PEGUE & THOMPSON

ANALYZE

STRATEGIZE

RESOLVE

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Insurance Coverage, Bad Faith, and Recovery In California and New Mexico

Ms. Jaymeson Pegue and Mr. Philip Thompson have worked together as a team for almost 35 years.

They co-founded the Los Angeles-based law firm of Nelsen, Thompson, Pegue & Thornton APC in 1987, which was recognized in the areas of insurance coverage, bad faith, and recovery by Best Lawyers (2012) and other leading publishers over the course of its 28-year history. They launched the firm Pegue & Thompson in 2015 after relocating to Santa Fe. Their practice continues to serve clients across California and New Mexico.

Best Lawyers BEST LAW FIRMS U.S.News 2020

Pegue & Thompson Is Pleased to be Recognized as a Tier 1 Best Law Firm for Insurance Law in Santa Fe, New Mexico

Focused on Complex Claims

The strength of Pegue & Thompson is in the representation of clients in difficult insurance coverage matters involving multiple claimants, law firms, and insurance carriers. Many of the firm's cases involve high profile disputes that draw national media attention.

The firm also represents clients in bad faith claims. The bad faith matters have involved both third party and first party issues of defense, settlement, and fraud.

Pegue & Thompson has developed a three-step formula to maximize case outcomes: Analyze, Strategize, and Resolve. The firm excels at comprehensive and focused analysis. Realistic and effective legal strategies are then created, reflecting all case dynamics. Finally, the firm works with the client to establish a beneficial path to resolution, whether by motion practice, alternative dispute resolution, or trial. The firm strives for maximum results while providing clients with responsive and efficient service.

Ms. Pegue and Mr. Thompson both have extensive trial and appellate court experience. They are skilled in the use of alternative dispute resolution (ADR) techniques, and have participated in hundreds of mediations, binding arbitrations, and settlement conferences.

Licensed in California and New Mexico

Between the two partners, Pegue & Thompson is licensed in all California and New Mexico courts, as well as U.S. District Courts in both states, and the U.S. Court of Appeals for the Ninth Circuit.

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The Insurance Coverage Practice

Pegue & Thompson's insurance coverage practice focuses on providing coverage analysis and advice, as well as litigating insurance coverage disputes. This includes declaratory judgment actions, recovery actions, extra-contractual defense, and errors or omissions defense. The partners often take the lead counsel role in multi-party matters, while also striving to negotiate and settle coverage-related claims using arbitration or mediation whenever possible.

Members of the firm have investigated thousands of coverage tenders, written thousands of coverage opinions, denial letters, and reservation of rights letters. The partners are also available to give "second opinions" when coverage counsel is already on a matter, but a fresh look is desired.

The range of coverage matters handled by members of the firm is outlined in more detail below.

Bad Faith

Members of the firm defend complex matters of policy interpretation. Analysis includes the sufficiency of the investigation, coupled with the application of numerous policy provisions. Cases often involve alleged fraud by the insured.

In matters of first impression, the firm is called upon to litigate the coverage determination itself and ancillary theories of extra-contractual recovery. Cases often represent a large monetary exposure to the client, with technical issues which may affect future insurance policy terminology, drafting, and usage.

Many cases are resolved with the use of a motion for summary judgment. If a case does proceed to trial, the firm's litigators are experienced in presenting evidence to the court and jury in a persuasive format.

Insurance Defense

For decades, members of the firm have defended insureds under general liability, errors or omissions, homeowners and auto policies in a wide variety of suits covered by those policies. This includes employment, construction, contract matters, and defamation and disparagement cases.

Commercial General Liability Coverage

Coverage advice and settlement expertise involving the entire scope of CGL coverage issues is available.

Homeowners Coverage

The firm offers coverage advice and settlement experience in small to multi-million-dollar homeowners coverage claims. Disputes often involve the meaning of "accident," priority of coverage/other insurance, "who is an insured," and the business pursuits exclusion.

Automobile Coverage

From UM/UIM to "priority of coverage," from Insurance Code §11580.9 to supplemental liability insurance, members of the firm have successfully handled all manner of auto-related coverage disputes and litigation.

Construction Defect Coverage

Complex construction defect disputes involving a multitude of parties and claims are handled by the partners. Cases often relate to the construction of multi-million-dollar public, private, commercial, or residential projects. Partners take a lead role in creating pathways to settlement, and have a track record of resolving very challenging cases.

Entertainment Coverage

Entertainment industry errors or omissions, CGL policy provisions including personal and advertising injury, negligence, and breach of contract are addressed.

Intellectual Property

Coverage disputes on copyright, trademark, trade dress infringement, disparagement, defamation, and unfair competition are all handled by the firm.

