

## Insurance & Indemnification

### Insurance Defense

Pashman Stein Walder Hayden provides legal representation to insureds in all types of litigation, including negligence, personal injury, construction, toxic tort, environmental, asbestos, professional malpractice, and employment cases in state and federal courts throughout New Jersey and New York.

At the outset of our representation, the assigned attorney works with the insurer to develop a strategy and budget for the case. A result-oriented, cost-effective approach by defense matters is emphasized. Our attorneys then work aggressively and closely with the insurer and insured for a successful disposition.

Our track record of successful results includes environmental matters involving the defense of third-party property damage and bodily injury claims resulting from the insureds' alleged transportation, disposal or use of hazardous waste, defense of mold-related and lead paint lawsuits, defense of municipalities, developers, contractors, sub-contractors, property owners and managers, defense of sellers of asbestos-containing products, representing management and employers in discrimination, wrongful termination, and wage and hour claims, representing professionals in professional liability claims against accountants, architects, engineers, and lawyers; representing insureds in slip and fall and automobile accident cases.

### Insurance Coverage

Pashman Stein has 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. We represent not only large corporate policyholders, but also numerous midsize and smaller companies and their officers and directors in connection with insurance claims and issues as well as insurance-related strategic concerns. Many policyholders, in numerous industry groups, have turned to Pashman Stein to address large and small loss or liability issues. Our attorneys routinely field insurance coverage questions from our clients, prosecute suits on their behalf, and work out a resolution of client's coverage issues with insurance companies.

Pashman Stein regularly advises clients that have received notice from an insurer of a denial or reservation of rights to deny coverage for a particular claim. To develop the best strategy for clients, immediately upon retention, our attorneys regularly perform an analysis of the prospects for obtaining coverage. This initial analysis involves a written report reviewing: (a) the relevant facts of the claims situation, (b) the relevant insurance policy language; and (c) the applicable state insurance law. Based on that review, we provide recommendations on whether and how best to pursue insurance recovery for the claim at issue. Our attorneys also have been retained by many clients that already have received adverse insurance coverage decisions at the trial legal and seek our counsel and experience in pursuing an appeal on their behalf.

In addition, the group offers a broad range of additional services in connection with its insurance coverage practice including:

## Service Areas

- Coverage Opinions
- Investigation of Complex Claims
- Reservation of Rights Letters
- Arbitration of Policy Disputes
- Bad Faith Litigation
- Declaratory Relief Suits
- Insurer Contribution actions
- Pursuit of Additional Insured Coverage

## Practice Areas

- Commercial General Liability
- Commercial Property
- Commercial Umbrella Liability
- Excess Liability
- Fidelity and Surety
- Pollution Liability
- Products-Completed Operations Liability
- Professional Errors and Omissions

## Indemnification & Advancement Fees

Pashman Stein attorneys also advise individual and corporate clients concerning their rights and/or obligations under indemnification and advancement of legal fees provisions of corporate by-laws and operating agreements. While New Jersey's corporate laws require companies to indemnify corporate officers who successfully defend lawsuits against them, New Jersey companies also can provide in their corporate governance documents other conditions upon which they will advance defense costs or indemnify employees or officers prior to the conclusion of litigation. Whether a company is required to advance legal fees to an officer or director often can determine whether the employee will be

able to defend the claims against him or her. Our attorneys provide advice to clients regarding drafting and interpreting indemnification and advancement provisions, and represent clients pursuing coverage or defending against claims for coverage. Our attorneys have litigated some of the only reported decisions on this important, and often overlooked, area of coverage.

## Representative Matters

- **Lead Poisoning Cases**

- Successful defense of landlords in minor lead poisoning cases. Worked closely with pediatric neurologists and psychologists to formulate medical causation defenses.

- **Noxious Fume Cases**

- Successful defense of plumbing contractor resulting from personal injuries involving toxic fumes from sewer back up. Successful defense of moving company for personal injuries claimed by worker's from adjoining facility for carbon monoxide exposure.
- Successful defense of Contractor who renovated Jersey City school and 40 teachers brought personal injury claims resulting from exposure to hazardous fumes.

