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THE POLICYHOLDER ADVOCATE/IP COUNSELOR

NEWSLETTER

Volume 19, Issue 2: Fall 2015

PROFESSIONAL CONDUCT: IP-RELATED INSURANCE ISSUES

PROTECTING YOUR FIRM FROM MAL-PRACTICE BASED ON IP/INSURANCE ISSUES

Rule 26(f) Requires Court be Advised About Potential Coverage

- A Negative Answer To This Question Posed by Fed. R. Civ. P. 26(f) should be carefully vetted
  - Written confirmation of the client's inquiry into insurance and representation that no insurance could potentially cover the asserted claims.
  - Where intellectual property defense counsel is unable to formulate an informed opinion to properly respond to this inquiry, insurance coverage counsel should be retained.
  - Analysis of insurance coverage should not be delayed until the date for responding to the Rule 26(f) request because, in some forums such as New York, Illinois or Washington DC, a delay of as little as four (4) months could bar all coverage.
- The Better Practice
  - The Standard Provision:

    We are being retained as your intellectual property counsel. We do not practice insurance coverage law nor will we render advice on whether or not claims asserted against an insured are potentially covered or which insurers should be notified of a claim. Our representation is limited to underlying intellectual property litigation matters.

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  - Additional Provision:

    We recommend you retain insurance coverage counsel in addition to consulting your insurance broker to assure notification is properly provided for all claims asserted against your company and seek their advice on what additional facts beyond the pleadings should be forwarded to your insured to enhance your company's projects for securing insurance coverage.

Which Insurers Should Be Notified and What Should They Be Told?

- Whom Should Be Notified?

  The following checklist is a baseline:
  - First carrier on risk when a bad act is alleged potentially triggers coverage.
  - Develop facts in underlying action.
  - What if complaint is silent on this issue, as most are?
  - Asking the insurer to clarify the facts upon which its denial is based.
- Notifying Policyholder of a Reduction in Coverage (Jurisdictions That Follow This Rule: California, Kansas, Illinois, Maryland, Minnesota, Missouri, New Jersey and New York)

  Where inadequate notice of a change in coverage exists, no change may be in effect.
  - Insurer may not reduce coverage without notification.
  - Notification must be clear and conspicuous.
  - Applies to commercial policyholders.
  - Applies to all coverage.

Is Your Notice Timely and Can An Insurer Refuse to Pay Pre-Tender Defense Fees?

There are three significant issues posed by the late notice of a claim from an insured or its counsel to an insurer.

First, will late notice forfeit the insured's rights to obtain any benefits under its policy for either defense or indemnity? Some jurisdictions apply such a draconian rule, so that a delay of a period of months can preclude an insured from ever obtaining any benefits under the policy. Under the law of such jurisdictions, the failure of an insured's counsel to promptly notify the insured's carriers of claims that might fall within potential coverage can have extremely unfavorable economic consequences to the insured.

Second, the majority of states place the burden upon the insurer to show prejudice in order to bar coverage under a policy for late notice. Even in such jurisdictions, however, notice sent after a trial or settlement may preclude any rights to coverage. If, however, the prejudice can be eliminated by pursuit of a timely appeal, an insurer may have an obligation to fund the appeal. Generally, the longer the delay, the better the insurer's arguments that prejudice arises. Other jurisdictions place the burden of demonstrating a lack of prejudice on the insured. In this later group of states, delay until the eve of trial may be highly problematic.

Third, the more significant problem is the fact that attorney's fees incurred prior to the date of notice to the insurer are difficult to recover in the majority of jurisdictions. Some states have not addressed this issue or do not automatically bar pre-tender fees when an insurer refuses to defend its insured. However, other states bar pre-tender fees on the grounds that the provision of the policy which limits the insured's rights to make voluntary payments without the consent of the insurer precludes recovery of such fees.

New Duties Arise From the "Facts Known" Standard

- Having An Insured Contact Its Insurance Broker May Be Inadequate
  - Insurance brokers are the insured's agents, notice to them is not notice to insurers.
  - Broker exposure for failure to notify insurer.
    - *J.F. Meskill Enters., LLC v. Acuity*, No. 05-CV-2955, 2006 WL 903207, at *7 (N.D. Ohio Apr. 7, 2006) (Broker's opinion of no coverage for trade dress claims creates exposure for negligent misrepresentation but not professional negligence).

