



# Insurance Coverage & Defense

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## OVERVIEW

AP&S attorneys provide a full range of time-sensitive legal services to individuals, insurers and companies – from Fortune 500 corporations to small employers throughout New England. Our experience encompasses defense and indemnity issues relating to construction claims, advertising injuries, environmental contamination, asbestos and other hazardous substances. We also offer experienced guidance and representation in professional liability defense, directors' and officers' liability, first-party property, homeowners, products, and specialty lines.

We advise clients on insurance coverage and bad faith claims for insurers, both admitted and surplus lines carriers, and provide coverage opinions on a variety of policies and issues, including questions pertaining to employee fidelity bonds, disability insurance, life insurance, environmental claims and construction defects.

As experienced litigators in state and federal courts, our attorneys have been nationally recognized as lead counsel in groundbreaking decisions of the appellate courts of Rhode Island, Massachusetts and New Hampshire, as well as the U.S. Court of Appeals for the First Circuit. We have successfully argued appellate cases concerning such issues as trigger of coverage, setoff for non-settling excess insurers, the sudden and accidental exception to pollution exclusion clauses, and employer immunity under workers' compensation acts.

We work closely with our clients' risk managers with respect to obtaining both appropriate insurance and the benefits thereunder. We also advise on selecting coverage and special endorsements suited to the particular circumstances of each undertaking, regularly dealing with issues of notice, adjustment of claims and coverage questions.

Perhaps most importantly, we recognize that litigation is not always the best option for our clients. Consequently, we're always sensitive to other solutions, including mediation and arbitration and we often guide our clients through alternative dispute resolution processes.

## Areas of Concentration

- Construction claims.
- Advertising injuries.
- Commercial Disputes.
- Personal injury.

- Environmental contamination.
- Asbestos and hazardous substances.
- Professional, directors' and officers' liability.
- Bad faith claims.
- Coverage opinions.
- Alternative dispute resolution.

## REPRESENTATIVE MATTERS

### Insurance Defense Litigation

- ***Raffone v. Home Depot U.S.A., Inc., et al. (Conn. Super. Ct. 2015)***: AP&S obtained summary judgment on behalf of Home Depot U.S.A., Inc. The plaintiff alleged numerous claims against Home Depot and its employee, including false imprisonment and excessive force, after being detained and arrested for shoplifting. The Connecticut Superior Court granted summary judgment on all claims in favor of Home Depot and the employee.
- ***Herchen v. Home Depot U.S.A., Inc. (R.I. Super. Ct. 2012)***: After a one-week jury trial, AP&S obtained a defense verdict on behalf of Home Depot U.S.A., Inc. The plaintiff alleged that a large stack of heavy lumber fell onto his arm, causing a permanent nerve injury. The jury found in favor of AP&S's client, concluding that it was not negligent. Plaintiff sought several hundred thousand dollars in damages.
- ***Figuroa v. J. C. Penney Corporation, Inc., et al. (R.I. Super. Ct. 2012)***: Plaintiff alleged injuries from a slip and fall outside of a JCPenney store. Shortly after the case was filed, AP&S successfully tendered JCPenney's defense and indemnity to the owner of the mall where the incident occurred.
- ***DeBenedetto v. One Offshore Road Condominium Association, et al. (R.I. Super. Ct. 2012)***: AP&S represented a condominium association against claims of nuisance, trespass and negligence in relation to how the condominium association handled its trash. Shortly after the case was filed, the Court held a non-jury trial on plaintiffs' claims for injunctive relief, and granted AP&S' motion for judgment on partial findings, thereby denying plaintiffs any injunctive relief. Plaintiffs agreed to dismiss the case with prejudice upon the execution of mutual releases.
- ***Riggs v. Alexandre Construction (Mass. Super. Ct. 2007)***: In a three-week jury trial, AP&S defended a general contractor in a case where an ironworker fell 26 feet and sustained serious injuries. Plaintiff demanded \$2 million. AP&S obtained a defense verdict.
- ***Bik v. Del Wes (Mass. Super. Ct. 2001)***: In a 3-week jury trial, AP&S defended a manufacturer in a products-liability case. The plaintiff alleged permanent disability and incurred approximately \$600,000 in medical expenses. AP&S obtained a defense verdict. The case was listed as one of the year's "Top 10 Defense Verdicts" by

*Massachusetts Lawyers Weekly.*

- ***Kelly v. O.E. Plus Ltd.*, 69 Mass. App. Ct. 1105 (2007), review denied 449 Mass. 1109 (2007)**: AP&S represented a distributor of alternators in a double wrongful death lawsuit arising from a motor vehicle accident and obtained summary judgment on the basis of lack of foreseeability. The plaintiffs appealed and the appeals court upheld the trial court's decision.

