

# Insurance Recovery

## Overview

## GTTC is Washington's premier Insurance Recovery practice

GTTC advises policyholders and prosecutes claims and coverage litigation in connection with a broad range of coverage lines, underlying liabilities, and related issues, including: environmental property damage and bodily injury; employment discrimination; aviation products liability; workers compensation and employer's liability; employee theft; long-term disability; construction defects; insurance archaeology and lost-policy issues; insurer insolvency proceedings; insurer bad faith; broker liability; and London-market issues. Our coverage practice ranges from large-scale litigation on behalf of international corporate policyholders to litigating bad-faith claims under personal-line coverages.

GTTC's experience and accomplishments in the insurance-coverage arena establish us as the premier policyholder-side firm in Washington. Our lawyers represented the policyholders in some of the most important insurance coverage decisions to come out of the Washington courts. These and other decisions place Washington among the most policyholder-favorable jurisdictions in the country.

## Representative Matters

### Thoughtful approach to major environmental coverage claim

Frank Cordell represented aerospace giant McDonnell Douglas Corporation in its first environmental coverage litigation in the mid-1990s. He resumed that engagement in 2009, when MDC was a subsidiary of The Boeing Company. MDC had incurred substantial liability for the cleanup of numerous manufacturing sites across North America. The company's resulting coverage

claim was one of the largest ever presented to MDC's principal insurer, Lloyd's and the London Market. Rather than following the typical "playbook," in rote fashion, and embarking on a second round of costly coverage litigation, Boeing and Lloyd's reached a standstill agreement and proceeded to negotiate in a structured, orderly fashion. After five years of hard-fought negotiations, the parties reached a confidential settlement. This is one of dozens of substantial long-tail coverage matters that Frank's clients have settled on favorable terms without bearing the enormous costs and risks of coverage litigation.

### Tunnel boring machine breaks down, insurers refusing to pay

The \$3.1 billion Seattle tunnel was designed to replace the downtown Alaskan Way Viaduct after it was damaged in a 2001 earthquake. The "Bertha" tunnel-boring machine sustained physical damage far beneath the surface, and a recovery shaft was drilled so that it could be repaired. A consortium of insurance companies denied coverage to Seattle Tunnel Partners' (STP) claims under a Builder's Risk Policy. STP, the contractor building the SR 99 Alaskan Way Viaduct Replacement Project in Seattle, is seeking coverage from its property insurers for damage to the project and the tunnel-boring machine. In 2015 STP filed a lawsuit seeking recovery of policy proceeds. Along with co-counsel, GTTC lawyers Dale Kingman, Haley Krug, and Greg Pendleton represent STP in this ongoing massive insurance recovery case. Haley and Dale represented STP in a vigorous court battle over where the insurance dispute was to be decided. Over months of litigation, they helped STP's litigation team defeat the insurers' numerous attempts – at both the Superior Court and appellate levels – to move the dispute to New York. The case will now be decided locally, in the community the project serves.

### Coverage counsel to Snohomish County after Oso landslide tragedy

On March 22, 2014 a massive landslide killed 43 people in the Steelhead Haven neighborhood near the community of Oso in Snohomish County, Washington. In the aftermath, victims and their families filed dozens of wrongful death claims against three defendants, including Snohomish County. These claims have been consolidated in King County into the State's largest-ever wrongful death action. Frank Cordell was selected to represent the County as coverage counsel, and, along with Chelsey Mam and Greg Pendleton currently is prosecuting litigation against the insurers in

federal court in Seattle.

## Long-tail coverage counsel to Weyerhaeuser Company

For nearly 30 years, GTTC's lawyers have served as coverage counsel to iconic Northwest business Weyerhaeuser Company. Frank Cordell has been lead counsel to Weyerhaeuser in a wide variety of coverage matters, including long-tail claims. Along with Susannah Carr, he currently represents the company in litigation against the London Market, AIG and other insurers over coverage for liability arising out of the Kalamazoo River Superfund Site -- one of the largest and most costly Superfund sites in history. Susannah Carr and Frank Cordell currently represent the company in litigation against the London Market, AIG, and other insurers over coverage for liability arising out of the Kalamazoo River Superfund Site, one of the largest and most costly Superfund sites in history.