A Growing Number of Forums Have Adopted a "Facts Known" Standard

- Defense Counsel May Be Required To Provide Supplement Of Notice To Insurers With Facts Material To Coverage
  - *Southern California Gold Products, Inc., v. Zurich-American Ins. Group*, No. B234720, 2012 WL 1548280, at *6 (Cal. App. (2nd Dist.) May 3, 2012) ("The key issue in determining whether the insurer conducted a reasonable investigation is the nature of the facts known to it. . . . If there is nothing in those facts which suggests a potential liability under the policy, there is no duty to investigate further.").
- Failure To Assure Client Is Fully Apprised About Available Policy Benefits May Be Malpractice
  - *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison*, 18 Cal. 4th 739, 753 (1998) (The California Supreme Court implicitly recognized that outside defense counsel may be held liable for legal malpractice for failure to advise the client about insurance coverage rights even when insurance issues are outside the scope of retention and the client never asks the lawyer to investigate the issue.)
- Increasing The Universe Of "Known Facts" Can Exponentially Impact The Viability Of Potential Coverage
  - *Scottsdale Ins. Co. v. MV Transp.*, 36 Cal. 4th 643, 654 (Cal. 2005) ("[T]he duty [to defend] . . . exists where extrinsic facts known to the insurer suggest that the claim may be covered . . . where, under the facts alleged, reasonably inferable, *or otherwise known*, the complaint could fairly be amended to state a covered liability." (emphasis added)).
- Receiving Practical Insurance Benefits May Require Advising An Insurer And/Or Insurers Of Facts That Come To Light Through Discovery And In Motions
  - *National Union Fire Ins. Co. of Pittsburgh, PA v. Seagate Technology, Inc.*, 233 Fed. Appx. 614, 616 (9th Cir. (Cal.) 2007) ("In an answer to an interrogatory, Convolve added that Seagate had embarked on a campaign to prevent Convolve from profiting on its product by 'falsely disparaging Convolve's image and its technologies.'. . . A trade libel claim by Convolve against Seagate could proceed and succeed even if, as Seagate maintains, it never misappropriated Convolve's technology.").

INSULATING IP COUNSEL FROM LEGAL MALPRACTICE LAWSUITS

Coverage Cases Increasingly Look To "Facts Known To The Insurer"

Notice May Now Require More Than Notice to the Insurer/Broker of a Lawsuit

Counsel's ethical duties to their insured clients may no longer be discharged by advising an insured to contact its IP insurance broker even where notice is promptly provided to the insurer on risk as of the date of the filing of the complaint. This notice may not sufficiently protect an insured's right to policy proceeds in many cases as the prior insurers and umbrella insurers may need to be notified as well. Continued tracking of discovery responses, complaint amendment and other legal developments essential to secure all available policy benefits may have to be promptly forwarded to a client's insurers.

The "Facts Known" Coverage Law Standard Raises The Bar For IP Defense Counsel

Looking to "facts known" forums:

California

The insurer's duty to investigate is limited to facts that suggest a potential liability under the policy but require further evaluation. *S. Cal. Gold Prods., Inc., v. Zurich-American Ins. Group*, No. B234720, 2012 WL 1548280 (Cal. Ct. App. May 3, 2012) ("The key issue in determining whether the insurer conducted a reasonable investigation is the nature of the facts known to it. . . . If there is nothing in those facts which suggests a potential liability under the policy, there is no duty to investigate further.").

Facts which come to light in the underlying action, such as interrogatory responses, can clarify a duty to defend. *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Seagate Tech., Inc.*, 233 Fed. App'x. 614, 616 (9th Cir. (Cal.) 2007) ("In an answer to an interrogatory, Convolve added that Seagate had embarked on a campaign to prevent Convolve from profiting on its product by 'falsely disparaging Convolve's image and its technologies.'. . . because a trade libel claim by Convolve against Seagate could proceed and succeed even if, as Seagate maintains, it never misappropriated Convolve's technology.").

