

**Comprehensive Legal
Advisory Services
for the Insurance Industry**

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With more than a dozen partners dedicated to the practice, along with 30 of our counsel and associates, Crowell & Moring offers the insurance industry unsurpassed breadth and depth of experience in navigating the many challenges that inevitably arise. We understand those challenges because our lawyers have lived them for years. And we understand the complexities and interrelationships inherent to an industry that assumes, in one way or another, most of the financial risks of an increasingly global society.

Our lawyers are litigators and dealmakers; trial lawyers and settlement professionals; advocates and advisors. Our experience spans all of the major industry segments—life, health, property-casualty—and all of the lines of business—insurance, reinsurance, captives, runoffs, SPVs. This collective experience has taught us the value of understanding the business of insurance as well as the law and the regulations. Our fields of play include courts and arbitrations, agencies and legislatures, bankruptcies, and internal and external investigations. And our practice pays as much attention to preventing problems as to resolving them when they arise.

We believe that few law firms offer a team of lawyers specifically dedicated to the representation of the insurance industry in all its facets and variations. And we believe that our team, along with colleagues we can draw from closely affiliated practice areas at the firm, allows us to help insurance industry clients navigate any terrain they may need to traverse.

We are not the only ones who think so. The 2015 *Chambers USA* had this to say: “An efficient cross-practice approach allows this firm to handle insurance matters relating to bankruptcy and financial lines issues for both domestic and foreign clients. This adds to its prominent insurance and reinsurance focus, particularly dealing with complex coverage litigation.” Interviewed clients had this to say: “They are very well placed to deal authoritatively and strike the balance between defending us and respecting the customer,” “They not only have my back but they understand our business. They are a go-to on the biggest work,” and “They are well-organized, efficient and produce quality work you can trust.” Our practice and individual lawyers have also been recognized by legal, industry, and business publications such as *Insurance Law360*, *Business Insurance*, *Best Lawyers in America*, *Washingtonian*, and more.

Our practice was also nominated for the *Chambers USA* “Award of Excellence” for our insurance practice, and several of our partners were individually recognized as well.

Practice Areas for Insurers

Litigation, Disputes, and Investigations

Insurance Disputes

Our lawyers have been successfully litigating major coverage disputes since the inception of the asbestos and environmental crises in the early 1980s. Our experience spans most of the major asbestos bankruptcies, trial and appellate defense of insurers throughout the country, Bermuda form and other arbitrations, and multiparty coverage workouts. Our lawyers have represented most of the world’s top-20 property-casualty insurers on some of their largest exposures. (See Tab 1.)

Reinsurance

Our reinsurance attorneys have successfully litigated in virtually every area of reinsurance law for every segment of the industry. In hundreds of litigations and arbitrations, we have represented cedents, reinsurers, and intermediaries. Because of this unsurpassed depth of experience, we also regularly counsel industry clients about how to structure, confine, and articulate their exposures. (See Tab 2.)

Bankruptcy, Insolvency, and Restructurings

Our bankruptcy team has focused on insurance-centric work for several decades, taking leading roles in many of the most complex multilateral asbestos and mass tort proceedings in history. We are also experienced in finding transactional solutions to difficult legacy exposures, ranging from the creation and disposition of runoff entities (or their restructuring) to obtaining regulatory or judicial approval of creative vehicles designed to disperse risk. (See Tabs 1 and 2.)

Internal and Governmental Investigations

No company wants them, but all companies have them. Our experience has us taught that, for inside and outside counsel involved in such investigations, there is no substitute for a thorough grounding in (1) the business of insurance, (2) the law applicable to the behaviors being investigated, and (3) the prosecutorial norms and customs being applied by regulators of every sort. Without these things, investigations run away with themselves and cannot be handled with the clarity and delicacy required. At Crowell & Moring, our lawyers have handled every kind of investigation at every level of severity, for insurers and for others, and we have successfully navigated governmental interventions arising out of the antitrust laws, FCPA, AML, OFAC, and other extraterritorial legal regimes. We team our insurance lawyers with former regulators and experienced financial investigators to provide a tailored approach to every unique situation. (See Tab 3.)

Appellate Work and Law Creation

Our lawyers are constantly engaged in the effort to move insurance law in the right direction, whether on behalf of individual clients, industry organizations, or otherwise. Our recent experience with appeals, amicus representations, legislative and regulatory advocacy, and NGO and academic law-creation enterprises is extensive and, we believe, unrivaled. Our work has included major case appellate representations as well as defense of generic policy language used in frequency lines of insurance. It extends to insurance, reinsurance, mass torts and product liability, and bankruptcy/insolvency. (See Tab 4.)

