

# Thomas Nienow

Thomas Nienow advises national insurers in connection with complex commercial liability insurance claims and parallel contractual indemnity demands. He conducts all phases of discovery and pre-trial litigation concerning insurance coverage and “bad faith” lawsuits, including taking and defending depositions, drafting briefs and performing oral argument before appellate courts.

Tom served as a Judicial Extern, California Court of Appeal, First Appellate District, where he advised Presiding Justice Carl West Anderson regarding civil and criminal matters pending before the California Supreme Court and Court of Appeal.



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## Bars:

- California

## Education:

- University of California, Hastings College of the Law, J.D., 1988
- University of California, Los Angeles, B.A., 1981

## Courts:

- Supreme Court of California
- U.S. Court of Appeals, Sixth Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, Northern District of California
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Southern District of California

## Notable Cases:

- *Feltham v. Universal Protection Service LP* (2022) 76 Cal.App.5th 1062 Affirmation of summary judgment finding no basis for imposing vicarious liability on employer of nightshift employee who was commuting home from work when she fell asleep at the wheel and caused traffic accident.

- *Philadelphia Indemnity Insurance Co. v. SMG Holdings, Inc.* (2019) 44 Cal.App.5th 834 Third party seeking rights as putative additional insured under liability-insurance policy is bound by policy's arbitration clause, which insurer is not estopped from enforcing by denying coverage.
- *Penn-Star Insurance Company v. The Caden Companies, Inc.* (C.D. Cal. 2017) 2017 U.S.Dist.Lexis 213387 Obtained summary judgment of no duty to defend or indemnify insured in litigation alleging slander in connection with contract dispute.
- *Philadelphia Indemnity Insurance Co. v. City of Fresno* (E.D. Cal. 2016) 2016 U.S.Dist.Lexis 91168 Obtained order compelling arbitration of insurance-coverage dispute with City of Fresno in connection with underlying personal-injury action.
- *State of Arizona v. Philadelphia Indemnity Insurance Co.* (2014) Private Binding Arbitration in Tucson, Arizona Obtained arbitration-panel award finding that the State of Arizona did not qualify as an additional insured under liability policy issued to non-profit.
- *Interstate Fire & Casualty Co. v. United National Insurance Company* (D.N.M. 2009) 2009 U.S.Dist.Lexis 106949 Prevailed on cross-motions for summary judgment, obtaining order requiring reimbursement of settlement contribution paid under professional-liability policy.
- *United National Insurance Company v. SST Fitness Corp.* (6th Cir. 2002) 309 F.3d 914 Obtained appellate decision reversing district court and holding that insurer is entitled to reimbursement of fees and costs to defend litigation against insured not potentially covered by applicable commercial liability policy.
- *Instant Fire Protection et al. v. Diamond State Insurance Company* (N.D. Cal. 2002) No. 02-01007-DT Summary judgment of no duty to defend insured in underlying lawsuit alleging business torts arising from franchisee's wrongful diversion of clients and job opportunities from franchiser.
- *Bullock v. Maryland Casualty Co. et al.* (2001) 85 Cal.App.4th 1435. Affirmation of trial-court ruling that underlying lawsuits by City of San Francisco to compel payment of penalties for unlawful conversion of residential hotel units did not involve insurance-covered "damages."
- *Ringler Associates, Inc. v. Maryland Casualty Company et al.* (2000) 80 Cal.App.4th 1165 Obtained affirmation of summary judgment that commercial general liability policies do not apply to ongoing defamation that commences before policy incepts.
- *Buttram v. Owens-Corning Fiberglas Corporation* (1997) 16 Cal.4th 520 Obtained determination by California Supreme Court that Proposition 51 (Cal. Civ. Code §1431.2) applies to latent-injury conditions which first manifested or were first diagnosed after the initiative's effective date.
- *Joette Baross Carlson v. Dr. Gerald Bausek, M.D.* (1996) U.S. Ninth Circuit Court of Appeals, No. 95-17426. Affirmation of District Court order granting motion for summary judgment in medical-malpractice action alleging civil rights violations.
- *Jackson v. Ingersoll-Rand Company* (1995) 42 Cal.App.4th 1163. Obtained reversal of order disqualifying counsel for alleged unauthorized contact with party represented by counsel.
- *Stanford Ranch, Inc. v. Maryland Casualty Company* (E.D. Cal. 1995) 883 F.Supp. 493, aff'd (9th Cir. 1996) 89 F.3d 618. Affirmation of summary judgment of no duty to defend or indemnify three underlying actions arising from violations of the Clean Water Act (33 U.S.C. § 1344).

## Publications

- *Business Interruption Insurance: Demystifying the Causation Analysis*, The Brief, ABA Torts & Insurance Practice Section, v. 24, no. 1, p. 30 (Fall 1994).
- *In re R.J. Reynolds Tobacco Company, Inc.: "The Common Sense" Distinction Between Commercial and Noncommercial Speech*, 14 Hastings Constitutional Law Quarterly 869 (August 1987).

## Published Decisions:

- *Wesco Ins. Co. v. BD and J, PC*, 664 F.Supp.3d 1055 (C.D. Cal. 2023) (declining to stay insurer's rescission lawsuit because disputed insurance application question sought insured's objective knowledge of facts capable of resulting in a professional-liability claim and thus presented no risk of inconsistent factual determinations with findings made in underlying malpractice litigation).