



**Charles L. Philbrick**

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Charlie has handled complex business litigation matters in the areas of insurance coverage and recovery, patent, copyright and trade secret infringement and business torts for the past 20 years. He has extensive trial experience and has successfully handled insurance coverage lawsuits in numerous jurisdictions across the country, including the states of: California, Illinois, Massachusetts, Michigan, Minnesota, New York, New Jersey, Ohio, Oregon, Rhode Island, Texas, Washington, and Wisconsin.

Charlie's insurance coverage experience is extensive. For the past nineteen years he has handled cases involving first party property, life and disability, boiler & machinery, errors and omissions, workers' compensation, directors and officers, primary and excess general liability and environmental impairment policies. He has successfully litigated disputes including business interruption, notice, pollution exclusion, fortuity and related issues of bad faith, negligent inspection, premium refund and misuse of a service mark.

**Practice Areas**

- Insurance Recovery
- Litigation

**Background & Education**

- New England School of Law (J.D., 1988)
- Trinity University (B.A., 1985)

**Bar Admissions**

- 1988 Illinois Supreme Court
- 1989 U.S. District Court - Illinois (Northern and Southern Districts)
- 1990 District of Columbia
- 1990 U.S. District Court - California (Southern District)
- 1995 U.S. District Court - Texas (Northern District)
- 1996 U.S. Court of Appeals, Seventh Circuit
- 1996 U.S. District Court for Southern Illinois
- 1997 U.S. District Court Michigan (Eastern District)
- 2005 U.S. District Court for the Western District of Michigan
- 2008 U.S. Court of Appeals, First Circuit
- 2011 U.S. District Court for the Central District of Illinois
- All State Courts in Illinois

## Awards & Achievements

- BV® Distinguished™ 4.4 out of 5

## Prior Work Experience

- Dowd & Dowd/Gleason McGuire & Schreffler - Associate (1988 - 1992)
- Robins Kaplan Miller & Ciresi - Associate (1992 - 1998)
- McBride, Baker & Coles - Associate (1998 - 2003)
- Holland & Knight, LLP - Partner (2003 - 2009)

## Cases

### INSURANCE COVERAGE LAWSUITS AND ENGAGEMENTS

- *Picerne Military Housing, LLC et al. v. American Specialty Lines Ins. Co.*, Case No. 08-273 (U.S. Dist. RI): Mr. Philbrick is lead counsel for a contractor of military housing against its legal liability insurance carrier with respect to the denial of a claim for the clean-up of demolition debris that was illegally dumped by a subcontractor. Clean-up costs exceed \$15 million dollars. The case is scheduled for a jury trial in December 2011.
- *Morrow Equipment Co. v. Royal Insurance Co. of America*, Case No. 02 CH 4408 (Circuit Court of Illinois, Cook County): Mr. Philbrick represents the contractor AMEC/Morse Diesel in an insurance coverage dispute arising from the interaction between OCIP and general liability insurance. The case presents an issue of first impression with respect to the horizontal exhaustion in the context of OCIP insurance.
- *Wausau Underwriters Ins. Co. v. Pronto Staffing, Inc.*, Case No. 11-CV-0928 (U.S. Northern District for the District of Illinois): Mr. Philbrick represents an employment agency in a dispute with its workers' compensation carrier over claim mismanagement and the amount of retrospectively rated premium adjustments.
- Workers' Compensation Premium Refund Claims: Mr. Philbrick represents numerous insureds in actions pending throughout Illinois and in Minnesota to recover workers' compensation premiums where the carrier overcharged the insured by failing to properly apply the experience modification factor, the schedule rating factor or the contractor's credit. Several of these cases have been successfully settled while others continue to be litigated. The Illinois Appellate Court affirmed in one decision that an arbitration clause in a retro agreement does not require arbitration of the premium refund issue. *See, Keeley & Sons v. Zurich American Ins. Co.*, 947 N.E.2d 876 (Ill. App. Ct. April 13, 2011).
- *Country Mutual Ins. Co. v. Best Pallet, LLC, et al.*, Case No. 2009 CH 47205 (Circuit Court of Illinois, Cook County): Mr. Philbrick is coverage counsel on behalf of the insureds in a coverage dispute involving an underlying race discrimination case. The insurance carrier denied defense and indemnification in light of the employment exclusion in the general liability insurance policy. The Circuit Court recently granted summary judgment in favor of the individual named insured on the duty to defend based on with respect to the separation clause.
- *Prate Installations, Inc. v. Zurich American Insurance Co.*, Case Number 11 L 447 (Circuit Court of Illinois, Lake County): Mr. Philbrick represents a roofing contractor against its general liability and workers' compensation carrier with respect to the carrier's breach of the duty to defend and indemnify with respect to construction