Broker & Intermediary Disputes

Our attorneys have extensive experience in defending and prosecuting claims against insurance brokers, agents, and reinsurance intermediaries in state and federal courts, at the trial and appellate levels, and in arbitration proceedings. As a result, we are uniquely well positioned to advise not just insurance intermediaries and market makers but also to advise insurers about coverage claims arising out of broker behaviors.

Professional Liability and Management Liability

Whether in connection with D&O coverage claims or in defense of the underlying action against board and management, our lawyers regularly represent participants in securities and derivative actions brought by shareholders, creditors, or policyholders. For insurers, we use all of the available legal tools to participate actively in liability suppression, particularly in the context of always-difficult settlement discussions.

Transactions and Corporate/Regulatory Advisory Services (See Tab 5, 6.)

Insurance Transactions and M&A

Working in a thoroughly interdepartmental manner, Crowell & Moring marshals all of its resources to help execute transactions quickly, efficiently, and effectively. Our transactional attorneys have represented insurers on acquisitions, dispositions, joint ventures, submarket exit strategies, new market entry strategies, joint ventures, international expansion, free trade issues, and access to capital markets. Drawing from so many areas of experience at our firm, including our international trade advisory group, we are able to help our clients design transactions, evaluate exposures, and get deals approved, no matter where they are centered.

Strategic and Preventive Counseling

Because so many of our lawyers have participated in the making of insurance law over the years, we are uniquely positioned to advise clients about how to handle emerging exposures, expanding regulatory intensity, problematic coverage grants and exclusions, and risk underwriting in general. As examples, our lawyers are currently engaged in advisory projects pertaining to cyber exposures (as a coverage grant and as an exclusion), the pending American Law Institute (ALI) *Restatement of the Law of Liability Insurance*, and the creation of low-cost vehicles for libel insurance for investigative reporters. We have regularly acted as coordinating counsel for insurers on a broad range of legacy and emerging risks.

Corporate Structure and Governance

Our advisory services also extend to matters of corporate form and governance, where our collective experience creating corporate entities, structuring legal departments within insurance companies, and managing both severity exposures and frequency exposures allows us to assist clients in creating efficient and effective organizational structures, systems, and cultures. We believe that insurer law departments can be value-added sources of corporate wealth creation—not just “cost centers.”

International Trade and New Markets

Crowell & Moring offers our clients distinctive legal and advisory assistance as they open operations overseas, navigate cross-border transactions, and seek multijurisdictional regulatory approvals for new or expanded businesses. Our model is unique: We combine our insurance and international trade knowledge with the decades of experience resident in our affiliated international policy and regulatory affairs consulting firm, C&M International. The result is an ability to deal with issues in real time based on realistic assessments of risk and reward, timing to completion, and local custom and practice. This collective advisory capability also entails a worldwide network of local law firms and advisors with proven records of success. (See Tab 6.)

Regulatory Counseling

Our lawyers have regularly provided strategic and tactical advice for clients facing regulatory scrutiny, whether through state insurance regulators, tax authorities, or legislative or political interventions. We have advised clients on a range of reinsurance tax and capital allocation issues, groupwide supervision regimes, and inquiries about sales practices. With the combination of our international trade practice and C&M International, we can help clients navigate the opening of foreign markets or create effective and efficient multijurisdictional insurance programs. Because our lawyers understand the business of insurance, we are able to deal with matters that turn on seemingly complex nuances of corporate finance and actuarial art and science. We have also participated in most of the major initiatives toward regulatory change, including a number of proposals that were not adopted as a result of effective advocacy on behalf of the industry and/or individual clients. Our work has involved regulatory changes proposed as a result of the 2008-09 financial crisis (including standards for identifying “systemically

important financial institutions”), groupwide supervision, reinsurance tax legislation, regulatory enhancement proposals in Bermuda, Optional Federal Charter, and inter-regulator cooperation in connection with multinational insurance programs.

