



Mary E. McCutcheon

Partner

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Mary McCutcheon represents corporate and individual policyholders in a wide variety of insurance coverage disputes. She also chairs the firm's Financial Services Industry Group.

Her wide-ranging experience includes disputes arising out of a variety of scenarios, including securities actions, venture capital and private equity litigation, intellectual property and technology errors and omissions disputes, highly sensitive employment claims, mass casualty personal injury actions, and construction defect and delay claims.

Mary has special expertise advising companies and individual directors regarding issues involved in the placement of directors' and officers' liability, management liability and financial services liability insurance, and related indemnification issues, as well as handling claims under those policies.

Her day-to-day practice typically involves using a hybrid of legal expertise and interpersonal and negotiating skills to craft workable solutions. This often requires simultaneously working with her clients, the insurance broker, the client's defense counsel and other parties to the litigation to achieve the client's goals. By emphasizing a collaborative and strategic approach, a dispute can be understood as a problem to be solved rather than an adversarial situation, with correspondingly better results. Although litigation, as a last resort, is always a viable option, Mary strives instead to convince her opposing counsel that a practical, agreed-upon solution is a better outcome for everyone concerned.

Mary has edited the "Directors & Officers Liability Insurance" chapter in the California Practice Guide Insurance Litigation. She is a past member of the editorial boards of the *ABTL Newsletter* and the *CGL Reporter*. She speaks on insurance topics at professional conferences, such as those sponsored by the American Bar Association, the American College of Coverage Counsel; the National Association of Criminal Defense Lawyers and the Association of Corporation Counsel.

Distinctions

- *Daily Journal* "Top Women Lawyers" in California (2019)
- Legal Momentum's Women of Achievement Award (2016)
- *Chambers USA*, Insurance: Policyholders (2005-2019)
- *Best Lawyers in America*
- Northern California Super Lawyers (2004-2019)

Memberships and Affiliations

- President, Founding Member of the Board of Regents, American College of Coverage Counsel, Chair of Membership Committee and Member of the Executive Committee
- Board of Directors, past President, National Center for Youth Law
- Member, Past Chair, Bar Association of San Francisco's Committee on Attorney Fee Disputes
- Former Co-chair, Directors and Officers Subcommittee of the American Bar Association's Insurance Coverage Litigation Committee

Services

- Insurance Recovery
- Financial Services
- Private Client

Education

- Yale Law School (J.D.)
- Stanford University (A.B.)
 . with distinction

Bar Admissions

- California

Experience

Representative Cases and Matters for Mary McCutcheon

Directors and Officers and Management Liability

- Represents a number of public companies and their directors/officers in obtaining coverage for defense and indemnity costs in securities, derivative and merger and acquisition actions, including Chesapeake Energy, Intuitive Surgical, Zynga, Finisar Corporation, Cadence Design, J.C. Penney, Herbalife and Starz. These matters have included "Side A" claims where the company recovered losses through coverage available to its directors and officers.
- Advises international shipping companies on coverage issues arising out of securities and preference claims asserted in multiple jurisdictions and involving foreign policy forms.
- Obtained coverage for the defense of a private medical testing device company facing investor fraud and product failure claims.

Venture Capital and Private Equity

- Represents venture capital and private equity firms in disputes with liability insurers over coverage for securities fraud, shareholder representative liability, commercial disputes, and employment claims.
- Advises firms regarding coverage wording and placement.

Architects and Engineers Professional Liability

- Represents international architect/engineering firms in coverage disputes over damages and delay claims involving complex issues of multi-party insurance and indemnity.

Technology Claims

- Represents an artificial intelligence company in insurance claims arising out of a data breach affecting customers and their consumers; involves coverage issues relating to company's direct losses as well as liability claims.
- Represents a cloud communications platform company in negotiations for coverage for a class action settlement of invasion of privacy claims in connection with the recording of text messages.
- Provides strategic coverage advice to a ride-sharing company in connection with significant automobile accident claims involving its drivers.
- Assists technology companies in obtaining coverage for intellectual property, product failure, wrongful termination and invasion of privacy claims.
- Advise technology, media, hospitality and other companies on obtaining coverage for defense and settlement of sensitive wrongful termination claims.

Non-Profit/Private Clients

- Provides coverage advice to foundations and other non-profit organizations regarding the placement of insurance and protection of high-net worth individuals involved in the organizations.

Public Entities

- Represents public and semi-public entities in obtaining coverage under traditional and captive programs for claims including antitrust, police brutality, landslide property damage and personal injury claims.

Mass Casualty Claims

- Represented Connex Railroad (now Veolia Transportation) in the settlement of personal injury claims arising out of the 2008 Chatsworth commuter rail accident.

Publications

March 12, 2019

Ninth Circuit Asks the California Supreme Court to Interpret the Scope of Personal Injury Coverage

October 18, 2018

Insurance in a Time of Crisis: Role of Insurance Counsel in Crisis Management

January 11, 2018

A Policyholder Perspective on the Unique Challenges of a Three-Way Mediation

May 24, 2017

Insured May Bear the Consequences of Insurer's Negligence

August 25, 2016

"Assuming" the Obvious: Exclusion for "Assumption of Liability in a Contract" Does Not Apply to Breach of Professional Services

April 3, 2015

Mind the Gap! Avoiding Unexpected Gaps in Insurance Programs

October 8, 2014

Accessing The D&O Liability Coverage of a Bankrupt Corporation

July 18, 2014

D&O Coverage: The Devil Is In the Details

July 1, 2013

General Counsel as Risk Manager

September 11, 2008

California Decision Highlights Risks of Settling Only With Primary Insurer

January 4, 2008

On INSURANCE

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Outside the Office

Mary is a hopeless Hibernophile. She has dual American and Irish citizenship, travels to Ireland whenever and wherever possible, and has been there many times. Although Northern California is always home, Ireland, its people and its culture, run a very close second.