



## James K. Thurston

Partner

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Jim Thurston, Chair of the D&O and E&O Insurance group, is a coverage lawyer who focuses his practice on insurance and bad faith litigation in the professional liability field. Jim's career has been distinguished by the successful litigation of a large number of complex insurance coverage cases, including those resulting in precedent-setting decisions in bankruptcy and other areas. He takes a pragmatic approach in resolving claims for his clients taking calculated risks when necessary while avoiding unnecessary litigation.

Jim's clients include primary and excess insurers, as well as reinsurers and retrocessionaires, that issue policies for directors and officers, financial institutions, architects, accountants, insurance company E&O and miscellaneous E&O. He also has represented environmental impairment and general liability insurers. Jim's practice extends worldwide and has involved insurance policies issued from England, France, Germany, Greece, Norway, Finland, Sweden, Switzerland, the Netherlands, India, Spain, Ireland, Russia, Japan, Italy, South Africa, Australia, Hong Kong, Mexico, Columbia, Argentina, the Island of Saipan, Guam, Puerto Rico and the Philippines.

Jim has been involved in insurance coverage matters arising from some of the largest corporate scandals, including Madoff, Enron, WorldCom, Adelphia, Global Crossing, Satyam, Dynegy and Qwest, as well as the IPO Laddering Lawsuits. In connection with such matters, Jim works on behalf of carriers to revoke coverage for corporate officers and directors found to have engaged in malfeasance and to indemnify and defend those officers not involved in any wrongdoing. He also utilizes his extensive knowledge of insurance coverage case law to counsel carriers on policy drafting and negotiation.

Jim has successfully litigated coverage disputes on behalf of his clients throughout the United States, Puerto Rico, England, South Korea, India, Norway and The Netherlands.

### Services

- Directors & Officers Liability
- Insurance & Reinsurance Coverage
- Latin America
- Professional Liability & Services
- Contractual/Extra-Contractual Liability Litigation

## Education

- Marquette University Law School (J.D., *magna cum laude*, 1989)
- Yale Law School (Attended)
  - 1988-1989
- University of Pennsylvania (B.A., Architecture, 1984)

## Bar Admissions

- Illinois
- Wisconsin

## Court Admissions

- U.S. Court of Appeals, First Circuit
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Sixth Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, Northern District of Illinois

# Representative Matters

*Hanover Ins. Co. v. Larson*, 2025 U.S. Dist. LEXIS 127534 (W.D. Mo. July 2, 2025), granting insurer's motion for judgment on the pleadings that two guaranties totaling in excess of \$11 million did not trigger D&O Policy's Insuring Agreement, as the three officers executing the guaranties did so in their "individual capacity," and not their insured "corporate capacity."

*Great Am. Ins. Co. v. Discovery Harbour Cmty. Ass'n*, 2025 U.S. Dist. LEXIS 26654 (D. Haw. Feb. 3, 2025), granting insurer's motion for judgment on the pleadings that two lawsuits constitute "related" Claims, despite the second lawsuit adding new insured persons (not named in the prior lawsuit) and new causes of action not previously alleged in the prior lawsuit.

*Paraco Gas Corp. v. Ironshore Indemn., Inc.*, 2024 U.S. App. LEXIS 14628 (2d Cir. June 17, 2024), affirming Southern District of New York's granting of an insurer's motion to dismiss and enforcing Contract Exclusion, including against breach of fiduciary duty allegations. 2023 U.S. Dist. LEXIS 108475 (S.D.N.Y. June 22, 2023).

*Origis USA LLC v. Great Am. Ins. Co.*, 2024 Del. Super. LEXIS 383 (Del. Super. Ct. May 9, 2024), granting insurer's motion to dismiss against Delaware state coverage lawsuit

based on the policy's No Action Clause.