## Insurance Coverage Litigation

- ***Susan D'Esposito v. Michaels Stores, Inc.* (2013)**: AP&S provided coverage opinion to a primary CGL insurer regarding Coverage B, personal and advertising injury liability coverage, for a new statutory claim in Massachusetts for the unlawful collection of consumers' zip code information in connection with credit card transactions.
- ***William Demmons v. Safety National Casualty Corporation* (2013)**: AP&S represented an excess reinsurer in a declaratory judgment action involving novel questions concerning the interpretation of a workers' compensation excess reinsurance policy.
- ***Charlotte Frey v. Reina Dastous* (2012)**: AP&S advised a medical malpractice insurer with respect to its rights and obligations under an excess liability insurance policy issued to a hospital for a medical malpractice action brought against two certified nurse midwives and a registered nurse who were employed by the hospital. The nurse-midwives were not included in the list of scheduled insureds under the policy, which raised a number of complicated insurance coverage and formation issues. The case was settled before trial.
- ***Michael Aleo v. SLB Toys USA, Inc.* (2013)**: AP&S advised a primary liability insurer with respect to its rights and obligations in this wrongful-death case resulting from the use of an inflatable slide next to an in-ground swimming pool. The case raised a number of coverage issues involving the rights and obligations between a primary and excess insurer.
- ***George B.H. Macomber Co. v. Acadia Ins. Co.* (2012)**: AP&S represented a primary insurer in a declaratory judgment action filed by a general contractor in connection with multiple underlying actions arising from the collapse of a mast-climbing platform at a construction project at an Emerson College dormitory building in downtown Boston. The case involved intervening on behalf of the insurer in the underlying consolidated cases before trial to present special questions to the jury to ensure a determination of factual questions relevant to coverage issues.
- ***Travelers Insurance Co. v. Providence Washington Insurance Co.* (D.R.I. 2010)**: In this insurance coverage dispute, AP&S represented Providence Washington Insurance Co. with regard to a claim for contribution brought by one of New England Container Co.'s other insurers.
- ***Emhart Industries v. New England Container Co., Traveler's Insurance Co. and Providence Washington Insurance Co.* (D.R.I. 2006)**: AP&S represented Providence Washington Insurance Co., the insurer for New England Container Company in a CERCLA Superfund environmental remediation case. The plaintiff sought

indemnification and/or contribution from New England Container Company and its insurers for any cleanup costs that may be apportioned to it.

- **United States Fire Ins. v. Peerless Inc. Co. (Mass. Super. Ct. 2005):** AP&S represented United States Fire Insurance Company in an equitable contribution action in Massachusetts Superior Court, seeking contribution from Peerless Insurance Company for its share of an underlying verdict of approximately \$1.75 million against their mutual insured in a construction defect action. We defeated a motion to dismiss and later a motion for summary judgment, each of which resulted in a significant trial court decision regarding the rights and defenses in a claim for equitable contribution among co-insurers. The case settled after the defendant's motion for summary judgment was denied.

## SEMINARS / PUBLICATIONS

### Seminars

- Geoffrey W. Millsom and Brenna A. Force, Social Media in Litigation, MetLife Auto & Home 2015 House Counsel Conference, May 7, 2015.
- Nicole J. Benjamin, Premises Liability Update, Rhode Island Bar Association Title Standards and Practices Committee, December 2013.
- John A. Tarantino, Insurance Coverage and Practice Symposium, New York, December 2006.

## AWARDS

- Rated Tier 1 Metropolitan "Best Law Firm" by Best Lawyers®.