defect claims and also to recover premium refunds on various workers compensation policies.

## **PAST COVERAGE CASES**

- *Catholic Health Partners v. Lexington Ins. Co.*, Case No. 01 L 1941 (Circuit Court of Illinois, Cook County): Mr. Philbrick represented a hospital/medical center against its hospital professional liability (medical malpractice) insurance carriers and the insurance broker with to sufficiency of notice of claims, proper allocation of claims/exhaustion of aggregate limits and applicability of the “knowledge of circumstances” exclusion. Circuit Court Judge Preston granted the hospital/medical center summary judgment against the insurance carriers in the amount of just over \$10 million. The Appellate Court affirmed.
- Insurance Recovery for Environmental Claims: Mr. Philbrick represented a postreorganization policyholder in its efforts to recover under its liability insurance program that was in effect from 1958 to 1985 for various environmental claims and cleanup costs for sites and facilities across the country. Environmental liabilities exceeded \$50 million. Settlements were reached with various primary and excess carriers without resort to litigation.
- *Romer v. PreferredOne Ins. Co.*, Case No.: CV-08-11910 (District Court of Minnesota, Olmstead County): Health insurance carrier rescinded private health insurance contract for allegedly false statements in application. Insured brought wrongful rescission action and carrier sued insurance broker and wholesale broker for contribution. Mr. Philbrick represented the wholesale broker and prosecuted the wrongful rescission action to establish carrier liability for wrongful conduct.
- Brownstone Homes LLC: Mr. Philbrick represents a general contractor/townhome developer as part of its defense of several construction defect lawsuits pending in Oregon State Court involving large multi-unit developments. Mr. Philbrick’s responsibilities include pursuing insurance recovery from non-participating carriers, overseeing the defense provided by defending carriers, challenging reservation of rights, maximizing insurance recovery, participating in mediations and representing the client’s uninsured interests.
- *Transportation Ins. Co., et al v. Baxter & Woodman, Inc. et al.*, Case No. 07 CH 30091 (Circuit Court of Illinois, Cook County): Mr. Philbrick represents and engineering firm in a coverage dispute arising out of a wrongful death action at a work site. Coverage issues include the professional services exclusion in a Owners and Contractor’s Protective policy, an OCIP exclusion in a CGL policy and application of other insurance provisions in excess and E&O policies.
- JDA Associates/Blasting Claims: Mr. Philbrick acted as coverage counsel for a large construction partnership doing extensive blasting work for the expansion of Chicago’s Deep Tunnel project. Coverage issues concern allocation and number of occurrences resulting from claims for property damage from blasting activity.
- Formosa Plastics USA/April 23, 2004 Plant Explosion: Holland & Knight deployed a team of lawyers to represent Formosa with respect to a catastrophic loss from a plant explosion in the spring of 2004. Mr. Philbrick’s provided guidance on all insurance coverage issues, which ranged from pollution legal liability to the adjustment of a property and extra expense loss in excess of \$100 million.
- *Connecticut Specialty Ins. Co. v. Pinnacle Corp.*, Case No. CT 03-015259 (Fourth Judicial District, Hennepin County, Minn.): Mr. Philbrick represented a contractor against its primary general liability insurance carrier with respect to denial of advertising injury claim for copyright infringement.



