



Michael J. Cawley

PARTNER

Philadelphia

215.717.4021

mcawley@grsm.com

RELATED SERVICES

- Insurance
- Cyber, Privacy & Data Security
- Class Action Defense
- Education
- Catastrophic & Traumatic Brain Injury Defense
- Professional Liability Coverage
- Professional Liability Defense
- Product Liability
- Commercial Litigation
- Bad Faith
- Directors & Officers Coverage

OFFICES

- Philadelphia

OVERVIEW

Michael Cawley concentrates his practice in the areas of insurance coverage, bad faith disputes, professional liability, product liability and cyber, privacy & data security issues. Michael has handled complex commercial litigation matters involving class actions, intellectual property, director and officer liability, legal malpractice, banking, False Claims Act, civil RICO, product recall and product liability claims.

He has extensive trial and appellate experience in state, federal and bankruptcy courts and has practiced in jurisdictions across the United States.

Michael is experienced in Legal Project Management which employs strategies to assess, plan, manage and control legal work in collaboration with clients throughout the life of a case.

More recently, he has complemented the above practice areas by providing counsel to lenders involving consumer credit matters, including issues arising under the Equal Credit Opportunity Act, and has addressed other compliance issues dealing with federal and state laws governing consumer credit.

Michael is included in Best Lawyers in America (2018-2024) in the field of Insurance Law. He is also AV-rated by Martindale Hubbell, a Fellow of the American Bar Association, and was named a Pennsylvania Super Lawyer (2007-2014).

Insurance Coverage/Reinsurance/Bad-Faith Disputes

Michael's insurance coverage practice includes providing advice to his clients on issues arising under multiple types of policies, including general liability, professional liability defense for insurance agents and brokers, directors and officers, property, and excess/umbrella liability policies. He is also experienced in reinsurance agreements and ERISA/non-ERISA issues involving life, health and disability matters.

He concentrates on the representation of insurers in coverage matters and related bad faith claims in state and federal courts where he has an established record of defeating bad faith claims brought against insurers.

His experience in bad faith litigation has enabled him to counsel insurers in developing strategies to resolve high exposure cases with excess liability potential through the use of hi-lo arbitrations, binding arbitration and other alternative dispute resolution mechanisms.

Michael has numerous reported decisions in both state and federal court regarding critical insurance coverage issues. He was lead counsel in the landmark 2006 Pennsylvania Supreme Court opinion in *Kvaerner Metals Div. v. Commercial Union Ins. Co.* where the Pennsylvania Supreme Court ruled that faulty workmanship by a contractor does not constitute an "occurrence" under a CGL policy.

In 2013, Michael prevailed on behalf of his insurer client in the insurance coverage litigation arising out of the notorious "Kids for Cash" scandal. In that litigation, an insured sought insurance coverage for a \$100 million class action suit charging it with depriving more than 2400 youths of their constitutional rights by participating in a scheme to falsely imprison the youths in a detention center owned by the insured.

Real Estate Error and Omission Claims

Michael's professional liability experience extends to the defense of error and omission claims brought against real estate agents and brokers, property managers and real estate developers. He has had extensive experience in defending real estate agents and brokers charged with negligence and

misrepresentation in the sale and leasing of both residential and commercial properties; Fair Housing Discrimination Claims; defense of licensing proceedings as well as failure to disclose claims (i.e. the failure to disclose the existence of fungi/bacteria and other pollutants on properties sold/leased to third parties).

Lawyers' Liability

The defense of malpractice claims requires experience, integrity and judgment. In that regard, Michael has represented lawyers in a variety of cases from the defense of an attorney charged with failing to file civil actions to the defense of a lawyer charged with multiple violations of state and federal laws while representing a major university. Finally, Michael was a contributor to the American Bar Association's 50-state survey entitled The Law of Lawyers Liability published in June 2012.

