

Thomas S. Hay

Partner

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Tom is an experienced litigator and strategic advisor. He is known for tackling and resolving complex business insurance issues and disputes – whether through litigation, alternative dispute resolution, or by providing strategic and creative pre-litigation solutions for clients.

OVERVIEW

Tom represents companies in a wide range of high-stakes insurance coverage, bad faith/extracontractual, and commercial disputes in federal and state trial and appellate courts across the U.S. He also regularly represents clients in mediation and arbitration proceedings. Tom has deep experience counseling insurance clients on a wide range of complex first- and third-party coverage issues arising under various types of insurance policies, including professional liability, cyber, media-tech, directors and officers (D&O), environmental, kidnap and ransom, event cancellation, business interruption, marine, and commercial general liability. Tom also advises clients regarding claims-handling issues and regulatory compliance.

In the rapidly evolving cyber-exposure space, Tom counsels and represents insurers in their handling of first- and third-party claims arising from all manner of privacy and data security breaches, cyber extortion/ransomware, business email compromise, website tracking technology/pixels, and other cyber- and privacy-related exposures, including those involving companies' increasing use of artificial intelligence to provide products and services to the public.

Clients seek Tom's guidance on their most challenging coverage litigation and claims, including those involving catastrophic/systemic risk events. For example, Tom represented several major insurers at a national level on coverage and business-interruption issues ranging from seven to nine figures in the COVID-19 context, where Tom designed strategies for his clients to address highly sensitive and novel legal issues. Other more recent work includes counseling cyber insurers on their handling of certain risks with portfolio-wide implications.

Tom has seconded as a complex claims team leader for the cyber team of a leading London syndicate, an experience that gave him valuable insight into what clients need and expect from outside counsel.

Tom frequently gives in-house presentations to clients and hosts webinars regarding a variety of legal issues.

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).

- Obtained dismissal, without leave to amend, in Los Angeles Superior Court of a declaratory judgment and bad faith action seeking over \$100 million in damages, arising from a dispute over insurance coverage for the production company of the Netflix drama *House of Cards*, which had its origins in an alleged theory that the production company sustained financial losses as a result of Kevin Spacey allegedly becoming totally disabled due to a sickness. See *Media Rights Capital II, LLC, et al v. Certain Underwriters at Lloyd's, London, et al.*, No.22SMCV00598 (Los Angeles Cty. Superior Ct., Nov. 30, 2023).
- Obtained summary judgment for D&O insurer in a Georgia federal court lawsuit, where the policyholder (one of the largest providers of health care services in the U.S.) sought the entire \$15 million limit of a D&O policy for costs incurred defending a False Claims Act lawsuit. After more than three years of litigation, the district court granted summary judgment in favor of our client, holding that a \$1 million sublimit of liability in the policy applied to the underlying lawsuit, but that the policyholder forfeited coverage for amounts within the \$1 million sublimit because it breached the policy's consent condition by retaining defense counsel without the insurer's prior written consent. *SavaSeniorCare, LLC v. Starr Indem. & Liab. Co., et al.*, 2021 WL 4429088 (N.D. Ga. Sept. 27, 2021).
- Defended insurer clients in COVID-19 related class action lawsuit in Illinois federal court in 2020 and negotiated favorable early resolution of the lawsuit, avoiding class certification issues.
- Defended insurer client in a Florida federal court action involving a financial services professional liability policy. The district court granted summary judgment to the client, holding that the insured was not entitled to a "double recovery" in a breach of contract action against the insurer after having received full indemnification from a third-party. On appeal to the Eleventh Circuit, the court affirmed on the alternative ground that, under Florida law, the third-party's indemnification obligation took precedence and the third-party was legally obligated to pay the insured's litigation costs and settlement before the client could be asked to pay. *Maplewood Partners LP v. Indian Harbor Insurance Company*, 654 F. App'x 466 (11th Cir. 2016). Tom's client ultimately recovered more than \$1 million in attorneys' fees under Florida's offer of judgment statute.
- Represented clients in numerous COVID-19 related coverage lawsuits in 2020-2023 in state and federal courts involving alleged losses ranging from seven to nine figures, including in the food and beverage, entertainment, and event sectors.
- Arbitrated a multimillion-dollar claim regarding interpretation of an environmental liability insurance policy under California law in 2019. Prevailed on all issues.
- Obtained dismissal of coverage action on behalf of environmental insurer in New York federal court in 2018.
- Defended cyber liability insurer in coverage litigation in Missouri in 2014 involving issues of first impression for data breach liability. Matter settled on confidential terms.