Illinois

Illinois increasingly places the burden on the insured to evaluate and forward all pertinent facts that could evidence coverage or risk establishing potential coverage and critically, not properly providing notice in accord with the notice provisions and therefore losing any potential coverage benefits. *Pekin Ins. Co. v. Precision Dose, Inc.*, 968 N.E.2d 664 (Ill. App. Ct. 2012) recognized that coverage was implicated by the facts alleged in "Koopman's affidavit" but could not be relied upon as its substance was not provided to the insurer at the time of defense of the underlying acts. "[T]here is no dispute that, when the complaint and amended complaint were filed in the underlying suit, defendants had all the information contained in Koopman's affidavit[.]" *Id*. at 679.

Minnesota

The failure to apprise an insurer of interrogatory responses which asserted factually based claims for coverage disparagement, which were propounded after the insurer's denial of a defense precluded coverage where these facts were not brought to the insurer's attention until after resolution of the underlying action. In *COMSAT Corp. v. St. Paul Fire & Marine Ins. Co.*, 246 F.3d 1101, 1106-07 (8th Cir. (Minn.) 2001) the court found no duty to defend "even though it would have been established by Alpha's answers to its interrogatories" because COMSAT "failed to meet its burden to provide evidence to the insurer in a timely manner.

New York

A recent Second Circuit decision in a copyright suit found no defense was due. The prayer sought destruction of "catalogs, circulars and *other printed material* . . . displaying or promoting the goods that were *or are being advertising* [sic], promoted" suggested that they may well have existed but were not identified as **b.** creating a basis for liability in the underlying action. No facts brought to the insurer's attention clarified how jewelry products were "offered for sale" even though discovery might have revealed this was accomplished through the widespread dissemination of product catalogues that were "paid advertisements" as required by the policy's restrictive "advertising injury" coverage.

Coverage Cases That Broadly Construe Duty to Defend Under Complaint Allegations Rule

Facts set forth in pleadings alone. In *Amerisure Ins. Co. v. Acusport Corp.*, No. 2:01-cv-683, 2004 U.S. Dist. LEXIS 6901 (S.D. Ohio Jan. 30, 2004), citing *Sherwin-Williams Co. v. Certain Underwriters at Lloyd's London*, 813 F. Supp. 576, 583 (N.D. Ohio 1993), the "duty to defend exists . . . 'when there is some doubt as to whether a theory of recovery within the policy period has been pleaded[.]'"

But, *ACE European Group, Ltd. v. Abercrombie & Fitch Co.*, 2013 U.S. Dist. LEXIS 131269, at *21 (S.D. Ohio Sept. 13, 2013), citing *Sherwin-Williams Co.*, 813 F. Supp. at 584, declared that " 'the insurer must defend when the facts in the complaint arguably or potentially fall within the scope of the insurer's coverage[.]'" It carried that analysis further, also stating, *id*. at 33-34:

> Even though breach of contract claims are not covered under the Policy, this fact does not lead to the conclusion that the consumer fraud claims are also precluded from coverage. ACE incorrectly characterizes the Underlying Lawsuits as simply alleging breach of contract and that any additional allegation is derivative of that claim. Indeed, the Underlying Lawsuits allege that Abercrombie breached contractual obligations as it relates to the gift card promotion. But the Underlying Lawsuits also allege that Abercrombie violated consumer protection statutory **[34]** law based on its conduct in connection with the gift card promotion. Furthermore, the *Boundas* and *Seaver*plaintiffs requested compensatory damages in connection with their Ohio Consumer Sales Practices Act claims, and the *White* Complaint alleges a violation of the California Consumers Legal Remedies Act, which allows for recovery of actual damages.

IP Counsel Necessarily Addresses Coverage Issues In Defending A Lawsuit

A Growing Number of Forums Adopting the "Facts Known To The Insurer" Trigger of Coverage Standard Heighten IP Counsel Duties to Communicate with Insurers

Clients defending intellectual property lawsuits look to their defense counsel for advice on all aspects of the case. This fact is contemplated by Fed. R. Civ. P. 26(f). It requires defense counsel to advise the court and opposing counsel about any insurance policies that could respond to asserted claims and cover any settlement contemplated.

