Simpson Thacher

Insurance Law Alert

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Loss From Spoofing Attack Arises From Three Separate Occurrences Under Computer Fraud Endorsement, Says Arizona Appellate Court

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A New York trial court dismissed a bus company's COVID-19-related coverage suit, ruling that loss of use or functionality does not constitute "direct physical loss or damage" to property. *Visconti Bus Service, LLC v. Utica Nat'l Ins. Grp.*, 2021 WL 609851 (N.Y. Sup. Ct. Orange Cnty. Feb. 17, 2021). (Click here for full article)

"[Simpson Thacher's] expertise ranges from direct insurance coverage of virtually all kinds, through to reinsurance matters and cases relating to insurance companies' business practices."

–Chambers New York 2020

California Court Denies Motion To Dismiss Suit Seeking Coverage For COVID-19-Related Business Losses

A California trial court refused to dismiss a suit seeking coverage for COVID-19-related business losses, finding that the complaint alleged sufficient facts to show "direct physical loss." *Goodwill Indus. of Orange County, CA v. Philadelphia Indem. Ins. Co.*, 2021 WL 476268 (Cal. Super. Ct. Jan. 28, 2021). (Click here for full article)

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A Michigan federal district court granted an insurer's motion to dismiss coverage claims under policy provisions for business income, extra expense and civil authority, but held that the policyholder's pleadings as to communicable disease coverage were sufficient to withstand dismissal on the pleadings. *Salon XL Color & Design Grp., LLC v. West Bend Mutual Ins. Co.*, 2021 WL 391418 (E.D. Mich. Feb. 4, 2021). (Click here for full article)

Oklahoma Court Rules That Cherokee Nation Entitled To Coverage For COVID-19 Business Losses

An Oklahoma district court ruled that several insurers were obligated to cover business losses sustained by the Cherokee Nation in the wake of government-mandated shutdowns. *Cherokee Nation v. Lexington Ins. Co.*, No. CV-2020-00150 (Okla. Dist. Ct. Jan. 14, 2021). (Click here for full article)

Ireland's High Court Rules That Insurer Must Cover Losses Stemming From Forced Closure Of Business During COVID-19 Shutdown

Ireland's High Court ruled that four pubs were entitled to insurance for business losses incurred during the country's mandated shutdown. *Hyper Trust Limited Trading as the Leopardstown Inn v. FBD Ins. PLC,* No. 2020/3656 (Ireland High Court Feb. 5, 2021). (Click here for full article)

Texas Appellate Court Rules That Intentional Conduct, Even If Based On Mistaken Belief, Is Not A Covered Occurrence

A Texas appellate court ruled that an insurer had no duty to defend or indemnify claims against a policyholder that arose out of intentional conduct, even where that conduct was based on mistaken beliefs. *Latray v. Colony Ins. Co.*, 2021 WL 97204 (Tex. Ct. App. Jan. 11, 2021). (Click here for full article)

Earth Movement Exclusion Is Unambiguous And Bars Coverage, Says Tenth Circuit

Applying Colorado law, the Tenth Circuit ruled that an earth movement exclusion unambiguously barred coverage for damage caused by a rockfall. *Sullivan v. Nationwide Affinity Ins. Co. of Am.*, 2021 WL 79765 (10th Cir. Jan. 11, 2021). (Click here for full article)

New York Department Of Financial Services Advises Insurers To Rigorously Assess Cyber Risks

New York's Department of Financial Services urged insurers to develop a rigorous approach to cyber risk, recommending guidelines and best practices for assessing and managing such risks, particularly those related to ransomware attacks. (Click here for full article)

New York Court Rules That Putative Policyholder Failed To Establish Material Terms Of Incomplete Policy

A New York federal district court ruled that a shipping company failed to establish material terms of a policy for which it located only three endorsements and therefore that coverage was unavailable. *Cosmopolitan Shipping Co., Inc. v. Continental Ins. Co.*, 2021 WL 229661 (S.D.N.Y. Jan. 22, 2021). (Click here for full article)

STB News Alerts

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Cyber Alerts:

Fifth Circuit Rules That Email Phishing Claims Are Not Covered By Computer Transfer Fraud Or Funds Transfer Fraud Coverage Provisions

The Fifth Circuit ruled that losses stemming from wire transfers initiated by spoofed emails were not covered by Computer Transfer Fraud or Funds Transfer Fraud coverage provisions of a commercial crime insurance policy. *Mississippi Silicon Holdings, L.L.C. v. Axis Ins. Co.*, 2021 WL 406238 (5th Cir. Feb. 4, 2021).