*Ironshore Indemnity Inc. v. Kay*, 2023 U.S. App. LEXIS 28172 (9th Cir. Oct. 24, 2023), affirming Nevada District Court's granting of insurer's motion for judgment on the pleadings, enforcing Warranty Exclusion in D&O Excess Policy, despite two non-imputation provisions. 2022 U.S. Dist. LEXIS 168561 (D. Nev. Sept. 16, 2022).

*Twin City Fire Ins. Co. v. Alcast Co.*, 2023 U.S. Dist. LEXIS 97868 (C.D. Ill. Apr. 28, 2023), following bench trial, District Court's ruling on D&O policy's allocation provision.

*Drivetrain, LLC v. Ironshore Indemnity Inc.*, Adv. Pro. No.: 22-50457 (Bankr. D. Del. Mar. 1, 2023), granting insurer's Motion to Transfer Venue to the Nevada District Court of Trustee's coverage litigation filed in the Delaware Bankruptcy Court.

*Adelman v. U.S. Specialty Ins. Co.*, 2022 U.S. App. LEXIS 35554 (9th Cir. Dec. 23, 2022), affirming District Court's granting insurer's motion to dismiss based on the WARN Act Exclusion in D&O policy. 2021 U.S. Dist. LEXIS 225646 (N.D. Cal. Nov. 17, 2021).

*Ironshore Indemnity Inc. v. Kay*, 2022 U.S. Dist. LEXIS 168561 (D. Nev. Sept. 16, 2022), granting insurer's motion for judgment on the pleadings, enforcing Warranty Exclusion in D&O Excess Policy with two non-imputation provisions. On appeal to the Ninth Circuit.

*AKN Holding, LLC v. Great Am. E&S Ins. Co.*, 2022 U.S. App. LEXIS 18903 (9th Cir. July 8, 2022), affirming District Court's enforcing Contract Exclusion in D&O policy, 2021 U.S. Dist. LEXIS 142777 (C.D. Cal. 2021).

*Ironshore Indemnity Inc. v. Kay*, 2022 U.S. Dist. LEXIS 17723 (D. Nev. Feb. 1, 2022), denying Debtor's motion to intervene in D&O coverage litigation.

*Twin City Fire Ins. Co. v. Alcast Co.*, 2021 U.S. Dist. LEXIS 237693 (C.D. Ill. Dec. 13, 2021). Allocation provision of D&O policy trumps the "reasonably related" rule for Defense Expenses.

*Sycamore Partners Mgmt., L.P. v. Endurance Am. Ins. Co.*, 2021 Del. Super. LEXIS 182 (2021). Insurability of restitution under D&O policy.

*Hanover Ins. Co. v. Fla. Coalition Against Domestic Violence*, 2020 U.S. Dist. LEXIS 185746 (N.D. Fla. 2020). D&O policy and indispensable parties.

*Segner v. Admiral Ins. Co.*, 2018 Bankr. LEXIS 1659 (Bankruptcy, W.D. Tex. June 4, 2018): Issues related to application of Insured v. Insured Exclusion to claims of liquidation trustee.

*Astellas US Holding, Inc. v. Starr Indem. & Liab. Co.*, 2018 U.S. Dist. LEXIS 89725 (N.D. Ill. May 30, 2018): Whether DOJ investigation constitutes a "claim" under D&O policy.

*Hanover Insurance Co. v. Vemma International Holding, Inc.*, 2016 U.S. Dist. LEXIS

99554 (D. Ariz. July 29, 2016): Denying Preliminary Injunction to advance fees of Insured Corporation in Ponzi scheme analysis of "Related Claim" provision and other coverage defenses.

*Citrus Course Homeowners Association v. Great Am. Ins. Co.*, 2016, U.S. Dist. LEXIS 10199 (C.D. Cal. Jan. 7, 2016): Granting insurer's motion to dismiss based on late notice of Claim 1, "related" Claim 2 also not covered.

*LIG Insurance Co. v. AIG-Korea Ins. Co.*, 2013-74013 (2016): Duties between cedent and reinsurer on raising rescission of underlying D&O policy. Decided by the South Korean Supreme Court.

