



# Insurance Agents & Brokers Liability

Hinshaw attorneys represent insurance agents and brokers in a wide variety of litigated and regulatory matters and have extensive experience in all aspects of the underwriting and claims processes. These include policyholder disputes and matters alleging breach of fiduciary duty, fraud, negligence, and other alleged errors and omissions, in relation to life, health, residential, commercial, and professional liability policies. We defend brokers in first-party suits against a variety of allegations, such as failure to advise properly as to policy limits, and against third-party liability suits. We also represent brokers and their newly hired agents when former employers sue to enforce non-compete agreements.

Our attorneys counsel and represent major insurance brokerage firms, privately held insurance brokerage firms, as well as independent insurance agencies. Hinshaw's knowledge of the operations of carriers offering all lines of insurance—as well as the regulatory environment in which carriers and their agents and brokers operate—gives our attorneys and clients a distinct advantage in evaluating, negotiating and defending claims against insurance professionals. We also assist agents and brokers in regulatory and self-regulatory enforcement and disciplinary proceedings.

## Experience

### Duties of Broker

- Obtained a published decision in 2004 that established the rule in California that an insurance broker does not have the implied duties of an insurer (e. g., to be concerned about excess exposure).

### Fraud/Misrepresentation

- Represented a broker in a claim alleging it had failed to procure enough property insurance coverage and to procure business interruption coverage, causing plaintiffs to incur \$2M in uninsured losses when their business was destroyed by a fire. Hinshaw successfully obtained dismissal of failure to procure claims, which was affirmed on appeal. On remand, we obtained summary judgment on the negligent misrepresentation and Consumer Fraud Act claims.
- Represented insurance agent against claims of fraud, misrepresentation and negligence. The three construction companies alleged that the insurance agent made promises and misrepresentations causing them to obtain workers' compensation insurance from Contractors a self-insured group. Eventually, the self-insured program went out of business, making each plaintiff liable for large six-figure contributions to the program. Hinshaw deposed the three principals and filed a motion for summary judgment, arguing that the agent had no obligation to monitor the financial stability of the self-insured program. Although the parties resolved the matter, the court

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## Related Services

Accountants Liability  
Architects & Engineers Liability  
Directors & Officers Liability  
Professional Liability  
Real Estate Agents & Brokers Liability  
Securities Brokers' Liability  
Technology Errors & Omissions

## Related Industries

Insurance Coverage  
Insurance Regulatory



later issued its tentative ruling granting the motion for summary judgment.

- Currently defending a lawyer who was acting as a title agent. The insured is suing for negligent misrepresentation and violation of the unfair and deceptive insurance practices statute, for statements client made regarding the terms and coverage available under the title insurance policy.

## **Negligence**

- Currently handling numerous cases involving negligence claims against insurance brokers for failure to procure any or adequate coverage and/or for failure to timely report claims to an insurer who denied the claim due to late notice.
- Represented an insurance broker against claims that he sold insurance with inadequate limits to cover substantial fire loss. Involved issues of co-insurance penalty. After filing a motion for summary judgment based on the statute of limitations and lack of breach or causation, settled the claim for a small percentage of demand, whereas insurance company involved paid substantially more.
- Obtained summary judgment dismissing claims for failure to procure adequate insurance.
- Defended claims of failure to timely notify insurer of claim, which ultimately settled at mediation.
- Represented an insurance agent who issued hundreds of used car dealer bonds, but failed to include the signed indemnity obligation. The insurer claimed high six figures in damages caused by having to pay out on the bonds, and no recourse against the bond holder. Reached very favorable settlement after deposing the claims handler for a number of days.
- Defended claims that insurance agency was liable to its client for failing to provide timely notice of loss to the insurer. Insurer issued two separate policies of insurance that covered the loss, but only disclaimed coverage under one policy. As a result, the insurer was required to afford coverage to the insurance agency's client for the loss, thereby relieving the agency from any claim for damages suffered by its client.
- Currently representing a large broker in an action arising from alleged negligent workers' compensation audits.
- Defending an insurance agent/broker whose former broker maintains that he improperly advised the plaintiffs about an annuity, and what, if any, of the principle would be used.
- Obtained favorable settlements in multiple claims involving insufficient coverage asserted against agents who sold Commercial Lines policies to common carriers (movers of household goods).

## **Business Torts**

- Obtained summary judgment in representation of broker in relation to various alleged business torts, including interference with contract and misappropriation of trade secrets, among others.