Additional Practice Areas

Litigation

Pegue & Thompson attorneys have extensive experience in all aspects of litigation up to and including trials and appeals. Members of the firm have successfully advocated for clients' interests in jury trials, court trials, and arbitrations, with several private trials extending over the course of many months.

The partners have litigated numerous declaratory relief matters in both state and federal courts. The issues litigated include questions of the duty to defend and indemnify, disputes among and between carriers, and the defense of counter-claims for bad faith. The policies included first and third-party coverage, issued at both the primary and excess levels.

Members of the firm have also litigated dozens of extra-contractual cases for a major national carrier, many of which included claims of fraud by the policyholder.

Litigation avoidance is always prioritized, and the majority of cases settle. Members of the firm have participated in hundreds of mediations, settlement conferences, and negotiations.

Mediation Practice

Jaymeson Pegue is available for mediations. As a Certified Mediator in the State of New Mexico, she is qualified to mediate both legal disputes and in the arena of facilitative mediation.

Recovery

Members of the firm have successfully handled numerous recovery matters leading to large recoveries, with several eight-figure recoveries.

Expert Witness Retention

The partners are available to serve as consultants and/or expert witnesses. Issues concerning the sufficiency of a carrier's investigation, the nature of the carrier's investigation in light of substantive coverage issues, and the scope of a carrier's investigation when questions of fraud exist are all analyzed.

Members of the firm also offer claim handling analysis and "second opinion" consultation when coverage counsel is already involved.

Multi-Carrier, Complex Claims

Members of the firm are accomplished in negotiating settlements of large, complex multi-carrier insurance claims and litigation.

Fee Disputes

Members of the firm are experienced in attorney fee disputes involving the amount of fees charged, entitlement to fees, and ethical issues involving fee agreements associated with D&O liability. The firm has particular knowledge as to the application of California Civil Code § 2860 and Buss allocations.

Insurance Coverage and Litigation Experience by Policy Type

Commercial General Liability Insurance (CGL)

- Bodily injury
- Property damage
- Personal injury offenses (libel, slander, wrongful entry, discrimination, etc.)
- Advertising injury (trade libel, etc.)
- Duty to defend and/or indemnify under primary policy
- Duty to indemnify, under excess policy

Examples of CGL cases include the following:

- Sexual harassment and molestation
- Bodily injury with survival
- Business disputes
- Class actions
- Construction defect
- Construction injury
- Discrimination
- Employee injury
- Libel or slander
- Property damage
- Unfair competition
- Wrongful death

Homeowners Insurance (Primary & Excess)

The firm handles both first-party property loss and third-party liability:

- Business first party property loss
- Pollution insurance
- Auto coverage
- Theft

Management and Professional Liability

- Errors or Omissions (E&O) coverage
- Directors & Officers (D&O) coverage

Subrogation and Equitable Contribution on All Types of Policies

Jaymeson Pegue represents national carriers on issues of insurance coverage, bad faith, and recovery matters. She works extensively with both third party and first party policies, and concentrates in the litigation and resolution of large scale, multi-party cases. She strives to reconcile diverse and competing interests of carriers and plaintiffs alike, and is experienced in construction defect cases with significant exposure and complex legal issues.

Ms. Pegue has significant trial experience in both state and federal court. She has also handled countless arbitrations, argued on multiple occasions at the appellate court level, and has been the voice and legal representative of the carrier in over 100 mediations. She is a native of Albuquerque, New Mexico.

Honors and Awards

AV® Preeminent Peer Review Rated by Martindale-Hubbell
Listed in California Super Lawyers, 2009-2019
Listed in "Top Women Litigators," *The Daily Journal*, 2009

Selected Publications

- Author, "3 Little Words: Arising Out of," *The Los Angeles | San Francisco Daily Journal,* June 15, 2018.
- Author, "From Mudslides to Molestation, A Question for the Legislature," *The Los Angeles | San Francisco Daily Journal,* May 11, 2018.
- Author, "Insurance Coverage in the World of Climate Change," *The Los Angeles | San Francisco Daily Journal*, May 2, 2018.
- Author, "Facilitative Mediation and the Value of Listening," *The Los Angeles | San Francisco Daily Journal,* February 2, 2018.
- Author, "Who Will Pay for Your #MeToo Experience?," *The Los Angeles | San Francisco Daily Journal,* January 11, 2018.
- Contributing author, "Reasonable Expectations Interpreting Insurance Policies in Common Law Jurisdictions,"Chapter on New Mexico Law, ABA Book Publishing, 2016.
- Co-author, "Harnessing a Will-Do Spirit," *Los Angeles Daily Journal*, April 26, 2013.
- Co-author, "Pitfalls of Private Trials," *The Recorder*, May 9, 2011.
- Contributing author, "Extra-Contractual Claims Against Insurers," within the chapter, "Strategies for Defending Claims Against Insurer Clients," Thomson Reuters, 2010.
- Author, "Handle with Care," *Claims Magazine*, Property Casualty 360, November 2009.

