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**BINGHAM SUMMERS  
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Martha S. Hollingsworth

October 10, 1995

Linda A. Weaver, Esq.  
Kilgallon, Carlson & Simkus  
218 N. Jefferson, Suite 101  
Chicago, IL 60661

Re: Armadillo Club

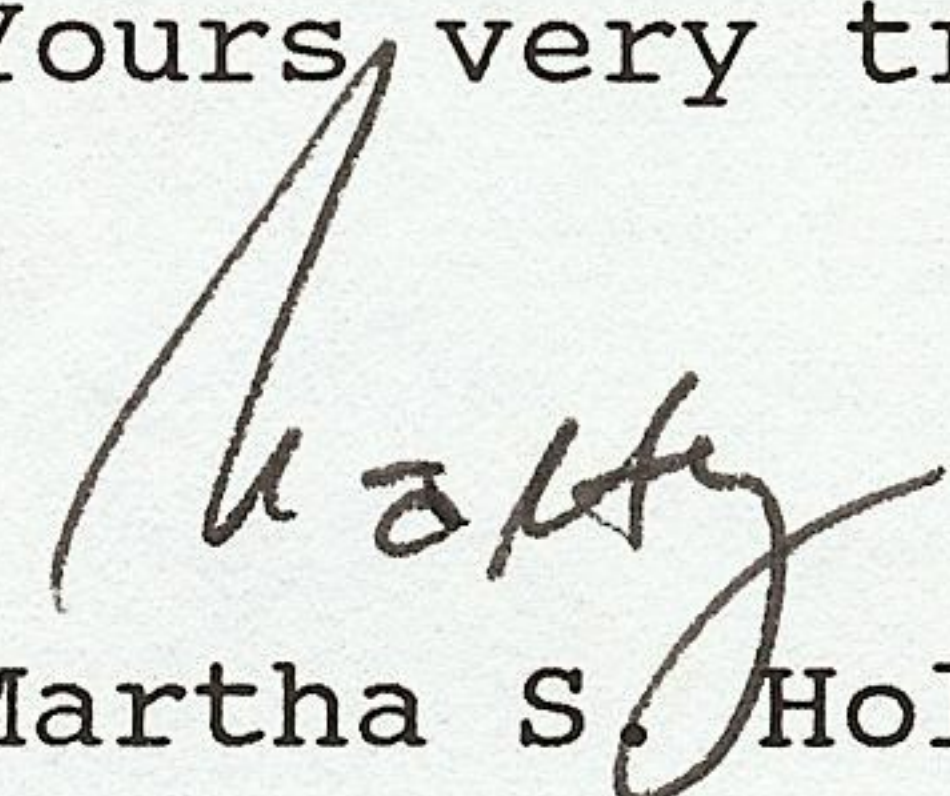
Dear Linda:

Thanks very much for sharing the October 5 armadillo announcements and especially your kind reference on page two. I am honored to serve on the fringe of your impressive list of club members.

I am enclosing a delightful article by an attorney in San Francisco concerning practicing insurance coverage law that I hope will give some chuckles to your club members. It was sent to me by an outstanding insurance coverage lawyer in Seattle, Mary DeYoung of the Reed McClure firm, 3600 Columbia Center 701 Fifth Avenue, Seattle, Washington 98104-7081, phone: 206-386-7091. Mary has provided outstanding analytical and strategic litigation advice to us in environmental insurance matters for the last four years. If the club approves expanding west of the Mississippi River, I would give Mary the highest recommendation for induction into your club.

Best wishes to you and your new firm for every success in the practice. I will keep in touch and hope you will do the same. Best regards,

Yours very truly,

  
Martha S. Hollingsworth

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Enclosure

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THE PRACTITIONER | ROXANNE L. HOLMES

# What Practicing Insurance Coverage Law Is Really Like

Roxanne L. Holmes is a partner in San Francisco's Bronson, Bronson & McKinnon and up until this moment seemed destined for greatness in the perilous world of coverage law.

