

HOSPITALITYLAWYER.COM PRESENTS
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Hospitality Industry Insurance Litigation Update for 2010

Presenters



- David P. Bender, Jr., Shareholder, Anderson Kill Wood & Bender, P.C.
- Devotes his practice to evaluating and enforcing business insurance claims and to handling litigation aimed at accessing insurance coverage
- Represents public and private companies
- Holds Martindale-Hubbell's highest "AV" rating for professionalism and ethics.



- William F. "Chip" Merlin, Jr., President, Merlin Law Group
- Dedicated to always being an advocate for the policyholder
- Founder of 20-attorney firm that represents commercial, governmental, condominium, and residential policyholders
- Frequent presenter at Insurance Law events to attendees and other interested parties involved on both the plaintiff and defendants' side.

Litigation Update for 2010

Disclaimer: The views expressed by the participants in this program are not those of the participants, employers, their clients, or any other organization. The opinions expressed do not constitute legal advice, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

First Party Claims

Misrepresentation in the Application

- *Grenoble House Hotel v. Hanover Ins. Company*, 2010 WL 2985789 (E.D. La. July 26, 2010)

First Party Claims

Additional Insured

- *Ramparts, Inc. v. Fireman's Fund Ins. Company*, 2010 WL 2326072 (D.Nev. June 07, 2010)

First Party Claims

Additional Coverage Endorsement

- *Merlyn Vandervort Investments, d/b/a Jeremiah's Night Club v. Essex Ins. Company*, 309 S.W. 3d 333 (Mo.App. S.D. 2010)

First Party Claims

Business Interruption

- *Catlin Syndicate v. Imperial Palace of Mississippi, Inc*, 600 F. 3d 511 (5th Cir. 2010)
- *B.S.S.B., Inc. v. Owners Ins. Company*, 2010 WL 320229 (M.D.Ga. January 20, 2010)
- *Ski Shawnee, Inc. v. Commonwealth Inc. Company*, 2010 WL 2696782 (M.D.Pa. July 06, 2010)

First Party Claims

Business Interruption

- *Aztar Corp. v. U.S. Fire Ins. Company*, 224 P. 3d 960 (Ariz.App. 1st Div. 2010)
- *WMS Industries, Inc. v. Federal Ins. Company*, 384 Fed. Appx. 372 (5th Cir. 2010)

First Party Claims

Discovery Sanctions

- *Bray & Gillespie Management v. Lexington Ins. Company*, 2010 WL 55595 (M.D.Fla. January 5, 2010)

First Party Claims

Subrogation

- *Amco Ins. Company v. Ninjin Japanese Restaurant*, 2010 WL 2028537 (Cal.App. 2 Dist. May 24, 2010)

Model Risk Manage Risk

Are there gaps between your policies?

- CGL: legal liability for BI/PD or PI/AI
- E&O: claim for economic loss
- What's in between?

Model Risk Manage Risk

Are there gaps within your policies?

- Know the key exclusions, such as:
 1. A&B: covered, self-insured?
 2. Bacteria & mold: foreseeable risks?

Model Risk Manage Risk

Assault & Battery, Rape

Pilgra v. America's Best Value Inn, 2010 WL 3894631 (La. App. Oct. 6, 2010) [multiple exclusions apply to sexual misconduct]

Model Risk Manage Risk

Bacteria

Amco Ins. Co. v. Swagat Group, LLC, 2010 WL 32593 (C.D. Ill. Jan. 21, 2010) [bacteria exclusion applied in Legionnaire's disease case]

BUT COMPARE:

Westport Ins. Co. v. VN Hotel Group, LLC, No. 6:10-cv-222-Orl-28KRS (M.D. Fla. Dec. 9, 2010) [bacteria exclusion did *not* apply in Legionnaire's disease case]

Model Risk Manage Risk

Is better policy language available?

- Does the policy unnecessarily restrict coverage?
- Just a few words can mean the difference between coverage and total exposure.

Model Risk Manage Risk

Consumable Products

Lorenzo v. Capitol Indem. Corp., 401 Ill.App.3d 616 (2010) [coverage defeated by failure to add all restaurant locations to Schedule]

Model Risk Manage Risk

Pollution

Barney Greengrass, Inc. v. Lumbermans Mut. Cas. Co., 2010 WL 3069560 (S.D.N.Y. 2010)
[“smoke” falls within pollution exclusion, but “odor” does not]

Roinestad v. Kirkpatrick, 2010 WL 4008895
(Colo. App. Oct. 14, 2010) [meaning of
“contaminant” under pollution exclusion is
ambiguous]

Model Risk Manage Risk

Watch for EPLI traps!

- Have you conducted a complete investigation of administrative claims?
- Who is really on the risk?

Thank you!
