



Tyler C. Gerking

Partner

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Tyler Gerking helps policyholders maximize their insurance assets. He works with them and their insurance brokers in negotiating favorable terms to address their unique risks. He also pursues insurance claims, shepherding policyholders through the claim process, and if necessary, pursuing breach of contract and bad faith claims against insurers in litigation and arbitration settings. He works frequently with cyber, errors & omissions liability (E&O), directors & officers liability (D&O), general liability (CGL), employment practices liability (EPL), crime and property insurance.

- He won an arbitration before a three-arbitrator panel, preventing an insurer from recovering a settlement payment it made under a CGL policy.
- He obtained a favorable recovery after settling litigation pending in California state and federal courts, the federal courts in Washington D.C. and London under a tower of professional malpractice insurance policies.
- He won a bench trial in California state court against a D&O insurer that breached its duty to defend a securities class action lawsuit, and then successfully defended the result in the California Court of Appeal.
- He won summary judgment in U.S. District Court for a technology company against its insurer for breach of the duty to defend, establishing that the breach prevented the insurer from compelling arbitration of a billing rate dispute under Cal. Civ. Code section 2860.
- He has persuaded courts to stay insurer-initiated declaratory relief actions while the underlying lawsuits proceed, protecting his clients from having to fight “two-front wars.”

He was a judicial extern for Magistrate Judge Maria-Elena James of the U.S. District Court for the Northern District of California in San Francisco.

Distinctions

- *Chambers USA*: Insurance Policyholder - California, Band 3 (2014-2022)
- *The Best Lawyers in America* in the area of Insurance Law (2018-2023)
- *Benchmark Litigation*, Future Star (California 2018-2023)
- Northern California *Super Lawyers* in Business Litigation since (2010–2022)

Memberships and Affiliations

- Fellow, American College of Coverage Counsel
- Co-Chair of the Bad Faith Subcommittee of the ABA's Insurance Coverage Litigation Committee
- Board Member, Law Center to Prevent Gun Violence (2015-present)
- Board of Directors, Boalt Hall Alumni Association (2011–present)
- Co-Chair, Berkeley Law Partners in Leadership Campaign (2011–2012, 2014-2015, 2015-present)
- Member, Edward J. McFetridge American Inn of Court (2011–present)
- Financial Crisis Hot Topic Website Editor, Insurance Coverage Litigation Section of the ABA (2008–2012)
- Secretary, Board of Directors, Leap: Arts in Education (2010 – 2012)

Services

- Insurance Recovery
- Privacy and Cybersecurity
- Data Analytics
- Technology

Education

- University of California, Berkeley, School of Law (J.D., 2002)
 - Publishing Editor, *California Law Review*; Programs Coordinator, *Berkeley Journal of International Law*
- University of Montana (B.A., 1999)
 - high honors
 - Political Science and German

Bar Admissions

- California

Experience

Employment Counseling

Reviewed insurance policies of family business and helped with redesign of coverage to eliminate gaps and better capture all insurance needs.

Kleinfelder

Retained to represent science and engineering consulting firm Kleinfelder in pursuing insurance coverage for large construction claims related to three Kleinfelder projects in California.

Multi-jurisdictional Coverage Litigation Over Legal Malpractice Insurance Tower

We pursued claims against a national law firm's professional liability insurance tower in litigation venued in California, Washington D.C. and London, and successfully resolved the claims through mediation.

Confidential Arbitration Over CGL Insurance for Technology Company

We won an arbitration before a three-arbitrator panel, preventing an insurer from recovering a settlement payment it made under a CGL policy on behalf of a technology company, and then defeated the insurer's petition to vacate the award; that order is currently on appeal.

National Union Fire Ins. Co. v. Electronic Arts, Inc.

We represent Electronic Arts Inc. in coverage disputes arising out of class action lawsuits alleging misappropriation of likeness and antitrust violations brought by college and NFL athletes whose likenesses were allegedly used without their permission. When EA's insurers filed a declaratory relief action to establish that they did not owe a duty to defend the underlying actions, we successfully obtained a stay of the coverage litigation pending further progress of the underlying actions.

Claims Advocacy for Technology Company Involved in Data Breach

We represent a software and services company in an insurance claim arising out of a data breach that involves resolution of coverage issues relating to both customer and consumer class actions claims.

Negotiation for Insurance and Indemnification Provisions for Timber Sale Agreement

We negotiated indemnification and the terms of a \$100 million insurance tower relating to a timber sale agreement in Northern California to address wildfire risk.

Cyber and Tech E&O Policy Negotiation

We represent numerous technology companies in negotiating the terms of their Technology Errors & Omissions liability and cyber insurance policies.

Cyber Warranty and Backing Insurance Policy Negotiation

We have helped a cyber security company draft a warranty and backing cyber insurance policy for its customers.

Greenwich Ins. Co. v. Prosper Marketplace, Inc.