**INSURANCE LAW:**  
Believe it or not,  
insurance coverage  
practice can be  
dangerous and sexy.

**W**e coverage nerds need an image overhaul. Business attorneys characterize themselves as above the fray, cerebral and committed to the constructive, rather than destructive, purposes of the law. Litigators recount exciting war stories of turning dramatically on hapless witnesses to the amazement of attentive jurors. But coverage attorneys have no riveting anecdotes. They seldom slap their partners on the back in the elevator, hike up their pants, and brag, "Let me tell you about the great policyholders' release I got in this complex construction defect case. I don't mind admitting that date-of-occurrence thing had me on the ropes."

This abbreviated introduction into the harrowing world of insurance coverage law will not redeem our discipline nor swell our ranks. It may, however, suggest that instead of "nerds" we should be called "coverage gurus." (I personally have lobbied within my own firm, with surprisingly limited success, for the gender-specific sobriquet "coverage goddess.")

At my firm, the coverage department hires only the best and the brightest — law review types who have singlehandedly created entire self-supporting communities of peasants in the mountains of Nepal during their school vacations. Well-traveled, sophisticated people with appropriate haircuts. These types rarely wear pocket protectors or white socks. Short sleeves, maybe. Why is it, then, that the minute they touch a coverage file, they start wearing bowties?

After watching us file out of a coverage department meeting, other attorneys cruelly remark, "Whoa! Did you guys have another guest speaker on the proposed revisions to the actuarial tables? And you didn't invite the rest of the firm? Anything good left to eat? Ooh, check this out. They brought in white bread and bologna!" Just wait until they need advertising liability coverage for a big securities case.

Coverage attorneys are brave. For instance, in arguing coverage, a coverage attorney occasionally must take inconsistent positions in different cases. (This danger would largely disappear if the Supreme Court would decide exactly when the date of occurrence is.) Other coverage attorneys who point this out are dispatched to a special place in hell where they spend eternity trying to explain what a "fronting" policy is.

Coverage law is hard. Representing insurers, coverage attorneys must compose effective reservation of rights letters. Representing insureds, coverage attorneys must make sense of reservation of rights letters. Representing insurers, coverage attorneys must try not to gag when the insured's attorney cites *Gray v. Zurich* for the trillionth time. Representing insureds, coverage attorneys must actually read *Gray v. Zurich*.

A common misperception is that insurance law involves only dry facts and boring characters. Au contraire. If the situation weren't novel, the coverage determination would be easy and a "dec action" unnecessary. (If you are new to the field, start using this term immediately.)

Coverage cases involve such situations as an adjuster feigning romantic interest in an insured in order to lure her onto the wobbly Tom Sawyer Island Bridge at Disneyland where she is secretly filmed in order to disprove, and deny, her disability claim. (I'm not making this stuff up. See *Unruh v. Truck Ins. Exchange*, 7 Cal.3d 616 (1972).) Tell me that's not sexy. Well, OK, that's bad faith. Another animal altogether. In fact, bad faith is so inherently interesting it has been overtaken by litigators. They can have it.

True coverage cases are usually something juicy like construction defect or earth movement cases, which we respectfully refer to as "downhill condo slalom" cases. My personal favorite is the case where the insured contractor installed bathroom doors that popped open unexpectedly, and the replacement doors had chimes and mail slots. *Geddes & Smith v. St. Paul Mercury Indem. Co.*, 51 Cal.2d 558 (1959). I still say the insured missed its best defense there. Anyone who thinks those doors were defective lives in a home without teen-agers.

In fact, sex and violence feature prominently in many coverage cases. In a recent case, a man killed his girlfriend on his father's yacht, then sought coverage for the resulting wrongful death claim under his dad's marine policy. *Reliance Ins. Co. v. Alan*, 222 Cal.App.3d 702 (1990). Or take the insured who shot two people, ap-

parently at point-blank range and in the back of the head, stuffed them in the trunk of a car, and drove some distance before abandoning the car. *Grain Dealers Mutual Ins. Co. v. Marino*, 200 Cal.App.3d 1083 (1988). He sought coverage under his homeowner's policy, asserting that he neither expected nor intended to injure anyone.

Last and perhaps least is the ever-popular category of celebrity coverage cases. A standout is the case in which a young and irascible John McEnroe sought coverage under his homeowner's policy after allegedly injuring a heckler at the 1983 U.S. Open Tennis Championship. *USAA Cas. Ins. Co. v. Schneider*, 620 F.Supp. 246 (E.D.N.Y. 1985). McEnroe unsuccessfully argued that his conduct was "ordinarily incident to a nonbusiness pursuit" or "a 'frolic and detour' from the tennis match."