Selected Speaking Engagements

- Speaker, American Conference Institute's 29th National Forum on Bad Faith Claims and Litigation, "Procedural Issues in Bad Faith Litigation: Removal from State to Federal Court, Choice of Law and Jurisdictional Differences for Establishing Bad Faith," Orlando, 2014.
- Speaker, National Association of Insurance Women, The American Conference Institute, New Orleans, 2010.
- Speaker, IRMI Construction Risk Conference, San Diego, November 2011.
- Speaker, National Association of Subrogation Professionals, March 2011.
- Speaker, CLM 2010 Annual Conference, Florida.

Education

Certified Mediator, University of New Mexico, 2016
J.D., McGeorge School of Law, University of the Pacific, 1982
-- Member, Phi Kappa Phi
-- Member, Moot Court Executive Committee
-- Recipient, "Best Oralist" Award, Moot Court Competition
B.A., *magna cum laude*, Sociology, Arizona State University, 1976

Admissions

California, 1982
U.S. District Court, Northern and Central Districts of California
U.S. Court of Appeals, Ninth Circuit

Phil Thompson has 35 years of experience in business litigation, insurance coverage, and subrogation, including numerous trials, arbitrations, mediations, and appeals.

He has written thousands of coverage opinions involving business disputes, construction defects, bodily injury, property damage, advertising injury and personal injury under both primary and excess policies for CGL, auto, homeowners, and premises claims.

Mr. Thompson also has extensive experience in subrogation matters, and recovered more than $11 million in one case alone.

Honors and Awards
Listed in Southern California Super Lawyers, 2011-2019

Publications
- Author, "ADR from an Insurance Company Perspective," *New Mexico Lawyer,* the magazine of the State Bar of New Mexico, June 2018.
- Co-author, "Harnessing a Will-Do Spirit," *Los Angeles Daily Journal*, April 26, 2013.
- Commentator, "9th Circuit: Excess Insurer Off the Hook in $800 Million Drive Suit," *Westlaw Journal Insurance Coverage,* 2012.
- Author, "What De-Publishing a Decision Means," *Law 360*, California Insurance Appellate Section, February 2011.
- Co-author, "Is Liability Coverage for Negligent Hiring No More?," *Los Angeles Daily Journal*, August 2010.
- Author, "Reservation of Rights Does Not Mandate Independent Counsel," *Los Angeles Daily Journal*, October 20, 2009.
- Commentary author, "Exactly What Is an 'Accident'?," Mealey's Litigation Report: California Insurance, August 2008
- Author, "Cruel Intentions?," *Los Angeles Daily Journal*, July 26, 2008.
- Co-author, "Minding the Cap," *Los Angeles Daily Journal,* July 17, 2008.

Education
J.D., Loyola Marymount University, Los Angeles, CA, 1982
B.A., *cum laude,* California State University, Northridge, CA, 1975

Admissions
California, 1982
New Mexico, 2016
U.S. District Court, Northern, Central, Southern, and Eastern Districts of California
U.S. Court of Appeals, Ninth Circuit

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Representative Cases for Jaymeson Pegue*

First Party Property
Ms. Pegue was lead trial counsel in a bad faith and coverage matter on a first party property policy case involving the doctrine of efficient proximate cause. She led multiple motions for summary judgment on the legal issue of concurrent causation, lengthy discovery, multiple mediations, and a two-week jury trial.

Construction Defects
Ms. Pegue acted as a lead coverage counsel in a construction defect matter involving a luxury resort. She facilitated a global settlement among all litigants and their carriers. After resolution was achieved, Ms. Pegue pursued and obtained full reimbursement of the entire settlement paid by her client in the sum of $25 million.

She oversaw the resolution of the underlying cases, created the coverage approach, interfaced with the insured, routinely presented the case to the upper management of the client as part of a risk assessment strategy, and tried the first phase of the case in Orange County Superior Court.

In a different matter, Ms. Pegue acted a lead coverage counsel and trial counsel in a construction defect matter based upon dozens of underlying suits filed against a major national developer and builder. The case involved the rendering of coverage advice on issues surrounding the nature and extent of covered property damage, the question of what qualifies as exhaustion of primary coverage, and the successful pursuit of appellate relief on the question of attorney-client privilege in the arena of the insured's contention that coverage counsel acts as a "super adjuster."

Class Action
Ms. Pegue is currently working as coverage counsel on a New Mexico class action matter involving loan practices by private entities on one of New Mexico's Native American reservations.

Bodily Injury
Obtained a significant settlement for an insurance company client in a severe injury case that was approximately 10 percent of the plaintiff's demand going into mediation.

