

# Property Insurance

For more than 50 years, major domestic and international insurers have relied on Cozen O'Connor's Property Insurance team to assist them in navigating the increasingly complex field of property coverage. From hurricanes, earthquakes, and ice storms to man-made disasters such as terrorist attacks and oil spills, we have always been on the cutting edge of property insurance work. We were also pioneers in business interruption matters stemming from the COVID-19 pandemic, as well as the rising threat of cyberattacks. Our deep experience helps us to not only handle the matters at hand but also identify emerging challenges on the horizon.

Our team is distinguished by its dual core competencies: precise contractual analysis and powerful trial advocacy. These competencies have cemented our reputation as knowledgeable and effective first-party practitioners for the full range of first-party property insurance coverages, including: all risks, builders risk, commercial property, commercial combined, cyber and electronic commerce risk, high net worth personal, inland marine, machinery breakdown, on- and off-shore energy, and business interruption.

The firm handles trials in state and federal courts around the country, argues appeals on coverage issues critical to the industry before all levels of appellate courts, and represents clients in mediations and arbitrations. Our strong reputation for successfully representing our insurer clients in court also helps us achieve highly favorable outcomes in the many cases where negotiation among stakeholders can resolve matters without resorting to litigation.

Our team has an encyclopedic knowledge of the legal bases governing the good faith handling and resolution of any claim scenario, from weather events and natural catastrophes to structural incidents to suspected arson and fraud, and we have represented clients in numerous high-profile losses. These losses include the 2021 ice storms in Texas, Oklahoma, and New Mexico, Hurricanes Laura, Irma, and Katrina, Superstorm Sandy, the 9/11 attacks, the Tohoku earthquake, numerous California wildfires, and the Deepwater Horizon oil spill.

With offices in 32 cities, Cozen O'Connor can respond quickly and effectively wherever losses occur. Our clients benefit from the firm's local presence and the advantages that come from fielding a home team that understands the details of a particular locality and has built relationships with the community, the regulatory authorities, and the courts.

The extent of our industry involvement speaks to our credibility, as well as to our commitment to the insurance industry. Our dedication to the insurance industry includes being members and holding leadership positions in many industry organizations, including the highly selective Federation of Defense & Corporate Counsel (FDCC), the Claims and Litigation Management Alliance (CLM), the American College of Coverage Counsel's Board of Regents, Law360's Insurance Authority Property Editorial Board, and DRI.

Our attorneys are sought-after speakers and writers on property insurance topics. We frequently participate in or chair seminars at nationally recognized industry conferences, host webinars, and provide in-house training programs for members of the insurance industry on topics such as claims handling, risk management issues, and updates regarding case law. Several of our attorneys have also authored treatises in the property insurance field, including the *Property Insurance Litigator's Handbook* (3d Ed.), *Insuring Real Property* (Matthew Bender) and the *Fire Litigation Handbook* (National Fire Protection Association).

In addition to being recognized in Chambers USA, individual members of the Property Insurance team have been honored with some of the most prestigious awards in the profession, including the FDCC's



**Stephen P. Pate**

Co-Chair, Property Insurance Group

spate@cozen.com  
Phone (832) 214-3957  
Fax (832) 214-3905



**Paul Ferland**

Co-Chair, Property Insurance Group

pferland@cozen.com  
Phone (212) 453-3914  
Fax (212) 509-9492

## Related Practice Areas

- Bad Faith
- Casualty & Specialty Lines Coverage
- Insurance Corporate & Regulatory
- Insurance Coverage
- Professional Liability Insurance Coverage
- Property Insurance
- Strategic Risk & Complex Litigation

## Industry Sectors

- Insurance

## Experience

Won pre-answer dismissal of a lawsuit seeking insurance coverage for stolen antiquities that a policyholder surrendered to prosecutors for repatriation. The policyholder had purchased the artifacts from top auction houses and relinquished them under a non-prosecution agreement with Manhattan's Antiquities Trafficking Unit. After the auction houses refused refunds, he sought compensation under his condo policy, which insured "all risk of physical loss." We successfully argued that the loss was not covered because it resulted from defective title, not physical damage or destruction. The decision highlights prosecutors' increasing crackdown on stolen antiquities and artwork, and signals that collectors who acquire stolen valuables (even unknowingly) are unlikely to recoup their costs from insurers.

---

Won summary judgment for the insurer in a case in which coverage was denied for water damage, based on Surface Water and Groundwater Exclusions in the insureds' policy. Plaintiffs' expert attributed the damage to a "weather event" but disputed the characterization of surface and ground water, and Plaintiffs further argued that the exclusions were ambiguous. In granting summary judgment, the court held that the exclusions were clear and unambiguous and that, based on the policy language and the insurer's expert report, there was no reasonable basis for Plaintiffs to expect coverage.

---

Secured a mid-trial withdrawal with prejudice by the plaintiffs after three weeks of jury selection and testimony in a fraud case against an insurer pending in Los Angeles Superior Court. The coverage dispute arose out of a suspicious fire at a Hollywood Hills home for which the insureds presented a multimillion-dollar claim, which an investigation revealed to be fraudulent.