RICO Litigation

The Racketeer Influenced and Corrupt Organizations Act (RICO) is a federal statute that creates civil causes of action for unlawful/illegal actions taken in connection with an ongoing enterprise. RICO violations require what are known as "predicate" actions which include, but are not limited to, the use of the mails, wire facilities or the Internet in pursuit of the unlawful activity. In his 30 plus years of litigating cases in state and federal courts, Michael has litigated RICO cases in federal district courts and has participated in arguments before the federal appellate courts. Most recently, Michael litigated the now notorious "Kids for Cash" RICO action in federal court in the Middle District of Pennsylvania which involved a complex bribery scheme where state court judges accepted bribes from a developer and his lawyer who developed a private youth detention facility. In return for the bribes, the judges wrongfully incarcerated more than 2400 youths over a three year period in the privately owned facility.

Directors & Officers Liability

Michael has represented directors and officers of homeowners associations against claims alleging violations of the Pennsylvania Uniform Condominium Act as well as breach of fiduciary duty and fraud claims.

He has litigation and trial experience in the representation of directors and officers in disputes involving the alleged violations of securities laws; derivative suits wherein shareholders allege that the directors and officers failed to properly manage a company and in so doing lost the ability to acquire other companies that would have assisted the company in meeting its strategic goals; and claims that the directors and officers routinely misrepresented the financial condition of the company.

He has defended the interests of directors and officers on the board of a regional waste management corporation that was confronted with claims of mismanagement, as well as an officer of an insurance subsidiary of a major financial institution in a binding American Arbitration Association proceeding.

Insurance Broker Liability

Michael has significant litigation and trial experience in representing some of the largest retail and wholesale insurance brokers and agents across the United States. He is routinely asked to counsel insurance agents and brokers on how to avoid error and omissions litigation and to represent insurance agents and brokers before insurance departments.

Cyber, Privacy & Data Security

Michael has advised insurers and private industry in the specialty areas of data security and privacy. His focus has been on the defense of class actions as well as breach response, regulatory actions and risk management strategies. He has counseled clients who have had their systems attacked and ransoms demanded by individuals from abroad. He has counseled clients on why their systems were vulnerable to an attack and has retained the appropriate forensic specialists in conjunction with the client's cyber insurer to address all aspects of the crisis created by the attack. He has provided guidance to the client regarding its notification obligation to thousands of individuals whose personal medical and financial information were compromised as a result of the attack and how to respond to governmental investigations of breach events. Finally, Michael's insurance coverage knowledge of the terms and conditions of cyber coverage insurance policies enables him to understand and counsel his clients regarding the true extent of the exposure facing both the insurer and policyholder.

Product Liability/Product Recall

During the 25 years, Michael has been practicing law, he has litigated cases involving both large and small medical device manufacturers. He also was involved in the defense of the manufacturer of the anti-obesity drug fen-phen. He has defended the interests of manufacturers of implanted spinal devices; gun manufacturers; disposable lighters; pesticides; diving boards and tanker trailers.

Most recently, Michael represented his dairy farm cooperative client in contentious litigation which spanned several continents involving a coliform contamination of butter products. While litigating the case, he worked with the USDA and the FDA in examining the manufacturing processes for the product, its storage and transport as well as an analysis of the equipment used to manufacture the product. As a result of this extensive investigation, he obtained a multimillion dollar judgment against the entity responsible for the contamination.

