



Coughlin Midlidge
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David M. Farkouh

Of Counsel



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David M. Farkouh is Of Counsel in the Firm's Insurance and Reinsurance Services Group.

David has over fifteen years of experience as an insurance coverage litigator and counselor for major insurance companies as panel and select counsel in litigation and alternative dispute resolution forums. David is admitted to practice and litigates coverage cases in State and Federal courts of New York and New Jersey and has also served as lead counsel for complex insurance coverage litigation in other jurisdictions and claims arising worldwide.

David's fifteen years of private practice has been devoted to insurance coverage, and he has experience with liability insurance policies that include, but are not limited to, pollution, general, excess, umbrella, products, advertising injury, cyber, marine terminal operator's, contractor's, construction operations, wrap-ups (owner controlled insurance programs), errors and omissions, directors and officers, employer's, workers' compensation, wharfinger and stevedores, and commercial auto. Many of these matters have involved manuscript and custom forms in modern and historical usage. David's experience also includes commercial first party insurance including property, all risks, business income, business interruption, inland marine, and named perils.

Claims and litigation underpinning David's experience include those arising from pollution, products, health hazards, latent and/or progressive or continuous injuries or damages implicating

a wide range of issues under the law of numerous states, such as competing allocation methodologies involving all sums and pro rata approaches, stacking and anti-stacking, horizontal and vertical exhaustion, triggers of coverage, pollution exclusions, as well as novel fate and transport issues, and prior insurance and non-cumulation clauses.

David has served as litigation counsel in connection with underlying environmental claims and class action lawsuits that involved losses or judgments well in excess of \$100 million, and demands that exceeded \$1 billion and policy limits. Insurance company clients have also entrusted David to proactively counsel best practices in matters involving suggestions of bad faith. David's experience includes defending bad faith claims asserted by insureds and representation of insurers in claims as between primary and excess insurers for liability to pay uninsured and excess judgments.

Prior to entering private practice, David served as law clerk in the Appellate, Chancery, and Law Divisions of the Superior Court of New Jersey (2004-2005). During law school, David worked for the National Association of Securities Dealers' Enforcement Division, private litigation firms, participated in a civil litigation clinic, and interned for the New York Stock Exchange's Enforcement Division, State and Federal courts.

REPRESENTATIVE MATTERS

- Served as lead defense counsel for an insurance company against agribusiness company's litigation claims seeking to recover under manuscript and historical primary and excess liability insurance policies the costs of defense and \$100 million+ settlement of class actions which alleged U.S. nationwide contamination of drinking water supplies by a weed killer product.
- Represented excess insurer as coverage counsel in connection with claim seeking personal and advertising injury coverage for \$28 million nationwide class action settlement based on alleged vicarious liability of alarm monitoring company for its authorized dealers' telemarketing calls in violation of the Telephone Consumer Protection Act.
- Served as coverage counsel for insurance company in connection with claims under \$100 million pollution liability policy for environmental liabilities in Alabama-vicinity as a

result of emerging-concern contaminants known as perfluorinated compounds (e.g., PFOA, PFOS) and investigation, clean-up costs, natural resource damage, bodily injury and property damage alleged in multiple class action lawsuits, and related claims by federal, state, and local environmental authorities and utility companies.

- Successfully represented insurance companies against numerous multimillion dollar claims by various commercial insureds for liability arising under CERCLA for the Diamond Alkali Superfund site in New Jersey including the former manufacturing facility, the Lower Passaic River Study Area (LPRSA), and the Newark Bay Study Area, including issues such as interrelated “claims” asserted by different governmental authorities, complex claims for natural resource damages, whether National Priorities List designation qualifies as a “claim,” and other issues.
- Served as coverage counsel for an insurance company against a claim to exhaust \$100 million limit under manuscript project-specific policy including contractor’s pollution liability insurance in connection with liabilities arising out of deconstruction and fire at NYC Deutsche Bank Building.
- Successfully represented an insurance company as coverage counsel for numerous multimillion dollar bodily injury lawsuits in various jurisdictions arising out of alleged exposure to toxins in “clean room” microchip manufacturing facilities.
- Successfully represented insurance company as lead coverage counsel for numerous class actions, lawsuits and claims arising out of alleged bodily injury caused by exposure to coal lab float sinks in and around West Virginia, involving issues including whether defined class and subclass amendments were pre-existing or new “claims” under claims-made liability policies.
- Successfully represented insurance company against multimillion dollar claim for business interruption and economic loss made by construction manager due to pollution conditions at a North Carolina military base.
- Served as coverage counsel for an insurance company in connection with multimillion dollar claim arising out of damages caused by pollution from Superstorm Sandy and relating flooding at major NYC hospital facilities, including issues such as the number of events, business interruption, and concurrent and sequenced causes of loss.
- Successfully represented primary insurer under a \$1 million policy against insured’s and excess insurers’ allegations of bad

faith liability for failure to settle resulting in \$23 million excess and uninsured liability verdicts for bodily claims arising out of a construction site accident.

- Served as coverage counsel for an insurance company in connection with claims by arms and chemical manufacturer for coverage under historical and manuscript general and excess liability insurance policies seeking costs of investigation and cleanup of contamination at numerous manufacturing sites throughout the country.
- Successfully obtained summary judgment dismissing an insurance agency's complaint against an insurance company for alleged tortious interference and fraud in connection with termination of agency agreement and unconsummated sale of agency subsequent to indictment for bribery of New York, Nassau County executives.
- Successfully defended appeal in the U.S. Second Circuit Court of Appeals after obtaining summary judgment in the trial court, which dismissed claims asserted by commercial insured for breach of contract, bad faith, estoppel, and entered judgment on counterclaim to enforce custom professional (financial) services exclusion.
- Successfully represented insurance company against New Jersey-statewide class action lawsuit alleging statutory violations for failure to obtain informed consent to minimum personal injury protection coverages, including obtaining pre-discovery dismissal of bad faith claim.
- Prevailed at night court trial in NYC Small Claims Court, Kings County (Brooklyn) in obtaining a no cause judgment for claims asserted by former customer against an insurance company and judgment entering counterclaim.
- Successfully represented insurance company against claims by university under pollution liability insurance policy in connection with costs to investigate and remediate New England medical waste site containing radioactive animal remains.
- Successfully represented insurance company under owner-controlled insurance program in connection with claims by commercial property owner and service contractors for damages caused by furnace explosion at international conglomerate's headquarters.
- Successfully litigated numerous lawsuits seeking insurance coverage for environmental contamination of commercial and residential properties under various forms of liability policies including custom and unique forms issued part of specialty

insurance programs for fuel service providers and home heating contractors.

Services

Insurance and Reinsurance

Education

Seton Hall University (J.D., 2004)

Rutgers University (B.A., 2001)

Professional Admissions

United States Court of Appeals for the the Second Circuit (2011)

United States Court of Appeals for the Third Circuit (2023)

United States District Court for the District of New Jersey (2004)

United States District Court for the Eastern District of New York (2007)

United States District Court for the Southern District of New York (2007)

State of New Jersey (2004)

State of New York (2005)