IP Counsel May Be Attacked for Failing to Assist a Client in Securing Policy Benefits

Anecdotally, I served as an expert witness in a malpractice case on behalf of a defendant trademark attorney where an intellectual property attorney was sued for failing to procure coverage for a 30-day period following service of a trademark suit. The gravamen of the malpractice suit was that the insured was unhappy with the questions posed by the insurer and requests for additional information, which it claimed were burdensome. It therefore instructed its defense counsel to advise its insurer that it was withdrawing its defense.

Intellectual Property Attorneys Are in a Unique Position to Highlight Potential Coverage

As I noted in my May 24, 2001 online article, "*Failure to Give Notice of Potentially Covered Claims Could Be Malpractice*,"

> It is a simple matter. If an attorney is asked to defend someone who has been sued, one of the things the attorney needs to say is, do you have insurance? It is not an issue of whether the lawyer is going to represent the client in any insurance matter, or that he is going to be hired to press the claim. The issue is whether the client is advised that the insurance matter should be investigated. Simply put, the issue is that the lawyer must take the initiative and question the client: "Do you have insurance that might be applicable? And then see that the issue is investigated to ascertain the proper answer. . . ."

Late Notice Rules Can Lead to Forfeiture of All Coverage in Some Forums

Where delay in notice can itself be deemed to cause a forfeiture of insurance rights, an IP attorney, placed in the legal position of responding to Rule 26(f), may be thrust into a coverage controversy. Especially where there is a delay in filing a 26(f) response and the time for giving prompt notice has passed under the forum (whose coverage law may or may not apply) problematic exposures can arise.

Problematic jurisdictions include **Illinois**, *Amerisure Ins. Co. v. Laserage Tech. Corp.*, 2 F. Supp. 2d 296 (W.D.N.Y. 1998) and **New York**, *Technaoro Inc. v. U.S. Fid. & Guar. Co.,* 2006 WL 3230299, at *7 (S.D.N.Y. Nov. 7, 2006). In each case, the court concluded that a delay of as little as five months in providing notice to the insurer was a breach of the policy condition causing the forfeiture of all coverage. *See IP Attorney's Handbook for Insurance Coverage in Intellectual Property Disputes* by David A. Gauntlett, p. 58, §6.B.1.

The Failure to Assure Effective Access To Policy Benefits Triggers IP Counsel's Malpractice Exposure

Keeping the Client Informed About Material Matters Includes Those Matters That Impact Coverage

Attorneys have a broad duty to advise the client on material matters and to keep the client reasonably informed about significant developments relating to the representation. *Nichols v. Keller,* 15 Cal. App. 4th 1672, 1683-84 (1993); Cal. Bus. & Prof. Code § 6068 (m); *Metrick v. Chatz*, 266 Ill. App. 3d 649, 653, 639 N.E.2d 198, 201 (1994); *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002); *Hatfield v. Herz*, 109 F. Supp. 2d 174, 185 (S.D.N.Y. 2000); *Toledo Bar Ass'n v. Stewart*, 968 N.E.2d 947, 950 (Ohio 2013).

An attorney must know or research the law applicable to the case. *Stanley v. Richmond*, 35 Cal. App. 4th 1070, 1092 (1995); *Niziolek v. Chicago Transit Auth.*, 251 Ill. App. 3d 537, 547, 620 N.E.2d 1097, 1103 (1993); *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686, 693 (Minn. 1980); *Conklin v. Owen*, 72 A.D.3d 1006, 1007, 900 N.Y.S.2d 118, 119 (2010); *State v. Kole*, 750 N.E.2d 148, 152 (Ohio 2001). An attorney has the duty to advise the client as to whether or not to seek or accept a settlement. *San Francisco Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App. 2d 41, 45 (1968); 4 Ronald Mallen and Jeffrey Smith, *Legal Malpractice* §§30:26, 31:8 (2008 ed.). A failure to advise a client to accept a reasonable settlement offer is a breach of the standard of care. *Charnay v. Cobert*, 145 Cal. App. 4th 170 (2006); *Day v. Rosenthal,* 170 Cal. App. 3d 1125, 1150-51 (1985); Paul W. Vapnek, *et al., California Practice Guide: Professional Responsibility* § 6:312.11(a) (TRG 2008).