An employee of MSH, a manufacturing company, received an email purportedly from one of its suppliers, directing it to change banking information for future payments. In accordance with that email, the MSH employee electronically changed the information and initiated a wire transfer. Another MSH employee authorized the transfer on the bank's website, and during a confirmation call with the bank, a third MSH employee verbally authorized the transfer. A second payment was made, following the same three-step authorization process. Thereafter, MSH discovered that the emails were fraudulent and that the funds had been sent to hackers' bank accounts. Axis Insurance paid MSH the $100,000 limit under a Social Engineering Fraud clause. MSH filed suit, alleging it was entitled to coverage under the Computer Transfer Fraud and Funds Transfer Fraud provisions. A Mississippi federal district court granted Axis Insurance's summary judgment motion, finding that neither provision covered the loss. *See* April 2020 Alert.

The Fifth Circuit affirmed, ruling that there was no "Computer Transfer Fraud," defined by the policy as "the fraudulent entry of Information into or the fraudulent alteration of any Information within a Computer System." The court explained that although the scheme "involved the creation of a 'fraudulent channel' in MSH's email system through which the scammers could monitor, and when necessary, alter emails," such manipulation "does not constitute Computer Transfer Fraud" because the scammers "did not manipulate those systems through the introduction of data or programs that could independently instruct the Computer System . . . . At best, the breach allowed the fraudsters to monitor the computer system and to act based on the information they learned."

Additionally, the court ruled that even assuming the scheme constituted Computer Transfer Fraud, other language in this provision "clearly suggests that this was not the type of scheme Axis agreed to insure MSH against." The provision also required the transfer to be made "without the Insured Entity's knowledge or consent." Here, however, three MSH employees affirmatively authorized the transfer. The court deemed it irrelevant that the employees were tricked into action by the fraudulent emails, noting that the Computer Transfer Fraud provision did not provide coverage for such scenarios. By way of contrast, the court emphasized that the Social Engineering Fraud provision clearly contemplated situations such as the present one, in which an employee acts in good faith on a fraudulent instruction.

Having ruled that MSH's knowledge of and involvement in the wire transfer precluded coverage, the court declined to address the "complicated question" of whether the loss "resulted directly from" the fraud scheme, as required by the Computer Transfer Fraud provision. Courts in other jurisdictions

have applied various causation standards in determining whether the "direct" requirement has been met in similar factual circumstances.

Loss From Spoofing Attack Arises From Three Separate Occurrences Under Computer Fraud Endorsement, Says Arizona Appellate Court

An Arizona appellate court ruled that an email spoofing scheme constituted three separate occurrences under the policy's Computer Fraud endorsement. *AIMS Ins. Program Managers, Inc. v. National Fire Ins. Co. of Hartford*, 2021 WL 408874 (Ariz. Ct. App. Feb. 4, 2021).

Criminals accessed an employee's email account in order to fraudulently intercept payments from AIMS to one of its vendors. The criminals used counterfeit domain names similar to the vendor's domain name and opened accounts at the vendor's bank. Thereafter, the thieves intercepted emails between AIMS and its vendor and replaced them with fraudulent emails directing AIMS to wire payments to the thieves' accounts. After the fraud was discovered, AIMS sought coverage under a business property policy. National paid $10,000—the policy limit for a single occurrence under a Computer Fraud endorsement but denied coverage under a Forgery and Alteration endorsement. In ensuing coverage litigation, an Arizona trial court granted National's summary judgment motion.

