability policies, for claims by adjacent building for alleged property damage caused during construction of client's building.
- Representation of NYC construction company in declaratory judgment action seeking insurance coverage under commercial general liability insurance policy for property damage allegedly caused by defective workmanship.
- Representation of cosmetics manufacturer in seeking insurance coverage for multiple asbestos-related personal injury claims.
- Representation of global construction company in seeking insurance coverage under professional liability insurance policy for claim alleging professional negligence in constructing luxury townhouses in Brooklyn, New York.
- Representation of US-based manager of North American infrastructure assets in evaluating and structuring insurance program.
- Representation of leading real estate company in negotiation of representations and warranties insurance policy.
- Representation of health and wellness company in negotiation of insurance and indemnity provisions in contract with security company.
- Representation of pot and container manufacturer in seeking coverage under property insurance policy for damages caused by fire at plant.