

TABLE OF CONTENTS

CHAPTER 1

The Basic Types of Policies and Coverages

§ 1.01	Components of an Insurance Policy	1-2
	[1] Declarations	1-2
	[a] Per Occurrence and Aggregate Limits	1-3
	[b] SIRs and Deductibles.	1-4
	[2] Insuring Agreement	1-6
	[a] Duty to Defend.	1-6
	[b] Duty to Indemnify	1-6
	[3] Exclusions.	1-7
	[4] Definitions	1-7
	[5] Conditions.	1-7
	[6] Endorsements	1-8
§ 1.02	Other Evidence of Insurance	1-10
§ 1.03	Types of Insurance Policies	1-12
	[1] Claims Made vs. Occurrence.	1-12
	[2] Primary vs. Excess.	1-12
	[a] Primary Insurance.	1-13
	[b] Excess Insurance	1-13
	[c] Umbrella Insurance	1-15
	[3] Subscription/Participation Policies	1-16
	[4] “Manuscript” Policies	1-17
	[5] Fronting Insurance	1-17
	[6] Retrospectively Rated Insurance	1-18
§ 1.04	Types of Coverages.	1-20
	[1] Comprehensive General Liability (CGL)	1-20
	[a] Property Damage/Bodily Injury.	1-20
	[b] Personal Injury	1-24
	[c] Advertising Injury	1-27
	[d] Contractual Liability.	1-29
	[2] First-Party Property	1-30
	[a] Named Peril	1-30

INSURANCE COVERAGE DISPUTES

	[b] All Risk	1-30
	[c] Business Interruption	1-30
[3]	Directors' & Officers' (D&O) Liability	1-31
[4]	Products Liability	1-33
[5]	Errors & Omissions (E&O) Liability	1-34
[6]	Fidelity/Dishonesty Coverage	1-34
[7]	Professional Liability	1-35
[8]	Environmental Impairment Liability (EIL)	1-36
[9]	Employers' Liability	1-36
[10]	Kidnapping and Ransom (K&R)	1-37
[11]	Mortgage Insurance	1-38
[12]	Cyber Risk Insurance	1-41
	[a] Availability of Cyber Risk Coverage Under Traditional CGL Policy Forms and Other Coverages	1-42
	[b] Availability of Standalone Cyber Risk Coverage	1-48
	[c] Hostile or Warlike Action Exclusions	1-52
[13]	Coverage for Violations of Biometric Data Privacy Laws	1-53
	[a] Relevant Exclusions	1-56
	[i] Employment-Related Practices Exclusions	1-56
	[ii] Violation of Statutes Exclusions	1-59
	[iii] Access or Disclosure Exclusions	1-65
	[b] Coverage Under Cyber Liability Policies	1-67
	[c] Other Sources of Coverage	1-68
[14]	Coverage for Regulated Marijuana Businesses	1-69
	[a] Relevant Exclusions	1-69
	[b] Public Policy	1-70
[15]	Drone Insurance	1-71
	[a] Coverage A Issues	1-72
	[b] Coverage B Issues	1-73
[16]	Specialized Supply Chain Insurance	1-73