The appellate court affirmed in part and reversed in part. The appellate court agreed with the trial court that the Forgery and Alteration endorsement did not cover the fraudulently induced wire transfers. The endorsement insured against loss resulting directly from forgery or alteration of "any check, draft, promissory note, bill of exchange, or similar written promise, order or direction to pay a sum certain money." The court rejected AIMS's contention that the invoices attached to the fraudulent emails were "similar . . . order[s] or direction[s] to pay a sum certain money," explaining that the attached invoices were not "of the same nature" as checks, drafts, promissory notes or bills of exchange.

However, the court ruled that the fraud constituted three separate occurrences under the Computer Fraud provision. Although the policy did not define "occurrence," the court held that each act of fraud—namely each counterfeit demand for payment—was a distinct "causative act." The court explained:

> Each email package represented a separate fraudulent payment demand, and each resulted in a separate wire transfer by AIMS, the victim of the fraud. In the language of the computer fraud endorsement, each of the three wire transfers "result[ed] directly from" a separate and distinct fraudulent payment demand by the thieves.

In so ruling, the court rejected National's contention that there was just one occurrence because the loss was caused by a single continuing fraudulent scheme. The court distinguished cases in which "occurrence" was defined to include continuous conditions or where the policy included other verbiage indicating that multiple claims may be treated as a single occurrence.

Minnesota Court Rules That Replacement Of Credit/Debit Cards Following Data Breach Does Not Constitute "Loss Of Use Of Tangible Property"

A Minnesota federal district court ruled that an insurer was not obligated to indemnify a data breach settlement payment, finding that the policyholder's cost of replacing cancelled plastic credit and debit cards did not constitute a loss of use of tangible property under a general liability policy. *Target Corp. v. ACE American Ins. Co.*, 2021 WL 424468 (D. Minn. Feb. 8, 2021).

Following a data breach of Target's computer networks, several banks that had issued the compromised credit and debit cards cancelled and reissued those cards to customers. The banks sued Target for the costs associated with those actions. The parties eventually reached confidential settlements, and Target sought indemnification from ACE.

The court granted ACE's summary judgment motion, ruling that Target failed to demonstrate covered property damage, defined as the "loss of use of tangible property that is not physically injured." The court explained that Minnesota law requires loss-of-use damages to be "based on" the loss of

use of the tangible property. Here, however, there was no nexus between the settlement payment and the value of the loss of the use of the payment cards. The court stated:

> Target has not established a connection between the damages incurred for settling claims related to replacing the payment cards and the value of the use of those cards, either to the payment-card holders or issuers. . . . For this reason, the connection . . . is insufficiently direct and, therefore, the damages claimed are not loss-of-use damages covered under the Policies.

Damages Alert:

Florida Supreme Court Rules That Insured May Not Recover Extra-Contractual, Consequential Damages For Breach Of Contract

Answering a question certified by a Florida appellate court, the Florida Supreme Court ruled that Florida law does not permit an insured to recover extra-contractual, consequential damages for breach of a first-party insurance contract. *Citizens Prop. Ins. Corp. v. Manor House, LLC,* 2021 WL 208455 (Fla. Jan. 21, 2021).

Citizens insured several apartment buildings owned by Manor House that were damaged by a hurricane. Citizens made several payments and closed the claim file. Approximately two years later, Manor House presented another claim. Citizens reopened the file and made additional payments. However, the parties disputed the replacement costs, among other things. Ultimately, an appraisal panel awarded Manor House more than $8.6 million in replacement cost value and $8.3 million in actual cash value. Thereafter, Manor House sued Citizens, alleging breach of contract and fraud. Manor House sought extra-contractual damages related to rental income that it allegedly lost due to the delay in repairing the apartment complex.

