



Katherine Musbach

PARTNER

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RELATED SERVICES

- Insurance
- Technology Litigation
- Cyber, Privacy & Data Security
- Fidelity

OFFICES

- Chicago
- San Francisco
- Los Angeles
- Detroit

OVERVIEW

Katherine Musbach's practice is focused on cyber and tech litigation, commercial litigation, insurance coverage and bank litigation. She is licensed to practice in Michigan, California and Illinois. She also leverages the firm's 50-state platform to ensure that her clients receive seamless national representation.

Katherine regularly handles disputes relating to wire transfer fraud, email compromise, data breaches and other technology-related matters. She assists her clients in understanding the evolving legal landscape, trends in cyber-crime, and the costs and benefits of litigation. She enjoys helping her clients weigh their legal options and their business concerns to craft their preferred strategy for responding to a dispute. She is experienced in developing and defending against novel legal theories asserted in technology-related disputes, and she enjoys employing the law to further her clients' interests.

Katherine is also experienced in litigating business disputes related to fraud and white-collar crime. She

has successfully recovered millions of dollars for clients defrauded in business transactions or by their employees. Katherine also has significant experience assisting financial crime victims in navigating criminal prosecutions, ensuring that they are able to recover through the restitution process.

An experienced litigator, Katherine leverages her expertise and the firm's national platform to help clients manage national litigation. She assists clients in marshalling a defense team, tracking and managing claims, and developing and implementing a comprehensive defense strategy.

Katherine is also well-versed in insurance coverage disputes, particularly with respect to fidelity bond, commercial crime policies and cyber-related claims. She has successfully represented insurers in numerous disputes concerning email-based fraud, loan losses, third-party losses, electronic trading losses, fraudulent mortgage conveyances and a wide range of employee theft schemes. Katherine has litigated coverage disputes arising out of cyber exclusions on a myriad of policies.

Katherine received her J.D., *cum laude*, from Duke University School of Law. During law school, she spent a semester studying international law and international commercial arbitration at the University of Hong Kong. Prior to law school, Katherine taught third grade with Teach For America in Phoenix.

REPRESENTATIVE EXPERIENCE

Cyber Security/Data Breach

- Representation of insured in dispute concerning liability for email-induced fraudulent wire transfer and alleged compromise of insured's email.
- Representation of insurer in a series of lawsuits seeking coverage under computer crime policies and cyber policies for loss sustained from hacking and social engineering.
- Representation of insurer in coverage dispute concerning application of a professional liability policy's unauthorized access exclusions.
- Representation of insurer in a \$100 million recovery action against a Taiwanese manufacturer of wireless gateways.
- Representation of insurer in a \$20 million recovery action against a cyber security auditor arising from a payment processor's data breach.

Fidelity/Financial Institution Bond

- Representation of insurer in \$1 million and \$24 million coverage dispute arising from theft perpetrated on third parties by the insured's general agent.
- Representation of insurer in \$5 million loan loss arising from alleged fraudulent auto loans.
- Representation of insurers in a \$141 million coverage dispute arising from allegations of unauthorized trading.

- Representation of insurers in a \$20 million coverage dispute arising from extension of credit against fictitious collateral.

PUBLICATIONS

- Katherine Musbach, Iga Todd and Theresa M. Biedermann, ERISA Coverage under Financial Institution Bonds and Commercial Crime Policies (Michael Keeley, et al., 2023). This annotated book chapter outlines the key policy language for ERISA coverage under a Financial Institution Bond and the ISO Commercial Crime Policy. Topics include the general coverage grants and coverage distinctions between the bond and the policy. Annotations focus on the issues of standing, statutory bond/reformation case law, covered individuals and covered conduct.
- Katherine Musbach, Iga Todd and Theresa M. Biedermann, General Agreement G – Insured’s ERISA Plans (Michael Keeley, et al., 2023). This annotated book chapter outlines the key coverage provisions for General Agreement G to a Financial Institution Bond.
- Katherine Musbach, C. Adam Brinkley, Adjusting the Social Engineering Claim, 57 Tort Trial & Ins. Prac. L.J. 801, 802 (2022). As email-based fraud implicates billions of dollars in losses, claims handlers should ensure that they are familiar with the basic elements of a social engineering claim. This article delves into how email-based scams are perpetrated, the information needed to evaluate these claims, and the policy provisions implicated. This article also covers the distinctions between social engineering coverage and computer fraud and funds transfer fraud coverage. In addition, this article covers considerations that arise frequently with these types of claims, including the potential overlap with a cyber policy, how to allocate the loss across multiple policies, and potential contributions from business partners.

- Katherine Musbach and Reina Dorvilier, *Apportioning the Loss: A Liability and Recovery Analysis for Email-Based Claims*, 25 FID. L.J. 1 (2019). E-mail-based crime is a \$1.2-billion-per-year problem. While much industry discussion has focused on new insurance products for these risks and the specific coverage issues implicated by the ever-evolving schemes, considerably less attention has been paid to the significant recovery opportunities available to insureds and insurers. This article addresses this void, focusing on the recovery opportunities available for email-based losses for insureds and their insurers as subrogees and assignees. The recovery sources addressed include: (1) technology service providers which enabled or failed to prevent a cyber-based attack; (2) the insured's bank or the bank into which the wire transfer was sent, as these institutions may have failed to develop or implement commercially reasonable security procedures to prevent unauthorized wire transfers or may have allowed a perpetrator's obviously fraudulent account to continue to operate; (3) the insured's vendor or customer, which may have been compromised and thus enabled the fraud; and (4) the insured's other insurance policies, as the proliferation of cyber-based risk often means that insureds have overlapping coverage for a claim. Given the magnitude of email-based threats and the increasing sophistication of the perpetrators, it is important for insurers to understand not only the coverage-based issues, but also the recovery opportunities available.
- Mark J. Krone, Chris McKibbin and Katherine Musbach, *Securities Claims*, in *Handling Fidelity Bond Claims* (Michael Keeley, et al., 2d ed. 2019). This book chapter discusses the investigation of securities claims under financial institution bonds and other crime policies. Issues addressed include determining whether there is a loss and the quantum of covered loss, causation, the "Original" and good-faith reliance requirements, the meaning of "Forgery" and other loss-causing acts, and evolving issues as technology transforms insureds' business practices.
- Scott L. Schmookler and Katherine Musbach, *Modernizing Loan Fraud: The Proliferation and Evolution of Digital Loan Transactions*, 24 FID. L.J. 85 (2018). This article discusses the Uniform Electronic Transactions Act ("UETA") and the Electronic Signatures in Global and National Commerce Act ("E-Sign"), analyzing how these laws have changed secured transactions. We discuss coverage issues implicated by the evolution of insureds' businesses to embrace electronic transactions, the unique risks of these transactions and ways in which future iterations of standard form bonds might evolve to meet these new risks.
- Scott Schmookler, Greg Bangs and Katherine Musbach, *Blockchain Technology: Balancing Benefits and Evolving Risks*, *Treasury & Risk*, (March 9, 2017). This article explores new and exciting uses of blockchain technology across various industries, analyzing the opportunities and unique risks. Special attention is paid to the unique risk of theft and fraud to financial institutions utilizing blockchain technology in their business transactions.

CREDENTIALS

Admissions

- Illinois
- Michigan
- California

Education

- J.D., *cum laude*, Duke University School of Law, 2013
- B.A., *with distinction* and Highest Honors in Political Science, University of Michigan, 2008

Honors

- *Best Lawyers in America*® Ones to Watch distinction in Insurance Law (2023-2025)