CHAPTER 2

**Duties of Policyholder and Insurer in
Claims Submission and Handling**

§ 2.01	Introduction	2-2
§ 2.02	Duties of Policyholder	2-3
	[1] Duty to Provide Notice to Insurer.	2-3
	[a] Occurrence-Based Policies.	2-4
	[i] Why Notice Must Be Given.	2-4
	[ii] Who Must Give Notice	2-5
	[iii] Where Notice Must Be Sent	2-7
	[iv] What Notice Must Be Given.	2-8
	[v] When Notice Must Be Given.	2-11
	[vi] <i>Chart: Late Notice/ Prejudice in Occurrence Policies</i>	2-20
	[b] Claims-Made Policies.	2-29
	[2] Assistance and Cooperation.	2-33
	[3] Consent to Settlement	2-36
	[4] Proof of Loss	2-40
	[5] Suit Limitation Issues	2-41
§ 2.03	Duties of Insurer	2-43
	[1] Investigate/Adjust.	2-43
	[2] Reservations of Rights/Disclaimers.	2-48
	[a] Waiver or Estoppel.	2-49
	[b] Mend the Hold Doctrine	2-53
	[3] Claims-Handling Statutes.	2-58
	[4] Defense Obligation: Tripartite Relationship; Conflicts of Interest	2-61
	[a] Reservations of Rights and the Tripartite Relationship	2-64
	[b] Judicial Response to Conflicts of Interest Created by the Tripartite Relationship	2-65
	[i] The Policyholder's Entitlement to Independent Counsel	2-65
	[ii] Enforcing Counsel's Obligations to the Policyholder	2-69

INSURANCE COVERAGE DISPUTES

[c]	Special Ethical and Professional Considerations Occasioned by Insurers' Use of In-House Counsel to Represent Policyholders	2-75
[i]	Conflicts of Interest Threaten Defense Counsel's Professional Judgment	2-75
[ii]	The Unauthorized Practice of Law by Insurers.	2-78
[d]	Reasonableness of Defense Costs.	2-81
[e]	Litigation Management Guidelines.	2-83
[f]	Insurer Deductions	2-89
[g]	Right to Recoupment	2-90
[5]	Duty to Inform Policyholder of Available Coverage	2-92
[6]	Equitable Duties to Underlying Counsel.	2-94

CHAPTER 3

Preliminary Litigation Considerations

§ 3.01	Case Management.	3-2
[1]	Introduction	3-2
[2]	Phasing, Bifurcating or Limiting the Case	3-2
[a]	By Claim or Loss.	3-2
[i]	Bellwether Trials	3-3
[ii]	Statistical Sampling	3-5
[b]	By Issue	3-5
[c]	By Parties	3-6
[d]	By Scope of Coverage—Duty to Defend or Duty to Indemnify	3-6
[3]	Timing of Different Types of Discovery	3-6
[4]	Protective Orders/Non-Waiver Agreements	3-7
[a]	Protective Orders	3-7
[b]	Non-Waiver Agreements	3-8

TABLE OF CONTENTS

§ 3.02	Venue.....	3-9
	[1] Introduction	3-9
	[2] General Principles	3-10
	[3] The Doctrine of <i>Forum Non Conveniens</i>	3-11
	[4] <i>Forum Non Conveniens</i> in Insurance Coverage Cases	3-12
	[a] Location of Underlying Claim/Loss vs. Place of Contracting.....	3-12
	[b] Statutory Preferred Venue Provisions.....	3-13
	[c] Application of Private Interest Factors	3-14
	[d] Application of Public Interest Factors	3-16
	[e] Influence of Choice of Law Issues	3-17
	[f] Influence of Service of Suit Provisions.....	3-18
§ 3.03	Proper Parties	3-20
	[1] Proper Plaintiffs	3-20
	[a] Coverage for After-Acquired Subsidiaries	3-20
	[b] Corporate Successorship/ Assignment.....	3-23
	[i] Application of Non-Assignment Clauses Generally	3-23
	[ii] Assignment by Operation of Law	3-28
	[2] Defendants and Others.....	3-35
	[a] Absent Insurers as Necessary or Indispensable Parties.....	3-36
	[b] Underlying Claimants as Necessary or Indispensable Parties.....	3-39
	[c] Other Insureds as Necessary or Indispensable Parties	3-40
§ 3.04	Justiciability Issues.....	3-41
§ 3.05	Litigation Considerations Regarding Insurer Insolvencies.....	3-46

