



MARTIN C. PENTZ

PARTNER

Boston

📞 617.832.1196

✉️ mpentz@foleyhoag.com

I evaluate commercial insurance coverage claims against insurers.

When insurers refuse or fail to pay, Marty Pentz brings to bear a variety of tools, including litigation, to compel them to fulfill their promises. Marty is highly experienced in representing policyholders in insurance recovery litigation. He has been recognized by Chambers USA, The Best Lawyers in America and Massachusetts SuperLawyers for his effectiveness in these matters, as well as for his skills in commercial litigation in all courts.

Marty represents insured businesses nationwide in lawsuits and ADR proceedings seeking recovery under various lines of property and casualty insurance, including general and umbrella liability insurance, directors and officers liability insurance, business property and business interruption insurance, professional liability (E&O) insurance and crime insurance. Marty has tried and won major insurance coverage suits and successfully handled appeals in key precedent-setting cases. He has also negotiated seven- and eight-figure insurance recoveries on behalf of a number of industrial clients.

Before joining Foley Hoag, Martin was a litigation partner and Chair of the Insurance Coverage Practice Group at another major Boston law firm. Following law school graduation he clerked for the Justices of the Massachusetts Superior Court (1982-83), and served as Staff Attorney for the Massachusetts Supreme Judicial Court (1983-84).

RELATED INDUSTRIES

[Life Sciences >](#)

RELATED PRACTICES

[Insurance Recovery >](#)

EDUCATION

- Boston College Law School, J.D., *cum laude*, 1982
- State University of New York at Stony Brook, B.S., *with honors*, 1979

BAR AND COURT ADMISSIONS

BAR ADMISSIONS

- Massachusetts

COURT ADMISSIONS

- Supreme Judicial Court of Massachusetts
- U.S. District Court for the District of Massachusetts
- U.S. Court of Appeals for the First Circuit
- U.S. Court of Appeals for the Sixth Circuit

EXPERIENCE

- National Grape Cooperative Ass'n et al. v. National Union Fire Ins. Co. of Pittsburgh, PA, Case No. 2184CV00193-BLSI (Mass. Super.) (dismissed following settlement December 10, 2021): Represented national distributor of beverages and snacks regarding D&O coverage for multiple underlying unfair trade practices lawsuits, including putative class actions. Issues included whether seventeen suits/claims arose from same or related Wrongful Acts for purposes of applicable retentions and limits. Settled favorably following mediation.
- Smith & Nephew, Inc. v. New Hampshire Ins. Co., No. 04-3027-STA-cgc (W.D. Tenn., dismissed following settlement, August 15, 2018): Lead counsel for medical device manufacturer in insurance recovery action for underlying mass tort, involving nine-figure loss and multiple layers of excess insurance. Resolved following sealed summary judgment rulings premised on governing English law after referral to special master.
- National Fish & Seafood, Inc. v. Great Am. Ins. Co., 2017 U.S. Dist. LEXIS 186600 (N.D. Tex. June 7, 2017): Lead counsel for frozen seafood distributor in action under Open Cargo insurance policy to compensate client for loss resulting from ammonia leak at storage facility in Dallas, Texas. Settled following grant of summary judgment in favor of distributor on breach of contract claims.
- Peabody Essex Museum, Inc. v. United States Fire Ins. Co., 802 F.3d 39 (1st Cir. 2015): Lead counsel for Museum in suit seeking insurance coverage in connection with cleanup of underground oil release. Established insurer's breach of duty to defend Museum in connection with agency notice of responsibility; thereby shifted burden to insurer to show inapplicability of exception to "pollution exclusion," which insurer failed to sustain; recovered full defense costs, without "allocation"; successfully avoided "pro rata" allocation of cleanup costs, instead securing more favorable "fact-based" allocation through expert evidence.

