



Matthew S. Foy

PARTNER

San Francisco

415.875.3174

mfoy@grsm.com

RELATED SERVICES

- Insurance
- Green Technology, Solar & Renewable Energy
- Cyber, Privacy & Data Security
- Bad Faith
- Directors & Officers Coverage
- General Liability Coverage
- Professional Liability Coverage
- Property Insurance

OFFICES

- San Francisco
- Fresno

OVERVIEW

Matthew Foy serves both as the National Practice Group Leader of the firm's Property and Casualty Insurance practice as well as the Practice Group Leader of the San Francisco Insurance group. Matthew has more than 25 years' experience representing national insurers at the claims stage, in trial, and on appeal.

Matthew's practice focuses on insurance coverage and bad faith litigation and advice involving first party property policies as well as primary and excess liability policies with an emphasis on personal and advertising injury, cyber-liability, complex fire litigation, environmental, asbestos, other mass torts, and construction defect matters. He also regularly handles all aspects of insurance cases involving professional liability insurance, D&O, E&O, inland marine, and life, health, and disability insurance products.

Matthew assists clients with drafting policy language and claims manuals. He also provides in-house client seminars on coverage and claims handling issues, as well as litigation planning.

In addition to his insurance practice, Matthew regularly represents corporate clients in connection with contract negotiation, dispute resolution and related litigation. He also maintains a professional liability defense practice which focuses on the defense of insurance brokers and legal professionals.

Matthew is a frequent speaker on issues confronting the insurance industry and is active with DRI – The Voice of the Defense Bar, for which he was the immediate past Chair of its Insurance Law Committee and the current Chair of its ALI Task force, which was formed to address concerns with ALI’s Insurance Restatement Project. Matthew is also a member of the International Association of Defense Counsel.

REPRESENTATIVE EXPERIENCE

Representative Experience

Examples of Mr. Foy’s broad based insurance background and coverage practice include the following.

- National coordinating and litigation counsel for insurer clients in connection with COVID-19 litigation, both in connection with first- and third-party claims.
- Successful handling of trials including on insurer duty to defend, indemnity, and primary *versus* excess issues
- Successful handling and resolution of all manner of mass tort, “long tail,” personal and advertising injury, and cyber-liability coverage claims
- Advising/litigating asbestos bankruptcies
- Providing underwriting and reinsurance counsel
- Drafting policy language
- Obtained complete dismissal on behalf of a national insurer in a \$1 million breach of contract action.

The insurer denied coverage to two strip clubs that used images of several professional models in advertisements without the permission of the models who then sued each club in two separate actions. The clubs entered into consent judgments with the models, assigning their rights against their insurer so that the models could seek to collect the judgments from the insurer. The models sued the insurer for breach of the insurance policies, arguing that the insurer breached its duty to defend and indemnify the clubs in the underlying actions. The GRSM team moved to dismiss the complaint arguing that the insurer had no duty to defend or indemnify the clubs in the underlying actions because the claims in the underlying actions were unambiguously excluded from coverage. The District Court agreed and found that the policies unambiguously excluded coverage for personal and advertising injury arising out of the use of another’s image.

