# 11th Circuit: 'Completed Work' Exclusion Does Not Bar Claims for Work Under Maintenance Contract


*Image by Pictures of Money*

The 11th Circuit ruled in *Liberty Surplus Ins. Corp. v. Norfolk Southern Railway Co.* that the unambiguous language of Liberty's "Completed Work" exclusion did not bar coverage for injuries sustained by a motorist injured at a railroad crossing who later sued Norfolk Southern, reports Hunton Williams.

"Before the Court is, once again, the classic case of the insurer requesting relief from the consequences of the inartfully drafted, yet plain, terms of its insurance policy," the opinion reads.

**Andrew A. Stulce** writes in the firm's **Insurance Recovery Blog** that the decision makes some important points:

> First, courts continue to construe exclusionary provisions narrowly and against the insurer, even where the provision utilizes plain and unambiguous wording. Second, in the context of contracts and agreements to supply services, work

or operations over time, exclusions designed to bar coverage for completed work or operations must be explicit as to when the services, work or operations are deemed to be "complete."

**Read the article**.

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# Law Firm Sues Insurer Over $700K in Lost Billings Due to Ransomware Attack

A small Rhode Island law firm has filed a lawsuit against its insurance company after the insurer refused to pay $700,000 in lost billings following a ransomware attack on the firm that locked down the firm's computer files for three months, reports CloudNine's **eDiscovery Daily Blog**.

**Doug Austin**'s report, based on a story in the ***Providence Journal***, explains that Moses Afonso Ryan Ltd. is suing its insurer, Sentinel Insurance Co., for breach of contract and bad faith. The insurer denied the plaintiff's claim for lost billings over a three-month period when the documents were frozen by a hacker's ransomware attack. The hacker encrypted the law firm's computer files, offering to unlock them if a ransom were paid.

The suit says the infection disabled the firm's computer network, meaning lawyers and staffers "were rendered essentially unproductive."

**Read the eDiscovery Daily Blog article**.

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# Negotiating Technology Contracts – Insurance Requirements

**By Stephen F. Pinson**
**Scott & Scott LLP**


*Image by Pictures of Money*

One of the most overlooked sections in a technology-related contract is the insurance section. Whether that contract involves IT services, development, Software as a Service or

Cloud Services, the insurance section is just as important as the other risk-allocating provisions contained in the contract. Yet, in most of the contracts in the industry, the original contract is silent on insurance and there is no insurance provision drafted. This leaves a business customer vulnerable to risks that are not covered by insurance. This discussion will help identify what provisions are actually needed in a contract to properly allocate the risks.

The following is a brief list of insurance provisions that parties should include in technology contracts for the different types of claims scenarios between contracting parties. This list describes how each provision works within the contract and what should be negotiated (this is not an exhaustive list). Parties should negotiate individual and aggregate limits for the types of risks involved.

**1. Commercial General Liability** – This type of insurance, commonly known as GL, is the most basic form of business liability insurance. This type of insurance protects a business against claims due to injuries, accidents, and negligence. It can protect a business from costs related to bodily injury, property damage, medical expenses, legal costs, judgments, and personal injury claims such as libel and slander. GL is a staple requirement for both the service provider and the business customer, but it will not protect against all risks or threats. To protect a service provider or business customer from more specific types of emerging threats, each party may need to purchase additional liability policies.

**2. Professional Liability Insurance, Errors and Omissions** – This is also known as E&O insurance and will cover a service provider if it fails to perform according to the requirements in the contract. This coverage will help offset the costs associated with customer claims when the provider’s mistake causes a customer loss. Customers may want to insist on E&O coverage to help bridge the gap between coverage offered by GL

or other policies.