REPRESENTATIVE EXPERIENCE

Representative Experience

- **Darigold, Inc. v. Dairy Solutions International, LLC et al.**, District Court of the Fourth Judicial District of the state of Idaho, Ada County, Case No.: CV OC 1007861. On behalf of his client Darigold, Michael obtained a \$10.6 million judgment on March 6, 2015 against Dairy Solutions International, LLC (“DSI”) in a contentious product recall litigation pursued in Idaho state court and which involved extensive discovery conducted in Denmark, Germany and the United Kingdom. .
- **Alea London and Atrium Underwriters v. PA Child Care et al.** (USDC) (MD of PA) Case No.: 3:09-cv-02256 and Alea London et al. v. Pa Child Care LLC Case No.: 12-2132 (3d Cir.). In the now notorious “Kids for Cash” scandal which involved a scheme whereby the owner of a privately owned youth detention center in Northeastern Pennsylvania, PA Child Care LLC (“PACC”), bribed two prominent Luzerne County judges in exchange for the judges’ agreement to illegally incarcerate youths at PACC, Mr. Cawley obtained summary judgment on behalf of the insurers of PACC, Alea and Atrium. The federal district court ruled that neither Alea or Atrium had any obligation to defend or indemnify PACC against a \$100 million class action brought by youths who were illegally detained at PACC by the corrupt judges. The Third Circuit affirmed the award of summary judgment.
- **Save Our Local Environment (“SOLE”) v. Grand Central Sanitary Landfill (“GCSL”) et. al.** (Northampton County, Pennsylvania). CCP, Northampton County No. 1995-c-78; Judgment for Defendant Grand Central Sanitary Landfill December 14, 1998. Mr. Cawley tried to verdict the first SLAPP (“Strategic Litigation Against Public Participation”) lawsuit in the Commonwealth of Pennsylvania. The case involved charges that the client, a landfill operator and its successor company, wrongfully used civil proceedings against a citizens’ group in an effort to intimidate and deter the members of the group from exercising their First Amendment Right to protest a proposed expansion of the GCSL landfill. Prior to the trial, SOLE made a demand of \$14 million from GCSL and the other defendants named in the litigation. After a seven-week trial in the Northampton County Court of Common Pleas, the jury returned a verdict in favor of the defendants.
- **Reliance Insurance Company in Liquidation v. Mellon-Clair Odell and Mellon Insurance Services** AAA# 14 195 Y 0014406. In this American Arbitration Association (“AAA”) matter, Michael represented Mellon Insurance Services (“Mellon”) against claims brought by the Liquidator for Reliance Insurance Company (“Liquidator”) that Mellon had made material misrepresentations regarding a risk which owned and operated over 170 nursing homes in Texas. The Liquidator claimed that as a result of the alleged material misrepresentations made by Mellon, Reliance was (1) induced to underwrite hundreds of millions of dollars in excess coverage on the nursing home account and (2) that Reliance had to pay \$7,600,000 under the policies to claimants who claimed to have been mistreated at the nursing home facilities. After hearings which spanned a two month period, the AAA panel found in favor of Mellon and dismissed the Liquidator’s claims.

- **Kvaerner Metals Division of Kvaerner U.S., Inc. et. al v. National Union Fire Insurance Company of Pittsburgh, PA.** 589 Pa. 317; 908 A.2d 888; 2006 Pa. LEXIS 2064. In this 2006 landmark ruling, the Pennsylvania Supreme Court held that the failure of an insured's work product to meet the specifications required in a design-build contract for the construction of a coke oven battery does not meet the definition of "occurrence" since the failure to meet such contract specifications is not an "accident."
- **Duff Supply Co., et. al. v. Crum & Forster Insurance Company** 1997 WL 255483 (E.D. Pa.). In the representation of the policyholder, Michael prevailed in establishing that Crum & Forster had an obligation to defend its insured-Duff Supply Co.-against allegations asserted in an underlying action that the insured engaged in a pattern of sexual harassment and gender based discrimination in violation of Title VII of the Civil Rights Act of 1964.
- **Atlantic Mutual Ins. Corp. v. Brotech Corp. v. Lexington Ins. Co.** 60 F.3d 813 (3d Cir. 1995), Third Circuit affirmed Trial Court's holding that "advertising activity" did not include the infringement of patents by Lexington's insured, Brotech.
- **National Union Fire Ins. Company of Pittsburgh, PA v. Combustion Engineering, Inc.** 1989 U.S. Dist. LEXIS 15110. Holding that an Owners Contractors Protective policy did not extend to provide coverage to designated contractors.
- **Diamond International Corporation and National Union Fire Insurance Company v. Sulzer Brothers, Inc.** 1989 U.S. Dist. LEXIS 9820. In this action, Michael represented the interests of Diamond International Company ("Diamond"). At issue was the interpretation of an indemnity agreement contained within an Asset Purchase Agreement ("Agreement") executed between Diamond and Sulzer Bros. ("Sulzer") and whether that agreement required Sulzer to defend and indemnify Diamond against contingent liability claims. The federal district court concluded that Sulzer had the obligation to defend Diamond against all future claims arising out of the product line transferred under the Agreement and held that the phrase "including, but not limited to" constituted a broadly worded indemnity promise running from Sulzer to Diamond.
- **Assicurazioni S.P.A. v. Public Service Mutual Ins. Co.,** 77 F.3d. 731 (3d 1996). Michael represented Public Service Mutual Ins. Co. ("PSM") which issued a comprehensive general liability policy to an insured which had insured its truckers liability risk through a Business Auto policy issued by Assicurazioni S.P.A. He successfully argued before the Third Circuit that the district court's holding that PSM had concurrent obligations with Assicurazioni S.P.A. to cover the injuries sustained by a third-party catastrophically injured during the delivery of furniture from a retail store be reversed.
- **Weinstein Supply Co. v. Home Insurance Co.** 1999 U.S. Dist. LEXIS 6661 (E.D of PA. 97-7195). The federal district court granted Home's Motion for summary judgment on basis that a CGL policy did not cover employment related practices claims against Weinstein Supply Co. since such claims did not allege an accident and were therefore not "occurrences".