CHAPTER 4

Choice of Law Issues in Insurance
Coverage Litigation

§ 4.01	Choice of Law Paradigms	4-1
	[1] Traditional Choice of Law Approach: Vested Rights and <i>Lex Loci</i> <i>Contractus</i>	4-3
	[2] Modern Choice of Law Approaches: Significant Contacts, Governmental Interests	4-5
§ 4.02	Applying Modern Choice of Law Paradigms in Insurance Coverage Litigation.	4-10
	[1] Focus on Insurance Policy Facts	4-10
	[2] Focus on Loss/Liability Facts	4-12
	[3] Focus on Public Policy	4-13
§ 4.03	Timing of the Choice of Law Determination	4-17

CHAPTER 5

Discovery

§ 5.01	Areas of Discovery	5-2
	[1] Insurer's Claim File	5-2
	[a] Attorneys as Claims Handlers	5-2
	[b] Bad Faith Cases	5-6
	[c] <i>Chart: Discoverability of Insurer</i> Claim Files by Insured of Third Parties.	5-8
	[2] Drafting History of the Policy.	5-32
	[3] Reinsurance Information	5-35
	[4] Reserve Information.	5-38
	[5] Other Insureds, Other Claims	5-39
	[6] Claims Handling and Underwriting Manuals and Guidelines	5-42
	[7] Advertising and Marketing Materials	5-42
	[8] Electronically Stored Information	5-43
	[9] Insured's Defense Counsel's Files	5-43

TABLE OF CONTENTS

xi

	[a] “At Issue”	5-44
	[b] Common Interest	5-46
	[c] Cooperation Clause	5-49
	[d] <i>Chart: Discoverability of Insured’s Defense Counsel Files by Insurer</i>	5-51
§ 5.02	Discovery from Third Parties	5-64
§ 5.03	The Propriety of <i>Ex Parte</i> Contacts with a Policyholder’s Former Employees	5-66

CHAPTER 6

Lost Policies

§ 6.01	Introduction to the Problem of Lost Policies	6-1
§ 6.02	Diligent Search and Absence of Bad Faith as Preconditions for Proving the Existence and the Terms of Lost Policies	6-3
§ 6.03	Proving the Existence and the Terms of Lost Policies	6-6
	[1] Burden of Proof	6-6
	[2] Standard of Proof	6-11
	[3] Types of Secondary Evidence	6-14
	[a] Standard Policy Forms or Specimen Policies	6-14
	[b] Other Policies	6-15
	[c] Practice or Custom	6-16
	[d] Premium Information	6-17
	[e] Experts	6-18
	[f] Depositions, Affidavits and Live Testimony	6-18
	[g] Other Secondary Evidence	6-19
§ 6.04	Use of Secondary Evidence in Practice	6-22
	[1] Preponderance of the Evidence Standard	6-22
	[2] Clear and Convincing Evidence Standard	6-25

CHAPTER 7

**Rules of Policy Interpretation
and Construction**

§ 7.01	Contract Interpretation Generally	7-1
§ 7.02	Insurance Policy Interpretation	7-5
	[1] General Rules of Interpretation	7-5
	[2] Use of the Doctrine of <i>Contra</i> <i>Proferentem</i>	7-7
	[3] <i>Contra Proferentem</i> and the Sophisticated Insured	7-21
	[4] Coverage Grants vs. Exclusions	7-24
§ 7.03	The Application and Limitations of the Parol Evidence Rule	7-27
	[1] The Parol Evidence Rule	7-27
	[2] The Practical Application of the Parol Evidence Rule	7-28
§ 7.04	Determining Ambiguity	7-30
	[1] Defining Ambiguity	7-31
	[2] Ambiguity and the Parol Evidence Rule	7-32
§ 7.05	Reasonable Expectations	7-40
§ 7.06	Estoppel	7-45

CHAPTER 8

**Establishing the Duty to Defend
Under CGL Policies**

§ 8.01	Standard for Determining	8-1
§ 8.02	Divisibility/Allocation	8-11
	[1] Between Insurer and Insured	8-12
	[2] Between and Among Insurers	8-12.1
	[a] Equal Shares	8-13
	[b] <i>Pro Rata</i> Apportionment	8-13
	[c] Primary and Excess	8-15
	[d] Targeted Tender	8-17
§ 8.03	What Constitutes a “Suit”	8-19
	[1] Discussion	8-19
	[2] <i>Chart: Duty to Defend: “Suit”</i> Clause	8-23
§ 8.04	What Constitutes Defense Costs	8-29