- *EastBanc, Inc. v. Ace American Ins. Co.*, 1:05 CV 735 (U.S. Dist. of Columbia): Mr. Philbrick represented a developer in a coverage dispute with its first party property carrier over the extent of business interruption and denial based on the defective design exclusion. The case settled before trial.
- *I/N Kote, Inc. v. Hartford Steam Boiler Inspection Ins. Co.*, 115 F.3d 1312 (7th Cir. 1997): Steel manufacturer suffered loss following breakdown of refining furnace. Mr. Philbrick defended the boiler and machinery carrier that denied the multimillion dollar property and business interruption claim.
- *Shriver v. Utica Mutual Ins. Co.*: Insurance broker sued for failure to pay premiums for renewal coverage. E&O carrier denied defense and indemnity. Mr. Philbrick prosecuted the coverage dispute on behalf of the broker and obtained a ruling in the trial court that the carrier had breached the duty to defend.
- *Smolka v. Marshall Field's Chicago, Inc.*, Case No. 98 L 14893 (Circuit Court of Illinois, Cook County): Contractor brought third-party claim against its insurance carrier and its insurance broker claiming that the insurance carrier must provide coverage for contractor's customer, Marshall Field's Chicago, Inc., or alternatively, that the insurance broker was liable for failing to provide notice of the claim to the carrier on behalf of the contractor's customer. Mr. Philbrick defended the broker. Liability turned on the broker's agency status, adequacy of the broker's notice and duty to provide notice for additional named insureds.
- *Evergreen Park School District No. 124 v. Federal Insurance Co.*, 276 Ill. App. 3d 766, 758 N.E.2d 1235 (1995): Insured school districts sought declaratory judgment that first party property policies covered asbestos-related property damage. Mr. Philbrick defended an insurance carrier and obtained favorable rulings in the circuit and appellate courts on a variety of substantive coverage and notice-related issues.
- *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 607 N.E.2d 1204 (Ill. 1993): Insured brought declaratory judgment action against liability insurance carriers seeking defense and indemnification for cleanup costs associated with Waukegan Harbor. Mr. Philbrick defended certain excess carriers and while many issues were thoroughly litigated, Mr. Philbrick's clients obtained summary judgment on the known loss doctrine.
- *CPC Inter., Inc. v. Northbrook Excess & Surplus Ins. Co.*, 739 F. Supp. 710 (D.R.I. 1990): Mr. Philbrick defended the defendant excess insurance carrier concerning coverage for environmental contamination caused by a train car derailment.
- *Shell Oil Co. v. Aetna Cas. & Sur. Co.*, 158 F.R.D. 395 (N.D. Ill. 1994): Mr. Philbrick defended various insurance carriers in litigation with Shell Oil pending in California and Illinois concerning coverage for environmental claims, polybutylene resin claims and bodily injury claims.
- *Abercrombie & Kent, Inc.*: Mr. Philbrick represented a tour operator in litigation brought by hundreds of club members in lawsuits pending in California, Tennessee and Illinois seeking recovery of over \$200 million in club memberships on theories ranging from securities fraud, common law fraud and false advertising. The claims provoked denials and reservations of rights from E&O, D&O and general liability carriers. In addition to the defense of the underlying lawsuits, Mr. Philbrick was responsible for maximizing the client's insurance recovery for the underlying lawsuits.
- *Insituform Technologies, Inc. v. American Home Assurance Co.*, Case No. 04 10487 GAO (U.S. Dist. of Mass.): Mr. Philbrick represented a contractor against its excess general liability insurance carrier with respect to denial of a contractor's rework claim. Following an award of summary judgment, the trial court entered a judgment on March 31, 2007 for damages and prejudgment interest in the amount of \$7,683,817.04. The case is currently on appeal to the First Circuit.

- *OB Sports LLC v. Greenwich Ins. Co.*, Case No. 400211 (Superior Court, Los Angeles County): Mr. Philbrick represented a golf course manager seeking coverage under its employment liability insurance for defense and indemnity associated with a wage and earnings class action.