



## Mary E. McCutcheon

Of Counsel

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In over 40 years of practice, Mary McCutcheon has represented corporate and individual policyholders in an extensive range of insurance coverage disputes.

She has guided her clients through complex 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, professional liability, and construction and delay claims.

Mary has special, in-depth expertise advising companies and individual directors on claims under directors' and officers' liability, management liability, and other financial services liability insurance products, related indemnification issues, and the placement of those policies.

She utilizes her in-depth legal expertise and strong interpersonal and negotiating skills to achieve creative, cost-effective, and highly satisfactory solutions for her clients, working with her clients, their insurance broker, and their client's defense counsel, as well as the insurers, to achieve the client's goals. By emphasizing a collaborative and strategic approach, the dispute can be understood as a problem to be solved rather than an adversarial situation, with correspondingly better results. Although litigation 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 is a founding member and past president of the American College of Coverage Counsel. She is a past member of the editorial boards of the *ABTL Newsletter* and the *CGL Reporter* and former editor of the "Directors & Officers Liability Insurance" chapter in the *California Practice Guide Insurance Litigation*. 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

- *Chambers USA*: Insurance Policyholder - California (Ranked since 2005, Band 1 2020-2023)
- *Daily Journal* "Top Women Lawyers" in California (2019)
- Legal Momentum's Women of Achievement Award (2016)
- *Best Lawyers in America*, Insurance Law (2013-2024)
- Northern California *Super Lawyers* in Insurance Coverage since (2004-2023)
- *Who's Who Legal* - Insurance & Reinsurance (2017-2023)

### Memberships and Affiliations

- Past 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, chair of the Diversity, Equity and Inclusion Committee, National Center for Youth Law

### Services

- Insurance Recovery
- Financial Services
- Private Client
- Healthcare
- Family-Held Enterprises
- Ultra-High Net Worth

### Education

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

### Bar Admissions

- California

- 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

## Experience

### Representative Matters for Mary McCutcheon

#### Directors and Officers and Management Liability

- Represented dozens of public companies and their directors/officers in obtaining coverage for defense and indemnity costs in securities, derivative, and merger and acquisition actions. These matters have included "Side A" claims where the company recovered losses through coverage available to its directors and officers.
- Advise an international shipping company on coverage issues arising out of securities and preference claims asserted in multiple jurisdictions and involving foreign policy forms.
- Represented a number of private companies in coverage disputes involving management liability policies, including obtaining coverage for the defense of a private medical testing device company facing investor fraud and product failure claims.
- Advise public and private companies on directors and officers and management liability policy wording and placement.

#### Venture Capital and Private Equity

- Represent venture capital and private equity firms in disputes with liability insurers over coverage for securities claims and investigations, shareholder representative liability, commercial disputes, and employment claims.

#### Architects and Engineers Professional Liability

- Represent international architect and engineering firms in coverage disputes over damages and delay claims involving complex issues of multi-party insurance and indemnity.
- Represent the owner of a multi-use sports facility in coverage matters involving property damage, personal injury, and securities actions.

#### Technology Claims

- Represent an artificial intelligence company in insurance claims arising out of a data breach affecting customers and their consumers; involves coverage issues relating to the company's direct losses as well as liability claims.
- Represent 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.
- Provide strategic coverage advice to a ride-sharing company in connection with significant automobile accident claims involving its drivers.
- Assist 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.
- Advise media companies on coverage issues relating to VPPA claims.

#### Nonprofit & Private Clients

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

#### Public Entities

- Represent 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 and Tort Claims**

- Represented an international transportation company in the settlement of personal injury claims arising out of a tragic commuter rail accident involving domestic and international insurance policies.
- Represented a cosmetics company in obtaining coverage under products liability policies for consumer class action claims.
- Advise a crane company in a coverage issue arising out of catastrophic damages arising out of crane collapses.

## **Publications**

June 3, 2021

#### **In Verizon Decision Careful Review of Insurance Policies Expands Coverage**

*Policyholder Perspective Blog*

April 22, 2021

#### **Insurance for Nonprofits: Managing Risk in Risky Times**

*Nonprofit Education Series*

February 2, 2021

#### **“Unfair Trade Practices” Exclusion Does Not Extend to Consumer Protection Claims**

April 13, 2020

#### **D&O Liability Insurance in a Time of Financial Uncertainty**

*Corporate Compliance Insights*

March 18, 2020

#### **Directors & Officers Liability Issues and the Coronavirus: Is That a “Thing”?**

March 12, 2019

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

10/18/2018

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

1/11/2018

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

5/24/2017

#### **Insured May Bear the Consequences of Insurer’s Negligence**

8/25/2016

#### **“Assuming” the Obvious: Exclusion for “Assumption of Liability in a Contract” Does Not Apply to Breach of Professional Services**

4/3/2015

#### **Mind the Gap! Avoiding Unexpected Gaps in Insurance Programs**

10/8/2014

#### **Accessing The D&O Liability Coverage of a Bankrupt Corporation**

7/18/2014

#### **D&O Coverage: The Devil Is In the Details**

7/1/2013

**General Counsel as Risk Manager**

9/11/2008

**California Decision Highlights Risks of Settling Only With Primary Insurer**

1/4/2008

**On INSURANCE**

*On INSURANCE*

## 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.