**3. Automobile Liability** – If a service provider will use an automobile in any phase of the work performed for the business, the business should require evidence of automobile insurance. In some cases, the service provider will own no automobiles and therefore may not purchase automobile liability coverage; however, the business customer should require evidence of coverage for exposure related to non-owned and hired automobiles. This coverage protects the service provider and business customer in claims arising from the use of personal or rented vehicles by the service provider's employees or principals. If dealing with a sole proprietor, proof of personal auto coverage should be required.

**4. Workers' Compensation** – If an employee experiences a job-related illness or injury, this policy can help pay for medical expenses and lost income. If a service provider plans to do work onsite at the business customer's location, the business customer should require evidence of worker's compensation insurance. In some states, worker's compensations can be waived by following certain statutory protocols. The agreement should contain a provision that ensures the business customer will have no liability for the service provider's employees or independent contractors, even if the service provider opted out of workers' compensation. Additionally, if a service provider has no employees, then Workers' Compensation is not generally required by the State.

5. Employer's Liability Insurance – Employer's liability coverage, known as EPLI, is designed to cover claims like harassment, wrongful termination, and other claims that that are not covered by workers compensation or by a GL insurance policy. The primary goal for requiring this type of insurance is that a business customer will want likely claims the services provider may incur to be covered by insurance. Having uncovered risks may make the service provider less able to continuously provide services in the event of a claim by an

employee.

6. Cyber Liability – Cyber liability includes numerous subsets of insurance coverage, and customers should carefully examine the particular coverage because it varies greatly among providers. Cyber Liability coverage should include both first-party liability coverage and third-party liability coverage.

- First-party liability coverage applies to direct costs for responding to a claim incident, such as: (1) notifying clients that their information was compromised or exposed, (2) purchasing credit monitoring services for customers affected by the breach or hacking incident, (3) launching a public relations campaign to restore the reputation of the company affected by the breach, (4) compensating the business for income that it isn't able to earn while it deals with the fallout of the data breach, and (5) paying a cyber-extortionist who holds data hostage or threatens an attack.
- Third-party liability insurance covers the people and service provider responsible for the systems that allowed a data breach to occur. It offers protection for the service provider and independent contractors who were responsible for the safe storage of the data. The following is a list of coverage types that should be included in some form or another as coverage for a service provider or business customer when they are seeking coverage for the different types of claims scenarios.

Regardless of whether the coverage is first-party or third-party, the contracting parties should examine whether they require the following categories of coverage:

- Network Security and Privacy Liability – This coverage protects the service provider against losses for the failure to protect a customer's personally identifiable information (SSN, credit card numbers, medical information, passwords, etc.) via theft, unauthorized

access, viruses, or denial of service attack.

- Media Communications Liability / Reputation or Brand Protection – This coverage protects against allegations of defamation/libel/slander, invasion or violation of privacy, plagiarism/piracy, copyright/trademark infringement, and other wrongful media communication acts that can hurt a service provider or business customer that is associated with media communications in electronic, print, digital, or broadcast form.
- Data Breach – Data breaches come in many shapes and sizes, but many kinds of cyber incidents, including: malware attacks, malfunctions, insider data breaches, data theft by employees, ransomware, or employee mistakes. Data Breach Insurance may cover these breaches as well as when a hacker targets your service provider or a business customer.
- Data Loss / Interruption of Computer Operations – This type of insurance covers incidents where there is data loss or interruption of computer operations from an inadequate backup or an insured loss, e.g., a disaster that destroys the computer system or virus. This type of coverage can also reimburse losses related to lost income that a service provider or business customer incurs ancillary to a data loss.
- Regulatory Response – Regulatory response insurance protects against fines and defense costs arising from proceedings brought by any regulatory body against either the service provider or those individuals performing regulatory functions within the business customer’s firm when an incident occurs.
- Regulator Defense/Penalties – This insurance covers defense expenses and regulatory fines and penalties imposed by a regulatory agency in connection with a data breach.
- Systems Damage – This insurance covers computer systems that are damaged in retrieving, restoring or replacing any computer programs or other data media.