- ***Reading Anthracite Coal Co. v. National Union Fire Insurance Co.*** 547 Pa. 756; 692 A.2d 566 (PA 1997). The Pennsylvania Supreme Court affirmed the trial court's award of summary judgment to National Union holding that a \$1.8 million dollar business interruption claim of Reading Anthracite Company (RAC) was not covered under a first party property policy issued by National Union to RAC. The bad faith claim was subsequently dismissed on summary judgment as well.
- ***Bonnie Bannon v. Property and Casualty Insurance Company of Hartford*** CCP, Philadelphia County, December Term 2008; No. 1019. The Philadelphia County Court of Common Pleas Court granted Hartford's Motion to Dismiss a bad faith claim as unsupported by the pleadings.
- ***Lexington & Concord Abstract Co. v. The Hartford*** (E.D of PA #2:07-cv-03398-AB). Michael obtained a dismissal with prejudice all statutory bad faith and Unfair Insurance Practices Act claims which charged that Hartford had improperly denied coverage for claims in an underlying action seeking the return of real estate commissions and escrow funds.
- ***Phelps School v. Transportation Ins.*** 844 A.2d. 1296; 2003 Pa. Super. LEXIS 5694 (November 17, 2003). Trial court granted summary judgment to insurer on the basis that the exclusionary language in the Transportation Insurance Co. (CNA) policy issued to The Phelps School ("Phelps") prohibiting coverage for sporting events "sponsored" by the school precluded coverage to Phelps for personal injuries sustained by a 14-year-old rendered a paraplegic in a school-sponsored wrestling match with another student.

PUBLICATIONS

- Co-author, Confronting Professional Liability Claims: Conform without Compromising, Addressing Professional Liability Claims: Strategies for Minimizing Risk and Protecting Against Malpractice Claims, *Thomson Reuters/Aspatore Special Report*, 2015
- Co-author, In Non-precedential Case, Third Circuit Affirms Fracking Trade Secrets Trump Physician's Right to Know, Absent Actual Harm, *Pratt's Energy Law Report*, LexisNexis, July/August 2015

PRESENTATIONS

- Presenter, *Hot Topics Involving Claims-Made and Claims-Made and Reported Policies*, DRI Insurance Coverage Symposium, December, 2017
- Presented, *Traumatic Brain Injury: How University Sports Programs Can Mitigate The Risk*, 2016 Annual Pinnacle/Marsh Conference at the University of Vermont (Burlington)

CREDENTIALS

Admissions

- Pennsylvania
- Pennsylvania Supreme Court
- U.S. District Court, Western, Eastern and Middle Districts of Pennsylvania

- U.S. Court of Appeals, Third Circuit

Memberships

- Pennsylvania Bar Association
- Masters member, Villanova University School of Law American Inn of Court
- American Bar Association
 - Co-chair of the Insurance Coverage Litigation Committee, 2012
 - Co-chair of the Membership Subcommittee of the Professional Liability Litigation Committee, 2009–2011
- Defense Research Institute (DRI)
- International Association of Defense Counsel
- Professional Liability Underwriting Society
- Risk Management Society
- Villanova University Inn of Courts

Education

- J.D., Villanova University School of Law, 1984
- B.S., *magna cum laude*, University of Scranton, 1981

Honors

- *Best Lawyers in America*® distinction in Insurance Law (2018-2025)
- AV® Preeminent™ Rated by Martindale-Hubbell
- Fellow of the American Bar Foundation, 2010
- Selected for inclusion in Pennsylvania *Super Lawyers*, Insurance Coverage, 2007–2014