*Great American Ins. Co. v. Re Veteran's Support Organization*, 166 F.Supp. 3d. 1303 (S.D. Fla. 2015): Issues related to discovery dispute under Nonprofit D&O Policy.

*W Holding Co., Inc. v. AIG Ins. Co.*, 2014 U.S. Dist. LEXIS 94005 (D.P.R. 2014): Whether FDIC Lawsuit is "interrelated" to prior Securities Class Action Lawsuit.

*Carolina Casualty Ins. Co. v. Team Equipment, Inc.*, 2014 U.S. App. LEXIS 2138 (9th Cir. 2014): In coverage litigation, insurer permitted to plead diversity on information and belief.

*W. Holding Co., Inc. v. Chartis Ins. Co.*, 748 F. 3d 377 (1st Cir. 2014): Application of D&O policy's Insured v. Insured exclusion to FDIC lawsuit against failed bank's directors and officers.

*Macey v. Carolina Casualty Co.*, 2012 U.S. Dist. LEXIS 174746 (D. Conn. 2012): Application of D&O policy's "other insurance" clause.

*Connolly v. Admiral Ins. Co.*, 2012 U.S. App. Lexis 25392 (9th Cir. 2012): When insurance policy is rescinded, insurer may subtract from the premium paid back to the insured the amount of defense costs paid to the insured (\$589,043) until rescission is effectuated.

*SonicBlue, Inc. v. Admiral Ins. Co.*, 2011 U.S. App. Lexis 19864 (9th Cir. 2011): D&O policy rescinded for misrepresentations in policy application.

*Biltmore Associates, LLC v. Twin City Fire Ins. Co.*, 572 F.3d 663 (9th Cir. 2009): Claim by debtor-in-possession that falls within Insured v. Insured Exclusion.

*Gregory v. Venbrook Ins. Services, LLC*, 2009 U.S. Dist. LEXIS 58653 (C.D. Cal. 2009): Insured v. Insured exclusion and fraudulent joinder.

*Macey v. Carolina Casualty Co.*, 585 F.Supp.2d 277 (D. Conn. 2008): Dismissal of claims brought by shareholders who were directors and officers for "nanosecond" based on Insured v. Insured Exclusion; appealed to Second Circuit, 2010 U.S. App. LEXIS 13326 (2d Cir. 2010).

In re *Laminate Kingdom, LLC, 2008 Bankr.* LEXIS 1594 (Bankr. S.D. Fla. 2008): Finding

that a D&O policy with entity coverage is not an "asset" of bankrupt debtor's estate.

*Onvoy, Inc. v. Carolina Casualty Ins. Co.*, 2006 U.S. Dist. LEXIS 47198 (D. Minn. 2006): Whether DOJ subpoena constitutes a "claim" under D&O policy.

*Biltmore Associates, LLC v. Twin City Fire Ins. Co.*, 2006 U.S. Dist. LEXIS 56034 (D. Ariz. 2006): Dismissal of a bad faith/breach of contract lawsuit based on \$175 million in consent judgments against an excess D&O insurer.

*Alanco Technology v. Carolina Casualty Co.*, 2006 U.S. Dist. LEXIS 31988 (D. Ariz. 2006): Finding that a claim for defense expenses related to a stock-for-asset purchase does not constitute "loss" under a D&O policy.

*Equifin v. Admiral Ins. Co.*, MON-L-3075-00 (Super. Ct. N.J.): Creditor's exclusion applies to transactional lawsuit.

*New Hampshire Insurance Co. v. Beckoff*, case no. 4553, London Court of International Arbitration, June 22, 2005: Decision that a claim by a creditors' committee against the debtors' former directors and officers falls within the Insured v. Insured Exclusion.

*Westcott Holding, Inc. v. Monitor Liability Managers, Inc.*, 2005 U.S. Dist. LEXIS 20149 (S.D. Tex. 2005): Finding that an insured entity's failure to indemnify its officers is not "loss" under a D&O policy.

