

Philip A. O'Connell, Jr.

Office Managing Partner



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Overview

Phil O'Connell specializes in litigation, particularly litigation involving insolvent insurers, reinsurance and coverage for mass tort liabilities. Phil has also represented clients in significant general commercial litigation and government contracts litigation.

Experience

Over the years, Phil has been personally involved in representing some of the world's largest insurers, reinsurers and reinsurance pools in complex coverage, bankruptcy and insolvency proceedings. He has also represented clients in complex environmental and commercial litigation, including litigation concerning private equity investments.

- Representing Swiss investor in litigation concerning private equity investments in Massachusetts.
- Assisted Boston-based hedge fund with response to expropriation of certain assets in the Republic of Uzbekistan.
- Lead trial counsel in an eight-day plan confirmation trial in *In re Plant Insulation Company*, Bankruptcy Court, N.D. Cal. Case No. 09-31347 TC. Plan involved debtor with alleged asbestos-related liabilities of US\$2 billion. Proceedings involved complex and novel issues under 11 U.S.C. Sec. 524(g).
- Lead trial counsel in a six-week, Phase I "missing policy" trial in San Francisco Superior Court. Trial principally involved material terms of three general liability policies allegedly issued by predecessor-in-interest and allegedly in force during the period January 1, 1962, through January 1, 1965. Prevailed on all issues.
- Lead trial counsel in a six-week, Phase II coverage trial on defenses of waiver, judicial estoppel and unclean hands. Proceeded in San Francisco Superior Court.
- Lead trial counsel in a four-week Phase III trial on contractual interpretation issues. Proceeded in San Francisco Superior Court.
- Trial counsel in a two-day plan confirmation trial in *In re Plant Insulation Company*, Bankruptcy Court, N.D. Cal. Case No. 09-31347-TC. Trial on a modified plan of reorganization. On remand after Ninth Circuit decision

in *In re Plant Insulation Company*, 734 F.3d 900 (9th Cir. 2013).

- Represented various insurers with respect to investigations by the Office of the Attorney General of the Commonwealth of Massachusetts concerning alleged non-compliance with various Massachusetts laws and regulations relating to the marketing, sale, issuance and administration of accident and health insurance policies and certificates.
- Represented insurers and reinsurers with regard to their claims against the SNTL Litigation Trust. Claims for in excess of US\$200 million involved breaches of various reinsurance, claims handling, underwriting management and purchase agreements.
- Represented 18 insurers, reinsurers and related entities in various proceedings with respect to relationships with insolvent California workers' compensation carriers. Representation included defense of these entities in a US\$250 million preference action brought by the liquidator of the Superior National Insurance Companies in Liquidation.
- Represented a general liability insurer in a suit seeking coverage for more than 20,000 underlying asbestos claims. Case involved complex "lost policy" and "successor liability" issues. *General Accident Insurance Company of America v. Superior Court*, 55 Cal. App. 4th 1444 (1997).
- Lead trial counsel for objector in a month-long plan confirmation trial in *In re Western Asbestos Company, Western MacArthur Company and MacArthur Company*, Bankruptcy Court, N.D. Cal. Case Nos. 02-46284 T to 02-46286 T. Plan involved debtors with alleged asbestos-related liabilities of US\$5.8 billion. Proceedings involved complex and novel issues under 11 U.S.C. Sec. 524(g), as well as issues relating to demand for "preemption" of insurer claim handling rights.
- Represented insurer in receivership for purposes of rehabilitation in a complex estimation proceeding relating to claims against bankrupt affiliates Metropolitan Mortgage and Securities Co., Inc., and Summit Securities, Inc.
- Lead trial counsel for large Midwestern energy company in a two-day AAA arbitration involving a dispute over executive compensation. Proceeded to hearing in Boston. Prevailed on all claims asserted against client.
- Represented a reinsurance pool with respect to the collection of a large receivable from a member of the pool. Settled the dispute on favorable terms.
- Represented the designer of Jamuna Multipurpose Bridge in Bangladesh with respect to the designer's claims for indemnity and a defense under project policy covering design and construction of the bridge. Contractor had asserted approximately US\$80 million in delay and disruption claims against designer in an International Chamber of Commerce arbitration venued in London. Insurer was an affiliate of the contractor. Obtained a court order requiring the insurer to pay for a defense and protecting the insured bridge designer against the insurer's conflict of interest. Insurer subsequently paid entire sum necessary to settle the action. *T. Y. Lin International v. Hyundai Marine and Fire Insurance Co., Ltd.*, 1997 WL 703778 (N.D. Cal).
- Obtained and enforced compliance with a court order requiring Travis Air Force Base to use the exclusive refuse collection franchisee for Fairfield, California to provide refuse collection services to Travis. Utilized Section 6001 of Resource Conservation and Recovery Act (42 U. S. C. sec. 6961) to compel the Air Force to comply with local environmental ordinances governing solid waste collection and disposal. *Solano Garbage Co. v. Cheney*, 779 F. Supp. 477 (E.D. Cal. 1991).
- Lead trial counsel in Tax Court trial involving an "innocent spouse" defense. Represented the petitioner on a pro bono basis. Obtained all relief requested. Tax Court Memorandum 2010-134 (June 17, 2010).
- Lead appellate counsel representing a petitioner on the US Internal Revenue Service's appeal. Prevailed on all issues. *Karen Marie Wilson v. Commissioner of Internal Revenue*, 705 F.3d 980 (9th Cir. January 15, 2013).
- Representing Haitian plaintiffs in federal suit brought in the District of Massachusetts pursuant to the Torture Victim Protection Act (28 U.S.C. §1350).
- Assisted the Domestic Violence Legal Clinic of Chicago with certain appellate issues.

