



**Mark E. Mills**

Director

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### PRACTICE AREAS

Insurance Coverage, Claim Advice, Coverage Analysis, Extracontractual Exposure Advice, Insurance Litigation, Legislative Monitoring and Regulatory Analysis, Defense Litigation, Personal Injury, and Professional Liability

### OVERVIEW

Mark Mills is a director with Betts Patterson Mines where he practices in the Insurance Coverage Practice Group. Practicing for over 30 years, he has advised insurers on coverage issues involving commercial general liability, commercial property, inland marine, commercial auto, homeowners, and personal auto policies. He has tried multiple cases to verdict in both coverage and defense contexts. He now advises insurers on coverage questions and represents them in related litigation under commercial general liability and related coverages, such as director and officer, employment practices, and management protection.

Mark represents insurers on claims involving:

Construction defects,  
Intellectual property disputes,  
Additional insured issues,  
Product withdrawals, and  
Related duties to defend and indemnify against litigation or claims made under commercial liability policies.

### REPRESENTATIVE CASES

- Obtained summary judgment that insurer had no duty to defend or indemnify under Washington law against construction defect allegations. Also obtained summary judgment dismissal of Washington State Insurance Fair Claims Act (IFCA) cause of action when insurer client denied duty to defend outright without defending insured under a reservation of rights or filing a declaratory judgment action. *Chase Constr. N.W. Inc. v. AIX Specialty Ins. Co.*, No. C15-19, 2015 WL 12001272 (W.D. Wash. June 23, 2015).
- Drafted coverage analysis and letter denying coverage for claim that client's Commercial General Liability policy covered the insured contractor's liability for "get to" or "tear out" costs. This resulted in the client saving a six-figure sum for defense and indemnity expenses.

- Montana insured was sued for infringing on plaintiff's intellectual property rights. Drafted coverage analysis and letter denying defense and indemnity that resulted in insured dropping bad faith claims against client.
- Advised Commercial General Liability insurers on segregating covered damages from excluded ones, making the correct indemnity payments, and avoiding extra-contractual liability in two cases (Oregon and Washington) in which arbitrators made large lump sum construction defect awards without supporting detail.
- Represented a surplus lines Commercial General Liability insurer. Following an audit, the insured contractor sued for a refund of its premium and named our client (the surplus lines insurer), the surplus lines broker, and producing broker. The insured also alleged failure to comply with Washington's surplus lines statutes, Consumer Protection Act violations, and professional negligence. The suit was dismissed, and our client paid nothing.
- Advised a Commercial General Liability carrier of an insured subcontractor, which was a defendant in a Washington state condominium construction defect suit in which the owners' association alleged \$15 million to repair the complex, and the insured's portion was \$335,000. Our client and four other carriers were defending the insured under a reservation of rights. The insured's liability was settled for \$7,500, and our client's share was \$1,750.
- Advised the Commercial General Liability carrier of a large commercial potato grower and a potato growers' association. The insureds were defendants in price fixing federal suits in California and Idaho. Our unchallenged coverage denial saved our client tens of thousands of dollars in defense costs.
- Advised a condominium developer's Commercial General Liability carrier. The condominium developer was a defendant in a Washington state construction defect suit. Our unchallenged denial of the duty to defend or indemnify under the sold or alienated premises exclusion saved the client hundreds of thousands of dollars in defense costs and indemnity payments.
- Advised the Commercial General Liability insurer of a Montana plant nursery. The insured nursery was a defendant in a federal patent infringement suit set in a Missouri federal court. Our unchallenged denial of the duty to defend or indemnify saved the client tens of thousands of dollars in defense expenses and indemnity proceeds.
- Advised the inland marine insurer of a Montana contractor. The contractor sought coverage for defective construction of part of a project to build a cell phone tower. Advised carrier to indemnify saving client from extra-contractual exposure and associated expenses for incorrect denial of a claim involving esoteric coverage issues.