AWARDS

- *Best Lawyers in America*®: Insurance Law (2023, 2026)

TOP AREAS OF FOCUS

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

ALL AREAS OF FOCUS

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

PROFESSIONAL/COMMUNITY INVOLVEMENT

- Professional Liability Underwriting Society
- Claims Litigation and Management Alliance
- International Association of Privacy Professionals
- Virginia Bar Association
- District of Columbia Bar Association
- Member of the Young Professionals Advisory Committee to the Board for the Atlanta Children's Shelter (2018)

EDUCATION AND CERTIFICATIONS

EDUCATION

- American University Washington College of Law, J.D., *cum laude*, 2009
- Dickinson College, B.A., 2004

BAR ADMISSIONS

- District of Columbia
- Georgia
- Pennsylvania
- Virginia

COURT ADMISSIONS

- U.S. District Court, Eastern District of Virginia
- Supreme Court of Virginia
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, District of Columbia
- U.S. District Court, Northern District of Georgia

SPEAKING ENGAGEMENTS

- Speaker, "The CrowdStrike Incident: Insurance Coverage Implications and Practical Strategies," American Property Casualty Insurance Association, September 26, 2024.
- Speaker, "Best Practices for Preserving Coverage Defenses, Navigating Waiver/Estoppel Issues, Securing

Other Sources of Recovery, and Obtaining Proper Documentation from the Insured,” Troutman Pepper, May 23, 2024.

- Speaker, “The Rising Standard for Lawyers in the Digital Age,” Atlanta Bar Association Litigation Section, March 12, 2021.
- “Notable Insurance Decisions,” Troutman Sanders Insurance Webinar Series, February 26, 2019.
- “Developments in Cyber Insurance,” Troutman Sanders Insurance Webinar Series, December 8, 2017.
- “What’s Next In Cyber Insurance: New Trends, New Risks, New Cases, and What We Can Expect in 2017,” Troutman Sanders Insurance Webinar Series, November 15, 2016.
- “A Comprehensive View of Cyber Exposures,” Troutman Sanders Insurance Webinar Series, April 22, 2015.

PUBLICATIONS

- Co-author, “Georgia Supreme Court Clarifies When an Insurer’s Duty to Settle Arises,” *Troutman Sanders*, March 13, 2019.
- Contributor, “D&O and Professional Liability Update 2017: A Year in Review,” *Troutman Sanders*, February 8, 2018.
- Contributor, “D&O and Professional Liability Update 2016: A Year in Review,” *Troutman Sanders*, February 27, 2017.
- Co-author, “Fourth Circuit Addresses Potential Coverage for Cyber Liabilities Under General Liability Policies in *Portal HealthCare*,” *PLUS Journal*, June 2016.
- Contributor, “D&O and Professional Liability Update 2015: A Year In Review,” *Troutman Sanders*, March 26, 2016.
- Co-author, “Ninth Circuit Amends Previous Opinion and Expressly Declines to Resolve Whether, Under California Law, a Breach of the Good Faith Duty to Settle Can Be Found in the Absence of a Settlement Demand,” *The Business Suit*, February 13, 2013.
- Contributor, “D&O and Professional Liability Update: A Year In Review,” *Troutman Sanders*, 2010-2017.