A Florida trial court dismissed Manor House's claim for lost rental income, noting that nothing in the insurance policy provided coverage for such loss. A Florida appellate court reversed, ruling that notwithstanding the absence of coverage for lost rental income in the policy, the insured was "entitled to recover monetary damages that will put it in the same position it would have been had the other party not breached the contract." The appellate court noted that Citizens was immune from a claim of bad faith based on its "government entity" status, but ruled that consequential damages were permissible as a remedy for the breach of contract claim.

Quashing the appellate court decision, the Florida Supreme Court ruled that an insured is not entitled to extra-contractual damages for breach of a first-party insurance contract that does not involve an award under Florida's bad faith statute. The court explained that for breach of contract claims, "the contractual amount due to the insured is the amount owed pursuant to the express terms and conditions of the policy." The court noted that while extra-contractual damages would be available in a separate bad faith action pursuant to section 624.155, such damages are not recoverable in this case against Citizens because Citizens is statutorily immune from first-party bad faith claims. The court expressly rejected the appellate court's premise that parties can "contemplate" remedies outside the policy's express terms.

COVID-19 Alerts:

Over the past month, nearly forty federal and state courts across the country have dismissed policyholder lawsuits seeking business interruption and other coverage stemming from COVID-19-related closures. A small handful of courts have recently allowed such cases to proceed past the pleading stage or have ruled in favor of coverage.

First Trial Of COVID-19 Coverage Claims Ends With Judgment For Insurers

The first trial involving coverage claims for business loss in the wake of COVID-19-related shutdowns concluded with a judgment in the insurers' favor. *Cajun Conti LLC v. Certain Underwriters at Lloyd's, London*, No. 2020-02558 (La. Civ. Dist. Ct. Orleans Parish Feb. 10, 2021).

The restaurant filed suit in March 2020 seeking coverage for business loss incurred after state and local orders restricted travel and dine-in eating in order to slow the spread of COVID-19. A bench trial began in December 2020, and the court issued a notice of judgment this month, without a written opinion.

Rejecting "Loss Of Use" Argument, New York Court Dismisses Policyholder's COVID-19 Coverage Suit

A New York trial court dismissed a bus company's COVID-19-related coverage suit, ruling that loss of use or functionality does not constitute "direct physical loss or damage" to property. *Visconti Bus Service, LLC v. Utica Nat'l Ins. Grp.*, 2021 WL 609851 (N.Y. Sup. Ct. Orange Cnty. Feb. 17, 2021).

Visconti sought coverage for loss of business income under an all risk policy. Utica disclaimed coverage, arguing that there was no direct physical loss or damage to property and that coverage was barred by a virus exclusion and an exclusion for "delay, loss of use or loss of market." Visconti sued for breach of contract, and the court dismissed the complaint.

The court rejected Visconti's assertion that "loss of use" is sufficient to trigger coverage, noting that such an interpretation is not supported by New York case law. The court stated: "New York courts, state and federal, applying New York law have uniformly held that this policy language is not ambiguous, and that it unambiguously excludes coverage for the mere loss of use or functionality of the covered premises in the absence of actual, demonstrable physical harm thereto." The court also rejected Visconti's claim for civil authority coverage, finding that the complaint did not allege "prohibited access" to insured property or damage to property elsewhere. Finally, the court noted that even if "coverage were somehow found to exist, it appears that there are three policy exclusions [virus, loss of use, loss of market] which, singly or collectively, would potentially create an insurmountable barrier to Visconti's recovery."

Utica Insurance is represented by Simpson Thacher in this matter.

California Court Denies Motion To Dismiss Suit Seeking Coverage For COVID-19-Related Business Losses

A California trial court refused to dismiss a suit seeking coverage for COVID-19-related business losses, finding that the complaint alleged sufficient facts to show "direct physical loss." *Goodwill Indus. of Orange County, CA v. Philadelphia Indem. Ins. Co.*, 2021 WL 476268 (Cal. Super. Ct. Jan. 28, 2021).