- Obtained summary judgment in favor of client based on application of Sexual Misconduct exclusions in the subject primary and excess liability policies. Generally, these exclusions eliminated coverage for claims arising out of sexual misconduct, subject to an exception for individual insureds who allegedly committed such misconduct unless it is judicially determined (or finally adjudicated) that such insureds committed the misconduct.
- Judgment in favor of client following a successful motion to dismiss. Client was sued in a putative class action by insureds who operated a restaurant chain and others similarly situated. Plaintiffs' asserted causes of action, including for breach of contract and bad faith, resulting from a denial of coverage in response to their insurance claim for alleged business interruption losses and related expenses resulting from applicable COVID-19 shut down orders. The trial court rejected plaintiffs' arguments, including that its restaurant offerings (i.e., service of food) were impaired and that food service should be considered an "Insured Product."
- Successful defense of insurer client following complex arbitration pursued by assignees of named insured under a D&O liability policy. Allegations stemmed from the insurer client's denial of coverage to insured in connection with underlying FINRA claims which resulted in default judgments in favor of Assignee. Assignee claimed \$100 million plus in damages, which were dismissed following arbitration.
- Secured significant dispositive motion ruling in favor of insurer client in connection with breach of contract and bad faith claims resulting from alleged denial of venture capital insured's settlement of underlying claims brought by trustee for a bankrupt subsidiary based on allegations of fraudulent transfers in excess of \$300 million.
- Secured dismissal of breach of contract and bad faith claim resulting from Defendant's denial of coverage for a business dispute between insured and its competitor. Plaintiff insured contended that the claims against it in the underlying action, based on allegations that it had claimed the accomplishments of the competitor as its own and advertised them on its website, triggered the Defendant's duty to defend. After numerous amendments of the complaint, the case was dismissed on the grounds that advertising of another's accomplishments as one's own is not use of an "advertising idea."
- Judgement in favor of insurer following trial of total fire loss case in Shasta County Superior Court. After securing dismissal of hotly contested Unfair Competition claim in advance of trial, and barring plaintiff from submitting critical evidence allegedly supporting their bad faith claim, judgment was entered in favor of insurer client including based on determination that national headquarters for a hierarchical religious organization was not an insured or otherwise entitled to coverage under policy issued to local congregation.

- Secured summary judgment in hotly contested multi-million bad faith case in Los Angeles County Superior Court. The insured contractor was sued by school district for delay in the completion of contracts for the installation of fire alarm systems. Relying on extrinsic evidence, the insured argued that the delay was caused by its disturbance of asbestos and that this claim was potentially covered under a pollution liability policy. Summary judgment in favor of insurer client was based on a finding of no potential for coverage because the school district's complaint did not allege a potentially covered "pollution event" which caused "property damage" as required to trigger coverage and, further, a determination that the extrinsic evidence relied upon by the insured was inadmissible and supported only impermissible speculation insufficient to trigger a duty to defend.
- Represented insurer in connection with litigation arising out of underlying arbitration involving construction and design issues with Harbor City Medical Center in Los Angeles, California. Underlying claims exceeded \$100 million and coverage disputes with insured design-builder under professional liability policy resulted in litigation of choice of law, claims handling, self-insured retention, allocation, independent counsel, and voluntary payments issues which would cut off insured's multi-million defense cost reimbursement claim. Favorable resolution following New York mediation.
- Favorably settled multi-million dollar fire loss bad faith case right before trial while dispositive motions pending, involving allegations of underinsurance / inadequate limits and failure to afford agreed-to coverages, including "Code Upgrade" coverage.
- Secured arbitration ruling in favor of lawyer client, who was sued by litigation funding company in connection with its investment in lawyer's prosecution of multi-million intellectual property claims involving iconic Marvel characters. Litigation funding company alleged that lawyer client converted invested funds and committed malpractice in his handling of the underlying litigation, which had been dismissed. Arbitration ruling in favor of lawyer client including on grounds that he did not have a legal or contractual relationship with the litigation funding complaint and, as a result, litigation funding company lacked standing to assert claims against lawyer client.
- Secured dismissal of direct action claim premised on stipulated judgment for \$7.6 million against insured and assignment of insureds' rights under at-issue policy. Court determined that direct action statute did not support claim under a professional liability policy and, further, that purely personal tort claims including claims for punitive damages were not assignable.
- Secured summary judgment on behalf of insurer client based on determination that underlying competitor lawsuit involving allegations that insured misappropriated plaintiff's experience in its own website were not covered as use of another's advertising idea in your advertisement.
- Secured summary judgment on behalf insurer client against large national retailer facing multiple national class actions premised on improper collection of consumer Zip codes on ground the class actions did not seek potentially covered damages, but instead only sought uncovered civil penalties.