## After four months of litigation, insurer accepts coverage for business interruption claim

Following severe storm damage to one of its processing facilities, a large family-owned food company sought business interruption coverage under a commercial property policy. The company's insurer claimed that, when the property was added to the policy as an insured location, no extra premium had been paid. In fact, the business interruption coverage was part of a blanket "sublimit" which was not changed with the addition of the new location. With the assistance of Dale Kingman and Matthew Pierce, the company asserted claims against its insurer for breach of contract, declaratory relief, WAC violations, CPA violations and attorney fees. After four months of litigation in U.S. District Court for the Western District of Washington, the insurer accepted coverage and agreed to adjust the loss.

## Bad-faith litigation on behalf of a publicly-traded biopharmaceutical company

Michael Rosenberger and Frank Cordell successfully represented a publicly-traded biotech company against its former insurer. When the company's former CFO sued the client claiming he was wrongfully terminated, the insurer refused to make an offer that could have settled the case below policy limits. The client later had to settle for an amount substantially above policy limits,

which the insurer refused to pay. The insurer brought suit seeking a declaration of no coverage, and our client counterclaimed for breach of contract, bad faith and violation of the Washington Insurance Fair Conduct Act. The case settled on confidential terms on the eve of trial.

### Defending an investment advisor in “bet the company” bad faith case

An investment advisor was sued for misrepresentation and violation of the securities act. When the investment advisor turned to its insurer to cover the cost of defending against these claims, the insurer denied coverage. Without coverage, the cost of defending against these claims would put this company out of business. During the trial of the underlying case, Dale Kingman successfully secured defense costs – allowing the company to defend itself. After the client prevailed in defense of the underlying claims, and following a three-week arbitration hearing, he secured a significant recovery against the insurer for bad faith and the client’s attorney fees. In addition, he secured recovery of all costs and attorney fees incurred in the bad faith action. As a result, the investment advisory business was saved.

### Precedent-setting environmental insurance recovery case

Gull Industries, a longtime Seattle-based gasoline distributor, faced environmental clean-up obligations for 220 gas stations. When Gull sought to recover the cost of these clean-ups, which it undertook voluntarily, from various insurers under its CGL policies, the insurers denied the claims. Frank Cordell and Susannah Carr (along with co-counsel at Marten Law) engaged in a multi-phase case to recover the insurance proceeds. In 2014, in the first trial, a King County Superior Court jury returned a verdict in favor of Gull. Issues in this ongoing “master class” environmental case include the effect of non-cumulation clauses, reconstruction of lost policies from years ago based on fragmentary evidence, and prevailing against the insurers’ “expected or intended” policy language defense.

### Insurer balks at cost of defending Port of Bellingham

An insurer for the Port of Bellingham claimed it had no duty to defend the Port in a wrongful death action arising from a serious fire at a marina owned by the Port. Susannah Carr represented the Port against the insurer. On summary judgment, the U.S. District Court ruled that the insurance

company was obligated to pay for the Port's defense in this significant wrongful death case.

## Following hard-fought litigation, settlement allows site remediation and development

Historical dry-cleaning operations led to groundwater contamination at the site of American Linen Supply Co.'s former industrial laundry and dry-cleaning plant in Seattle – a site that occupies a full city block in the heart of the South Lake Union district. In environmental coverage litigation involving this site, Frank Cordell, Matthew Pierce and Jeff Tilden represented American Linen and Frontier Redevelopment, a Denver-based brownfield redevelopment firm. On the eve of trial, and after more than two years of hard-fought litigation against its insurers, American Linen reached confidential settlements that will allow it to remediate and redevelop the site.

## City turns to insurer to help pay largest land use verdict in state history

In 2004, a developer proposed building a parking garage on land it owned. Over the ensuing years, the city in which the land was located was alleged to have frustrated the developer's efforts. The city eventually took title to the land through a deed in lieu of foreclosure transaction. The developer later sued the city. In 2016, after more than three years of litigation, the King County Superior Court awarded \$18.3 million to the developer – reportedly the largest land use judgment in the history of Washington State. The city is appealing the verdict. In an effort to recover insurance dollars to satisfy the judgment, Frank Cordell and Greg Pendleton are representing the city in a parallel insurance coverage case in federal court.

## Insurance policies help with costly environmental clean-up

Simpson Timber Co. is listed as one of the parties liable for cleanup of the 250-acre Pasco Sanitary Landfill – a large Superfund site. Simpson turned to GTTC for assistance. After a careful review of Simpson's insurance policies, Michael Brown and the firm have recovered insurance proceeds totaling nearly \$2 million—the full amount of Simpson's costs to date.