- Threats or Extortion – This insurance covers incidents where threats or extortion from a hacking attack or virus on a computer system.

**7. Umbrella Liability Insurance** – Umbrella coverage provides extra liability protection to help protect a service provider or business customer in the event that a loss exceeds the limits of the other policies. There are three basic reasons to maintain an umbrella policy: (1) professional liability insurance can be quickly exhausted by legal defense fees, (2) there are significant business assets to protect, and (3) there are risks of legal claims due to the nature of the products or services provided. This type of insurance is used in situations where "excess liability" kicks in after your commercial general liability coverage has been exhausted. Without this policy in place, a service provider or business customer would be responsible for the additional out of pocket amounts (which can reach into the millions of dollars). Unless that money has been stashed away for such an incident, a lawsuit would have major financial repercussions, without the extra protection of a business umbrella policy.

**8. Self-Insured** – Some service providers are so well established that they elect to provide self-insurance against many of the risks identified above and to the extent they have third-party insurance, they do not make the third-party coverage available to the customers. In a situation where a service provider will not include insurance language because it is self-insured, the business customer should include language adjusting the limitations of liability sections and indemnification provisions to adequately provide protection in the event of a loss.

Parties to a technology contract should include a provision requiring the other party to provide evidence of the insurance contained in the contract.

Given the regulatory and privacy risks, it is increasingly

important to seek advice from experienced counsel when negotiating a technology contract to make sure the risks are adequately assessed and each party's interests are protected.

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# U.S. Accuses UnitedHealth of Medicare Advantage Fraud

The U.S. Justice Department has accused UnitedHealth Group Inc. of obtaining inflated payments from the government based on inaccurate information about the health status of patients enrolled in its largest Medicare Advantage Plan, **Reuters is reporting**.

The accusation against the company is the latest, following separate lawsuits in two separate whistleblower lawsuits against the country's largest health insurer.

"Medicare Advantage, an alternative to the standard fee-for-service Medicare in which private insurers manage health benefits, is the fastest growing form of government healthcare, with enrollment of 18 million people last year," writes reporter **Nate Raymond**.

A UnitedHealth spokesman said the company rejects the claims and will contest them vigorously.

**Read the Reuters article**.

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# Reallocation Actions and Settlement Agreements: What Did We Settle?

The purpose of a settlement and release agreement is to fully and finally dispose of a disputed matter, explains Stacy L. La Scala, a neutral writing for JAMS.

“However, more and more often, a dispute cannot be fully resolved where nonparties to the dispute have contributed defense and indemnity amounts on behalf of one or more of the parties and have reserved the right to seek recovery of those amounts in subsequent litigation,” he cautions.

In **the article**, published on JDSupra.com, he writes:

> In particular, where insurance carriers have actually provided a defense and/or indemnity in an action, those carriers in a number of jurisdictions have potential rights against their insureds, pursuant to reservation of rights for uncovered claims; potential rights against those entities who are principally responsible for the loss; and potential rights against contractually obligated indemnitors of their insureds. The carriers are typically not part of the action and are not signatories to the settlement agreement.

**Read the article**.

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# How Do Additional Insured Obligations Work with Subcontract Flow-Down Clauses?

In his **Commonsense Construction Law** blog, Stan Martin asks the question "How do additional insured obligations work with subcontract flow-down clauses." And he answers it with one word: "They don't."

"Unless the subcontract is carefully drafted, that is. So where the prime contract required the owner to be named as an additional insured, and the subcontract flow-down clause passed along the GC's obligations to the owner, as the sub's obligations to the GC, this did not by itself result in a requirement that the sub name the owner as an additional insured. That is one lesson from a New York court decision," Martin explains.

He discusses *Navigators Ins. Co. v Merchants Mut. Ins. Co.* at length and concludes with two lessons to be learned.

**Read the article**.

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# When Is a Mixed Insurance Contract a Maritime Contract?

