



## Insurance Coverage & Bankruptcy: Practical Information for Tort and Bankruptcy Counsel

### **A Debtor's Insurance Policy is Property of the Bankruptcy Estate:**

- Insurance policies are “property of the estate” under § 541 (a)(1).
- If policyholder is a bankruptcy debtor, coverage may not commence/continue until:
  1. Relief from stay is granted; or
  2. Completion of the bankruptcy proceeding.
- Bankruptcy Courts typically allow relief from stay (or from § 524 injunction) to obtain judgment against debtor, provided:
  1. State insurance law requires judgment against debtor before recovery against insurer;
  2. Claimant agrees not to collect any monies from debtor; and
  3. Pursuit of claim does not cause undue expense to debtor.

### **A Debtor's Insurance Policy *Proceeds* are Sometimes Property of the Bankruptcy Estate:**

- Insurance proceeds from debtor's third party liability policies are generally not property of the estate because they are not payable to debtor.
  - However, where there are more claims than proceeds, or where proceeds are considered vital to resolution of bankruptcy, bankruptcy courts have ordered proceeds to stay within estate (e.g. asbestos coverage actions).
- Proceeds of first party policies (e.g. property insurance) are typically property of the estate because debtor is intended recipient of proceeds.

### **A Debtor's Insurance Policy is Generally not an Executory Contract:**

- Executory Contracts involve material obligations that are unfulfilled by debtor and creditor at time of bankruptcy filing.
- Courts generally disagree with notion that retroactive premium adjustments, unpaid deductibles and/or penalties owed, constitute material obligations which render insurance policies executory contracts.
  - Coverage cannot be voided for failure to make such payments; insurer is considered an unsecured creditor.
  - Exception: Policies will be considered executory if initial premiums are not paid at time of petition.

### **A Debtor's Discharge/Reorganization does not Void Coverage:**

- Discharge or reorganization is designed to provide a fresh start to debtor; it is not intended to absolve the responsibilities of a co-obligor or indemnitor, such as an insurer.
- Courts have generally rejected assertions that a party's failure to submit a proof of claim or obtain relief from stay in bankruptcy absolves claims for recovery against debtor's insurer.
  - However, a minority of courts have disagreed.

## AGREEMENTS THAT AFFECT RIGHTS TO INSURANCE PROCEEDS ARE SCRUTINIZED

### Negotiated Settlements May Be Objectionable:

- An injured party typically has standing to object to a liability policy “buy back” by insurer from debtor, which would render proceeds available to all unsecured creditors rather than just alleged victims.
- Insurer typically has standing to object to a bankruptcy compromise of claim between debtor and injured party where injured party agreed to pursue settlement amount from insurer.
- As a general rule a bankruptcy court’s approval of settlement will not be enforceable if:
  1. An interested party (insurer or injured tort claimant) is not provided opportunity to raise objection to the approval; and
  2. Bankruptcy court fails to articulate the reasonableness of the settlement.

### QUICK TIPS

1. Third Party claimants should file a Proof of Claim and obtain Relief from Stay as soon as possible.
2. Determine whether material obligations are owed that would render policy an executory contract.
3. Be mindful of the impact of proposed settlement agreements upon insurance coverage.

### INSURANCE COVERAGE/ BANKRUPTCY

*SDV is one of the nation’s leading law firms focused exclusively on representing policyholders in disputes with their insurance companies. We have extensive experience with negotiating and litigating insurance coverage disputes involving various types of policies including: commercial general liability, professional liability, directors and officers, builders risk, first party property, and health insurance policies.*

*The firm also has experience with the bankruptcy related matters. Tracy Alan Saxe served as a Chapter 7 Trustee for a period of seven years. Mr. Saxe and other firm members have been involved in a variety of bankruptcy adversary proceedings and insurance coverage disputes.*



### WANT MORE INFORMATION? PLEASE CONTACT...



**Tracy Alan Saxe, Partner**  
tas@sdvlaw.com

Tracy Alan Saxe has extensive experience in complex commercial litigation, specializing in insurance coverage issues. He has handled cases involving coverage for construction defects, completed operations, product liability, property damage and bodily injury related to mold and asbestos, bodily injury related to construction, “sick building” syndrome, environmental claims, business interruption, employment disputes, patent infringement, contempt, RICO, unfair practices, breach of fiduciary duty, bad faith and professional malpractice. Mr. Saxe is well versed in issues relating to late notice, allocation, subrogation, contribution, indemnification and the duty to defend.

Mr. Saxe has successfully tried numerous jury and court trials in state and federal courts, has handled cases before the federal, state trial and appellate courts in Connecticut, New York, Pennsylvania, Texas, Florida, Delaware and Michigan and has successfully mediated and arbitrated many disputes.

Mr. Saxe has been an Adjunct Professor of Law at Quinnipiac University School of Law where he has taught courses in insurance law. He is also a frequent lecturer nationally on insurance coverage topics. He received his J.D. from Georgetown University Law Center, and his B.A. in Policy Studies, magna cum laude, Phi Beta Kappa, from Syracuse University.



**Jeffrey J. Vita, Partner**  
jjv@sdvlaw.com

Mr. Vita has broad experience in many aspects of general commercial litigation, most notably concerning insurance coverage issues. In the last several years, Mr. Vita has focused his practice on the representation of business policyholders in large, multi-state insurance coverage matters involving coverage for comprehensive general liability, directors & officers, professional liability, aircraft liability, builder’s risk, subguard, first party property damage, additional insured, health care, life insurance and disability. Mr. Vita has handled cases involving coverage for construction defects, completed operations, product liability, property damage and bodily injury related to mold and asbestos, bodily injury related to construction, “sick building” syndrome, environmental claims, business interruption, employment disputes, patent infringement, contempt, RICO, unfair practices, breach of fiduciary duty, bad faith and professional malpractice. Recently, Mr. Vita successfully pursued pension and life insurance benefits on behalf of several Connecticut municipalities. Currently, Mr. Vita is representing health care providers in connection with disputes arising out of the provider/payer relationship, including reimbursement.

Mr. Vita has successfully tried numerous court trials and commercial arbitrations. He also has authored numerous articles on insurance coverage issues and has lectured frequently on a variety of insurance coverage topics including bad faith claims and late notice, allocation, subrogation, contribution, indemnification and the duty to defend.

Mr. Vita currently serves as chairman of the Insurance Law Section of the Connecticut Bar Association and is an Adjunct Professor of Law at the University of Connecticut School of Law, where he teaches “Insurance Coverage Litigation.” Mr. Vita received his J.D. from Quinnipiac University School of Law, where he served as Managing Editor of the Law Review. He received his B.A., cum laude, from the University of Connecticut.