



## Diana M. Hendry

Of Counsel

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Diana M. Hendry is an experienced litigator focusing on insurance coverage and complex insurance defense matters. She also has represented Fortune 500 companies and other corporations in commercial litigation, toxic tort cases and products liability suits.

### **Insurance Coverage & Defense**

Diana has conducted every aspect of complex insurance coverage and insurance defense cases arising out of numerous types of policies, provisions and exclusions. These include CGL, professional liability, E&O, D&O and workers' compensation policies. She also has defended businesses in construction accident, construction defect, property liability, wrongful death and general negligence actions.

### **Education**

- Brooklyn Law School (J.D., 1993)
- Harvard College (A.B. Government, 1987)

### **Bar Admissions**

- New Jersey
- New York

### **Court Admissions**

- Supreme Court of the United States
- U.S. District Court, District of New Jersey
- U.S. District Court, Southern District of New York

### **Services**

- Insurance & Reinsurance Coverage
- Insurance & Reinsurance Defense
- Complex Tort & General Casualty
- Commercial Litigation

# Client Wins

## **Hendry and O'Toole Secure Favorable Defense Settlement in High-Exposure Wrongful Death Action**

Diana M. Hendry (Of Counsel-Madison, NJ) and John P. O'Toole (Partner-Madison, NJ) secured a favorable settlement on behalf of their property owner client in a potentially high-exposure wrongful death action. The client purchased the facility with known roof problems and intended to complete full repairs. However, during the repair process, the plaintiff, an employee of the demolition subcontractor, fell through the decrepit roof to a gruesome death. The decedent's widow sued the sub-contractor employer, the roofing contractor, the building tenant, and our client. The allegations against the client included failure to disclose the roof's condition accurately and knowingly retaining an inferior contractor to conduct the necessary repairs. Despite facing an aggressive plaintiffs' firm representing the decedent and his widow, John and Diana conducted early depositions of the parties' representatives, and, before incurring significant expert costs, the client contributed only minimally to the overall settlement. Among the factors that forced the settlement was the deep dive review and discovery of the plaintiff widow's social media posts, which recounted a troubled relationship with the decedent, undermining the loss-of-services damages alleged in the plaintiff's claim.

## **Hendry & Press Foil Plaintiff's Assertion that Policy Cancellation Notice Was Never Received**

Diana Hendry (Of Counsel-Madison, NJ) and Michelle Press (Partner-Los Angeles, CA) obtained a motion for summary judgment on behalf of an insurance company and broker in a case disputing the cancellation of a homeowners' policy. The plaintiff homeowner applied through his mortgage broker for a homeowners' policy, which was issued based on the information provided. Shortly thereafter, the insurer discovered that the information provided by the homeowner was incorrect and timely sent a notice of cancellation to the policyholder by U.S. Mail and email. The home was destroyed by fire many months later; plaintiff's claim was denied and the plaintiff asserted he had never received notice of the cancellation. In support of their motion for summary judgment, Diana and Michelle submitted a certificate of mailing and the emails, which the Court found sufficient to meet the client's initial burden of demonstrating that it complied with the cancellation requirements in New York Insurance Law and therefore was entitled to the presumption that notice was received. (The emails bolstered the proof of mailing, but were themselves insufficient to comply with the Insurance Law requirement.) However, the plaintiff's claim that he did not receive the notice was insufficient to meet his burden to prove that the insurer failed to conform with the strict statutory cancellation requirements. On that basis, the Court dismissed the coverage action against our client.

## **Hendry and O'Toole Secure Summary Judgment for Strip Mall Owner in Premises Liability Case**

Diana M. Hendry (Of Counsel-Madison, NJ) and John P. O'Toole (Partner-Madison, NJ) won a motion for summary judgment on behalf of a landlord in a case in which the plaintiff was severely injured when an errant driver plowed through a local fast food franchise. The case involved an automobile driver who was parked in front of the franchise store and

accelerated abruptly, crashing through the storefront, striking the plaintiff. There was surveillance video, which was shocking and certainly would have influenced a jury. The driver tendered his policy limits and was dismissed from the case. The plaintiff alleged the property owner was negligent; he argued that the owner should have installed bollards in front of the store. We submitted an expert report confirming that the municipal code did not require bollards and that the bollards would not necessarily have prevented the incident. The plaintiff failed to submit an expert report, and the court determined that expert testimony was necessary because the allegations were beyond the ken of the average juror. On that basis, the court dismissed the premises liability case against our client.