- Filed amicus brief with the Massachusetts Supreme Judicial Court on behalf of the Domestic Violence Legal Empowerment and Appeals Project concerning the admissibility in custody proceedings of evidence of prior domestic abuse.

Over the years, Phil has had principal day-to-day responsibility for defending various insurance companies in the following complex environmental coverage actions, among others:

- *City of Fresno v. Admiral Insurance Co., et al.*, Sacramento County Superior Court (landfill)
- *Coast Oil Company v. Northbrook Property, et al.*, Santa Clara County Superior Court (tank farm)
- *Litton Systems, Inc., and Ingalls Shipbuilding, Inc. v. Employers Insurance of Wausau, et al.*, Los Angeles County Superior Court (multiple sites)
- *Bicoastal Corporation v. Aetna Casualty, et al.*, United States District Court, Northern District of California-San Jose Division (tank farm)
- *County of Mendocino v. American Home Assurance Co., et al.*, Marin County Superior Court (landfill)
- *International Paper Company v. Continental Casualty Company, et al.*, San Francisco Superior Court (paper plants)
- *Lafarge Corporation v. The Travelers Indemnity Company, et al.*, United States District Court Eastern District of California-Fresno Division (cement plant)

Insights

- Co-author, "Likelihood of success a prerequisite to insurer's duty to appeal, Mass. court rules," *Dentons Newsletter*, October 13, 2016
- Co-author, "Insurance Insolvency: A Guide for the Perplexed," *Insurance Litigation Reporter*, Vol. 27, No. 14, September 2005 (cited in *In the matter of Rehabilitation of Indemnity Insurance Corporation, RRG*, Court of Chancery of Delaware No. 8601-VCL (Jan. 16, 2014), *Handbook on Insurance Coverage Disputes* by Barry R. Ostrager and Thomas R. Newman (2014), and Laura S. McAlister, "The Inefficiencies of Exclusion: The Importance of Including Insurance Companies In the Bankruptcy Code," 24 *Emory Bankr. Dev. J.* 129 (2008))
- Co-author, "The Golden Dustman in the Golden State: Exclusive Contracts For Solid Waste Collection And Disposal In California," *The Urban Lawyer*, Spring 2000, (cited in *Pleasant Hill Bayshore Disposal, Inc. v Chip-It Recycling, Inc.*, 91 Cal App. 4th 678 (2001) and *Jonna Corporation v. City of Sunnyvale*, N.D. Cal. No. 17-CV-00956-LHK (Nov. 9, 2017))
- Co-author, "The Wake of Waller: Bad Faith Returns to Its Contractual Roots," *Insurance Litigation Reporter*, December 1995
- Co-author, "The Wisdom of Waller: The End of Automatic Waiver," *Insurance Litigation Reporter*, September 1995
- Co-author, "Waiver and Estoppel Without Waste: (Titan v. Aetna)," *Insurance Litigation Reporter*, January 1995, (cited in *Waller v. Truck Insurance Exchange, Inc.* 11 Cal. 4th 1, 32 (1995))

Activities and Affiliations

Presentations

- "Insolvent Insurers and Impact on Financial Institutions Coverage and Reinsurance," American Conference Institute's Advanced Forum on Financial Institutions Insurance, New York, NY, March 31, 2009
- "Jurisdiction Over Property Claimed by a Debtor and a Receiver of an Insolvent Insurer," International

Association of Insurance Receivers Insolvency Workshop, Palm Springs, CA, February 6, 2003

- "The Role and Impact of Insurance," Mealey's Section 17200 Conference, Pasadena, CA, December 10, 2002

Memberships

- American Bar Association
- Boston Bar Association

Areas of focus

Practices

- Litigation and Dispute Resolution
- Restructuring, Insolvency and Bankruptcy

Industry sectors

- Financial Institutions
- Insurance

Education

- University of Chicago Law School, 1983, JD
- Wesleyan University, 1979, BA, *magna cum laude*, Phi Beta Kappa

Admissions and qualifications

- Massachusetts
- Nevada
- California
- Illinois
- US Court of Appeals for the Federal Circuit
- US Court of Appeals for the First Circuit
- US Court of Appeals for the Ninth Circuit
- US Court of Appeals for the Seventh Circuit
- US Court of Federal Claims
- US District Court for the Central District of California
- US District Court for the District of Massachusetts
- US District Court for the District of Nevada
- US District Court for the Eastern District of California

- US District Court for the Northern District of California
- US District Court for the Northern District of Illinois
- US District Court for the Southern District of California
- US Supreme Court
- US Tax Court