- Favorably settled bad faith litigation pending in Illinois involving large national retailer while motions for summary judgment were pending on issues of whether underlying data breach class actions involving compromised Pin Pad machines alleged potentially covered claims for invasion of the right of privacy.

PRESENTATIONS

Selected Presentations

- Hot Topics in Insurance Coverage Law 2024, GRSM Legal Education Conference, New York, NY, May 2024
- Hot Topics in Insurance Coverage Law 2024, GRSM Legal Education Conference, Hartford, CT, April 2024
- Hot Topics in Insurance Coverage Law, GRSM Legal Education Conference, New York, NY (May 2023)
- Hot Topics in Insurance Coverage Law, GRSM Legal Education Conference, Hartford, CT (May 2023)
- Time-Limited Settlement Demands, ASCDC Annual Seminar (February 2023)
- “Top 10” Insurance Coverage Decisions Of 2022, DRI Insurance Coverage and Practice Symposium, New York (December 2022)
- The State of Business Interruption Claims and Liability Issues in the Covid-19 Era, National Insurer Client (September 2022)
- Claims Handling Issues and the Claim File, Avoiding Bad Faith Pitfalls, National Insurer Client (October 2020)
- Annual Fair Claims Handling Presentation, Select California Insurance Issues, Insurer Client (March 2020)
- Insurance Coverage: Sexual Harassment Claims in the #MeToo Era, DRI Insurance Coverage and Practice Symposium, New York (December 2019)
- New Trends in Insurance Coverage Law, GRSM Legal Education Conference, New York and Hartford (May 2019)
- Emerging Cyber Coverage Issues, Insurer Client (March 2019)
- Bad Faith in the Western United States, Insurer Client (March 2019)
- Insurance Coverage Issues Resulting From Sexual Harassment Claims in the #MeToo Era, DRI Annual Meeting, San Francisco (October 2018)
- Significant Insurance Coverage Decisions and Trends, GRSM Legal Education Conference, New York and Hartford (May 2018)
- Business of Law: A Changing Legal Landscape, GRSM Legal Education Conference, New York and Hartford (May 2017)
- Eroding Limits, Prior Knowledge, and the Related Acts Limitation (May 2016)
- Professional and Pollution Liability Coverage Issues, Insurer Client (December 2015)

- Defending Under a Reservation of Rights, Just Because You Can Does Not Always Mean You Should, DRI Insurance Law and Claims Conference, Hartford (October 2015)
- Application of the Pollution Exclusion to Indoor and Other Non-Traditional Exposures, Insurer Client (April 2015)
- The Future of the Privacy Offense: Coverage B and Beyond, DRI Insurance Coverage Practice Symposium, New York (December 2014)
- Additional Insured Tenders and Contractual Indemnity Problems, Insurer Client (December 2014)

Selected Publications

- “Top 10” Insurance Coverage Decisions Of 2022, *Defense Research Institute* (2022)
- Ramifications of Defending Under a Reservation of Rights, *Defense Research Institute* (2015)
- Sony's Interview Quagmire: A Watershed Moment for Cyberinsurance, Co-Author, *DRI In-House Defense Quarterly* (2015)
- The Future of the Privacy Offense: Coverage B and Beyond, *Defense Research Institute* (2014)

CREDENTIALS

Admissions

- California
- Massachusetts

Memberships

- California State Bar Association
- San Francisco Bar Association
- Massachusetts State Bar Association
- DRI-The Voice of the Defense Bar – Immediate Past Chair, Insurance Law Committee

Education

- J.D., Santa Clara University School of Law, 1996
 - Recipient of the Moot Court Best Brief Award
 - American Jurisprudence Award for Insurance Law
- B.S., University of Southern California, 1992
 - Best Business Plan

Honors

- *Chambers USA: America's Leading Business Lawyers*
Recognized as one of the leading Insurance lawyers in California (2024)
- *Super Lawyers®* distinction in Insurance Coverage (2016-2024)

- *Best Lawyers in America*® distinction in Insurance Law (2019-2025)