



# Lawrence J. Bracken II

## Partner

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### SERVICES

#### Industries

Energy

Financial Services

Retail and Consumer  
Products

#### Practices

Class Action, Multidistrict  
Litigation

Cyber Investigations and  
Privacy Litigation

Retail and Consumer  
Products Litigation

Insurance Coverage

Cyber Insurance

Financial Services Litigation

Energy Litigation

Advertising Litigation

Pipeline

### EDUCATION

JD, University of Virginia  
School of Law, 1985

BA, University of Virginia,  
with high distinction, 1981

Larry Bracken has 35 years of experience litigating and negotiating insurance matters.

Larry has represented clients in federal and state courts throughout the United States in a broad range of cases. In addition to insurance coverage disputes, he regularly litigates class actions and other cases involving allegations of unfair trade practices, environmental issues, and complex contract disputes. Pro bono representation of clients in habeas corpus, prisoner rights, and landlord-tenant litigation also is an important part of his practice.

In addition to his litigation practice, Larry counsels clients regarding insurance claims evaluation and strategy, policy placement and manuscripting issues, and recovery of insurance proceeds under third parties' insurance policies.

Larry is admitted to practice in Georgia, New York and Virginia, as well as before the U.S. Courts of Appeals for the Fourth, Seventh, Ninth and Eleventh Circuits, and numerous U.S. District Courts. After earning his law degree, he served as a law clerk for the Honorable D. Dortch Warriner of the U.S. District Court for the Eastern District of Virginia. He is a Fellow of the American College of Coverage Counsel.

#### Representative Experience – Insurance Litigation and Counseling

- Advised clients in more than 600 insurance coverage matters involving CGL, excess liability, E&O, technology E&O, D&O, property, business interruption, environmental/PLL, inland marine, and builders risk coverage.
- Tried eight D&O liability insurance matters in U.S. courts and arbitration proceedings as lead counsel.
- Represented current and former executives of Fortune 50 financial-services company to secure Side-A D&O coverage in connection with multiple government investigations and in derivative lawsuits filed in federal and state courts. The coverage issues involved a complex overlay of financial-services regulatory agency investigations. The firm's coverage advice facilitated settlement in one of the largest derivative settlements of all time.
- Advised numerous public and private company clients concerning D&O liability coverage arising from securities and fiduciary claims.

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## BAR ADMISSIONS

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Georgia

New York

Virginia

- Lead counsel representing a Fortune 250 energy company in the negotiation, mediation and arbitration of claims involving coverage under \$300 million D&O liability insurance tower. Underlying claims arose from insolvency of client's foreign subsidiaries and related U.S. securities litigation.
- Litigating and negotiating claims on behalf of major petroleum pipeline company concerning insurance coverage arising out of recent accidents and environmental incidents. Also advising the client about potential recoveries from contractors' insurers and additional insured coverage.
- Advising major U.S. electric utility concerning insurance coverage for alleged emissions from power generation plants.
- Advising one of the U.S.'s largest energy infrastructure companies concerning insurance coverage issues arising out of petrochemical plant explosion. Assisted client in recovering more than \$200 million from excess liability insurers.
- Representing one of the U.S.'s largest energy infrastructure companies in arbitration with excess general liability insurer concerning coverage for claims brought by co-owner of petrochemical plant.
- Negotiated and litigated \$100 million+ of insurance coverage claims asserted against multiple excess liability policies, involving seven separate releases from pipelines operated by major petroleum pipeline company.
- Settled a \$24 million builders risk claim, in pre-litigation mediation, for developer client arising from design errors during construction of a \$300 million hotel and entertainment complex.
- Represented major REIT concerning first-party insurance coverage issues arising out of property damage and construction errors at residential housing complex, resulting in recovery of full amount claimed by client.
- Advised U.S. energy company about D&O insurance coverage issues arising from U.S. Attorney investigation of alleged mining regulation violations.
- Represented municipality in litigation involving municipality's commercial property policy seeking reimbursement for flood-related property damage and extra expense. Assisted client in recovering \$24 million from its property insurers, as well as additional funds from FEMA.
- Negotiated the successful resolution of a business interruption/cost of replacement power claim on behalf of a major electric generation company, which arose from the failure of a transformer at a 575 MW coal generation unit, resulting in the extended shutdown of the unit. The insurers involved were Lloyd's, London syndicates and seven London Market insurers. During negotiations, we prepared a complaint against the insurers that assisted in reaching a settlement of the coverage dispute.
- Represented multiple clients in claims involving property damage and business interruption coverage arising from fire and explosion damage to industrial facilities and other operations, including bad faith claims.
- Advised independent system operator in the placement of D&O liability and E&O liability coverage, and in connection with various actual and potential claims.