A lawyer also has the duty to exercise informed judgment but may not be held liable merely for an error in judgment if that judgment was both reasonable and informed. *Kirsch v. Duryea,* 21 Cal. 3d 303, 308 (1978); *Barner v. Leeds,* 24 Cal. 4th 676, 690 (2000); *Kling v. Landry*, 292 Ill. App. 3d 329, 333, 686 N.E.2d 33, 37 (1997); *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 112-13 (Minn. 1992); *Siegel v. Kranis*, 29 A.D.2d 477, 479, 288 N.Y.S.2d 831, 834 (1968); *Murphy, Young & Smith Co., L.P.A. v. Billman*, 1984 Ohio App. LEXIS 11643, at *24 (Ohio Ct. App. Nov. 20, 1984). This requires proof both that the applicable law was unsettled at the time the relevant advice was given and that the attorney's advice was based on the exercise of informed judgment – that the attorney conducted reasonable research in order to determine the relevant legal principles. *Village Nurseries, L.P. v. Greenbaum,* 101 Cal. App. 4th 26, 38 (2002); Paul W. Vapnek, *supra,* § 6:236; *Stanley, supra,* 35 Cal. App. 4th at 1094.

A claimant must show that but for the alleged negligence of the attorney, it is more likely than not that claimant would have obtained a more favorable result. *Viner v. Sweet,* 30 Cal. 4th 1232, 1244 (2003); *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill. App. 3d 1006, 1023, 929 N.E.2d 1167, 1183 (2010); *Antone v. Mirviss*, 720 N.W.2d 331, 335 (Minn. 2006); *Humbert v. Allen*, 89 A.D.3d 804, 806, 932 N.Y.S.2d 155, 157 (2011); *Rinehart v. Majorano*, 76 Ohio App. 3d 413, 419 (1991). Where the case is settled and the client claims that the attorney was negligent, the claimant must prove that (i) but for the attorney's negligence a better result would have been obtained, and (ii) what that better result would have been. *Barnard v. Langer,* 109 Cal. App. 4th 1453, 1461 (2003); *Marshak v. Ballesteros,* 72 Cal. App. 4th 1514, 1519 (1999). It is not sufficient to claim that it was possible to obtain a better settlement but rather that such outcome was likely. *Barnard, supra,* 109 Cal. App. 4th at 1461-62. *See also Sukoff v. Lemkin,* 202 Cal. App. 3d 740,746-47 (1988) *(accord)*; *Webb v. Damisch*, 362 Ill. App. 3d 1032, 1042, 842 N.E.2d 140, 149 (2005); *Rouse v. Dunkley & Bennett, P.A.*, 520 N.W.2d 406, 410 (Minn. 1994); *Dinhofer v. Med. Liab. Mut. Ins. Co.*, 92 A.D.3d 480, 481, 938 N.Y.S.2d 525, 527 (2012); *Envtl. Network Corp. v. Goodman Weiss Miller, L.L.P.*, 893 N.E.2d 173, 174 (Ohio 2008). This is the so-called "case-within-a-case" formulation of proof of proximately caused damages. *See Jalali v. Root,* 109 Cal. App. 4th 1768, 1774, 1777 (2003).

Generally, expert testimony is required to establish professional negligence because the conduct of lawyers is not within the common knowledge of a layman. *Lysick v. Walcom,* 258 Cal. App. 2d 136, 156 (1968); *Davis v. Damrell,* 119 Cal. App. 3d 883, 887 (1981); *Prendergast v. Ret. Bd. of Firemen's Annuity & Ben. Fund of Chicago*, 325 Ill. App. 638, 648, 60 N.E.2d 768, 773 (Ill. App. Ct. 1945); *Jensen v. Linner*, 260 Minn. 22, 37, 108 N.W.2d 705, 715 (1961); *Bloom v. Dieckmann*, 464 N.E.2d 187, 188 (Ohio Ct. App. 1983).

