



David Cutter, a member of BatesCarey's management committee, represents insurers in coverage litigation. David has a diverse practice, handling disputes across many product lines, including management liability, professional liability, commercial general liability, automobile and commercial transportation and property coverages.

David litigates nationwide. In the last five years, David has served as lead counsel in state or federal courts in nearly thirty states, as well as in many domestic and international arbitrations. David has secured victories for his insurer clients in these proceedings in several ways, including through early dispositive motions, by taking focused discovery and securing summary judgment, and by prevailing at trial before a jury. David has also successfully protected many victories on appeal.

As David is known to say, litigation should be used as a tool to close claims. Clients appreciate this perspective, as well as David's ability to creatively use litigation to move matters toward resolution. When matters are not amenable to a compromise, however, David's breadth of experience enables him to efficiently obtain favorable results for clients.

In addition to his litigation practice, David also provides insurers advice in a counseling role for claims involving complex underlying matters and coverage issues. In that capacity, David helps his clients understand their coverage, defense and settlement obligations, assists with the evaluation of underlying exposures and develops unique strategies for closing claims.

David has been consistently recognized by Chambers, The Legal 500, Best Lawyers and Super Lawyers as a leading commercial lawyer. As noted in recent editions of Chambers, clients say of David that he "understands the insurance coverage world inside and out. He is very effective in advocating for our company's positions"; he "is an excellent lawyer and advocate for his client"; he "is respected in the field as an excellent litigator"; and he is "responsive and knowledgeable about insurance coverage."

REPRESENTATIVE MATTERS

Pavilion Construction, LLC v. Underwriters at Lloyd's, London, et al., Case No. D-202-CV-2022-05946 (N.M. Dist. Ct., Bernalillo Cnty. Dec. 2024). Granting motion to dismiss direct action filed by underlying claimant in construction defect dispute against professional liability carrier asserting unfair claims practices and bad faith claims.

U.S. Tobacco Cooperative, Inc. v. Axis Specialty Ins. Co., Case No. 5:23-cv-00374-BO-BM (E.D.N.C. July 18, 2024). Granting motion to dismiss certain claims seeking defense and indemnity from management liability insurer in connection with the insured's dispute with members of its tobacco sellers price stabilization cooperative seeking the return of accumulated reserves based upon statute of limitations, and dismissing all of insured's bad faith claims.

The Hanover Ins. Co. v. Heyden Enterprises, LLC, Case No. 23-A-08684-8 (Ga. Super. Ct., Gwinnett Cnty. April 24, 2024). Granting judgment on the pleadings on behalf of management liability insurer in declaratory judgment action that coverage was excluded by employment-related exclusion.

Karl McIntosh v. Allied World Insurance Company, Case No. 1:22-cv-0522-CFC (D. Del. March

Contact Information

Email: dcutter@batescarey.com
Office: (312) 762-3172

Practice Areas

- Bad Faith
- Commercial General Liability
- Counseling and Risk Management
- Coverage Litigation
- First-Party Property
- General Commercial Litigation
- Professional Liability

Education

- Catholic University of America, J.D. 1995, *magna cum laude*, Class salutatorian, Executive Editor and staff member of Catholic University Law Review.
- University of Michigan, B.G.S. 1989

Clerkship

- United States District Court for the District of Columbia (1996-1997)

Memberships

- James B. Moran Center for Youth Advocacy (Board Member)
- Women Helping Others, Inc. (Co-Founder and Board Member)
- Noah's Playground For Everyone Committee (Co-Chair)
- Jewish Reconstruction

18, 2024). Entering jury verdict obtaining a declaration that professional liability insurer properly rescinded medical malpractice policy.

U.S. Specialty Ins. Co. v. City of Youngstown, 2023 WL 5984168, at *1 (N.D. Ohio Sept. 14, 2023). Granting summary judgment for municipal liability insurer that coverage is unavailable because the insured breached the notice and reporting requirements of a CGL policy causing prejudice to insurer as a matter of law.

Arch Ins. Co. v. PCH Mgmt. Alpha, LLC, No. 2018-L-012681 (Ill. Cir. Ct. March 23, 2023). Granting motion for judgment on the pleadings for management liability insurer because the claim was interrelated to a claim made in a prior policy period and not reported and prior or pending litigation exclusion barred coverage, and denying insured's cross-motion for summary judgment.

Hanover Ins. Co. v. R.W. Duntelman Co., 51 F.4th 779, 782 (7th Cir. 2022). Affirming trial court ruling that management liability policy was not implicated because claim was made in first of two successive policy period but not reported until the second policy period.

Rimini St., Inc. v. AXIS Ins. Co., 2022 WL 17487749 (N.D. Ill. Dec. 7, 2022). Granting motion to dismiss on behalf of professional liability insurer based upon application of prior or pending litigation exclusion.

Alain Dery v. Aviva Ins. Co. of Canada, No. 49D01-2202-PL-004720 (Ind. Comm. Ct. October 17, 2022). Granting motion to dismiss action against Canadian insurers due to a lack of personal jurisdiction.

Morris v. Arch Ins. Co., 2022 WL 507474 (S.D. Ill. Feb. 18, 2022). Granting summary judgment finding insured was not entitled to UIM coverage based upon choice of law and effective rejection of certain higher limits.

XL Specialty Ins. Co. v. AR Capital, LLC, 2021 WL 353853 (N.Y. Sup. Ct. Feb. 2, 2021). Granting summary judgment to management liability insurer because insureds were not acting in an insured capacity, capacity exclusion barred coverage, and some portions of the settlement constituted uninsurable disgorgement.

XL Specialty Ins. Co. v. AR Capital, 181 A.D.3d 546, 121 N.Y.S.3d 269, 270 (2020). Affirming trial court's denial of insured's motion to dismiss action in lieu of competing Delaware action.

Hanover Ins. Co. v. MRC Polymers, Inc., 2020 IL App (1st) 192337. Affirming trial court rulings that products and liability services exclusion in management liability policy barred coverage.

RLI Ins. Co. v. Acclaim Res. Partners, LLC, 2020 IL App (4th) 190757-U. Affirming trial court ruling that contractual fee dispute did not trigger coverage under a professional liability policy because there was no "wrongful act."

AR Capital, LLC v. XL Specialty Ins. Co., 2020 WL 4907990 (Del. Super. Ct. Aug. 3, 2020). Granting motion to stay Delaware action in favor of competing New York action.

U.S. Specialty Ins. Co. v. Vill. of Melrose Park, 455 F. Supp. 3d 681 (N.D. Ill. 2020). Finding prior and pending litigation exclusion in municipal policy barred coverage.

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Committee Coordinator

- Youth and Opportunity United, Inc. (Board Member) (2012-2018)

Admissions

- Illinois
- District of Columbia
- Maryland
- Numerous federal courts, including the Trial Bar of the US District Court for the Northern District of Illinois