** Disclaimer: Every case is different.*
Past results do not guarantee future outcomes.

Employment Practices
In a wrongful termination case which spanned the development of wrongful termination law in California, Ms. Pegue was lead defense counsel for the entirety of the eight-year pendency of the case. As the substantive case law evolved, Ms. Pegue contested the sufficiency of the evidence, leading ultimately to the dismissal of the suit.

In a separate case, Ms. Pegue recently represented the president of a major university in a matter alleging a hostile work environment. Ms. Pegue's client reached a settlement with the university after asserting violations of the right of privacy.

Unfair Competition
In an unfair competition case involving market competitors, the insured settled the case, and thereafter demanded that Ms. Pegue's client pay the verdict of $17 million. Ms. Pegue successfully moved for summary judgment on the matter. On appeal, she argued the matter and obtained a ruling from the appellate court upholding the trial court ruling. Beyond issues of late notice, the appeal concerned the insured's burden of proof in showing that a verdict containing covered and uncovered aspects is within the policy insuring agreement.

Duty to Defend
Ms. Pegue represented a carrier in a protracted private trial in which the insured contended that the carrier's imposition of the hourly rate limitation under Civil Code Section 2860 was tantamount to a denial of the duty to defend, freeing the insured to settle the case without the carrier's consent. Ms. Pegue's client prevailed.

Intellectual Property
Ms. Pegue acted as co-counsel in a patent infringement matter concerning cutting edge technology. She acted in a dual capacity for the client, creating and achieving a settlement and obtaining the participation of the carrier in the defense of the case.

Entertainment
Obtained resolution of a dispute over defense and indemnity involving defamation against an insured celebrity. Ms. Pegue's insurance carrier client walked away without having to pay anything.

Representative Experience and Cases for Philip H. Thompson*

Career Highlights
Over the course of his career, Mr. Thompson has:

- written more than 1,000 coverage opinions,
- settled hundreds of cases,
- written over 50 summary judgment motions,
- tried six bench trials, and
- served as first chair on two jury trials.

He headed a California insurance coverage unit for a major national insurer from 2003 to 2013. During this time, he gained considerable experience in preparing coverage opinions on commercial general liability and homeowners claims.

Construction Defects
Mr. Thompson acted as appellate counsel in a writ proceeding in a construction defect matter based upon dozens of underlying suits filed against a major national developer and builder. He successfully litigated the question of attorney-client privilege relating to the insured´s contention that the insurer´s coverage counsel was acting as a "super adjuster."

Subrogation
Mr. Thompson represented an insurer in a subrogation arbitration based on settlement of over 50 injuries and three deaths as the result of a chain restaurant selling food tainted with Hepatitis C, recovering $11 million for the insurer from a third party.

** Disclaimer: Every case is different.*
Past results do not guarantee future outcomes.

Third Party Property Damage
Mr. Thompson chaired a committee that was appointed by a trial judge to oversee a landslide case. Parties included the State of California, the County of Los Angeles, more than 250 damaged properties, over 250 cross-defendants, and over 250 law firms. Mr. Thompson managed the case through settlement, working very closely with the trial judge.

First Party Property
Mr. Thompson handled a $4 million declaratory relief first party property case and a bad faith cross-complaint for an insurer involving a satellite that failed to activate once put into space.

Inland Marine Coverage
In a coverage case involving a significant trucking accident, Mr. Thompson won summary judgment on behalf of an insurer.

Bad Faith
Mr. Thompson settled a bad faith suit brought by a father involving liability insurance for the wrongful death of a child as the result of a boating accident.

Sports Litigation
Mr. Thompson settled a case on behalf of an NBA sports agent who was denied full compensation by his employer.

Homeowners Property Damage
Mr. Thompson settled a homeowner property damage suit against a realtor and a home inspector.

Law Firm Operations

Billing Philosophy

Pegue & Thompson is committed to providing comprehensive services with consistent communication for a cost-effective claim value.

The firm can get involved in a case with only one or two lawyers and quickly take command of the situation. Even a long-term case with a history of several failed settlement attempts is tackled with a fresh perspective and a goal of efficient closure.

Settlement strategies are designed to reconcile the diverse and competing interests of defendants and plaintiffs alike. In this regard, the firm provides insurance carriers and self-insured entities with significant value when complex cases are resolved and the client may be able to release reserves set aside for the claim.

Electronic Billing

Pegue & Thompson utilizes the Practice Panther law practice management software, which is used by thousands of law firms in 35 countries. Capabilities include enterprise level security and 256-bit military grade encryption.

The firm adheres closely to all litigation guidelines, and can provide reports and invoices electronically in any requested format.

Ethics and Professional Liability

The firm does not represent plaintiffs in personal injury matters.

Neither the firm, nor any of its attorneys, have been subject to any disciplinary action by a court of law or state bar association.

The firm maintains a professional liability policy through Aspen American Insurance Company, details of which are available on request.

References

References available upon request.

Firm Contact Information

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