TABLE OF CONTENTS

xiii

§ 8.05	Consequences of Breach of Duty To Defend	8-32
§ 8.06	Terminating the Duty to Defend	8-39
	[1] Exhaustion of the Policy Limit	8-39
	[2] Discovery That There Is No Covered Claim	8-41

CHAPTER 9

**Establishing the Duty to Indemnify
Under CGL Policies**

§ 9.01	Standards for Determining	9-3
	[1] Judgment	9-4
	[2] Settlement	9-9
	[3] Special Issues Involving Bankruptcy Code Section 524(g)	9-14
§ 9.02	“Damages” Covered	9-16
	[1] Discussion	9-16
	[2] <i>Chart: “As Damages”</i>	9-24
	[3] Insurability of Liability for Punitive Damages	9-29
	[a] Rationale for Prohibiting the Insurance of Punitive Damages	9-32
	[b] Rationale for Allowing the Insurance of Punitive Damages	9-33
	[c] Interpreting Policy Language Regarding Coverage	9-35
	[d] <i>Chart: Insurability of Liability for Punitive Damages</i>	9-36.1
§ 9.03	Accident/Occurrence/Advertising Injury	9-36.9
	[1] Accident Policies	9-36.9
	[2] Occurrence Policies	9-36.15
	[a] Expected or Intended	9-36.15
	[b] Single Occurrence vs. Multiple Occurrences	9-36.22
	[3] Event Policies	9-46
	[4] Advertising Injury Coverage	9-50
	[a] In General	9-50

	[b]	Insurance Coverage for Internet-Related Trademark and Domain Name Claims.	9-64.6
	[i]	Basics of Trademark and Domain Name Law	9-65
	[ii]	Establishing “Advertising Injury”.	9-71
	[iii]	Coverage Under ISO’s 1981 CGL Policy Form Endorsement.	9-76
	[iv]	Coverage Under ISO’s 1986 CGL Policy Form.	9-78
	[v]	Coverage Under ISO’s 1998 CGL Policy Form.	9-78.3
	[vi]	Coverage Under ISO’s 2001 CGL Policy Form.	9-78.3
	[vii]	Coverage Under ISO’s 2007 CGL Policy Form.	9-78.4
	[viii]	Particularized Insurance Issues that May Arise with Respect to Internet-Related Trademark Claims	9-78.4
	[ix]	New Forms of Coverage	9-78.6
§ 9.04		“Trigger” of Coverage	9-78.8
	[1]	Exposure.	9-78.9
	[2]	Manifestation	9-78.10
	[3]	Continuous/Multiple.	9-78.13
	[4]	Injury-In-Fact.	9-78.16
	[5]	Product Liability Triggers	9-78.17
	[6]	Toxic Tort Coverage Claims	9-78.19
	[7]	Environmental Insurance Coverage Claims	9-78.22
	[8]	<i>Chart: Trigger of Coverage</i>	9-78.23
§ 9.05		Construction Defects.	9-79
	[1]	In General.	9-79
	[2]	The Insuring Agreement	9-79
	[a]	“Legally Obligated to Pay as Damages”.	9-80
	[b]	Property Damage	9-83
	[c]	Occurrence	9-86