- **Exterior Insulated Finish System Cases (EFIS)**

- Successful defense of builders, contractors and subcontractors involved in construction of homes clad in EFIS in which personal injury and property damage claims were asserted.

- **Landfill Litigation Cases**

- Successful defense of insured's who disposed of hazardous or other materials at waste sites in which CERCLA and NJ Spill Act claims were asserted against the insured.

- **Environmental Litigation**

- Successful defense of corporate and individual property owners involving claims of responsibility for contamination of properties.
- Obtained dismissal of claim by developer against insured municipality for underground water contamination due to alleged over-salting of neighboring roads by municipality.

- **Legal Malpractice Cases**

- Successful defense of lawyers involved in transactional and other claims involving deviation of acceptable standards of care.

- **Water Infiltration/Mold Growth Cases**

- Successful defense of claims by homeowners against roofing companies and general contractors for defective work, water infiltration and personal injury due to mold exposure.

- **Workplace Injury Litigation**

- Successfully defended claim against construction site owner by worker injured in fall at site.

- **Asbestos Litigation**

- Successful defense of suppliers in asbestos personal injury case

- **Workers' Compensation**

- Represents governmental agency in connection with the recovery of over \$2 million dollars from an excess workers' compensation carrier of benefits paid above a self-insured retention. The issue is whether the excess carrier, in the absence of an underlying defense obligation, is obligated to pay without having advised the insured of its policy defenses by way of a coverage position letter. The claim, based on estoppel and waiver, presents a novel issue of whether, in these circumstances, an excess carrier may avoid coverage without issuing its coverage position

## Reported Decisions

- *LCG Investments, Inc. v. Merchants Mutual Insurance Company*, 2006 WL 15708 (N.J. Super. App. Div. 2006)  
Won recovery of substantial debris removal costs for insured in the first New Jersey decision to construe the debris removal provision in Business Owner's policy following fire that destroyed a major hardware business.
- *Vergopia v. Zelnick*, 383 N.J. Super 256 (App. Div. 2006) aff'd 191 N.J. 217 (2007)  
Successfully litigated novel issue of whether attorney who represented corporation but also served as a corporate officer of the company was entitled to indemnification for several hundred thousands of dollars in legal fees from the corporation when he was sued in his individual capacity.
- *Myron v. Atlantic Mutual Insurance Corporation*, 2007 WL 432624 (N.J. Super. Law Div. 2007)  
Won victory for policyholder on question of whether insurer was obligated to provide a defense in nationwide lawsuits involving claims asserted against it under the Telephone Consumer Protection Act (TCPA). Result was reimbursement of hundreds of thousands of past defense costs and payments of substantial defense costs on a going forward basis.
- *Myron v. Atlantic Mutual Insurance Corporation*, 407 N.J. Super. 302 (App. Div. 2009) Aff'd. 203 N.J. 537  
Won victory for insured on the issue of whether N.J. Ct. R. 4:42-9(a)(6), which provides for the award of counsel fees to a claimant who successfully sues its insurance company, would apply to fees incurred in an out-of-state court when the ultimate coverage determination was rendered in New Jersey.
- *Bridge Metal Industries, LLC. C. Travelers Indemnity Company*, 812 F.Supp.2d 527(S.D.N.Y. 2011)  
Won victory for policyholder on question of whether insurer was obligated pursuant to the advertising liability provision of its policy to provide a defense to insured in two lawsuits involving Lanham Act and Unfair Competition claims. Result was the reimbursement of fees and costs the insured expended in successfully defending the

underlying matters.

- Represents governmental agency in connection with the recovery of over \$2 million dollars from an excess workers' compensation carrier of benefits paid above a self-insured retention. The issue is whether the excess carrier, in the absence of an underlying defense obligation, is obligated to pay without having advised the insured of its policy defenses by way of a coverage position letter. The claim, based on estoppel and waiver, presents a novel issue of whether, in these circumstances, an excess carrier may avoid coverage without issuing its coverage position