The underlying complaint alleged that COVID-19 caused direct physical loss to insured property because virus particles were present at the properties, employees tested positive for the virus, and the policyholder was required to conduct sanitization of properties in order to remove COVID-19 particles from physical surfaces. Accepting these allegations as true for purposes of the insurer's demurrer, the court concluded that the complaint sufficiently alleged "direct physical loss." The court recognized that California federal courts have required a physical change to property or a permanent dispossession of property in order to satisfy the "direct physical loss" requirement, but deemed those cases factually inapposite. Noting the "high standard that must be met to prevail on a demurrer on an insurance policy," the court declined to rule as a matter of law that COVID-19 has not "in some manner, caused physical damage to property."

Michigan Court Dismisses Business Income, Extra Expense And Civil Authority Coverage Claims, But Allows Communicable Disease Coverage Claim To Proceed

A Michigan federal district court granted an insurer's motion to dismiss coverage claims under policy provisions for business income, extra expense and civil authority, but held that the policyholder's pleadings as to communicable disease coverage were sufficient to withstand dismissal on the pleadings. *Salon XL Color & Design Grp., LLC v. West Bend Mutual Ins. Co.,* 2021 WL 391418 (E.D. Mich. Feb. 4, 2021).

The insured salon alleged that COVID-19 particles infected its property and exposed staff and customers, thereby preventing the property from being used for its intended purpose. The court held that these allegations plausibly alleged "direct physical loss or damage." The policyholder also alleged that government shutdown orders were due to the spread of COVID-19 throughout the state, including at and within a mile of the insured premises. The court concluded that these allegations were sufficient to withstand dismissal of the civil authority coverage claim. However, the court ruled that coverage under both provisions was unambiguously excluded by a virus or bacteria exclusion. The court further held that a consequential loss exclusion, which encompasses "delay, loss of use or loss of market," barred coverage under the business income, extra expense and civil authority coverage provisions.

The court declined to dismiss the salon's claim for coverage pursuant to a communicable disease provision. The court reasoned that while the virus exclusion applied to other coverage clauses, it does not preclude communicable disease coverage.

Oklahoma Court Rules That Cherokee Nation Entitled To Coverage For COVID-19 Business Losses

An Oklahoma district court ruled that several insurers were obligated to cover business losses sustained by the Cherokee Nation in the wake of government-mandated shutdowns. *Cherokee Nation v. Lexington Ins. Co.*, No. CV-2020-00150 (Okla. Dist. Ct. Jan. 14, 2021).

The Cherokee Nation argued that the covered properties sustained "direct physical loss or damage" because they could not be used as intended, emphasizing that use of the word "or" indicated that "loss" encompassed more than tangible damage. The court agreed and granted the Nation's summary judgment motion. Citing *Elegant Massage LLC v. State Farm Mutual Auto. Ins. Co.*, 2020 WL 7249624 (E.D. Va. Dec. 9, 2020) (discussed in our December 2020 Alert), the court held that "direct physical loss" includes property that is uninhabitable because of an intangible risk.

Ireland's High Court Rules That Insurer Must Cover Losses Stemming From Forced Closure Of Business During COVID-19 Shutdown

Ireland's High Court ruled that four pubs were entitled to insurance for business losses incurred during the country's mandated shutdown. *Hyper Trust Limited Trading as the Leopardstown Inn v. FBD Ins. PLC*, No. 2020/3656 (Ireland High Court Feb. 5, 2021).

FBD provided insurance to pubs throughout Ireland through more than one thousand different versions of the policy at issue in the present case. The policy included a provision that covered "losses arising from the imposed closure of the premises by order of a government or local authority following the occurrence of a number of specified circumstances including 'outbreaks of contagious or infectious diseases on the premises or within 25 miles of the same.'" The court ruled that under this provision, the pubs were entitled to indemnification for losses during and beyond the period of mandated closure, rejecting the insurer's contention that there was no coverage because the closures arose as a consequence of the countrywide presence of COVID-19, rather than a local

outbreak at or near the insured premises. In addition, the court rejected a strict "but for" causation standard under which the policyholders would have to prove that their losses were caused solely by the pandemic, rather than from a societal reaction to the virus as well.