Compliance and Extraterritorial Regulation

With a legal staff that includes former regulators and prosecutors, compliance professionals, and in-depth institutional knowledge about the law and the exercise of prosecutorial discretion, Crowell & Moring regularly assists its clients in building effective compliance systems and disseminating clear and cogent information about compliance procedures. We help in-house legal and compliance teams effectively educate management about the real-world dynamics involved in establishing systems and procedures to protect both the company and the individual managers in it. Our approach is not academic and removed from the business realities. Rather, we help build systems that efficiently adapt existing business operations to the new compliance realities, and we do this by understanding how the insurance industry works. Our legal staff is intimately familiar with the major regulatory regimes of greatest importance and risk and understands from experience the enforcement dispositions of the most significant regulators. As a result, we are well positioned to help insurers craft efficient and compliant systems and to defend themselves when under regulatory scrutiny.

All-Segment Multidisciplinary Experience: Property-Casualty, Life, Health

In addition to the 40 practitioners who focus on property-casualty and life insurance, Crowell & Moring has also built an unparalleled practice advising health insurers on the entire range of regulatory, transactional, and litigation issues they face at the state and federal level. All of our insurance lawyers are, in turn, teamed with attorneys with deep knowledge of specific regulatory regimes or relevant legal landscapes, most of whom have experience within and without the insurance industry. At our firm, these practice areas are not separate and distinct; rather, our collective experience with regulators, financial reporting, reserving, transactions, business practices, and litigation has given us, we believe, the broadest possible exposure to the entire world of insurance. We can provide valuable insight on all of the issues and problems facing companies in the industry.

Attachments

1. Insurance Disputes
2. Reinsurance
3. Internal and Governmental Investigations
4. Appellate Work and Law Creation
5. Transactions and Corporate/Regulatory Advisory Services
6. International Trade and New Markets
7. Crowell & Moring Attorney Contacts

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Insurance Disputes

For more than 25 years, Crowell & Moring attorneys have been involved in some of the largest and most complex coverage cases in the country. Our attorneys have litigated hundreds of coverage disputes on behalf of insurance company clients in more than 35 states, Bermuda, and the United Kingdom. Our experience spans all of the major industries whose coverages have spawned major litigation: pharmaceuticals, railroads, aerospace, petrochemicals, asbestos (manufacturers and installers), automotive, construction, municipalities, colleges and universities, and health insurance and managed health care. We have handled cases arising out of climate change, environmental contamination, natural disasters (e.g., Hurricane Katrina and the San Diego wildfires), and a variety of mass torts including claims relating to asbestos, silica, plastic plumbing, home heating furnaces, over-the-counter cold remedies, benzene, and alleged repetitive stress “injuries.” We have represented our insurance company clients in coverage litigation involving employment discrimination, construction defects and construction accidents, sick building syndrome, antitrust, and denial of health benefits.

In the course of this work, we have litigated all of the major policy interpretive questions that have arisen over the past quarter century for property-casualty insurers. We have successfully litigated the pollution exclusion, trigger and multipolicy allocation, vertical exhaustion protocols and the reallocation methodologies associated with the so-called “all sums” approach to trigger and allocation, the owned property exclusion, the products liability definition, corporate and insurance policy succession issues, expectation and intent and the occurrence definition, “other insurance” clauses, notice timing questions, and number of occurrences. A number of these cases have involved potentially unaggregated coverages in which the compounding of per-occurrence limits threatened allegedly unlimited exposure.

Our practice has extended, of course, to standard-form comprehensive general liability coverages, but also to manuscript policies, environmental impairment coverages, and the Bermuda form. Our litigations have been venued all over the United States, as well as Bermuda and the United Kingdom, and include civil court actions, arbitrations, and bankruptcy proceedings. We regularly counsel insurers dealing with major exposures resident in bankruptcy courts, and we have led or participated in many of the most complex and financially significant bankruptcy proceedings.

We have also litigated potential liabilities arising out of claims-handling practices and alleged bad faith, agency questions arising out of the conduct of brokers and other intermediaries, and many other policyholder attempts to bootstrap coverage from the manner in which claims were managed. Our lawyers have litigated or successfully managed a great many complex interactive difficulties associated with Directors and Officers (D&O) coverages, where the insurance issues always come coupled with jostling over the management of the underlying claims, and Errors and Omissions (E&O) coverages of various sorts.

Although legal-interpretive advocacy was at the center of many of these disputes, especially as the insurance law applicable to major tort exposures and long-tail exposure-based injuries was being painstakingly developed, those questions must, in turn, center on the facts of each case and each liability exposure. Determining facts requires carefully crafted and efficient discovery. And it often means trials. Our lawyers have conducted more than a dozen trials over the years, and we regularly take arbitrations to the award stage. We believe that trial readiness is a key to successful resolution of large claims, whether the trial actually happens or not. We also commit ourselves to efficiency in our fact finding and discovery efforts, working with our clients to tailor discovery to the actual needs of the case and not trying to boil the ocean in search of some kind of abstract (and expensive) sense of perfection.