- *Certain Underwriters at Lloyd's London v. Chicago Bridge & Iron Co.*, 406 S.W.3d 326 (Tex. App.-Beaumont 2013, writ denied): Served as lead trial and lead appellate counsel in Texas coverage action arising from nationwide asbestos claims. Won summary judgment rulings applying "all sums" coverage approach, and rejecting insurer pro rata allocation and horizontal exhaustion theories, based on collateral estoppel. Won trial rulings aggregating multiple claims at a given site into a single "occurrence" for purposes of exhausting retention amounts. Affirmed in all respects on appeal.
- *Dominion Energy, Inc. v. Zurich Am. Ins. Co.*, 2013 U.S. Dist. LEXIS 150569 (D. Conn. 2013): Won summary judgment on insurer's duty to defend "additional insured" under "automatic additional insured endorsement" in connection with underlying wrongful death action. Court rejected insurer argument that defense obligation applied only if named insured was solely at fault. 2015 U.S. Dist. LEXIS 25795 (D. Conn. 2015): Established insured's entitlement to pre-judgment interest and fees of prosecution of coverage action. 2016 U.S. Dist. LEXIS 32980 (D. Conn. 2016): Established insured's entitlement to recovery of costs incurred before tender of defense to insurer.
- *EaglePicher Mgmt. Co. v. Zurich Am. Ins. Co.*, 640 F. Supp. 2d 1109 (D. Ariz. 2009): Won summary judgment on liability of insurer to indemnify insured for loss arising from dishonesty of IT director, who diverted substantial company funds to entities he owned or controlled. Case settled following summary judgment rulings.
- *OneBeacon Ins. Co. v. Georgia-Pacific Corp.*, 474 F.3d 6 (1st Cir. 2007): Secured for client Georgia-Pacific Corporation a district court judgment holding that, contrary to an insurer's contention, the cancellation of an umbrella liability policy after three months did not reduce the aggregate limit of liability of the policy from \$10 million to \$2.5 million, but rather left the full \$10 million limit intact. Decision affirmed on appeal by First Circuit.
- *Scott v. NG US 1, Inc.*, 450 Mass. 760 (2008): Won summary judgment dismissing G.L. Ch. 21E action by property owner claiming successor liability of defendant utility for contamination allegedly caused by former manufactured gas plant operations of company whose assets were purchased by defendant. Affirmed on appeal by Massachusetts Appeals Court, 67 Mass. App. Ct. 474 (2006), and on further appellate review by Massachusetts Supreme Judicial Court.
- *KeySpan New England, LLC v. Hanover Ins. Co.*, 24 Mass. L. Rep. 511 (2008): Won summary judgment against primary insurer on duty to defend DEP Ch. 21E proceeding regarding former coal tar processing facility. Tried a "lost policies" case against a second insurer, successfully establishing terms of policies. Won summary judgment on second insurer's duty to defend; secured 10-year stay of primary insurer's counterclaims seeking declaration of no indemnity obligation; won summary judgment on "trigger-of-coverage" and "known loss" issues. Case settled as to all insurers.
- *Allmerica Financial Corp. v. Certain Underwriters at Lloyd's, London*, 449 Mass. 621 (2007): Submitted amicus curiae brief on behalf of public utility company, urging Court to narrow apparent scope of "known loss" doctrine in Massachusetts; Court rejected application of "known loss" in case presented, and clarified the "proper narrow construction of the known loss doctrine" to apply only to insurance purchased when liability was known or substantially certain.
- *Chicago Bridge & Iron Co. v. Certain Underwriters at Lloyd's, London*, 59 Mass. App. Ct. 646 (2003), rev. denied, 441 Mass. 1101 (2004): Served as lead trial and lead appellate counsel in precedent-setting case arising from alleged environmental liability of policyholder from wood treating operations of a former affiliate. The \$6 million judgment won after trial was affirmed on appeal in a frequently-cited opinion holding that policyholder was entitled to recover "all sums" under each triggered policy, rather than mere pro-rated amount.
- *Smith & Nephew, Inc. v. Federal Ins. Co.*, 113 Fed. Appx. 99, 2004 U.S. App. LEXIS 21452 (6th Cir. 2004): Secured reversal by Sixth Circuit of district court opinion granting insurer summary judgment. The Court of Appeals held that insurer had a duty to defend the policyholder under "personal injury" provisions of a general liability policy for underlying action alleging the policyholder's participation in a conspiracy to defame a self-styled "whistle-blower." Case settled on remand.