Occurrence Alert:

Texas Appellate Court Rules That Intentional Conduct, Even If Based On Mistaken Belief, Is Not A Covered Occurrence

A Texas appellate court ruled that an insurer had no duty to defend or indemnify claims against a policyholder that arose out of intentional conduct, even where that conduct was based on mistaken beliefs. *Latray v. Colony Ins. Co.*, 2021 WL 97204 (Tex. Ct. App. Jan. 11, 2021).

The insurance dispute arose after the policyholder dumped debris on property that he believed to be owned by a friend, but in actuality was owned by the friend's neighbor. The neighbor sued and obtained judgment against the policyholder. Colony denied coverage on the basis that there was no covered "occurrence" under the policy. A Texas trial court agreed and granted Colony's summary judgment motion. The appellate court affirmed.

The appellate court rejected the policyholder's contention that even though the act of dumping the debris was intentional, his conduct was accidental because he was acting under the misconception that he had permission to dump the debris on the property in question. The court ruled that there was no occurrence because the damage was "reasonably foreseeable" and the type that would "ordinarily follow" from the policyholder's conduct. In so ruling, the court distinguished cases in which the policyholder engaged in intentional conduct, but performed that conduct in a negligent manner, thereby giving rise to a covered "occurrence."

Property Insurance Alert:

Earth Movement Exclusion Is Unambiguous And Bars Coverage, Says Tenth Circuit

Applying Colorado law, the Tenth Circuit ruled that an earth movement exclusion unambiguously barred coverage for damage caused by a rockfall. *Sullivan v. Nationwide Affinity Ins. Co. of Am.*, 2021 WL 79765 (10th Cir. Jan. 11, 2021).

Homeowners sustained extensive damage when large boulders dislodged from an outcropping and rolled down a hillside. At least one boulder struck the homeowners' residence. Nationwide denied coverage under an earth movement exclusion that defined "earth movement" as a "[l]andslide" or "[a]ny other earth movement including earth sinking, rising or shifting," among other things. The homeowners filed suit, asserting claims for breach of contract, bad faith and declaratory judgment. A Colorado federal district court granted Nationwide's summary judgment motion. The homeowners appealed and moved to certify several questions of law regarding the exclusion to the Colorado Supreme Court. The Tenth Circuit affirmed the district court decision and denied the motion to certify.

The Tenth Circuit rejected the homeowners' contentions that a rockfall is not a landslide and that the term "earth" refers to soil, not rock. The court noted that courts in several other jurisdictions have concluded that earth movement exclusions bar coverage for damage caused by rockfalls and predicted that the Colorado Supreme Court would find those cases persuasive. The court reasoned that the catch-all phrase "any other earth movement" evidenced an intention for the exclusion to "be broadly inclusive of all natural materials that comprise the surface of the earth, including rocks and soil." Additionally,

applying Colorado's reasonable expectations doctrine, the court held that "[i]t would be unreasonable for an ordinary reader to think that damage caused by soil-only and soil-and-rock slide events would not be covered but damage caused by a rock-only slide event would be."

The Tenth Circuit acknowledged that a different Colorado district court ruled that an earth movement exclusion was ambiguous and therefore did not bar coverage for damage caused by a boulder that rolled down a slope and struck a house, but deemed that decision unpersuasive. *See Kresge v. State Farm Fire & Cas. Co.*, 2012 WL 849973 (D. Colo. Nov. 4, 2012).

Regulatory Alert:

New York Department Of Financial Services Advises Insurers To Rigorously Assess Cyber Risks

As ransomware attacks and other cyber incidents continue to proliferate, New York's Department of Financial Services urged insurers to develop a "rigorous and data driven approach to cyber risk." The Department recommended guidelines and best practices, including careful vetting of policyholder risk, the establishment of comprehensive risk strategy, retention of cybersecurity experts and stringent notice requirements for cyber incidents in insurance policies. Although the guidelines are not binding, the Department warned that insurers' failure to adequately assess cyber risks could adversely impact the insurance market overall. In addition, the Department emphasized the rising incidence of ransomware attacks in particular, cautioning insurers that they may be held liable for ransom payments made to sanctioned entities pursuant to formal advisories issued by the Office of Foreign Assets Control in October 2020. *See* October 2020 Alert.