CHAPTER 10

**Common Exclusions and Defenses
to Coverage Under CGL Policies**

§ 10.01	Exclusions	10-2
	[1] Pollution Exclusion	10-2
	[a] Introduction and History	10-2
	[b] Burden of Proof	10-10
	[c] The Meaning of “Sudden”	10-12
	[d] Estoppel	10-23
	[e] The Relevant Event	10-25
	[f] <i>Chart: “Sudden and Accidental”</i> Exception in Pollution Exclusion	10-30
	[g] The Meaning of “Abrupt”	10-39
	[h] Initial Application of the Exclusion	10-43
	[i] Is There a Pollutant?	10-44
	[ii] Has There Been a Discharge, Dispersal, Release or Escape?	10-52
	[i] <i>Chart: Initial Application of</i> Pollution Exclusion	10-57
	[j] “Personal Injury” Coverage	10-66
	[k] <i>Chart: Personal Injury Coverage</i> for Pollution Claims.	10-75
	[l] Climate Change Claims	10-79
	[m] The Related Contamination Exclusion	10-87
	[2] Business Risks	10-87
	[a] Own Product/Own Work	10-88
	[b] Sistership.	10-93
	[c] Loss of Use/Impaired Property	10-95
	[3] Owned Property/Alienated Premises.	10-96
	[4] War Risk and Terrorism Exclusions	10-103
	[a] War Risk Exclusion Generally	10-104
	[b] Applying War Risk Exclusion Clauses to Acts of Terrorism.	10-104
	[c] Explicit Terrorism Exclusions	10-108
	[5] Contractually Assumed Liability Exclusion	10-112
	[6] Prior Publication Exclusion for Advertising Injury	10-114.1

	[7]	Failure to Conform with Advertisement	10-114.2
§ 10.02		Defenses to Coverage	10-114.4
	[1]	Known Loss/Loss-in-Progress	10-114.4
	[2]	Late Notice	10-124

CHAPTER 11

Establishing Coverage Under Other Than CGL Policies and Special Provisions of CGL Policies

§ 11.01		First-Party Property Coverage	11-3
	[1]	Direct Physical Loss of or Damage to Property	11-5
	[2]	Covered Property	11-7
	[3]	Covered Cause/Peril	11-16
	[4]	“Trigger” of Coverage	11-20
	[5]	Conditions and Exclusions	11-24
	[6]	Business Interruption Coverage	11-31
		[a] Business Income Coverage	11-32
		[b] Civil Authority Coverage	11-36
		[c] Ingress/Egress Coverage	11-37
		[d] Contingent Business Interruption Coverage	11-38
		[e] Extra Expense Coverage	11-38
		[f] Other Considerations	11-39
		[g] Supply Chain Disruptions	11-43
	[7]	“Sue and Labor” Provisions	11-44
	[8]	First-Party Property Coverage for Mold-Related Property Damage	11-45
		[a] Mold Exclusions	11-46.2
		[b] Pollution Exclusions	11-46.5
	[9]	The World Trade Center First-Party Property Insurance Litigation: A Case Study of the Hazards in Placement of a Multi-Layer Coverage Program	11-46.6
§ 11.02		Directors’ and Officers’ Coverage	11-46.24
	[1]	Components of a D&O Liability Policy	11-46.24
		[a] Declarations	11-46.24
		[i] Claims Made vs. Occurrence	11-46.24
		[ii] Named Corporation	11-46.25