## **Admiralty/Maritime**

- Currently representing large insurance brokerage firm in a negligence case in federal court in New York involving placement of coverage for a ship that

## Reinsurance



was taken over by a foreign government. Case involves several millions of dollars in damages.

### **Class Actions**

- Represented agents and brokers who were sued in separate state court and federal class actions for the allegedly fraudulent sale of health care policies. The unique issue presented was whether they knew of the alleged fraud or were duped themselves. All the claims made against our insureds were settled, including the federal class action that involved hundreds of individual and small business plaintiffs with millions of dollars sought in damages. Thereafter, we worked with a team in coordinating the response to the liquidation action by the California Department of Insurance.

### **Construction**

- Currently representing a midwest insurance brokerage firm in defense of claims arising out of several construction surety bonds issued by agent of an insurer who allegedly did not have authority to issue the bonds.

### **Data Privacy/Cyber/Technology**

- Currently representing broker involving cyber/technology insurance issues.

### **Employment/Non-Compete**

- Defended a privately held insurance brokerage firm in which a competing broker was trying to stop the firm's expansion plans. There was an appeal in this case in which a Hinshaw attorney challenged the enforceability of the agreement under a number of theories, including selective enforcement against only some similarly situated agents. Hinshaw then defended a second action against some of the same defendants and obtained dismissal on estoppel issues. When plaintiff broker appealed the dismissal of the second suit, the appellate court affirmed the dismissal of the second action, reversed, and found the case to be frivolous and remanded for an award of attorneys' fees.
- Obtained dismissal of lawsuit to stop client broker's expansion efforts on the grounds the non-compete was unenforceable as too broad. The ruling was affirmed on appeal.

## **News**

[Law360 Reviews: Top Insurance Cases in 2023 and Trends to Watch in 2024](#)

January 12, 2024

[Scott Seaman Puts a Recent Illinois Supreme Court Ruling on Construction Defect Coverage into Context for Law360](#)

December 4, 2023

[Jason Schulze Discusses West Virginia Supreme Court Holding that Continuous Trigger Theory Applies To Latent Bodily Injury Claims](#)

November 22, 2023

[Hinshaw Receives Recognition in 2024 "Best Law Firms" Directory](#)

November 2, 2023

[Hinshaw Discusses Potential Problems Posed by the CCPA to the Tripartite Relationship Between Insurer, Insured, and Law Firm](#)

February 3, 2020

[Hinshaw Reviews Key U.S. Insurance Developments in RPC's 2020 Annual Insurance Review](#)

January 10, 2020

[Hinshaw Announces Strategic Alliance with UK-based Reynolds Porter Chamberlain](#)

February 27, 2019



Hinshaw Contributes to 2019 Annual Insurance Review  
January 24, 2019

## Publications

[Grieving Families Act Reintroduced: What New York Insurers Need to Know](#)  
February 20, 2024  
Insights for Insurers

[California Privacy Protection Agency Advances Insurance Privacy Compliance Regulation](#)  
December 13, 2023  
Insights for Insurers

[Two Cases Directly Impacting Insurers Are Currently Pending Before the United States Supreme Court](#)  
November 6, 2023  
Insights for Insurers

[Agent Had No Duty to Produce Additional Insurance Coverage For Lost Rent and Soft Cost Without a Specific Request](#)  
May 9, 2016  
Professional Lines Alert

[Insurance Broker Not Liable to Estate of Patron Crushed by Inflatable for Failure to Procure Coverage](#)  
August 31, 2015  
Professional Lines Alert

[Insurance Agent Who Provided Carrier's Valuation and Two Competing Quotes Did Not Counsel the Insured and Create a Special Relationship](#)  
January 20, 2015  
Professional Lines Alert

[Insurance Agent had Special Duty to Advise Dental Practice About its Insurance Coverage and to Procure Full Coverage](#)  
March 13, 2014  
Professional Lines Alert

[Insurance Producer's Complaint for Judicial Review of License Revocation Dismissed for Failure to Exhaust Administrative Remedies](#)  
February 20, 2014  
Professional Lines Alert

[South Carolina Supreme Court Introduces "Continuum" Approach for "Occurrence"](#)  
October 4, 2013  
Insurance Coverage Alert

[Broker Liable for Failure to Obtain Excess Defense Cost Coverage for CCIP Program](#)  
May 6, 2013  
Professional Lines Alert

[Insurance Agency Potentially Liable for Use of a Cost Estimator Program to Calculate Replacement Cost](#)  
April 3, 2013  
Professional Lines Alert

[Agent Not Liable for Mental Distress Damages for Katrina Losses; Still Liable for Attorneys Fees and Special Damages](#)  
February 28, 2013  
Professional Lines Alert