*Alanco Technology, Inc. v. Carolina Casualty Co.*, 2004 U.S. Dist. LEXIS 28266 (D. Ariz. 2004): Insured v. Insured Exclusion applies to claims by a former officer not with company for eight years.

*Physicians Corp. of America Securities Litigation*, case no. 97-3678 (S.D. Fla. 2002): "No Action" clause bars coverage action against D&O insurer.

*Foster v. Summit Medical Systems, Inc.*, 610 N.W.2d 350 (Minn. App. 2000): The Past Acts Exclusion applies to securities class action, even where all of the causes of action were based on post-policy conduct; SEC investigation does not constitute a "Securities Action Claim"

*Natural Gas Utility District v. Virginia Surety Insurance Co.*, 99-214 (E.D. Tenn. 2000): General liability insurer responsible for "lion's share" of six-figure defense expenses of an employment practice claim instead of D&O insurer.

*In Re Roasters Corp.*, adversary pro. 98-9013 (Bank M.D.N.C. 1999): Excess miscellaneous E&O policy did not follow form to duty to defend primary.

*S&S Healthcare, Inc. v. Virginia Surety Co.*, 1998 U.S. Dist. LEXIS 21810 (W.D. Va. 1998): "No Action" clause bars action against D&O insurer.

*Edward Gray Corp. v. National Union Fire Ins. Co.*, 1997 U.S. Dist. LEXIS 5834 (N.D. Ill.

1997): General liability insurance policy, examining duty to defend for construction accident.

## Publications

Q3 2025

### **What Capacity Is Your Capacity In?**

*Coverage Matters*

Q2 2025

### **Coverage Matters**

Q2 2025

### **New Federal Case Addresses Related Claims Under Executive Protection Policy**

*Wilson Elser's Coverage Matters*

November 2024

### **Coverage Matters**

September 20, 2019

### **Informed Insurance: Thought Leadership 2019/20**

## Client Wins

### **Thurston, Tranen, and Curtis Secure Declaratory Judgment Relief for Insurance Company Client**

James Thurston (Partner-Chicago), Daniel Tranen (Partner-St. Louis, MO), and Robert Curtis (Associate-St. Louis, MO) secured a declaratory judgment dismissal on motion on the pleadings for an insurance company client in U.S. District Court for the Western District of Missouri. The plaintiffs in this matter, executives at a company insured by our client, sought coverage for a lawsuit and a demand letter arising out of their provision of personal guarantees to the company for more than \$14 million in debt to a lender and a supplier. The client had denied coverage because these personal guarantees were not made in the executives' capacity as officers of the company. The executives argued that they would not have made the personal guarantees but for the fact that they were officers of the company. However, the court agreed with the insurance company client that personal guarantees are personal obligations, and therefore, cannot be made by the executives in their "capacity" as officers of the company, particularly since if they had done so, then it would have been the company guaranteeing its own debt.

### **Murphy-Petros and Thurston Obtain Affirmance on Contract Exclusion**

Melissa Murphy-Petros (Of Counsel-Chicago, IL) and James Thurston (Partner-Chicago, IL) obtained affirmance in *Paraco Gas Corp. v. Ironshore Indemnity, Inc.*, No. 23-1069-cv. U.S. App., Second Circuit (June 17, 2024) for the firm's specialty insurance client, Ironshore. The plaintiff, a closely held family corporation that distributes propane fuel and

equipment, sought coverage under its D&O policy for a shareholder dispute involving share transfers. The Second Circuit affirmed the dismissal of the plaintiff's complaint on the ground that its declaratory judgment action seeking enforcement of the shareholder agreement's stock transfer provisions is excluded from coverage under the policy's contract exclusion as an action arising out of the insured's contractual obligations under the shareholder agreement. This litigation was covered by *Law360* extensively and reported on five times, most recently after the Second Circuit's decision was handed down.

