BOVIS KYLE
BOVIS, KYLE, BURCH & MEDLIN

Insurance Coverage and Bad Faith

PROTECTING INSURERS

From the beginning, our firm has provided strategic legal representation to insurers faced with coverage issues and alleged bad faith. We have an experienced group of seasoned coverage attorneys who regularly provide professional and cost-effective representation to insurers involved in disputes with policyholders. Insurance coverage is not a sideline in our firm. It is one of the pillars of our firm's practice.

Our coverage group has decades of experience handling complex coverage and bad faith issues at the local, national, and regional level, and is focused on helping insurers successfully handle difficult and complex claims. We act as coordinating national and regional counsel for some clients, including obtaining and overseeing local counsel. We are also requested to act as local counsel by other coordinating counsel.

We represent insurers in a wide variety of insurance coverage disputes before federal and state trial and appellate courts and arbitration panels across the nation and regionally throughout the southeast. We understand local nuances while maintaining consistent positions for our clients nationally.

Our commitment to quality service has resulted in long-term relationships with our clients, some of which go back several decades. Our clients rely on us to anticipate all angles of a coverage dispute, to control costs, and to help them achieve their objectives.

We have extensive experience with all types of property and casualty insurance policies including:

- Commercial General Liability Policies
- Commercial and Personal Automobile Policies
- Excess and Umbrella Policies
- Homeowner's Policies
- Professional Liability Policies
- Directors and Officers Policies
- Manuscript Policies
- First-Party Property Policies
- Builder's Risk, Inland-Marine, and Boiler Policies
- Alternative Risk Transfer Arrangements
- Policies with High Deductibles and S.I.R.'s

The following are examples of the broad and complex types of coverage matters that our coverage attorneys have handled:

- Serve as coverage and extra-contractual exposure counsel for clients writing CGL, D&O, E&O, EPL, Environmental, Educational Liability, Commercial Property, Commercial Auto/Fleet, Excess/Umbrella, and other specialty policies throughout the southeast.
- Successfully initiated coverage litigation and defended bad faith claims involving all of the following in related litigation: (1) class action bodily injury and property damage claims arising out of negligent housing construction, (2) bad faith claim against the carrier of a high profile charitable organization, and (3) officer and director claims by one high profile charitable organization against another and its officers and directors. This matter involved multiple insureds, multiple lawsuits, and multiple states.
- Represented multiple insurance carriers and multiple claims involving bad faith and insurance coverage seeking to enforce judgments over $100,000,000. As examples of these claims, they arose out of premises liability wrongful death, tractor-trailer accident, commercial explosion, and allegations of widespread sexual abuse and molestation.
- Successfully initiated equitable subrogation claims on behalf of an excess carrier against other insurers within a tower of coverage. The claim arose out of a $60M claim against an agricultural processor that allegedly permitted an allergen to contaminate raw materials that were incorporated into a final food product that had to be recalled.
- Successfully litigated coverage involving two related bodily injury/wrongful death claims against an apartment and property management company that included significant choice of law issue resulting in a victory before the 11th Circuit Court of Appeals.
- Successfully resolved a wrongful death case during litigation of related coverage issues of first impression arising out of the interaction of Georgia's statutory employer rules to a multiple-contractor construction accident and the General Contractor's employer exclusion in a CGL policy.
- Defended numerous insurance companies alleged to have failed to settle claims in bad faith resulting in judgments or settlements of millions of dollars.
- Successfully rescinded a policy of a mega-church in which the lead pastor was alleged to have breached fiduciary duties and engaged in wrongful sexual conduct with minor and adult women of the church.
- Regularly called upon to guide insurance companies through the complexities of "gotcha" policy limit demands designed to be too complex to comply with to try to bust the insurance carriers' policy limits in a bad faith claim.
- Successfully obtained court rescission of $250,000,000 aviation policy based upon misrepresentations in the application, including obtaining an important choice of law opinion from the Georgia Court of Appeals.
- Lead fraud investigation on behalf of carrier into a large hurricane loss in which church and public adjuster attempted to recover over $10,000,000 more than the actual loss and replacement costs associated with the storm.
- Successfully litigated seminal Georgia case on Construction Defect coverage.
- Successfully litigated first case reported in the nation to interpret the Absolute Pollution Exclusion.