[Insurance Broker Can Be Liable to Insured Who Did Not Read the Insurance Policy](#)  
February 20, 2013



Professional Lines Alert

[Agent Not Liable for Not Obtaining Additional Coverage](#)

January 15, 2013

Professional Lines Alert

[Insurance Agent Not Liable for Failure to Cover Boat](#)

November 8, 2012

Professional Lines Alert

[Architect Not Liable to Unsuccessful Bidder for Tortious Interference](#)

October 31, 2012

Professional Lines Alert

[California Insurance Agent Who Improperly Completed Insurance Application Liable to Insured](#)

October 3, 2012

Professional Lines Alert

[Insurance Agent Can Be Sued by Intended Beneficiary for Negligence](#)

September 26, 2012

Professional Lines Alert

[District Court Declines to Extend Business Judgment Rule to Corporate Officers](#)

August 2, 2012

Professional Lines Alert

[Continuous Representation Doctrine Not Necessarily Limited to Attorney-Client Relationship](#)

July 10, 2012

Professional Lines Alert

[Court Effects Contraction of Contract Claims and Expansion of Economic Loss Doctrine](#)

March 19, 2012

Professional Lines Alert

[Broker Had No Duty to Monitor Solvency of Insurance Company After Policy Issued](#)

March 7, 2012

Professional Lines Alert

[Minnesota Recognizes Claim Against Insurance Agent for Negligent Failure to Procure Insurance](#)

November 7, 2011

Professional Lines Alert

[No Coverage for Insurance Agent's Claim Against His Agency for Failure to Procure Coverage](#)

November 2, 2011

The Professional Lines Alert

[Accountant May Owe Duty of Care to Client's Creditors](#)

September 28, 2011

Professional Lines Alert

[N.Y. Appellate Court Holds Statute of Limitations Started Running When Architect's Services Ended](#)

September 22, 2011

Professional Lines Alert

[Illinois Court Extends Evidentiary Lifeline to Accounting Firm Accused of Negligence](#)

September 7, 2011

Professional Lines Alert

[Bank Not Liable to Architects Under "Instrumentality" Theory for Defaulted Developer's Nonpayment of Fees](#)



May 9, 2011  
Professional Lines Alert

[Insurance Agents Liable for Submitting Application With Incorrect Information That Client Signed Without Reading](#)  
May 4, 2011  
Professional Lines Alert

[Architect Potentially Liable to Indemnify Owner for Electrical Subcontractor's Negligence](#)  
April 21, 2011  
Professional Lines Alert

[Supreme Court Tightens Section 1983 Liability for Failure to Train](#)  
April 18, 2011  
Professional Lines Alert

[Materials Testing Company Owed No Duty to Concrete Subcontractor](#)  
April 7, 2011  
Professional Lines Alert

[Architect Who Provided Limited Construction Management Services Had Duty to Injured Guests Based on Foreseeability](#)  
March 28, 2011  
Professional Lines Alert

[Mechanics' Liens Now Available to Design Professionals in Massachusetts](#)  
March 22, 2011  
Professional Lines Alert

[Accounting Malpractice Claim Time-Barred By Two-Year Statute of Limitations](#)  
March 15, 2011  
Professional Lines Alert

[Supreme Court Broadens First Amendment Protection Against State Tort Claims](#)  
March 10, 2011  
Professional Lines Alert

[Court Rejects Argument That Home Inspection Form Contract Was Contrary to Public Policy and Unconscionable](#)  
March 7, 2011  
Professional Lines Alert

[Insurance Agent Not Liable for Negligent Misrepresentations](#)  
December 15, 2010  
Professional Lines Alert

[Course of Practice May Determine an Insurance Agent's Authority to Issue a Binder/Evidence of Insurance – AND – Finding of Bad Faith May Preclude an Insurer From Seeking Indemnity From an Insurance Agent](#)  
December 9, 2010  
Professional Lines Alert

[U.S. Supreme Court Clarifies That "Policy or Custom" Requirement for Establishing Section 1983 Municipal Liability Applies to Claims Seeking Declaratory or Injunctive Relief](#)  
December 2, 2010  
Professional Lines Alert

[California Court Holds That Sellers Agents Must Disclose When Their Clients' Property Is Overencumbered by Debt](#)  
October 18, 2010  
Professional Lines Alert

[Professional Lines Alert](#)



August 27, 2010  
Professional Lines Alert

[Professional Lines Alert](#)  
August 10, 2010

[Professional Lines Alert](#)  
July 28, 2010