Legal Malpractice Claims Against Intellectual Property Defense Counsel Have Been Prosecuted for Failing to Advise of Insurance Coverage

In *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison, 18 Cal. 4th 739 (1998),* the California Supreme Court implicitly recognized that outside defense counsel may be held liable for legal malpractice for failure to advise the client about insurance coverage rights even

when insurance issues are outside the scope of retention and the client never asks the lawyer to investigate the issue.

Emblematic of the problem is *Darby & Darby, P.C. v. VSI Int'l, Inc.*, 178 Misc. 2d 113, 117-18, 678 N.Y.S.2d 482, 486 (Sup. Ct. 1998) *aff'd as modified*, 268 A.D.2d 270, 701 N.Y.S.2d 50 (2000) *aff'd*, 95 N.Y.2d 308, 739 N.E.2d 744 (2000). There, the court stated, "This court is persuaded that the plaintiff's failure to investigate the defendants' insurance coverage or alert them to the potential availability of insurance to cover their litigation expenses may have constituted legal malpractice." *Ross v. Briggs & Morgan*, 540 N.W.2d 843, 847 (Minn. 1995). While modifying the earlier ruling, the appellate division in *Darby & Darby, P.C. v. VSI Int'l, Inc.*, 268 A.D.2d 270, 272, 701 N.Y.S.2d 50 *aff'd*, 95 N.Y.2d 308, 739 N.E.2d 744 (2000) concluded, distinguishing *Jordache Enters. v Brobeck, Phleger & Harrison*, 56 Cal. Rptr. 2d 661, *revd* 18 Cal. 4th 739, 958 P.2d 1062 because: "The vast majority of [case law evidencing that CGL policies may coverage intellectual property infringement suits] developed after the period of plaintiff's representation of defendants[.]" *Darby & Darby*, 268 A.D.2d at 272-73.

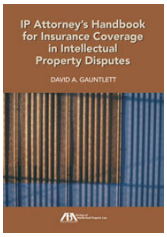
Subsequent coverage case law developed since *Darby & Darby*, in 2000, clarify why insurance coverage issues can no longer be avoided by IP counsel. *Shaya B. Pac., LLC v. Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 A.D.3d 34, 41, 827 N.Y.S.2d 231 (2006) ("We cannot say, as a matter of law, that a legal malpractice action may never lie based upon a law firm's failure to investigate its client's insurance coverage or to notify its client's carrier of a potential claim."). *See IP Attorneys' Handbook for Insurance Coverage in Intellectual Property Disputes* by David A. Gauntlett, ABA Intellectual Property Section, 2010.

Conclusion

Advising a client to not provide notice for all potentially covered claims can be perilous. Most forums preclude coverage for pre-notice defense fees. Especially where facts beyond the complaint reveal grounds for covered liability that clarify the pleadings in a manner revealing potential coverage, a duty to defend may arise. A failure to track such developments may compound problematic advice to not provide notice to an insurer. Unless defense counsel is a skilled insurance coverage practitioner, it is easy to overestimate the effect of intellectual property exclusions that may not even reach conduct pled. Securing the advice of knowledgeable coverage counsel is the best way to avoid legal malpractice exposure.

PUBLICATIONS BY DAVID A. GAUNTLETT

David A. Gauntlett is the author of ***Insurance Coverage of Intellectual Property Assets***, ***Second Edition*** (April 25, 2013), published by Aspen Publishers. The book and supplements are available for $321.00 plus tax where applicable; shipping and handling are free when full payment is enclosed with the order. To order, call Aspen Publishers at **1-800-638-8437**, or visit their website at www.aspenpublishers.com.



David is also the author of ***IP Attorney's Handbook for Insurance Coverage in Intellectual Property Disputes*** (*Second Edition*, 2014) published by the American Bar Association. (**$110.95**–ABA Member; **$103.95**–Section of Intellectual Property Law) To order, visit the American Bar Association Online Store at www.ababooks.org.