The initial step in analyzing coverage is obtaining the policy. While this seems reasonable to the coverage attorney, both insurance industry and policyholder clients seem baffled by the request. An insured client is likely to respond, "Policy? Gosh, I don't know. Would that be those little half-sheets they stick in with your premium notice? I never save those. Say, tell you what. My sister-in-law's house is only three blocks from here, and it slipped off the same hill as mine, and her insurance company paid. I'll send you her policy."

An insurance claims adjuster is likely to respond, "Policy? Gosh, I don't know. Underwriting is really in charge of that sort of thing. And I haven't talked with anyone in that department for years. But I think this policy is just like the policy you used in that other case. You know, the one where that crazy guy smashed all the computers." When you suggest that an inland marine form won't work for a liability claim, he responds, "OK. No problem. I'll find a specimen form just like the one issued to this insured." What he sends is a nonowned snowmobile endorsement and a volcano eruption rider.

Then there are settlement conferences, a civilized society's method of accelerating the judicial process by discussing strengths and weaknesses, resolving differences, and compromising. Unless an insurance representative shows up. In that case, a settlement conference is a gang fight.

I can always tell how experienced my

insurance clients are by how nervous they are about settlement conferences. A youngster sitting calmly in chambers with the sports section on his lap has no idea the judge is about to take his first newborn as a sanction for underreserving the claim. On the other hand, an insurance guy who shows up with a toothbrush, enough canned food to last a week, and his own Barca-younger understands how lengthy this process can be. If he calmly commands, "Call my wife and tell her I'll be home by spring or my retirement date, whichever comes first, and tell the judge he can have my twins this time," I know I'm dealing with someone who earned those gray hairs. I also know I will never succeed in getting authority exceeding \$20.

Insurance claims people can also distinguish themselves during the settlement conference itself. A rookie who thinks there is some hope of convincing the judge that a premises liability policy does not cover a bank's embezzlement scheme will wriggle in his seat until the judge accidentally glances toward his end of the room. He'll then jump up and excitedly explain the definition of property damage. An experienced claims person sits calmly, as if on narcotics, until the judge launches a gavel in his direction, at which point he says softly, and only once, "It is not covered. I am not paying." Awesome.

But an insurer's refusal to contribute large sums and get the case off the docket irritates jurists. Piqued, the judge will insist that you attend the next settlement conference with someone from "home office." (Most cases involving coverage require numerous settlement conferences. Of course, because of law firm attrition and typical life expectancy, none of the attorneys present at the first conference is at the last. Those who go through the entire process often marry, procreate and divorce — each other — before the settlement draft is executed.) Since insurance company home offices are always in frigid states with miserable weather nine months of the year, you will have no trouble convincing a home office representative to attend the conference in California. He will discreetly trip into the judge's chambers with a loaf of sourdough under each arm and a stinking Dungeness crab purchased at the airport.

Insured clients, on the other hand, seem somewhat taken aback when they enter the settlement conference and are confronted with 200 or 300 small, warring nations.

**U**nless you represent an insured, settlement conferences are excruciatingly boring, with everyone sitting around trying to look intimidating by talking on their portable phones. (Don't be fooled: Most of them are talking to each other. The rest are placing Spiegel orders.) But things liven up around midafternoon if your client is an insured. At this point, the client will suddenly awaken and lunge at your throat with a crazed look in his eyes. He has just realized that he is paying for every stultifying, unproductive hour of this exercise in American justice. Unless of course you succeed in obtaining coverage, in which case you may have the honor of becoming "Cumis" counsel, entitled to approximately \$17.50 per hour.

Were the truth more widely known, coverage attorneys would be considered the Joe Montanas of litigation. What we do is interesting, difficult and — stay with me — dangerous. In an effort to educate our colleagues, change our image, and elevate our position on the ladder of legal interest, I suggest we form a group. We could name this group the CAWSN-NBRFTGP (Coverage Attorneys Who Should Not Necessarily Be Removed From the Gene Pool) Task Force. Let's meet at the San Jose Denny's. B.Y.O.B(ologna).