---

Secured pre-answer dismissal of a lawsuit filed by insureds seeking indemnity for approximately \$1.8 million in property damage. In dismissing the case, the court accepted our argument that the insureds' failure to comply with the policy's notice provision precluded reimbursement as a matter of law.

---

Secured dismissal of our insurance company client from a COVID-19 related coverage action, defeating the insured's argument that its property had suffered physical damage in the form of the virus attaching itself to the property. The insured sought damages totaling more than \$200 million.

---

Secured victory on behalf of an insurer on a Motion for Reconsideration in a COVID-19 business interruption coverage dispute involving several popular South Florida hotels, with the court holding that only perils which cause direct physical loss or damage to the property described in the policies are recoverable under the business interruption coverage, and that the insurer was therefore entitled to judgment on the pleadings.

---

Won summary judgment for the insurer in a case centering on its denial of a \$1.4 million claim for stolen art work where the plaintiffs failed to prove that a loss occurred during their policy period.

---

Won a defense verdict in favor of the insurer following a seven-day jury trial in the Eastern District of New York, after 7 years of litigation over an approximately \$50 million insurance claim made by an insured manufacturer of chocolate products for damages from Superstorm Sandy. The insured made a claim under its commercial property policy for damage to its building, machinery, and inventory, as well as its lost profits, arguing that a windstorm deductible endorsement in the policy rendered the policy's flood exclusion ambiguous and that extrinsic evidence did not resolve the ambiguity. In

finding for the insurer, the jury found that the available extrinsic evidence demonstrated that the insured had no genuine expectation that a wind-driven flood such as it experienced during Superstorm Sandy would be covered under the policy.

---

Secured pre-answer dismissal of a mega COVID-19 coverage case in New York state court, brought by 94 bars, restaurants, and hotels against 42 insurers. The court held that New York law is clear that commercial property insurance coverage is not triggered for "physical loss or damage" caused by government orders, whether for partial or complete shutdowns. Nor do policyholders' own alterations (like installing Plexiglas and demarcating six-foot's distance) constitute property damage.

---

Successfully moved to dismiss a COVID-19 business interruption claim filed by Highgate Hotels, L.P. and its affiliates to recover under a first-party property policy issued by our client. Plaintiffs claimed that the business losses incurred as a result of the COVID-19 pandemic and the resulting government orders were covered losses under the policy. In dismissing the claim, the court agreed with the argument that there was no "direct physical loss or damage" to covered property, and therefore no coverage under the policy.

---

Obtained a dismissal with prejudice for a commercial property insurer in a lawsuit brought against it by a condominium that sought in excess of \$1.5 million for replacement of its entire cast iron plumbing system.

---

Secured a favorable settlement for a commercial property insurer in a multi-party lawsuit involving a \$15 million claim for Hurricane Irma damage to more than twenty buildings.

---

Successfully reached a global resolution of seven lawsuits brought against our client by a contractor seeking payment for alleged repairs, which were disputed. The resolution was reached after the client filed counterclaims against the contractor. The litigation required our team to review hundreds of similar lawsuits filed by the contractor and to extensively review the company's web site and social media to establish a pattern of conduct.

---

Won summary judgment in the U.S. District Court for the Southern District of New York on behalf of the insurer in a case arising from a \$2 million residential arson fire that destroyed the plaintiff's home, as well as a prototype for a new device that was allegedly the subject of a \$300 million contract, together with personal property worth more than \$1 million. After conducting an investigation that revealed that the plaintiff provided untruthful information about the claim, as well as multiple prior foreclosure actions and several bankruptcies, the insurer denied coverage under the plaintiff's homeowner's insurance policy on the basis that the owner of the property had procured the fire, and citing provisions prohibiting "fraud and concealment" and requiring the insured to cooperate with the insurer's post-fire investigation. Despite the high bar for granting summary judgment on the basis of fraud, the court ruled in the insurer's favor, finding that the record established clear and convincing evidence of fraud and concealment enabling the court to rule in favor of the insurer as a matter of law. The court also found that the plaintiff failed to cooperate with the post-fire investigation under the terms of the homeowner's policy by refusing to answer questions about his financial condition and other relevant areas of inquiry.

---

Successfully moved to dismiss a declaratory judgment action in which the owner of a new residential building in New York City sought a declaration that our client was obligated to defend and indemnify it for repair and remediation costs it incurred when the building at the construction project, and the building next door, were allegedly damaged by a subcontractor insured by our client. Defeated the plaintiff's argument that it qualified as an additional insured because the insured's subcontract incorporated the insurance and indemnification provisions of the trade contract between the owner and the general contractor. In granting the motion to dismiss, the court agreed that the incorporation

clause was binding only as to prime contract provisions relating to the scope, quality, character, and manner of the work to be performed by the subcontractor and not to insurance and indemnity provisions, which must be strictly construed.

---