We also understand the sensitivities associated with coverage disputes and the general disposition of insurers and policyholders to try to reach some sort of accommodation. We believe that no other law firm has had a leading role in favorably settling as many large, complex exposures over as many years as Crowell & Moring. Our lawyers have led mediated, multilateral, mass tort settlements that have taken years to accomplish, and our insurance and bankruptcy teams are regular players in mass tort workouts. We believe that the complexity of insurance law, combined with its intersections with modern mass tort law, requires creative approaches to accommodation and settlement, especially when there are 30 parties in the room. This can only be accomplished, we believe, through a true collaboration between law firm and client and an acute sensitivity to risk, reward, and (in general) the spectrum on which they can be charted for each individual client at any particular point in time.

We believe that it is fair to say that our experience in and knowledge of insurance disputes are unsurpassed for breadth, depth, and financial significance.

Experience

- **Asbestos, Silica, and Asbestos Bankruptcies.** Our lawyers have been continuously engaged in asbestos litigation on behalf of insurers since the early 1980s and have taken part in at least 200 such matters, including virtually all of the most important ones. We have taken lead roles on behalf of some of the largest or most-exposed insurers in many of the most significant proceedings arising out of the several waves of asbestos bankruptcies and, more recently, state court receiverships as well. And we have regularly defended insurers in pressing coverage issues against still-solvent policyholders, whether these claims were brought by the policyholders themselves, other insurers, or, as in the so-called “direct actions,” the asbestos plaintiffs themselves. As examples, our lawyers litigated asbestos exposures involving Foster-Wheeler, Met Life, Exxon, US Gypsum, Combustion Engineering, HK Porter, Pneumo-Abex, PPG-Pittsburgh Corning, and Halliburton, among many others. We also played leading roles in defense of asbestos direct actions in West Virginia and elsewhere, both by defending the cases directly and channeling them through the Manville bankruptcy proceeding.
- **Environmental.** Likewise, we have been continuously litigating or arbitrating coverage issues arising out of environmental liabilities for several decades, including some of the largest multisite exposures. Examples include Conrail, Amtrak, Exxon, Ford, Stauffer Chemical Co., and Allied-Signal. Our lawyers have argued some of the most important appeals in this area, including state supreme court arguments in Delaware and California. Current engagements include two toxic tort cases arising out of industrial emissions in West Virginia; PFC claims; asbestos, environmental, and other tort claims against Amtrak; coal ash pollution claims against the Tennessee Valley Authority (Bermuda form arbitration); coverage claims by AES Corporation arising out of climate change allegations; and several ongoing lawsuits arising out of environmental contamination in New Jersey and California.
- **Product Liability.** We have represented insurers in a variety of high-profile product liability matters (separate and apart from asbestos, environmental, or pharmaceutical cases), including a plastic plumbing coverage litigation argued before the Illinois Supreme Court.
- **Pharmaceuticals.** Our insurance lawyers have dealt for many years with coverage issues arising out of alleged defects in pharmaceutical products, including litigation about product aggregates attached to those exposures. The list of products we have dealt with is long, and our experience extends to judicial actions and arbitrations, on shore and off shore. Examples include: knee implants, Avandia, breast implants, DES, Poligrip, AIDS-contaminated blood, and, in a related area, unnecessary surgeries.

