Ross Smith

Counsel

Orange County

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Balancing a scholarly love of the law with practical, commonsense judgment, Ross helps clients understand their insurance rights and duties, effectively communicates coverage determinations and reserve rights, and efficiently advances and protects clients' interests in and outside of litigation.

OVERVIEW

Ross has nearly 20 years of legal experience, primarily in the insurance field. He has handled a variety of insurance-related matters, including disputes involving various types of liability insurance, rescission, and other remedies resulting from material misrepresentations and omissions in the application process, bad-faith matters, and insurer-versus-insurer disputes. His practice is almost evenly divided between providing coverage assessments and advice and actively litigating in state and federal courts.

REPRESENTATIVE MATTERS

- Defeated $49 million insurance bad faith lawsuit in Los Angeles Superior Court before trial via dispositive motion, with court determining that as a matter of law the policy provides a maximum of $1 million in Pandemic Events coverage across all locations (not, as claimed, $1 million per location up to a $50 million policy aggregate) for national restaurant chain's COVID-19 losses. Then obtained full affirmance on appeal. *See P.F. Chang's China Bistro, Inc. et al. v. Certain Underwriters*, 2024 WL 33415, 2024 Cal.App.Unpub.LEXIS 37 (Cal. Court of Appeal, 2nd Appellate Dist., Div. 8, Jan. 3, 2024).
- Defeated, at the pleadings stage, a bad-faith lawsuit against an EPL insurer seeking coverage for underlying wage and hour litigation above and beyond the exhausted defense costs sublimit.
- Obtained summary judgment, and successfully defended it on appeal, in a bad-faith suit filed against a professional liability insurer that had denied coverage for a confidential settlement entered into without the insurer's consent.
- Obtained a determination that a declaratory relief action concerning an insured's pre-petition liability insurance policy was not a core bankruptcy proceeding, in connection with the insurer moving the bankruptcy court to abstain due to a pending parallel suit in state court.
- Defended, through jury trial and appeal, an accidental product contamination insurer that denied coverage for a voluntary recall of breakfast sandwiches that did not identify MSG as an ingredient, resulting in a decision affirming the key policy language was unambiguous.
- Obtained partial summary judgment that a D&O policy did not cover a multimillion-dollar judgment involving an

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attempt to raid a competitor, relying on an exclusion for the gaining of any profit or advantage to which the insured was not legally entitled.

- Authored an amicus curiae brief on issues of advertising injury liability coverage and the exhaustion of underlying insurance for an excess liability insurer in a $50 million coverage lawsuit brought by a global technology company.
- Represented an umbrella liability insurer in coverage litigation against the insured. Handled and won the bench trial, then successfully defended the judgment on appeal, resulting in a published decision.

AWARDS

- Super Lawyer, Orange County, *Orange Coast Magazine* (2014-2018)
- Rising Star, Insurance Coverage, *Law & Politics'* Southern California Super Lawyers (2010 and 2013)

TOP AREAS OF FOCUS

- Insurance + Reinsurance
- Media, Technology + Cyber Liability Insurance
- Professional Liability

ALL AREAS OF FOCUS

- Bad Faith
- Directors + Officers Insurance
- Employment Practices Liability
- General Liability
- Insurance + Reinsurance
- Litigation + Trial
- Media, Technology + Cyber Liability Insurance
- Professional Liability

EDUCATION AND CERTIFICATIONS

EDUCATION

- Cornell Law School, J.D., 1998
- North Dakota State University of Agriculture and Applied Sciences, B.A., 1995

BAR ADMISSIONS

- California
- Connecticut

COURT ADMISSIONS

- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California

- U.S. Court of Appeals, Eighth Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, District of Colorado

SPEAKING ENGAGEMENTS

- Co-presenter, “Initial Coverage Evaluation and Reservation of Rights,” webinar, Troutman Sanders LLP, Sept. 20, 2017.
- Moderator, “Demands – Duty to Settle Within Policy Limits,” panel, Perrin’s Emerging Insurance Coverage & Allocation Issues Conference, May 11, 2017.

PUBLICATIONS

- Author, “Draft Restatement of the Law of Liability Insurance Proposes Significant Changes to Insurance Law,” *PLUS Journal*, July 2015.