Whether a mixed insurance contract (i.e., an insurance contract with maritime and non-maritime elements) permits the exercise of admiralty jurisdiction is a complicated question for parties and for the courts, writes **Eric Chang** in an alert for **Montgomery McCracken Walker & Rhoads LLP**.

He writes that admiralty jurisdiction can be the basis for subject matter jurisdiction for the federal courts.

"Historically, admiralty jurisdiction was limited to contracts that were *purely* maritime – involving rights and duties pertaining to ships, vessels, and the navigation thereof on the ocean or elsewhere," he explains.

That changed, however, when the U.S. Supreme Court exercised admiralty jurisdiction in a "maritime case about a train wreck."

**Read the article**.

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# Judge Blocks $54 Billion Anthem-Cigna Health Insurance Merger

A federal judge blocked the $54 billion merger between health insurance giants Anthem and Cigna, saying the deal would increase prices and reduce competition, according to a report by ***The Washington Post***.

**Carolyn Y. Johnson** reports that this ruling is the second recent court decision to uphold the Justice Department's opposition to deals that would have consolidated the five largest insurers in the United States into three companies.

"The evidence has also shown that the merger is likely to result in higher prices, and that it will have other anticompetitive effects: it will eliminate the two firms' vigorous competition against each other for national accounts, reduce the number of national carriers available to respond to solicitations in the future, and diminish the prospects for innovation in the market," U.S. District Judge Amy Berman Jackson wrote in a 12-page order.

In the merger agreement, Anthem had agreed to pay Cigna a $1.85 billion termination fee if the deal is blocked because of regulatory interference.

**Read the *Washington Post* article**.

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# Protecting Your Event with Contracts and Insurance

Attorney Barbara Dunn O'Neal and Lance Ewing, executive vice president Global Risk Management & Client Services at Cotton Holdings Inc., recently discussed some of the basics of contract drafting when they spoke at a meeting of professional meeting planners.

MeetingsNet.com reported on their presentation, including a discussion of some of the basic terms used in contracts.

The speakers also discussed the importance of updating contracts and insurance related to meetings.

And they wrapped up with "the drone horror story."

**Read the article**.

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# Federal Court Dismisses Insurer's Claims Seeking Tens of Millions of Dollars in Damages

A federal judge has dismissed claims brought by a South Carolina insurance company against Texas-based insurance agency Highpoint Risk Services and its owner, Charles David Wood Jr. , according to a report published by **Androvett Legal Media & Marketing**.

That lawsuit sought more than $40 million in damages for an alleged shortfall in reinsurance collateral and claims relating to the issuance of various workers' compensation policies. Last week, Senior U.S. District Judge Cameron McGowan Currie ruled that Companion Property and Casualty Insurance Co. was contractually barred from recovering any alleged shortfall from Wood, the report says.

In dismissing other claims against Highpoint and Wood for alleged breach of fiduciary duty and alleged violations of the South Carolina Unfair Trade Practices Act, the court found that "there is no evidence Highpoint (or Wood) owed or breached" a fiduciary duty to Companion in connection with the issuance of Companion's workers' compensation policies.

"The court has dismissed the core of the case brought by Companion," said **Michael Gardner**, name partner at Dallas-based law firm Gardner Haas and counsel for Wood and the defendant companies. "An insurer cannot avoid the terms of its own policies and can't complain when its agreements are given their clear and natural effect."

Companion, purchased by Enstar Group in 2015, now operates as Sussex Insurance Company and remains headquartered in

Columbia, S.C.

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# Federal Court Dismisses Insurer's Claims Seeking Tens of Millions of Dollars in Damages

A federal judge has dismissed claims brought by a South Carolina insurance company against Texas-based insurance agency Highpoint Risk Services and its owner, Charles David Wood, Jr.