#### APPELLATE CASES

- Ninth Circuit Court of Appeals affirmed summary judgment that client had no duty to defend or indemnify insured contractor for its work on condominium buildings when policy excluded liability arising from the insured's work in connection with any condominium. *Chase Constr. N.W., Inc. v. AIX Specialty Ins. Co.*, No. 15-35591, 2018 WL 832467 (9<sup>th</sup> Cir. February 13, 2018).
- Represented defendant who successfully argued on appeal that he did not make an alternative service arrangement with plaintiff's process server. *Gross v. Sunding*, 139 Wn.App. 54, 161 P.3d 380 (2007)
- Represented subcontractor in case clarifying spoliation under Washington law. *Homeworks Construction, Inc. v. Wells*, 133 Wn.App. 892, 138 P.3d 654 (2006)
- Represented defendant in case clarifying witness disclosure requirements under state and local discovery rules. *Lancaster v. Perry*, 127 Wn.App. 826, 113 P.3d 1 (2005)

- Successfully defended marine insurance broker against errors and omissions suit for failing to procure war risks coverage where the causes of the vessel's loss – Russian authorities' seizure of vessel or Russian court's transfer of vessel's title – would not have been covered under a war risks endorsement. *International Ultimate, Inc. v. St. Paul Fire & Marine Insurance Co.*, 122 Wn.App. 736, 87 P.3d 774, review denied, 153 Wn.2d 1016, 101 P.3d 109 (2004)
- Represented first party auto insurer of classic British automobile in successful appeal where Washington's Court of Appeals held that client was prejudiced as a matter of law when insured failed to produce material financial documents after a fire destroyed the vehicle. *Keith v. Allstate Indemnity Co.*, 105 Wn.App. 251, 19 P.3d 443 (2001)
- Represented first party property insurer which prevailed on appeal where Washington's Court of Appeals held that the client was prejudiced as a matter of law by insured's failure to produce material financial information when client suspected insured of overstating loss. *Herman v. Safeco Insurance Co. of America*, 104 Wn.App. 783, 17 P.3d 631 (2001)
- Successful appeal by client – first party property insurer – in case where Washington's Supreme Court held that insured lacks insurable interest when he conveys property before loss even if he intends to re-purchase the property. *Gossett v. Farmers Insurance Company of Washington*, 133 Wn.2d 954, 948 P.2d 1264 (1997)
- Represented first party property insurer filing amicus brief in case where Washington Supreme Court held that insured must replace property before claiming replacement cost proceeds. *Hess v. North Pacific Insurance Co.*, 122 Wn.2d 180, 859 P.2d 586 (1993)

#### EDUCATION

Willamette University, J.D., 1986

University of Washington, B.A., with distinction, *cum laude*, *Phi Beta Kappa*, 1983

#### ADMISSIONS

Washington State Bar, 1986

United States District Court, Eastern and Western Districts of Washington

United States Court of Appeals, Ninth Circuit

#### PROFESSIONAL & CIVIC AFFILIATIONS

Claims & Litigation Management Alliance

Member, Insurance Coverage Committee

Co-Chair, Publication/Magazine Committee

Defense Research Institute

King County Bar Association

Northwest Insurance Coverage Association

Washington Defense Trial Lawyers

Washington State Bar Association

#### PUBLICATIONS & PRESENTATIONS

Author, *Hazy Coverage: Analyzing the Duty to Defend Newly Insured Marijuana Businesses under Standard CGL Provisions*, CLM Magazine, March 2018.

Co-author (along with Daniel L. Syhre and Kathryn N. Boling), *"Get To" Costs Correctly Understood*, In-House Defense Quarterly, 56 – 60 (Spring 2016).

Presenter/Panelist, *Defending Under Reservations of Rights in Alaska, Idaho, Oregon, and Washington: Pitfalls to Avoid for Insurers and Defense Attorneys*, Claims and Litigation Management Alliance (CLM) Pacific Northwest Regional Conference, (March 10, 2016).

Presenter, *Insurance 411: What Every New Lawyer Must Know*, Young Lawyers Division of the King County Bar Association, (April 16, 2015).

Presenter, *Construction Defect Disputes & Litigation: Using Coverage, Case Law and Indemnification to Shift Liability*, NBI, (December 8, 2014).

Presenter, *Subrogation: Medicare, ERISA, Auto and Workers' Compensation Challenges*, NBI, (June 2013).

Author, *Finding and Construing Policy Language*, Washington Motor Vehicle Accident Insurance Deskbook, Chapter Supplement, Washington State Bar Association, (2009 Supplement).