#### **Thurston, Murphy-Petros and Meer Obtain Affirmance in D&O Coverage Case**

Jim Thurston (Partner-Chicago, IL), Melissa Murphy-Petros (Partner-Chicago, IL) and Jonathan Meer (Partner-New York, NY) prevailed on behalf of the firm's insurance client in a case involving an insured closely held family corporation that sought coverage under its D&O policy for a declaratory judgment action seeking enforcement of the stock transfer provisions in its shareholders' agreements. The Second Circuit affirmed dismissal of the plaintiff's complaint on the ground that the policy's contract exclusion precluded coverage because the declaratory judgment action – although not an action for breach of contract – arose out of the insured's contractual obligations under the shareholder agreements. Jim and Jonathan secured the dismissal in the U.S. District Court for the Southern District of New York; Jim and Melissa handled the Second Circuit briefing, and Melissa presented oral argument. Jim and Melissa are now 8-1 before the U.S. Court of Appeals, where they have handled matters in the First, Second, and Ninth Circuits.

The appeal was covered by *Law360* in their June 22, 2023, December 5, 2023, March 22, 2024, March 27, 2024, June 17, 2024 articles.

#### **Murphy-Petros, Thurston, Tranen and Butterfield Score Team Victory before the U.S. Court of Appeals for the Ninth Circuit**

Melissa Murphy-Petros (Of Counsel-Chicago, IL) Jim Thurston (Partner-Chicago, IL), Daniel Tranen (Partner-St. Louis, MO), and Chad Butterfield (Partner-Las Vegas, NV) convinced the Nevada District Court that coverage was not available under a \$5 million D&O policy for the putative claims by a bankruptcy litigation trustee against a former officer (Kay). Kay allegedly breached his fiduciary duties to an insured entity when he failed to uncover the criminal fraud of its former CEO (Rogas). The Court followed Wilson Elser's arguments that Kay's breaches were "arising from" Rogas's prior fraud and, therefore, fell within the purview of the exclusionary language of a warranty letter executed by Rogas, wherein he represented that "no insured" (including Rogas) had knowledge or information of any act or error that might give rise to a claim. Following briefing and oral argument by Melissa, the U.S. Court of Appeals for the Ninth Circuit affirmed, holding that despite two non-imputation clauses in the policy and allegations of wrongdoing by Rogas after the warranty letter, "the broad language excluding any claim 'arising from' pre-execution knowledge" was sufficient to bar any coverage to Kay under the policy. This three-office victory evidences the successful collaboration between Wilson Elser's coverage, litigation and appellate attorneys on an economical basis without having to use additional local counsel.

#### **Ninth Circuit Victory in Coverage Case Involving the El Chapo Drug Cartel**

Melissa Murphy-Petros (Of Counsel-Chicago), Jim Thurston (Partner-Chicago) and Paul

White (Partner-Los Angeles) prevailed in a coverage action before the Ninth Circuit. The underlying action involved the insured's sale of a scientific manufacturing facility in Mexico without telling the buyer that the facility had been taken over by the El Chapo drug cartel. The Ninth Circuit affirmed the district court's grant of our Rule 12(b)(6) motion to dismiss on the basis of the policy's contract exclusion, finding that the underlying action – which stated claims for fraud – was an action “based on, arising from, or in any way related to an actual or alleged breach of contract.” This decision is important because the underlying action sought damages only for tort claims, and there were no breach of contract claims. Further, certain of the alleged wrongful acts occurred prior to the formation of any contract, yet both courts held the exclusion still had application. Although there was no claim for indemnity, the insured sought \$5 million in defense costs.

This appeal has been reported on four times by Law360:

**[9th Circ. Won't Revive PE Firm's 'El Chapo' Insurance Dispute](#)**

**[Firm Faces Skeptical 9th Circ. In 'El Chapo' Insurance Dispute](#)**

**[Insurer Urges 9th Circ. To Toss Appeal In 'El Chapo' Dispute](#)**

**[PE Firm Tells 9th Circ. It's Owed Defense In Fraud Suit](#)**