In 2014, Highpoint filed a lawsuit against Companion Property and Casualty Insurance Co. in Texas seeking reimbursement for more than $30 million in workers' compensation claims payments, according to an article published by **Androvett Legal Media and Marketing**. Companion filed a countersuit in South Carolina against Highpoint and other companies owned by Wood. That lawsuit sought more than $40 million in damages for an alleged shortfall in reinsurance collateral and claims relating to the issuance of various workers' compensation policies. Companion, purchased by Enstar Group Ltd. (NASDAQ: ESGR) in 2015, now operates as Sussex Insurance Company and remains headquartered in Columbia, S.C.

On Jan. 10, Senior U.S. District Judge Cameron McGowan Currie ruled that Companion was contractually barred from recovering any alleged shortfall from Wood. In dismissing other claims against Highpoint and Wood for alleged breach of fiduciary duty and alleged violations of the South Carolina Unfair Trade Practices Act, the court found that "there is no evidence

Highpoint (or Wood) owed or breached" a fiduciary duty to Companion in connection with the issuance of Companion's workers' compensation policies.

"The court has dismissed the core of the case brought by Companion," said Eric Haas, name partner at Dallas-based law firm **Gardner Haas** and counsel for Wood and the defendant companies. "An insurer cannot avoid the terms of its own policies and can't complain when its agreements are given their clear and natural effect. We look forward to successfully pursuing Highpoint's claims against Companion at trial in the Texas action."

The case is *Companion Property and Casualty Insurance Company v. Charles David Wood Jr. et al.*, Case No. 3:14-cv-03719, in the U.S. District Court for the District of South Carolina.



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# Trial Lawyer Jay Old Joins Texas-based Hicks Thomas LLP

Veteran trial lawyer Jay Old has joined commercial litigation firm **Hicks Thomas LLP** where he will continue to represent construction, insurance, petrochemical and health care companies as part of his client portfolio.

Old's addition will add offices in Austin and Beaumont. Old joined the firm effective Jan. 1.

"We are thrilled to be adding Jay and his team. He's an exceptional lawyer with an outstanding track record," said John B. Thomas, name partner and firm co-founder. "Many of us have known Jay for years, dating back to our days together at Andrews Kurth."

Old's clients include refineries, construction contractors, manufacturers, hospital systems and insurers. Joining him is labor and employment lawyer Jim Henges, along with four other lawyers from Old's firm.

"I like to say I represent the job creators," Old said. "I'm very excited to be joining the Hicks Thomas team, and hope to add to its reputation as a premier trial firm."

Old is a frequent speaker at continuing education programs for lawyers across the country. He also is a former president of the Texas Association of Defense Counsel and has chaired the Construction Law Section of the State Bar of Texas.

He has defended national clients in statewide and regional mass tort litigation, in toxic torts, construction and product liability cases. He also successfully defended insurance companies in a series of high-profile trials involving hailstorm claims in Galveston and elsewhere.

Old is Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization and has been recognized on the Texas Super Lawyers list every year since 2005. A native of Beaumont, he is a graduate of Texas A&M University and the Texas Tech University School of Law.

# New e-Posting Regulations, Featuring Locke Lord LLP – Webcast

eSignLive by VASCO and Insurance Networking News will present a complimentary webinar on how updated regulatory laws are allowing companies to improve the process of buying insurance for consumers, while ensuring security, compliance and enforceability, on Dec. 13, beginning at 2 p.m. Eastern time.

Intended to improve the process of buying insurance for consumers, there have been recent updates to laws that allow insurance companies to post policies, forms, and endorsements on a website rather than printing these documents on paper.

As you look to take advantage of this new regulatory environment, questions related to how this can be done in a compliant way will arise.

