Tucker Ellis LLP

Insurance

Overview

The Tucker Ellis Insurance Group assists our clients – including many of the world's largest and most respected insurers – in meeting their business program, claim, and litigation needs.

We draft coverage programs and endorsements that ensure compliance with all regulatory obligations. Our specially prepared broker/agent agreements strengthen and support business operations under clear standards to avoid unnecessary disputes that can detract from successful and profitable relationships. And when disputes arise with business partners, the Insurance Group has the experience to represent our clients in enforcing and defending their rights in both judicial and arbitration settings.

We provide claim assistance, including the development of complete and thoughtful coverage opinions, the ongoing monitoring of claims and defense counsel (and the analysis of legal defense fees), and active participation in strategic and settlement discussions. Our approach supports our clients' business relationship needs, while protecting their financial interests on an individual claim and programmatic basis.

When necessary, we file and defend declaratory relief and bad faith litigation in jurisdictions throughout the United States, often partnering with our Appellate & Legal Issues Group to boil down complex or challenging issues into persuasive factual and legal arguments.

Our experience in assisting clients with their reinsurance and retrocession claims, submitted under both domestic and international treaties and agreements, also provides important guidance that ensures the successful and stable management of these important agreements and the financial resources they provide.

The Tucker Ellis Insurance Group is Band 1-ranked in Chambers USA in the area of Insurance: Insurers (Ohio). Clients say, "They have an excellent ability to take our cases put them in context of similar cases; so great industry perspective. They are really the top of their game in thinking and presenting." Other sources describe our team as "very smart and well respected" and "good at putting complex contract matters in layman's terms."

AREAS OF EMPHASIS

- **Insurance Class Actions.** Our team is called upon to represent major insurance carriers in class actions nationwide. We leverage our extensive experience representing major insurance carriers in insurance coverage matters to defend our clients in class action litigation related to policy interpretation and claims handling practices.

- **Comprehensive General Liability (CGL).** CGL policies continue to present challenges to our clients, particularly in the areas of products liability (mass tort, product recalls), construction defect, and the management of "additional insured" rights and obligations. We provide thoughtful guidance that addresses obligations actually owed, while avoiding unnecessary defense, indemnity, and "independent counsel" disputes that can needlessly increase costs and exposures.
- **Employment Practices Liability (EPL).** Retained as national coordinating counsel and local counsel for claims brought under EPL policies (one of the more challenging insurance practice areas given limitations imposed by policy language and different states' public policies), we work closely with all involved parties to address defense and indemnity exposures in a manner that often navigates emotional and financially significant exposures.
- **Professional Liability (E&O).** We represent foreign and domestic insurers in the evaluation and management of high-stakes exposures presented under healthcare (medical center and individual providers), legal, accounting, securities dealers, and architect liability programs, offering practical guidance when coverage extends to both civil and regulatory exposures. Our analysis also takes into account differing state laws and policies that can impact coverage obligations, while also ensuring consistency in program administration.
- **Architects & Engineers (A&E).** As the demand for A&E coverage continues to grow, our attorneys are regularly retained to evaluate coverage issues arising from the interpretation of the claims made and reported policies, including notice issues, retro activity dates, prior acts, prior notice, and other issues.
- **Directors and Officers (D&O).** Our attorneys have managed claims programs as both outside counsel and as part of in-house claims management teams (secondment with Lloyd's Syndicate as Interim Professional Liability Claims Manager), involving public and private securities offers (individual claims and industrywide exposures), corporate mergers and acquisitions, and health and welfare benefits programs. We develop and implement innovative defense and settlement strategies, and we work closely with reinsurers and retrocessionaires.
- **Malicious Product Tampering and Accidental Product Contamination Policies.** As food contamination issues and recalls of food products have become more prevalent, insurance policies designed to cover at least a portion of those losses attributed to that event have become more important; however, insurance is limited and, therefore, litigation over the scope of coverages provided in those policies has grown. Tucker Ellis represents carriers around the country where these cases are litigated.
- **Marine Insurance.** We are frequently called upon by London market insurers (including Lloyd's-led and London Company insurers) and by U.S. domestic insurers to analyze coverage under marine insurance policies, encompassing traditional marine risks, other transportation risks, energy, fine art, and specie

