



Erica Villanueva

Partner

evillanueva@fbm.com

San Francisco: 415.954.4437

Erica Villanueva advises policyholders seeking to maximize coverage under their insurance policies and litigates insurance coverage disputes. She helps her clients navigate the insurance claims process, pursues breach of contract and bad faith claims against insurers, and advises on policy wording and insurance renewals. She frequently handles claims under media liability, errors & omissions liability (E&O), directors & officers liability (D&O), general liability (CGL), employment practices liability (EPL), venture capital/private equity liability, and property insurance policies. She also works with policyholders and their insurance brokers to negotiate favorable policy terms, addressing their unique risk profiles. Some of Erica's representative engagements include:

- Represented private equity firm seeking insurance coverage for litigation filed against it and numerous other defendants by a disgruntled co-founder of a portfolio company. Persuaded insurer to fund far greater than the private equity firm's proportionate share of the settlement, to protect the client's interests and its investment.
- On behalf of hotel-owner client, initiated litigation for breach of contract and bad faith against insurer who unreasonably refused to fund a personal injury settlement. Promptly moved the case into mediation and negotiated a favorable settlement.
- Negotiated insurer-funded resolution of contentious employment case on the eve of trial. Within a week, persuaded the insurer to abandon its aggressive coverage position and fund settlement.

Erica is active in a number of professional organizations. She is currently a member of the board of directors of the Bar Association of San Francisco (BASF), and is a past chair of the BASF Insurance Section. She is a regional representative to the Yale Law School Alumni Executive Committee, and a 2019 fellow in the Leadership Council on Legal Diversity Fellows Program.

Distinctions

- *Chambers USA*, Insurance: Policyholder (2019-2020)
- *Benchmark Litigation's* 40 & Under Hotlist (2017-2018)
- Client Choice Award in the Insurance category for California from International Law Office (ILO) and Lexology (2016)
- Northern California Super Lawyers (2018-2020)
- California Rural Legal Assistance Outstanding Alumni Award (2018)

Memberships and Affiliations

- Fellow [Leadership Council on Legal Diversity](#) (2019)
- Board of Directors, Bar Association of San Francisco (2019-2021)
- Board Member, Centro Legal de la Raza (November 2016-present)
- Regional Representative, Yale Law School Alumni Executive Committee (2017-2020)
- Edward J. McFetridge Inn of Court, Barrister & Pupilage Group Leader (2014-2017)
- Chair, Insurance Law Section, Bar Association of San Francisco (2018); Executive Committee Member (2015-2017)

Services

- Insurance Recovery
- Financial Services
- Private Equity and Venture Capital
- Technology
- Healthcare

Education

- Yale Law School (J.D., 2004)
- University of California, Berkeley (B.A., 2000)
 - high distinction, Phi Beta Kappa

Bar Admissions

- California

- Judiciary Committee, Bar Association of San Francisco (2016-2018)

Experience

Multi-State Managed Care Insurance Coverage

Ongoing insurance coverage advice to a multi-state managed care organization in connection with various disputes arising out of underlying litigation. Underlying matters include major class actions, high-value personal injury and employment cases, business disputes, and qui tam litigation.

Venture Capital Firm Dispute and Resolution

Represented venture capital firm in obtaining insurance coverage for defense costs associated with its substantial investment in a portfolio company that faced high-profile investigations commenced by multiple federal agencies.

Hospital Executive Wrongful Termination

Advised regional hospital in connection with a high-stakes individual wrongful termination case. Successfully negotiated independent counsel rates to cover all of the Hospital's costs with no coverage gap, and advocated for the hospital's interests in response to various coverage and litigation management challenges generated by the hospital's employment practices liability insurer, a Joint Powers Authority.

Claims Advocacy and Litigation Over Coverage for Talc Ovarian Cancer Claims

We are representing \$75B multinational mining company Rio Tinto in insurance coverage litigation in San Francisco Superior Court regarding coverage for the Johnson & Johnson Baby Powder Ovarian Cancer Litigation (Talc Ovarian Cancer Claims). The Talc Ovarian Cancer Claims involve approximately 14,000 personal injury claims filed across the country alleging that talc exposure caused the plaintiffs' ovarian cancer. This litigation recently resulted in a \$4B verdict against J&J, as well as a number of other large verdicts. Our firm's work involves not only the coverage litigation, but advice to the client on numerous other insurance issues raised by the claims.

Target Corporation v. Golden State, et al.

Successfully defended a favorable summary judgment ruling for both McKesson Corporation and its captive insurance company on appeal to the Second Appellate District. The lawsuit was filed against McKesson by Target seeking indemnity from McKesson and insurance coverage from McKesson's captive insurance company for costs that Target incurred to defend and settle an underlying product liability case.

Claims Advocacy for Venture Capital Firm

We represented one of the country's largest venture capital firms in several disputes with its liability insurer including a dispute concerning coverage for alleged liability arising out of conduct by rogue shareholder representative, in which we obtained a substantial contribution from the insurer to settlement of the underlying matter. We continue to represent the same client in ongoing negotiations concerning coverage for a securities class action filed against the venture capital firm and its appointed board member, arising out of one of the largest losses in the history of venture capital.

Resolution of Start-Up's Founder Dispute with Venture Capital Firm's Insurance Proceeds

We advised a venture capital firm in connection with underlying "founder dispute" litigation, naming the portfolio company, its three largest investors, and their appointed board members as defendants. At mediation we resolved a potential eight-figure claim for an amount well within the limits of available insurance, persuading our client's insurer to contribute far greater than its proportionate share of the settlement, to protect the client's interests and its investment.

FelCor Lodging Trust Incorporated v. Commerce & Industry Ins. Co.