Webcast highlights:

- E-Posting and E-Delivery defined
- Update from PCIAA on the progress of legislative adoption of e-posting laws
- The intersection between ESIGN, UETA and state insurance laws on e-signatures and records
- How to demonstrate insured consent to do business electronically
- Best practices for ensuring security, compliance and enforceability
- A live demonstration of insurance policy electronic

posting

**Register for the webinar**.

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# Dykema's Eduardo Espinosa Appointed Trustee in Life Partners Reorganization

**Eduardo Espinosa**, a member with law firm **Dykema**, has been appointed trustee for the Position Holders Trust as part of Life Partners Holdings Inc.'s Chapter 11 Plan of Reorganization, which was confirmed on Nov. 1, 2016.

In a news release, the firm said Life Partners, a life settlement provider, filed for Chapter 11 protection in 2015 in response to a $47 million jury verdict secured by the U.S. Securities and Exchange Commission (SEC). The company sold more than $1.3 billion of fractional interests in individuals' life-insurance policies to more than 20,000 people. The estate includes 3,400 policies with more than $2.4 billion in face value; and more than 22,000 investors holding more than 100,000 positions in said policies. Thompson & Knight served as counsel to the bankruptcy trustee and Munsch Hardt Kopf & Harr, P.C., was counsel to the unsecured creditors committee.

Espinosa was appointed trustee to administer the bankrupt estate's assets and the claims against them as part of the reorganization plan confirmed by Judge Nelms of the U.S. Bankruptcy Court for the Northern District of Texas. The plan

also creates a Creditors Trust to pursue the estate's claims against third parties and names AMJ Advisors LLC's President Alan Jacobs as its trustee.
In addition to Espinosa, a former SEC enforcement attorney, the trust will be supported by Dykema members Michael Napoli, Mark Andrews, Aaron Kaufman and senior counsel Jeff Goldman.

"This has been a very difficult and contentious bankruptcy," Espinosa said. "The Trustee has successfully collaborated with various stakeholders and they've collectively crafted a plan of reorganization that is designed to preserve flexibility and maximize value for Life Partners' victims."

The Plan of Reorganization is expected to be effective in early December.

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# In Contracts, What a Difference a Word Makes


Lack of precision in reinsurance contract wording has been known to engender anomalous results, points out Larry P. Schiffer in Squire Patton Boggs' Insurance and Reinsurance Disputes Blog.

"Often a single word or phrase can cause a court or arbitrator to construe an agreement in ways unintended. In reinsurance

arbitrations, when the panel majority decides how a contract operates based on its construction of a word or phrase, the losing party is likely stuck with that result even if a court might have construed the contract differently," he writes.

He describes a recent case that illustrates his point that legalese and unnecessary words can cause a trier of fact to interpret a clause in a way that is unexpected.

**Read the article**.

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# Exclusion For 'Assumption Of Liability in Contract' Does Not Apply to Breach of Professional Services

In what it described as a case of first impression, the Northern District of California ruled that a professional liability policy that excluded the insured's "assumption of liability obligations in a contract or agreement" did not extend to breach of warranty or false advertising claims arising out of a genetic data testing company's marketing and sale of a personal genome service, reports **Mary McCutcheon** of **Farella Braun + Martel LLP**.

She writes **in the article** on the firm's website that *Ironshore Specialty Ins. Co. v. 23andMe, Inc.* is noteworthy by the fact that the insurer challenged coverage on this ground.

“While this issue apparently has never been decided in the context of a professional liability policy, both case law and custom and practice recognize that the same phrase used in a general liability policy applies only to liabilities ‘assumed,’ i.e. created by, a contractual indemnity agreement,” according to McCutcheon.

**Read the article**.

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# New York Proposes Cybersecurity Regulation for Insurance Companies, Banks, Financial Institutions

New York State has proposed a new regulation that requires insurance companies, banks, and other financial services institutions regulated by the New York State Department of Financial Services (DFS) to establish and maintain a cybersecurity program designed to protect consumers and ensure the safety and soundness of New York State’s financial services industry, reports **Jason O. Balogh**, a partner with **Hickey Smith LLP**.