- **Specialty Policies and Programs.** As risks change, so do our clients' needs for specialty programs (food contamination, data security, emergency response). We assist clients in drafting specialty policies and programs, evaluating claims under various insurers' specialty programs (primary and excess), and litigating coverage and bad faith claims in these emerging coverage areas. We assist our clients in offering new products to their insureds, while also protecting their rights should coverage issues arise under new and evolving liability standards.
- **Reinsurance.** Reinsurance and retrocession agreements, whether foreign or domestic or facultative or treaty, all receive special attention from our skilled attorneys to ensure that claim notifications, claim management relationships, and financial payments are handled in keeping with the special standards applicable to these programs.
- **Agency Risk Pools.** In addition to foreign and domestic insurers, we serve as outside general counsel to public agency risk pools, operating as public agencies or nonprofit public benefit corporations, as we partner together to support the many aspects of their legal needs in support of their business operations.
- **Regulatory Compliance, Standards, and Training.** Having assisted clients in developing internal claim management guidelines, we also provide guidance and training to ensure their legal compliance with state-imposed claim and underwriting guidelines.

AREAS OF SPECIAL INTEREST

- **Authors.** Our attorneys are the authors of Ohio Insurance Coverage, the definitive resource for policy and claim issues arising under CGL policies and coverage programs within that state. We also frequently contribute articles addressing issues of concern to our clients.
- **Speakers.** We are often called upon to speak at local, state, and national conferences on defense, indemnity, and claim management concerns, including the ABA TIPS national programs, CAJPA state programs, and CLE programs. We have provided training in Fair Claims Practices Regulations and have presented topics of interest to the London insurance market.
- **Appellate Specialists.** Our appellate attorneys handle appeals in jurisdictions throughout the United States.
- **Auditors.** Audits, which may involve legal counsel (defense fee audits), insureds (claims or underwriting audits), and reinsureds (claims and treaty evaluations), can materially impact important business and claim relationships, requiring that they be conducted by trained professionals who understand how to manage such activities in a positive and productive manner. Our clients retain Tucker Ellis to manage these activities with the security of knowing we will provide them with critical information upon which to base their underwriting and claims decisions, often protecting them from avoidable financial exposures that can negatively affect their bottom line.

Experience

REPRESENTATIVE EXPERIENCE

- Investigate and analyze coverage issues in claims of attorney malpractice, conversion, and misrepresentation
- Defended carriers in lead paint coverage actions and other long-tail pollution claims
- Analyzed coverage issues associated with a dispute arising out of a billion-dollar construction project
- Investigate and analyze coverage issues associated with all modes of transportation, including ocean marine, inland marine, rail, motor carrier, aviation, and space
- Defended carrier in equitable contribution and notice claims
- Defended carriers in complex long-tail cases concerning coverage for asbestos claims
- Defended bad faith and coverage litigation brought by insured for coverage under product contamination policy for alleged salmonella contamination
- Defend carriers in interpretation of “claims made and reported” policies, known loss, prior notice, related acts, and other issues that arise in the interpretation of those policies
- Defended litigation alleging coverage under public works policy
- Defend carrier in coverage litigation involving application of the definition of “occurrence” along with equitable doctrines, known loss, prejudice, and misrepresentation by insured
- Defended bad faith litigation brought by a former director under a country club’s D&O policy; obtained summary judgment on bad faith and indemnification
- Provide coverage analysis for a professional liability carrier for medical billing audits and claims involving Medicare and state-based Medicaid investigations
- Assist self-insured entities in developing claims management systems and provide independent analysis of claims for reserving and settlement purposes

REPRESENTATIVE CLASS ACTION LITIGATION EXPERIENCE

- Represent a major insurance carrier as national counsel in numerous class actions across the country challenging whether sales tax and title fees should be included in the calculation of the actual cash value of a total loss vehicle
- Represent a major insurance carrier as Ohio counsel in a class action challenging the calculation of the actual cash value of the repair of damaged property
- Represented a major insurance carrier in a class action seeking medical payments coverage; obtained voluntary dismissal of the case after dispositive briefing
- Served as trial counsel for a major insurance carrier in a class action of more than 100,000 policyholders during a 22-year class period involving windshield repairs; obtained a favorable settlement prior to trial
- Represented a major insurance carrier as Ohio counsel in a class action alleging price fixing through direct repair programs

- Obtained a voluntary dismissal of a class action against a major insurance carrier alleging a pattern of bad faith negotiations and settlement practices
- Represent a large international insurance carrier in Ohio for coverage for business interruption claims arising out of the COVID-19 pandemic in both single cases and class actions