LIABILITY COVERAGE

A significant part of our coverage practice concerns evaluating complaints against insureds and determining the extent to which a duty to defend and coverage exist. Our lawyers have extensive experience with virtually every conceivable issue under both occurrence-based and claims-made liability insurance policies, including but not limited to:

- Construction Defect Claims
- Late Notice of Occurrence
- Other Insurance Provisions and Priority of Coverage
- Additional Insured Endorsements
- Conditions Precedent to Coverage
- Personal and Advertising Injury Coverage
- Environmental Coverage
- Continuous Damage Coverage
- Officer & Director Policies
- Errors & Omissions and Lawyer Liability Policies
- Employment Practices Policies
- Inter-related Wrongful Acts/Number of claims
- Commercial Policy Coverage
- Miscellaneous Professionals Errors & Omissions Policies
- Educators Liability Policies
- Financial Institution Policies
- Surety and Fidelity Coverage
- Employer's Liability Policies
- Product Liability Coverage
- Commercial Transportation and Trucking Policies
- Commercial Oil and Gas Policies
- Non-profit and Church Liability and Errors & Omissions
- Medical Facilities and Institutions Coverage Issues
- Exclusions and Sub-limits within Endorsements
- Commercial Excess and Umbrella Coverage
- Personal Umbrella Coverage

Our coverage group also routinely handles coverage issues involving both personal and commercial

uninsured motorist coverage. We are also asked to assist in drafting manuscript endorsements for insurance policies to meet the specific and unique needs of both insurance companies and their insureds.

FIRST-PARTY PROPERTY COVERAGE

Bovis, Kyle, Burch & Medlin, LLC has always represented insurers in property coverage disputes, especially arson and fraud cases. We have long-standing relationships with cause-and-origin experts, forensic accountants, and other technical experts.

Our coverage attorneys conduct examinations under oath and correlate the work of experts. With our experience and resources, we can advise insurers on the most cost-effective method for resolving property claims.

From time to time, our attorneys are consulted by underwriters and called upon to draft policy provisions.

We maintain membership in the property loss section of the American Bar Association and the International Association of Defense Counsel. We have served as guest speakers and attendees for the past eight Property Loss Research Bureau conventions, and we are members of the Southern Loss Association and the Metro Arson Committee.

We have represented insurers on a wide variety of property insurance claims regarding buildings, equipment, airplanes, electronic data, and other property. Representative coverage issues include:

- Fortuity
- Exclusions
- Concurrent Causation
- Valuation and Appraisal
- Conditions
- Business Interruption
- Extra Expense Coverage

We focus on helping our clients avoid litigation when possible, but we can effectively litigate and try property claims when necessary.

DEFENDING BAD FAITH AND EXTRA-CONTRACTUAL CLAIMS

In the past twenty years, bad faith law governing insurers has expanded significantly, and the number of claimants and insureds willing to sue insurance companies for alleged bad faith has exploded.

First-party property claimants routinely include bad faith claims when suing their insurers for coverage.

Third party claimants are increasingly trying to set up insurance companies for coverage in excess of their

agreed-upon limits by making time-limited, policy-limit settlement demands.

Bad faith claims against insurance companies second-guess not only the coverage analysis of the particular claim in issue, but often attack insurers' processes and procedures for doing business. Preventing and defending bad faith claims is a high priority of our clients.

Our coverage lawyers understand what is considered good faith claims handling generally and under the law and can counsel our insurance clients on how to handle a claim in a cost-effective, good faith manner that prevents bad faith from becoming an issue. Our coverage group prides itself on winning summary judgments on bad faith claims when possible and trying them to successful jury verdicts or resolution when necessary.

COVERAGE ATTORNEYS

Bovis, Kyle, Burch & Medlin, LLC understands the insurance industry. As one of the leading insurance coverage firms in the Southeast, we can provide cost-effective legal representation on virtually any insurance coverage issue that is presented in today's complex legal environment. Our insurance coverage team includes partners Kim Jackson, Jimmy Singer, Steve Kyle, and David Russell Smith. Between this group and their strong supporting team members, we have litigated hundreds of coverage cases across the Southeast.