TABLE OF CONTENTS

xvii

	[iii]	Each Wrongful Act and Aggregate Limits	11-46.25
	[iv]	SIRs and Deductibles	11-46.26
	[v]	Policy Period	11-46.27
	[vi]	Retroactive Date	11-46.27
	[b]	Insuring Agreements	11-46.27
	[i]	Direct Coverage of Directors and Officers	11-46.28
	[ii]	Corporate Reimbursement Coverage	11-46.33
	[iii]	Entity Coverage	11-46.36
	[iv]	Derivative Investigations Coverage	11-46.40
	[v]	Defense Coverage	11-46.40
	[c]	Exclusions	11-46.40
	[d]	Definitions	11-46.41
	[i]	Claim	11-46.41
	[ii]	Loss	11-46.43
	[iii]	Wrongful Act	11-46.50
	[iv]	Related Claims and Related Wrongful Acts	11-46.52
	[e]	Conditions	11-46.54
	[i]	Notice of Claim/ Circumstances	11-46.54
	[ii]	Consent to Settlement/ Defense	11-46.58
[2]		Misrepresentations in the Application	11-46.59
[3]		Common Exclusions	11-46.65
	[a]	Insured vs. Insured Exclusion	11-46.65
	[i]	The Regulatory Context	11-46.66
	[ii]	The Bankruptcy Context	11-46.67
	[b]	Regulatory Exclusion	11-46.70
	[c]	SEC Exclusion	11-46.71
	[d]	Personal Profit Exclusion	11-46.72
	[e]	Prior Acts Exclusion	11-46.72
	[f]	Dishonest, Fraudulent, and Criminal Acts Exclusion	11-46.73
[4]		Allocation of Settlement and Defense Costs	11-46.77
	[a]	Settlements and Judgments	11-46.77
	[b]	Defense Costs	11-46.80
[5]		Bankruptcy and Insurer Standing Under Section 1109(b)	11-46.81
§ 11.03		Fidelity/Dishonesty Coverage	11-46.82
	[1]	Covered Loss	11-46.83

	[2]	Dishonest/Fraudulent Act.	11-46.85
	[3]	Manifest Intent.	11-46.87
	[4]	Causation	11-46.89
	[5]	Exclusions.	11-46.91
§ 11.04		Environmental Impairment Liability (EIL) Coverage	11-46.93
	[1]	Pollution Incident/Environmental Impairment.	11-46.95
	[2]	Trigger	11-46.96
	[3]	Primacy of EIL and CGL Coverage	11-52.2
	[4]	Exclusions.	11-52.3
§ 11.05		Professional Liability Coverage	11-52.5
	[1]	Insuring Agreement	11-52.5
		[a] Insured's Capacity	11-53
		[b] "Claim" Requirement.	11-57
	[2]	When a Claim Must Be Reported.	11-62
	[3]	Limits of Liability	11-65
	[4]	Potential Defenses to Coverage.	11-67
		[a] Business Enterprise Exclusion.	11-67
		[b] Prior Acts Exclusion	11-68
		[c] Dishonesty Exclusion.	11-69
		[d] Media Liability Coverage Employment Exclusion	11-70.3
	[5]	Insured's Consent to Settlement	11-70.3
§ 11.06		Employment Practices Liability Insurance	11-71
	[1]	Covered Claims and Exclusions	11-72
	[2]	Coverage under Other Types of Policies.	11-73
		[a] Comprehensive General Liability (CGL) Policies	11-73
		[b] Directors' and Officers' (D&O) Liability Policies	11-77
		[c] Workers' Compensation Insurance	11-77
	[3]	What Constitutes a "Claim"	11-78
	[4]	Selection of Counsel	11-80
	[5]	Public Policy Considerations and Limitations.	11-80
§ 11.07		The Vendor's Endorsement and the Manufacturer/Vendor Relationship.	11-84
	[1]	Methods Available to Vendors to Reduce or Avoid Liability and Defense Costs	11-84
		[a] Comparative Negligence, Contribution, and Indemnification	11-84

TABLE OF CONTENTS

xix

[b]	Indemnity Agreement	11-85
[c]	The Vendor's General Liability Insurance	11-85
[d]	The Manufacturer's CGL Insurance	11-85
[e]	Vendor's Liability Endorsement	11-85
[2]	Purpose of Vendor's Endorsement	11-85
[3]	The Vendor's Endorsement	11-86
[4]	Scope of Coverage	11-87
[5]	Exclusions	11-89
[a]	The Product Change Exclusion	11-89
[b]	The Labeling/Relabeling Exclusion	11-90