- Negotiated the successful resolution of a property damage/business interruption claim on behalf of a major electric generation company, which arose from a fire at a 565 MW coal generation unit, resulting in the extended shutdown of the unit. The insurers involved were Lloyd's, London syndicates and eight London Market and U.S. insurers. During negotiations, we prepared a complaint against the insurers that assisted in reaching a settlement of the coverage dispute. In addition to assisting the client in negotiating usual proof of loss and coverage issues, the claim involved unique issues arising from the policy's waiting period, deductible and cost of replacement power provisions.
- Advised multinational energy company in negotiation of pollution liability coverage for major U.S. environmental site.
- Represented a major petroleum products pipeline company in an action for declaratory judgment against several U.S. insurers. The policyholder client sought a judgment declaring that under the terms of applicable insurance policies, the company was entitled to coverage for losses incurred by the company as a result of a 1975 petroleum pipeline rupture in North Carolina. The court granted summary judgment in our client's favor, which was affirmed on appeal. The case involved issues of first impression concerning the timing of notice to excess carriers in environmental cleanup situations.
- Litigated insurance coverage action in connection with environmental claims arising from closed coal gasification plant and waste facility, resulting in negotiated settlement of defense cost and indemnity issues.
- Litigated claim to recover defense costs and amounts paid to settle class claims concerning allegedly improper bank fees and assessments.
- Negotiated settlement of insurance coverage claims asserted against excess liability policies, arising from catastrophic failure of mine company impoundment that resulted in third-party property damage and environmental claims.
- Represented industrial holding company in coverage litigation relating to lead-based paint personal injury and property damage claims.
- Pro bono representation of prisoners in habeas corpus and other actions involving violations of constitutional rights. Received Justice Ally of Year from the Southern Center for Human Rights for work with SCHR.

### **Memberships**

- Fellow, American College of Coverage Counsel
- Board of Directors, Atlanta Volunteer Lawyers Foundation
- Member, American Bar Association
- Member, Defense Research Institute
- Member, Georgia State Bar Disciplinary Rules and Procedures Committee, 2008-2011, 2015-2018
- Master, Bleckley Inn of the American Inns of Court

### **Clerkships**

- US District Court, Eastern District of Virginia

## Awards & Recognition

- Recognized as a Leader in Insurance, Georgia, *Chambers USA*, 2021
- Recommended for Insurance: Advice to Policyholders, Legal 500 United States, 2020
- Named Best Lawyer, Commercial Litigation, Insurance Law, Litigation – Banking and Finance, *The Best Lawyers in America* - Georgia, 2012-2021. A description of the selection methodology can be found on Best Lawyers' [webpage](#).
- Selected as a Super Lawyer for Insurance Coverage, *Atlanta Magazine* and *Georgia Super Lawyers Magazine*, 2005-2021. A description of the selection methodology can be found on Super Lawyers' [webpage](#).
- 2015 Justice Ally of the Year Award – Southern Center for Human Rights

## Events

- Presenter, *Voir Google – Ethical Jury Research*, Bleckley Inn of Court, April 9, 2018
- Presenter, *Emerging Liability Risks: Are You Covered?*, Community Bankers University, March 29, 2018
- Speaker, *Single Versus Multiple Occurrences Under a CGL Insurance Policy*, Insurance in the Construction Industry CLE, Atlanta, Georgia, March 23, 2018
- Speaker, *Single Versus Multiple Occurrences Under a CGL Insurance Policy*, Insurance in the Construction Industry CLE, Atlanta, Georgia, March 24, 2017
- Speaker, *Debates, Updates, and Dictates: D&O and Employment Litigation*, Executive Edge conference, Scottsdale, Arizona, May 2014
- Speaker, *Cyber Liability* program, Federal Bar Association, Atlanta Chapter, March 2014
- Speaker, *Data Breach and Privacy Litigation*, International Association of Privacy Professionals, Practical Privacy Series conference, New York, January 2013
- Panelist, *Claims, Crises, Unexpected Issues and the Benefit of Hindsight in the Boardroom*, Executive Edge Conference, San Antonio, May 2012
- Faculty Member and Lecturer, ACI Subprime Litigation Conference
- Program Co-Chair and Lecturer, Georgia Insurance Law Institute
- Speaker, *Consumer Fraud Claims*, Product Liability Advisory Council
- Faculty Member and Lecturer, *Fundamentals of Georgia Environmental Law*

## Publications

- Co-author, *Insurer's Duties to Defend and Indemnify: Georgia*, *Thomson Reuters Practical Law*, June 2021
- Co-author, *Class Certification And Multidistrict Litigation Hurdles For Business Interruption Claims*, *Mealey's Litigation Report: Insurance*, December 2, 2020
- Co-author, *Protecting Delaware Insureds: Recent Decisions Highlight Importance of State Law, D&O Policy Provisions Governing Coverage, Forum, and Applicable Law*, *Business Law Today*, November 18, 2020