Lost Policy Alert:

New York Court Rules That Putative Policyholder Failed To Establish Material Terms Of Incomplete Policy

A New York federal district court ruled that a shipping company failed to establish material terms of a policy for which it located only three endorsements and therefore that coverage was unavailable. *Cosmopolitan Shipping Co., Inc. v. Continental Ins. Co.*, 2021 WL 229661 (S.D.N.Y. Jan. 22, 2021).

Former seamen filed lawsuits against ship owners and operators, including Cosmopolitan, alleging injury caused by asbestos exposure. Cosmopolitan settled the suits and sought coverage from Continental under a Protection & Indemnity policy known as Policy C-4893. After conducting an evidentiary hearing, the court concluded that at least some of the seamen were covered by the policy, but that Cosmopolitan did not meet its burden of establishing all material terms of the policy.

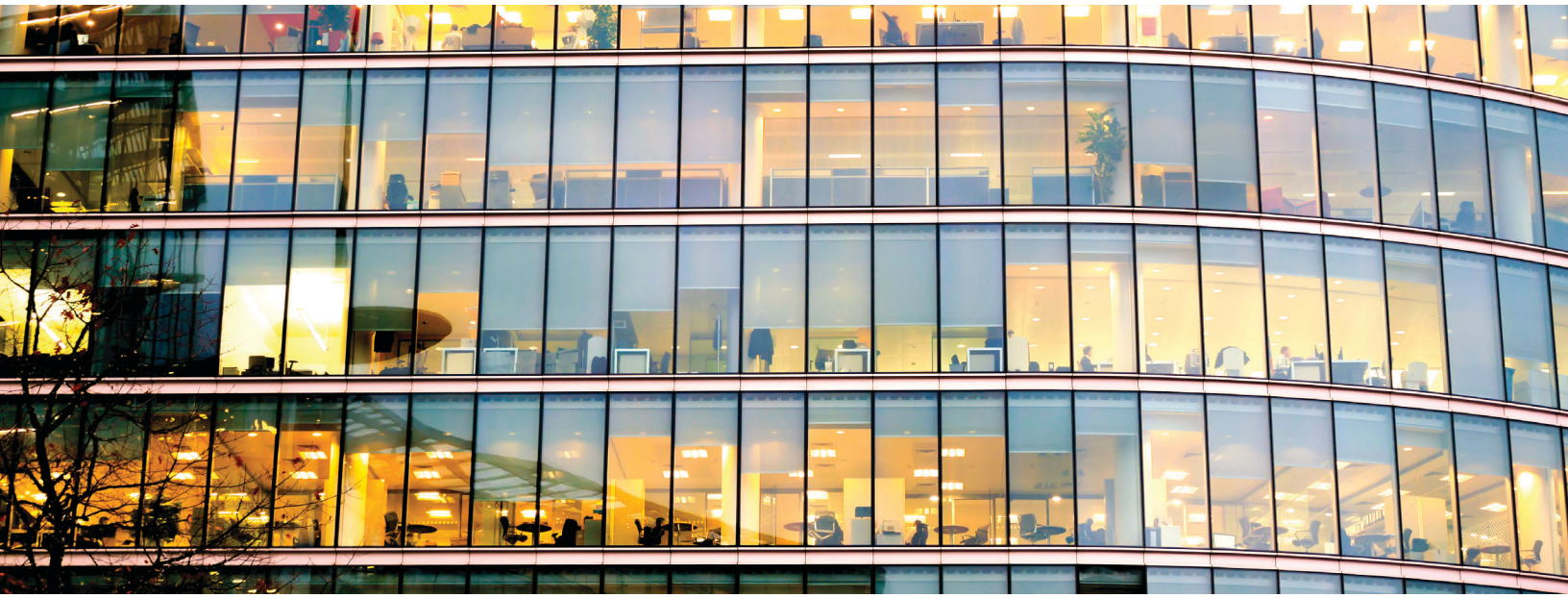
The court noted that New York law is unclear as to whether the standard of proof for the existence and terms of a lost policy is preponderance of the evidence or clear and convincing evidence. Declining to resolve that uncertainty, the court held that Cosmopolitan failed to meet either standard of proof. While the record established that Continental Policy C-4893 covered at least some of the asbestos plaintiffs who worked on Cosmopolitan's vessels, the court ruled that Cosmopolitan failed to show the material terms of the policy, most notably the per-occurrence or per-vessel limits of coverage. The court rejected Cosmopolitan's assertion that two forms of insurance policies, submitted as examples of maritime policies issued around the coverage period, sufficiently reflected the terms of Policy C-4893. The court explained that the two sample polices were not consistent in several material terms, including policy limit, time limitation, and premium. In addition, the record did not establish that