- *D'Amelio v. Federal Ins. Co.*, 2004 U.S. Dist. LEXIS 7488 (D. Mass. Apr. 28, 2004): Insurer held on summary judgment to be obligated to honor an arrangement under which a directors and officer liability policy was set up as primary to a representations and warranties liability policy. Court rejected the insurer's contention that the controlling shareholder (sued for alleged breaches of representations and warranties) was not acting in D&O policy's "insured capacity" in a stock purchase and sale agreement.
- *Narath, et al. v. Executive Risk Ins. Co.*, 2004 WL 924231(D. Mass. Mar. 14, 2002): Defeated an insurer motion for summary judgment based on "insured vs. insured" exclusion in directors and officers policy. Court held that the case nominally brought in name of bankrupt insured against directors did not invoke exclusion where bankruptcy trustee, acting for the benefit of creditors, was real party in interest.
- *Hakim v. Massachusetts Insurers Insolvency Fund*, 424 Mass. 275 (1997): Retained to appeal a summary judgment granted to an insurer on grounds that an "owned property" exclusion precluded coverage under homeowners policy liability provisions for costs of clean up of home heating oil spill. The Supreme Judicial Court reversed the judgment, agreeing that costs incurred to abate contamination of third-party property are covered, even if remedial work is performed on the policyholder's property. The case is now widely cited to defeat "owned property" defense under commercial liability insurance.

HONORS & INVOLVEMENT

HONORS

- Ranked by *Chambers USA: America's Leading Lawyers for Business* as one of Massachusetts' leading insurance lawyers (2017-2022)
- Ranked by *Chambers USA: America's Leading Lawyers for Business* as one of Massachusetts' leading environmental lawyers; specially noted for concentration in insurance coverage for environmental liabilities (2010-2012)
- Listed in *Best Lawyers in America*
- Listed in *Massachusetts SuperLawyers: Insurance Coverage Litigation*

INVOLVEMENT

- American College of Coverage and Extracontractual Counsel, Fellow
 - January 2016: Co-Chair, American College of Coverage and Extracontractual Counsel, Boston College Law School Insurance Law Symposium
 - 2016: Co-Chair, CGL/Excess Liability Insurance Committee
- American Bar Association, Insurance Coverage Litigation Committee, Member
- Boston Bar Association, Insurance and Tort Litigation Section
 - 2015: Co-Chair, Insurance and Reinsurance Committee

SPEAKING ENGAGEMENTS

- "COVID-19 Insurance Issues in the Higher Education Community," Foley Hoag Webinar (July 2020)
- "*Rass Corp v. Travelers*: Pre-Tender Defense Costs and Allocation of Covered vs. Non-Covered Claims," Boston Bar Association Seminar (May 2017)
- "Common Interest Doctrine and the Tripartite Relationship: Insurer Use of Privileged/Protected Defense Material to Attack the Policyholder in the Coverage Case," American College of Coverage and Extracontractual Counsel, Boston College Law School Insurance Law Symposium (January 2016)
- "Speaking Freely: The Limits of Cooperation and Common Interest," American College Of Coverage and Extracontractual Counsel Annual Meeting (May 2013)
- "Lightning Round of Mock Oral Arguments: Should Settlement Credits be Pro Tanto, Pro Rata or Something Else?," HB Litigation's All Sums Reallocation and Settlement Credits Conference (May 2012)
- "What Happens After the 'Spike'? Reallocation and Application of All Sums in the Settlement Context," HB Litigation's All Sums Reallocation & Settlement Credits Conference (October 2009)
- "Litigating Insurance Coverage Disputes: Understanding Insurance Coverage and Developing Winning Strategies," MCLE Seminar (September 2009)
- "The Reasonable Expectations Doctrine: Why Policyholders May Be Better Off Without It," ABA Litigation Section Insurance Coverage Committee Mid-Year Meeting (February 2008)
- "Maximizing the Value of Precious Metals Insurance: Dealing with Carriers in the Event of a Claim," 31st International Precious Metals Conference (June 2007)
- "Solvent Schemes: The U.S. Policyholder's Perspective: IBNR and Insurer Attempts at Compulsory Reversal of the Insurance Relationship," Mealey's Second Annual Solvent Schemes of Arrangement Conference (2007)
- "'Late Notice' Coverage Disputes: Policyholder Strategies to Avoid Forfeiture," Product Liability Advisory Council Conference (Fall 2006)
- "All Sums," Lexis/Nexis Mealey's Reallocation and Settlement Conference (2004)
- "Top Ten Issues," Mealey's Advanced Insurance Coverage Conference (2004)