- Co-author, Purported COVID-19 Class Actions Face Big Hurdles, *Daily Report*, September 28, 2020
- Co-author, D&O Insurance Issues Arising from the COVID-19 Crisis, *The D & O Diary*, April 15, 2020
- Co-author, Insurer's Duties to Defend and Indemnify: Georgia, *Westlaw*, December 13, 2019
- Co-author, Flood Coverage and High Hazard Zones: Issues Policyholders Should Be Aware Of, *ABA Coverage Journal*, October 10, 2019
- Co-author, Energy industry: Is Your Insurance Sufficient to Handle a Major Cyber Event?, *Electric Light & Power*, September 11, 2019
- Co-author, Be Careful When relying on Insurance Coverage to Contain Utilities' Wildfire Risks, *Electric Light & Power*, February 19, 2019
- Co-author, 3 D&O Questions Regarding Event-Driven Securities Litigation, *Law360*, December 19, 2018
- Co-author, Insurance Mitigates Cyber-Related Risk, *The American Oil & Gas Reporter*, December 2017
- Co-author, Insurers Win Series Against Lakers In TCPA D&O Shootout, *Law360*, August 29, 2017
- Co-author, D.C. Circuit Steadies the Barko Bus: Clarification of the Attorney-client Privilege in Corporate Internal Investigations and Post-Barko Developments, *Bloomberg BNA Corporate Law & Accountability Report*, September 26, 2014
- Co-author, General Insurance Policies May Provide Coverage for Data Breaches, *American Bar Association, Tort Trial & Insurance Practice Section*, Summer 2013
- Co-author, Arbitration Agreements and Class Action Waivers - Practical Steps In An Uncertain Landscape, *U.S. Law Week*, 80 U.S.L.W. 1649, May 29, 2012
- Co-author, Practical Advice in a Changing Landscape: Exhaustion of Underlying Limits and Resolving Coverage Issues Under a Multilayer D&O Insurance Program, *Financier Worldwide*, June 2009
- Co-author, AAA Releases Rules on the Administration of Class Actions, *ABA Franchise Law Journal*, May 26, 2004
- Co-author, *Georgia Environmental Law Handbook* (Litigation and Insurance Coverage), 1997, 2003, 2007

### **Blog Posts**

- Co-author, Insurer Denies Coverage for Deal Litigation Despite Bank Purchasing Runoff Coverage for Pre-Acquisition Alleged Wrongful Acts, *Hunton Insurance Recovery Blog*, April 22, 2021
- Co-author, New Jersey Supreme Court Hears Insurers' Bid to Overturn a \$400M Decision, *Hunton Insurance Recovery Blog*, January 7, 2021
- Co-author, Georgia Court of Appeals Upholds Denial of Coverage Because Insurance Broker Lacked Agency to Accept Premium Payment, *Hunton Insurance Recovery Blog*, November 5, 2020
- Co-author, Georgia Court Says "Au Revoir" to Henry's Louisiana Grill's COVID-19 Business Interruption Claim, *Hunton Insurance Recovery Blog*, October 15, 2020

- Co-author, Eleventh Circuit Determines AEGIS Must Defend Landlord in Security Deposit Class Action, *Hunton Insurance Recovery Blog*, August 5, 2020
- Co-author, D&O Insurance Issues Arising from the COVID-19 Crisis, *The Nickel Report — Energy and Environmental Law*, April 22, 2020
- Co-author, Georgia Jury Awards \$21M against Trucking Insurer and its Insured in Pedestrian Death, *Hunton Insurance Recovery Blog*, February 12, 2020
- Co-author, Insurer on the Hook for Loss Resulting From Phishing Scheme, *Hunton Insurance Recovery Blog*, December 12, 2019
- Co-author, Insurer Cannot Invoke Duty to Cooperate as Affirmative Defense After Denying Coverage, *Hunton Insurance Recovery Blog*, October 15, 2019
- Co-author, Hunton Insurance Lawyers Discuss Cyber Risks to the Energy Grid in Electric Light & Power, *The Nickel Report — Energy and Environmental Law*, September 27, 2019
- Co-author, Georgia Court of Appeals Holds That Insurer Must Defend Oil Company Against Entire Lawsuit, *Hunton Insurance Recovery Blog*, July 18, 2019
- Co-author, California Commission Recommends Switching To Fault-Based Wildfire Liability Standard for Public Utilities, *Hunton Insurance Recovery Blog*, June 6, 2019
- Author, Eleventh Circuit Stakes Limits on Insurer's Broad Duty to Defend, *Hunton Insurance Recovery Blog*, January 11, 2018
- Author, New Jersey Decision Highlights Importance Of Reviewing Historical Liability Insurance Policies, *Hunton Insurance Recovery Blog*, November 2, 2017