- ***Intellectual Property Due Diligence in Corporate Transactions***: § 12A (West/Thomas Reuters 2015) (contributor)
- ***Assets and Finance: Audits and Valuation of Intellectual Property – Internal Controls, Materiality and Investment*** (West/Thompson Reuters) (Westlaw AFAVIP) (contributor)
- ***Insurance Coverage for Wage and Hour Claims***, 2014 Emerging Issues 7192 (LexisNexis 2014)
- ***New Appleman on Insurance Law Library Edition*** chapter on *"Intellectual Property Insurance"* (LexisNexis 2011) (contributor)
- ***Recent Developments in Insurance Coverage Litigation*** (with Stephen Groves, Robert Kelly, Christine Davis, Pamela Palmer and Fred Smith) for the Tort Trial & Insurance Practice Law Journal, Winter 2010 (45:2)
- ***New Appleman Insurance Law Practice Guide*** chapter on *"Understanding Intellectual Property Insurance"* (LexisNexis 2009) (contributor)

- ***New Appleman on Insurance Critical Issues in Insurance Coverage*** – upcoming chapter on *"Insurance Coverage for Antitrust Lawsuits"* (LexisNexis 2011) (contributor)
- ***ICLC's CGL Handbook*** chapter entitled "*The Principal Exclusions in Coverage B"* (ABA 2009) (contributing editor)
- *A Primer on Insurance Coverage Law, and Intellectual Property Claims Under Commercial General Liability Policies* (Insurance of IP assets) (contributing author for Chapter 7) (Tod I. Zuckerman, Robert D. Chesler, Mary Hildebrand and Christopher Keegan)
- *Free and Open Source Software and Content Desk Reference: A Legal and Risk Management Guide* (Browntree Publications) (contributing author of chapters on F/OSS and F/OC adoption and corporate risk management policies and procedures)

UPCOMING PUBLICATIONS BY DAVID A. GAUNTLETT

- 2016 Updates for ***Intellectual Property Due Diligence in Corporate Transactions***: § 12A (West/Thomas Reuters 2015) (contributor)

UPCOMING AND PAST SEMINARS ON INSURANCE COVERAGE AND INTELLECTUAL PROPERTY WHERE DAVID A. GAUNTLETT IS SPEAKING OR ATTENDING

October 13, 2015	*IP-Related Insurance Issues*—Whittier Law School (*speaking*)
August 14, 2015	*IP-Related Insurance Issues*—Provisors NPI (*speaking*)
May 26-27, 2015	*IP-Related Insurance Issues*—OCPA IP Section Meeting/Patriot Risk & Insurance Services (*speaking*)
April 14, 2015	"*IT Security Insurance Policies Trends & Opportunities*"—Provisors OC IT Affinity Group (*speaking*)
March 4-7, 2015	ABA Section of Litigation Insurance Coverage Litigation Committee CLE Seminar, Loews Ventana Canyon, Tucson, AZ (*attending*)
February 19-21, 2015	*The "Professional Services" Exclusion: Opportunities and Limitations in a Variety of Insurance Disputes* —ABA TIPS ICLC Midyear Program—Phoenix, Arizona (*speaking*)

GAUNTLETT & ASSOCIATES – THE POLICYHOLDER ADVOCATE

Gauntlett & Associates specializes in policyholder insurance coverage and litigation regarding copyright, antitrust, patent, trademark, trade secret, business and general coverage disputes, including:

1. Insurance Coverage Litigation Focusing on IP, Antitrust and Business Tort Claims
2. Securities Fraud Litigation Insurance Coverage
3. IP Litigation, Representation in Arbitrations and Mediations
4. Mergers and Acquisitions Insurance Coverage Counsel and Advice
5. Expert Witness on Insurance Coverage Issues, Including Fee Disputes
6. Counsel to IP Case-in-Chief Counsel for Insurance Coverage, Including: Choice of Forum and Negotiation
7. Consultant to Corporations Regarding What Type of Policies to Purchase to Protect Against IP Litigation

If you have a topic you would like to see addressed in future issues, please feel free to contact us with your suggestions.

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