If enacted, this change would bring the first statewide regulation mandating that insurance companies, banks, and other financial institutions create such a program. The

regulation would set forth fairly general minimum standards, Balogh **explains in the article** published on the firm's website.

"Among other requirements, under the proposed regulation, insurance companies, banks, and other financial institutions would be required to set out detailed plans for handling data breaches, increase their monitoring of how third-party vendors handle and secure data, and appoint a chief information security officer. While many insurance companies, banks, and other financial institutions will find that elements of the proposed regulation are similar to those found in existing regulatory and technical guidance, they have not previously been required as a matter of law," Balogh writes.

**Read the article**.

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# Andrew Kopon, Jr. Named President-Elect of International Association of Defense Counsel

The International Association of Defense Counsel (IADC) has elected **Andrew Kopon, Jr.** president-elect for the 2016-2017 term. Beginning in July 2017, he will serve as president of the IADC, which is the preeminent, invitation-only, global legal organization for attorneys who represent corporate and insurance interests.

Kopon is a founding member of **Kopon Airdo, LLC** in Chicago. His practice focuses on complex civil litigation matters, including class actions, mass tort litigation and employment litigation. He has worked as national and regional counsel for major consumer and commercial product manufacturers and has successfully tried and argued cases before the Illinois Supreme Court.

In addition to his service to the IADC and its Foundation, Kopon is an active member of the Defense Research Institute, Illinois Association of Defense Trial Counsel, and National Foundation for Judicial Excellence. He is Martindale-Hubbell® AV Preeminent™ rated and has been recognized by Illinois Super Lawyers and Leading Lawyers Network for multiple years. He received his J.D. from The John Marshall Law School and B.A. from Providence College.

Founded in 1920, the IADC has approximately 2,500 members from six continents, more than 45 countries and all 50 U.S. states and includes corporate and insurance defense attorneys and insurance executives. The core purposes of the IADC are to enhance the development of skills, promote professionalism and facilitate camaraderie among its members and their clients, as well as the broader civil justice community. The IADC also takes a leadership role in many areas of legal reform and professional development.

# Additional Insured By Written Contract Clause Construed to Bar Coverage

Commercial construction projects necessarily involve many moving parts, including multiple parties from the owners to the construction managers to the project financiers to the contractors and to the sub-contractors, points out **Larry P. Schiffer** in Squire Patton Boggs' **Insurance and Reinsurance Disputes blog**.

"These moving parts generally result in a web of interrelated insurance policies covering the project. Typically, when there is no controlled insurance program, contractors and sub-contractors are required to obtain liability insurance covering their potential negligence and very often are also required to add others, like the property owner or construction manager, as additional insureds onto those insurance policies," Schiffer writes.

In his post, he discusses what a New York appellate court recently called an "additional insured by written contract" clause. The language of an additional insured clause may make all the difference as to whether a party is covered as an additional insured or not.

**Read the article**.

# Additional Insured By Written Contract Clause Construed to Bar Coverage

Commercial construction projects necessarily involve many moving parts, including multiple parties from the owners to the construction managers to the project financiers to the contractors and to the sub-contractors. **Larry P. Schiffer** of **Squire Patton Boggs** writes that these moving parts generally result in a web of interrelated insurance policies covering the project.

"Typically, when there is no controlled insurance program, contractors and sub-contractors are required to obtain liability insurance covering their potential negligence and very often are also required to add others, like the property owner or construction manager, as additional insureds onto those insurance policies," **he explains**. "But not all additional insured clauses are the same. In this post, we discuss what a New York appellate court recently called an 'additional insured by written contract' clause. The language of an additional insured clause may make all the difference as to whether a party is covered as an additional insured or not."

He concludes that the case demonstrates that New York courts will interpret insurance policies based on the plain meaning of the words used by the parties and will not alter the contracts for equitable reasons if the language is clear and unambiguous.

**Read the article**.