We represented a major hotel property owner in insurance coverage litigation arising out of their insurer's refusal to fully fund settlement of an underlying catastrophic personal injury action. Our complaint against insurer included claims for breach of contract and bad faith, and the matter settled favorably within 3 months of initiating litigation.

Won Asbestos Insurance Coverage Appeal Worth Over \$150 Million

On appeal, we successfully overturned unfavorable trial court rulings entered against John Crane, Inc. regarding insurance coverage for asbestos judgments. Taking over this complex insurance lawsuit from previous trial counsel, our work preserved over \$150 million in excess insurance coverage. In the process, we turned back a serious challenge to the "all sums" allocation rule in Illinois.

Claims Advocacy for D&O Liability Insurance for Securities Class Actions and Derivative Claims

We have represented numerous companies or their directors or officers in obtaining insurance proceeds to fund the defense and settlement of securities class actions and derivative settlements, including Chesapeake Energy, Intuitive Surgical, J.C. Penney and Finisar Corporation.

Portfolio Company Exit

Represented a storied Sand Hill Road venture capital firm in connection with insurance coverage issues arising out of a medical device portfolio company exit. Post-closing, the acquiring company brought claims against the venture capital firm, as to which the firm's VCAP liability insurer initially denied coverage. Following our involvement, the venture capital firm obtained a substantial settlement contribution from its insurer.

Theranos Litigation

Advised Theranos regarding coverage under private liability management and products liability policies in connection with investor and consumer claims of fraud and personal injury. The confidential settlement provided significant recovery for the client.

Bio-IT and Health-IT Venture Capital

Represent a venture capital firm focused on Bio-IT and Health-IT portfolio companies, in connection with a major claim arising out of its investment in a former portfolio company. The portfolio company and its former management face investigation by both SEC and DOJ, for alleged conduct related to health care industry practices. We assist the venture capital firm in obtaining coverage for its investigation-related expenses under its VCAP liability insurance coverage.

Asbestos Judgments Litigation

We represented the manufacturer of engineered sealing systems in litigation seeking insurance coverage for asbestos judgments. After taking the matter over from previous trial counsel and preparing extensive briefing on appeal, the appellate court reversed the trial court's ruling in favor of the insurers and remanded for a new trial.

Commercial Aircraft Litigation

We litigated a \$20 million insurance claim on behalf of the owner of commercial aircraft, seeking value of damaged aircraft and engines, as well as damages for insurers' bad faith conduct. Settled favorably shortly before trial.

Energy Company

We are advising a major energy company facing shareholder litigation, related government investigations and

other lawsuits, in order to maximize coverage under the company's directors' and officers' liability insurance.

Insurance Coverage Arbitration

Ms. Villanueva serves as an arbitrator in an insurance coverage arbitration, involving claims of breach of duty to defend and insurance bad faith.

Venture Capital Firm

We represent a venture capital firm in multiple disputes with its liability insurer concerning coverage for lawsuits against the firm, and provide strategic advice in connection with the purchase of insurance policies, negotiation of policy wording, and drafting of indemnity agreements with the firm's portfolio companies.

Publications

September 28, 2020

Maximizing Business Insurance Coverage Benefits After a Fire

10/10/2017

Maximizing Business Insurance Coverage Benefits After a Fire

10/10/2016

California Supreme Court Leans in Favor of Treating Defense Bills as Privileged Communications

8/18/2016

Protect the Investment: Require Portfolio Companies to Purchase Strong D&O Coverage

6/3/2016

Do You Know What's In Your Portfolio Company's D&O Insurance?

2/2/2016

5 Insurance Tips for Emerging Companies

6/1/2015

Submitting Your Defense Bills to Insurers Could Mean Waiving Privilege

12/22/2014

CA Court of Appeals Confirms that Insured Need Not Accept 2860 Rate Caps For Work Done After Tender, But Before Insurer Accepts Defense

9/17/2014

Setting Up a Successful Negotiation Regarding "2860 Rates"

8/25/2014

The Napa Earthquake: Now Is The Time To Think About Insurance Coverage

6/19/2014

Newly-Published Regional Steel Case Raises More Questions Than It Answers

3/4/2014

How To Navigate London's Aviation Insurance Claims Process

2/19/2014

Common Policyholder Pitfalls When Navigating London Aviation Insurance Claims

7/1/2013

General Counsel as Risk Manager

6/14/2013

Recent Media Coverage Overstates Impact of New Second Circuit Case Regarding “Drop-Down” Issue

2/10/2012

Tendering Your Claim

11/30/2010

California Supreme Court Denies Review of Howard v. American National

10/5/2010

Central District of California Allows Wage and Hour Coverage Case to Move Forward

9/2/2010

Bad Facts Make Good Law in Howard v. American National

7/12/2010

California Appellate Court Rejects Insurer’s Attempt to Apply Multiple Self-Insured Retentions To a Single Lawsuit

6/1/2010

California Insureds Should Question the “Conventional Wisdom” Regarding Coverage for Wage and Hour Class Actions

3/16/2010

Preparing for a Mediation Involving Coverage Issues

1/14/2010

Recent California Court of Appeal decision suggests insured should consider answering and cross-complaining before moving to stay insurer’s declaratory relief action

1/21/2009

New California Court of Appeal Case Supports Policyholder Argument Regarding “Stacking” of Consecutive Policy Limits

Outside the Office

Erica spends most of her free time with her husband and two daughters. She is passionate about living and raising her children in the city of San Francisco. She serves on the board of directors of Centro Legal de la Raza, a legal aid organization dedicated to protecting and advancing the rights of low-income, immigrant, and Latino communities.