CHAPTER 12

Bad Faith and Other Extracontractual Claims

§ 12.01	Bad Faith	12-2
[1]	Historical Background	12-2
[2]	The Implied Covenant of Good Faith and Fair Dealing	12-7
[3]	Bad Faith Breach of the Duty to Settle Third Party Actions	12-9
[4]	Bad Faith Conduct That May Prejudice the Policyholder's Defense of an Underlying Action	12-14
[5]	Bad Faith Litigation Tactics	12-16
[6]	Bad Faith In The First Party Insurance Context	12-19
[7]	Reverse Bad Faith	12-22
§ 12.02	Damages Available in Bad Faith Actions	12-23
[1]	Excess Judgments	12-23
[2]	Punitive Damages	12-25
[3]	Consequential Damages	12-26
[4]	Damages for Mental Suffering	12-29
[5]	Attorneys' Fees	12-29
§ 12.03	Statutory Claims	12-34
[1]	The Model Unfair Claims Settlement Practices Act	12-34
[2]	Statutory Bad Faith Damages and Penalties	12-34.4
[3]	Consumer Protection Statutes	12-35

§ 12.04	Equitable Remedies and the Doctrine of Reasonable Expectations	12-38
	[1] Reformation and Rescission	12-38
	[2] Adhesion and Unconscionability	12-40
	[3] Estoppel	12-43
	[4] Reasonable Expectations	12-45
§ 12.05	Broad-Based Leveraged Corporate-Owned Life Insurance	12-48
§ 12.06	Extracontractual Claims Relating to Contingent Commissions	12-53

CHAPTER 13

Litigating Claims Against the London Market

§ 13.01	The London Market: What It Is and How It Functions	13-2
	[1] Lloyd's of London	13-3
	[2] London Companies Market	13-4
	[3] The Participation/Subscription Concept: Lead Underwriters and Following Market Underwriters	13-5
	[4] The Role of "Lloyd's Brokers"	13-6
§ 13.02	Litigating With the London Market: Some General Considerations	13-8
§ 13.03	Jurisdictional Issues	13-10
	[1] Determining Diversity of Lloyd's, London	13-10
	[2] Removal to Federal Court of Lawsuits Against the London Market	13-16
	[a] Diversity Cases	13-16
	[b] Foreign Sovereign Immunity Act Cases	13-17
§ 13.04	Special Discovery Issues Involving the London Market	13-22
	[1] Discovery from Following Market Insurers	13-22
	[2] Discovery of Attorneys' Reports	13-24
	[3] The Lloyd's Underwriters Non-Marine Association (NMA)	13-28
§ 13.05	Insolvencies in the London Companies Market	13-29
§ 13.06	Negotiating Settlements with the London Market	13-33

TABLE OF CONTENTS

xxi

[1]	The Specialist Claims Unit (SCU)	13-33
[2]	Equitas and the Equitas Claims Unit . . .	13-33
[3]	Effect of Insolvencies—Gross vs. Net . . .	13-37

CHAPTER 14

Trial of the Coverage Case

§ 14.01	Introduction	14-1
§ 14.02	Judge vs. Jury Issues	14-3
	[1] Existence of Contract.	14-3
	[2] Lost or Missing Policies	14-3
	[3] Meaning of the Policy	14-4
	[4] Application of Policy Terms to Facts . . .	14-7
§ 14.03	Phasing/Bifurcation	14-8
§ 14.04	Evidentiary Issues: The “Case Within a Case”	14-11
§ 14.05	Special Interrogatories vs. General Verdict Forms	14-12
§ 14.06	Allocation and Related Issues	14-13
	[1] Discussion.	14-13
	[2] <i>Chart: Allocation</i>	14-30

CHAPTER 15

Settlement of Coverage Claims

§ 15.01	General Considerations	15-2	
§ 15.02	Types of Settlements	15-3	
	[1] Policy Buy-Back or Commutation	15-3	
	[2] Claim Release: Global or Specific	15-5	
	[3] Coverage in Place	15-6	
§ 15.03	Issues Arising Out of Settlements and Settlement Agreements	15-7	
	[1] Nonsettling Insurers’ Right to Setoff and Contribution	15-7	
		[a] Setoff.	15-7
		[b] Contribution	15-10
	[2] Exhaustion of Underlying Limits	15-18	
	[3] Addressing the Impact of Settlements on Aggregate Limits and Retrospective Premiums	15-24	

