



John E. Howell

Partner



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John helps insurers resolve complex and significant claims arising under professional liability insurance policies issued to directors and officers, financial institutions, mutual funds, investment advisors, lawyers, and other professionals and firms. He provides clients with advice concerning coverage issues and underlying liability exposures in claims involving major scandals, large monetary losses, government investigations and enforcement actions, and corporate bankruptcies.

John has successfully represented insurers at all stages of litigation in trial and appellate courts across the United States and in confidential arbitrations both here and abroad. He frequently represents insurers in the mediation of claims against policyholders and coverage workouts.

In addition, John assists insurers in drafting and revising policy forms and endorsements to implement specific policyholder requests and to reflect claim trends and the current legal landscape.

Representative Matters

- Obtained affirmance of summary judgment in the Seventh Circuit, with the court holding that under Wisconsin law a carveout in a D&O policy for settlements of “Inadequate Consideration Claims” barred coverage for the insured’s settlement of securities litigation alleging that its misleading proxy statement induced shareholders to accept inadequate consideration in the sale of the company. This is the first appellate decision among several cases concerning similar issues, so the insurers’ win in this case stands out. *Joy Global*

Practice Areas

Insurance
Litigation
Privacy, Cyber & Data Governance

Credentials

Education

J.D., *cum laude*, Harvard Law School
B.A., *summa cum laude*, Tulane University;
Phi Beta Kappa

Clerkships

Law Clerk for the Honorable E. Grady Jolly,
U.S. Court of Appeals for the Fifth Circuit
(2007-2008)

Bar and Court Memberships

District of Columbia Bar
U.S. Courts of Appeals for the Second,
Third, Ninth, and Eleventh Circuits

Inc. v. Columbia Cas. Co., No. 21-2695 (7th Cir. Jan. 23, 2023).

- Won declaratory judgment following a week-long bench trial determining that directors and officers (D&O) policies did not provide coverage for the \$23 million settlement of a shareholder lawsuit alleging that the price paid by another company to acquire the insured was inadequate because the settlement was subject to an exception from the definition of covered "Loss." *Onyx Pharmas. Inc. v. Old Republic Ins. Co.*, No. CIV 538248 (Cal. Super. Ct. Dec. 30, 2022).
- Won summary judgment determining that a D&O policy did not provide coverage for \$20.8 million in settlements of shareholder lawsuits challenging the acquisition of the insured by another company because they constituted settlements of claims alleging that the price of the acquisition was inadequate and so were carved out from the definition of covered "Loss." *Joy Global Inc. v. Columbia Casualty Company*, No. 18-cv-02034, 2021 WL 3667077 (E.D. Wis. Aug. 18, 2021).
- Won final award in a self-administered arbitration on behalf of an insurer that issued a \$10 million excess D&O policy to an insured seeking coverage under multiple policy years for related lawsuits. (2021).
- Won final award on preliminary issues in Bermuda arbitration involving exhaustion issues in connection with \$25 million excess policy issued by a D&O insurer. (2021).
- Obtained an order transferring coverage litigation against a D&O insurer from the U.S. District Court for the District of Delaware to the U.S. District Court for the Central District of California, where the insured was headquartered. *Ceradyne, Inc. v. RLI Ins. Co.*, No. 20-cv-1398 (D. Del. July 26, 2021).
- Defeated motion for summary judgment brought by policyholder in Delaware Superior Court seeking full coverage as a matter of law for a settlement of litigation involving covered and uncovered matters under the "larger settlement rule," which the court rejected. *SS&C Tech., Inc. v. Endurance Assur. Corp.*, 2020 WL 6335898 (Del. Super. Ct. Oct. 29, 2020).
- Won appellate affirmance that no coverage was available for Wells notices issued and an enforcement action brought by the U.S. Securities and Exchange Commission (SEC) because they were related to the SEC's original investigation, which commenced prior to the claims-made policy period. *UniPixel, Inc. v. XL Specialty Ins. Co.*, No. 14-18-00828-CV (Tex. 14th Ct. App., Mar. 31, 2020).
- Won appellate affirmance of judgment for insurer that specific litigation exclusion barred coverage for regulatory investigations, lawsuits, and over one thousand FINRA arbitrations filed after collapse of Puerto Rican bond market. *UBS Financial Serv. Inc. of Puerto Rico v. XL Specialty Ins. Co.*, 929 F.3d 11 (1st Cir. 2019).
- Negotiated and obtained recoupment of uncovered settlement amounts a D&O insurer advanced on behalf of policyholders under California's "Blue Ridge" doctrine. (2018).
- Won appellate affirmance of judgment in favor of insurer seeking rescission of a D&O policy issued to a man who later pled guilty to selling \$1.9 million of phony stock in his law enforcement equipment company, due to multiple misrepresentations in the policy applications. *Continental Cas. Co. v. Gargoyles, Inc.*, No. 17-1618 (4th Cir. Nov. 2, 2017).

- Successfully defended insurer in appeal of trial court ruling determining that insured's settlement in excess of \$100 million of claims from bank customers arising from allegedly excessive overdraft protection fees did not constitute insurable loss under subject policies. Also obtained reversal of trial court ruling that plaintiffs' attorneys' fees awarded out of settlement funds were covered. *The PNC Fin. Servs. Grp., Inc. v. Houston Cas. Co.*, 647 F. App'x 112 (3d Cir. 2016).
- Won summary judgment ruling for an insurer in a false advertising case based on failure to conform exclusion. *General Star Indemnity Co. v. Driven Sports, Inc.*, No. 14-3579, 2015 WL 307017 (E.D.N.Y. Jan. 23, 2015).
- Obtained a unanimous ruling from the Delaware Supreme Court holding that a coverage action by a litigation trust against several insurance carriers was not ripe because the trust had not obtained a settlement or judgment, and the insureds' defense costs had been covered by other insurance. *XL Specialty Ins. Co. v. WMI Liquidating Tr.*, 93 A.3d 1208 (Del. 2014).

Professional Experience

- Adjunct Instructor of Law, Mississippi College School of Law (2007-2008)

Affiliations

- Professional Liability Underwriting Society (PLUS)
 - Member (2011-Present), Co-Chair (2013), and Chair (2014-2015), Future PLUS Committee (2016)
 - Future PLUS Task Force (2011)
- DC LGBTQ+ Bar Association

Recognitions

- Received a "Break Out" Award from *Business Insurance* magazine (2023)
- Named by *The Legal 500 US* a "recommended lawyer" in Insurance Law (2017-2018, 2022)
- Named to *Law360's* Insurance Editorial Advisory Board (2021)
- Recognized by *Law360* as a "Rising Star" in Insurance (2015)