either comparator policy had any direct connection to Policy C-4893. Finally, the court emphasized that Policy C-4893 was neither a renewal policy nor a "boilerplate" policy—situations in which material terms could arguably be inferred. As such, the court ruled that the policy was unenforceable.

STB News Alerts

Susannah Geltman and Summer Craig authored the United States chapter in the third edition of *The Insurance Disputes Law Review*. Published as part of *The Law Reviews* series, the book discusses important developments over the past year in the quickly-evolving area of insurance disputes across more than 15 jurisdictions. The book features commentary on dealing with insurance disputes and highlights mechanisms for dispute resolution in each jurisdiction.

Mary Beth Forshaw, Bryce Friedman and Karen Cestari served as Contributing Editors of the recently published 2021 edition of Lexology's *Getting the Deal Through: Insurance Litigation*. Mary Beth, Bryce and Karen co-authored the publication's chapter addressing United States insurance law. The chapter highlights preliminary and jurisdictional considerations in insurance litigation, the interpretation of insurance contracts and notice to insurance companies, as well as insurance litigation trends and the outlook for the next year.



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Simpson Thacher has been an international leader in the practice of insurance and reinsurance law for more than a quarter of a century. Our insurance litigation team practices worldwide.

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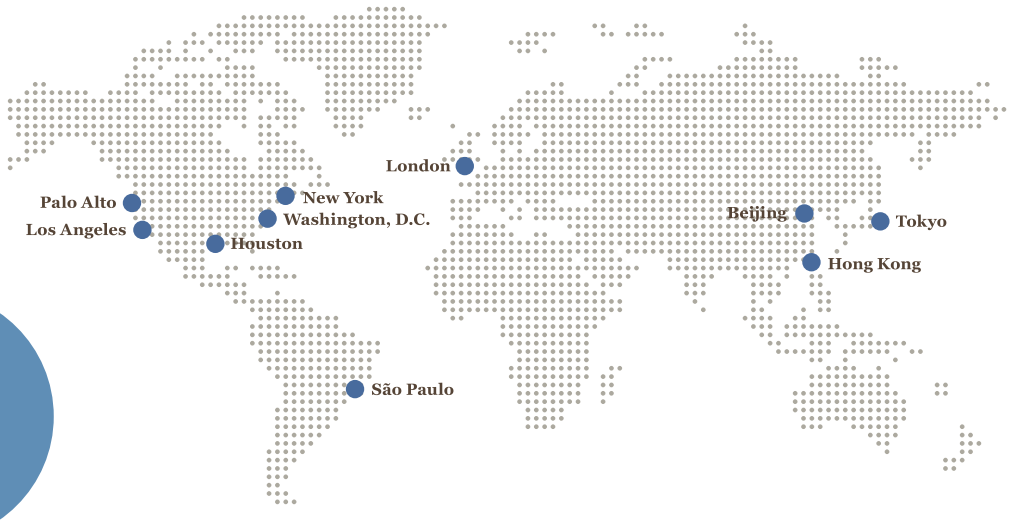

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