§ 15.04	Addressing Contribution Concerns in Settlement Agreements Through Use of Indemnity Provisions	15-25
§ 15.05	What to Include in the Settlement Agreement	15-26
	[1] Parties Bound	15-26
	[2] Policies Involved	15-26
	[3] Scope of Release	15-26
	[4] Reservation of Rights	15-27
	[5] Effect of Settlement on Aggregate Limits and Retrospective Premiums	15-27
	[6] Indemnity Provisions	15-27
	[7] Confidentiality	15-28
	[8] Definitions	15-28
	[9] Integration	15-28
	[10] Representations	15-28
	[11] Choice of Law	15-28
§ 15.06	Arriving at Settlement: Arbitration, Mediation and Negotiation	15-29

CHAPTER 16

Insurance Coverage for Claims Arising Out of Sexual Misconduct

§ 16.01	Introduction	16-1
§ 16.02	Establishing Coverage	16-3
	[1] CGL and Homeowner's Policies	16-5
	[a] The Perpetrator as Insured	16-5
	[b] The Non-Perpetrator as Insured	16-6
	[2] Professional Liability Policies	16-8
	[a] Physicians and Dentists	16-9
	[b] Mental Health Therapists	16-11
§ 16.03	Avoiding Coverage	16-13
	[1] Public Policy	16-13
	[2] Exclusion of Intentional Conduct	16-14
	[a] Victim as Minor	16-17
	[b] Perpetrator as Minor	16-18
	[c] Victim as Adult	16-20
	[3] Sexual Molestation Exclusion	16-21
	[4] Business Pursuits Exclusion	16-23

CHAPTER 17

**Insurance Coverage for Claims
Arising Out of COVID-19**

§ 17.01	Introduction	17-1
§ 17.02	Establishing Coverage.	17-3
	[1] Physical Loss or Damage	17-3
	[2] Civil Authority	17-25
	[3] Communicable Disease Coverage	17-32
§ 17.03	Avoiding Coverage	17-34.1
	[1] Virus Exclusion	17-34.1
	[2] Pollution and Contamination Exclusions	17-38
	[3] Fungi, Wet Rot, Dry Rot and Microbes Exclusion and Microorganisms Exclusions	17-42
	[4] Loss of Use or Loss of Market Exclusions	17-42
	[5] Law and Ordinance and Acts or Decisions Exclusions	17-44

CHAPTER 18

Insurance Coverage for Aviation Claims

§ 18.01	Introduction	18-2
	[1] The Aviation Leasing Industry	18-2
	[2] The Aviation Insurance Market.	18-3
	[3] The “Perfect Storm”	18-3
§ 18.02	Insurance in the Aviation Leasing Context	18-5
	[1] Policy Overview	18-5
	[2] Contingent vs. Possessed Cover	18-5
	[3] All Risk vs. War Risk	18-9
§ 18.03	Principal Aviation Insurance Coverages	18-11
	[1] Aircraft Hull Coverage	18-11
	[2] Spares and Equipment Coverage	18-13
	[3] War and Allied Perils Coverage for Aircraft Hull, Spares and Equipment	18-13
	[4] Aviation Liability Coverage	18-15
	[5] Personal Accident Coverage	18-17
	[6] Repossession Expenses Coverage	18-17
	[7] Technical Records Coverage	18-18

INSURANCE COVERAGE DISPUTES

§ 18.04 Key Exclusions and Conditions

- Applicable to All Coverages 18-20
- [1] Whole or Partial Indemnity from
the Principal Policy 18-20
- [2] Sanctions. 18-23

§ 18.05 Other Clauses/Endorsements 18-24

- [1] The “50/50 Clause” 18-24
- [2] Measure of Indemnification for
Loss of or Damage to Aircraft:
Cost of Repairs v. “Total Loss” 18-25

INDEX I-1