We represented Prosper Marketplace, Inc., a peer-to-peer lending company, in a bench trial in California state court against a D&O insurer that breached its duty to defend a securities class action lawsuit, and then successfully defended the trial win in the California Court of Appeal.

Publications

September 17, 2022

Fire Preparedness for Vineyards and Wineries

July 12, 2022

Caught in the Crossfire — How Will the War Exclusion Affect Commercial Policyholders?

Business Insurance

March 14, 2022

The War Exclusion in a Time of War

Policyholder Perspective Blog

February 10, 2022

Crime Insurance for Social Engineering Thefts: The Ninth Circuit Finally Joins the Party

Policyholder Perspective Blog

October 25, 2021

Mitigating the Uncertainty of Smoke Taint in Wine Grapes

American Vineyard

September 1, 2021

How to Guard Against 3 Cannabis Cyber Attack Risks

mg Magazine

June 1, 2021

Cyber Insurance for the Cannabis Industry

Cannabis Industry Education Series

September 28, 2020

Maximizing Business Insurance Coverage Benefits After a Fire

August 20, 2020

D&O Professionals Series: Tyler Gerking Discusses D&O Coverage and Litigation

Willis Towers Watson

June 9, 2020

Maximizing Insurance Coverage: What Cannabis Businesses Need to Know

Cannabis Industry Education Series

April 27, 2020

COVID-19 Exposure and GL Coverage: Issues for Personal Injury Claims

February 20, 2020

Time to Check Your Cyber Insurance

TAG Cyber Law Journal

January 30, 2020

Wine 'Smoke Taint' Blurs Insurance Coverage Distinctions

September 13, 2019

3 Lessons For Calif. Insureds From Late-Notice Rule Decision

Law360

1/4/2019

Are You Covered for California's New IoT Laws?

11/7/2018

Keeping Up With the Risks and Protections of Cyber Insurance

10/1/2018

Florida Court Finds No CGL Coverage for Data Breach Claim

6/8/2018

Negligent Hiring and Supervision Can Be an 'Accident'

5/8/2018

Navigating the Autonomous-Vehicle Liability Waters

11/27/2017

State Appeals Courts Rule on 'That Particular Part' Exclusions

10/25/2017

The Ramifications of a Less-Than-Thorough Investigation

10/10/2017

Maximizing Business Insurance Coverage Benefits After a Fire

4/28/2017

Winery, Vineyard Cyber Attack Risk Grows With Web-Connected Systems

North Bay Business Journal

2/8/2017

CGL Coverage for False Advertising and Intellectual Property Claims: Sometimes It's There, but You Need to Know Where to Look for it

2/2/2017

Insurance When the Internet Goes Down

10/25/2016

Blog: Latest Cyber Attack a Wake-up Call: What are your company's IoT exposures?

9/26/2016

Data Security Breach Liability: Is Your Business Covered?

6/10/2016

Law Firm Cyber Risks and Mitigation Strategies - Podcast

4/5/2016

Cyber Attacks on Infrastructure Are Increasing: Review Your Insurance As "Internet of Things" Risks Grow and Change

January 2016

Protect Your Wine Business Against Data Security Breaches and Other Cyber Risks

12/17/2015

Systemic Cyber Risks and the Internet of Things

9/18/2015

Maximizing Business Insurance Coverage Benefits After a Fire

9/18/2015

Maximizing Homeowner Insurance Coverage Benefits After a Fire

8/17/2015

Independent “Cumis” Counsel Now Face Direct Claims for Reimbursement From Insurers

4/30/2015

California’s “Independent” Cumis Counsel Regime Faces A Novel Challenge

8/6/2014

Recent Developments in California Bad Faith Law and Related Trends

7/2/2014

California Supreme Court Refines the Tort of Commercial Disparagement

3/14/2014

Mitigating Cyber Risk: Strategies to Reduce Exposure

5/13/2013

California To Draw The Lines In Disparagement Liability

11/26/2012

Insurance Coverage Against Patent Infringement Suits by Non-Practicing Entities

7/13/2011

Hindsight in Bad Faith Insurance Litigation

9/10/2010

California Supreme Court To Decide Whether An Administrative Trial Proceeding Constitutes A “Suit” For Purposes Of General Liability Coverage

8/9/2010

Insurer’s Agreement To Defend Insufficient; It Must Actually Defend By Immediately And Fully Funding The Insured’s Defense.

6/2/2010

Insurance in Bankruptcy: Preserving and Maximizing Insurance Assets of a Bankrupt Entity Webinar

5/11/2010

An Insurer’s Defense Under One Policy Does Not Excuse Its Breach Under Another

3/11/2010

Kemper Finally Close to Liquidation?

10/2/2008

Ninth Circuit Advantages of Pursuing Claims for Third Party Pre-Bankruptcy

Outside the Office

Tyler spends most of his free time with his wife and two daughters. He’s a big fan of outdoor activities, including skiing and ultramarathons.