- **Natural Catastrophe Coverage.** We represented an insurance company in an international arbitration with regard to property damage and bodily injury claims—both a class action and hundreds of additional individual suits—arising out of an oil spill in New Orleans in connection with Hurricane Katrina. We have also represented insurers in litigation arising out of the major oil spill litigation in the Gulf of Mexico.
- **Abuse Cases.** We have represented several insurers defending coverage claims arising out of sexual abuse and police misconduct and have acted as trial, coordinating, and/or strategic counsel on such claims. For example, we handled a 2015 jury trial involving late notice of judgment concerning county sheriffs who killed an arrestee. We also represented a risk retention group for claims arising out of the abuse allegations made against the Duke lacrosse team.
- **Errors and Omissions (E&O) and Directors and Officers (D&O) Coverages.** We regularly represent insurers in connection with a wide variety of E&O and D&O claims, both with regard to coverage issues or disputes and management/settlement of underlying actions
- **“Emerging” Torts and Liabilities.** As exposures move from the theoretical to the practical, we represent insurers in both the evaluation of the exposures and in coverage disputes where the “emerging” tort graduates into actuality. Current examples include climate change litigation, concussion litigation, and a variety of engagements pertaining to privacy and cyber tort issues.
- **Bad Faith.** We have defended a wide array of bad faith claims involving significant exposure to our clients. These range from defense of garden-variety bad faith claims routinely attached to large coverage claims to bad faith allegations on frequency coverage lines that seek to explode policy limits due to claims-handling difficulties.
- **Corporate Succession.** In many cases, terms of coverage may be affected by the movement of insurance rights through merger and acquisition transactions, as is discovery through evaluation of due diligence materials pertaining to the transactions. Occasionally, such transactions lead to competing claims for coverage. Our lawyers have been litigating such issues since the early 1990s, when the Stauffer Chemical Company, which no longer existed, purported to bring a major environmental coverage suit. Today, the corporate and insurance succession issues persist, and we continue to represent insurers in litigation involving complex corporate/insurance succession issues.

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Reinsurance

We believe that our reinsurance practice is unrivaled in terms of our collective experience, knowledge, and historical success. Our lawyers have successfully handled reinsurance disputes on behalf of cedents, reinsurers, and intermediaries. These have included the most important dispute categories in the industry over time, continuing to today. Our practice includes, of course, arbitrations, and no one has more experience with them. We have also litigated matters in courts, on appeal, and overseas. Our reinsurance practice spans all industry segments: property-casualty, life, health, facultative, treaty, and retrocession.

Quantitatively, we have handled hundreds of reinsurance arbitrations in both domestic and international proceedings, including London and Bermuda arbitrations. Qualitatively, we have earned a reputation for effectiveness and efficiency in our markets, which is the result of decades of effort on behalf of several dozen major clients. We have been engaged to handle disputes arising out of virtually all types of underlying business and exposures, including variable annuities, individual life, workers' compensation, asbestos, environmental, disability income, accident and health, health care, and construction defect claims.

To a significant degree, reinsurance billings lag events in the global economy and in the tort system. As a result, shocks to the system always create new interpretive challenges for multipurpose treaty and policy wordings. Reinsurance disputes almost inevitably arise when general wordings of contracts are called upon to react, after the fact, to these unexpected shocks.

In the 1980s and 1990s, a complex array of reinsurance issues arose out of the development of insurance law as it was applied to a mass tort environment. Issues that originated then are still being litigated, and our lawyers have been centrally involved in all of them for many years: trigger and allocation in a great many forms and permutations, number of occurrences or events, recovery of declaratory judgment expenses, claims-handling and its interaction with the duties of good faith or utmost good faith, and a wide variety of problems associated with insolvencies along the insurance-reinsurance-retrocession pipeline.

More recently, various major dislocations in the life insurance industry have led to controversies about underwriting practices, broker behavior, and the sale of life insurance to "strangers" with no perceptible insurable interest (i.e., STOLI: stranger-originated life insurance). The separate reinsurance pipelines for components of universal life, including most particularly "yearly renewable term" contracts (YRT), have created other controversies that are being worked through the contractual language. Our lawyers have been continuously active in these disputes in recent years.

And, of course, reinsurance is not limited to liability and life exposures. Our practice encompasses surety and construction disputes, health insurance controversies and "accident and health" reinsurance, controversies involving captives, and complex insurance/reinsurance programs.

In virtually all of these disputes, the matrix of reciprocal obligations owed by cedents and reinsurers is defined by contract, law, and long tradition. These generally defined duties meet the complexities of the modern world constantly and must be reconsidered and adapted to the facts as they present themselves. Through long experience in all lines of business and in all of the relevant jurisdictions and fora, Crowell & Moring has a proven record of sophistication and success.

Much like our direct insurance practice, our reinsurance work has focused over the years on the most pressing issues that emerge out of the intersection of tort law, insurance law, and reinsurance contracts.

Experience

- **Legacy Long-Tail Liability Exposures and Allocation.** Our experience with the many issues that arise in the course of final disposition of tort system liabilities as they make their way through the global financial security system has included every major type of liability exposure and all of the significant legal-interpretive issues that have arisen over the past 25 years. We have been regular or coordinating counsel to several major international insurers and reinsurers for asbestos and other mass tort exposures, and we continue these representations today. Our lawyers are continuously engaged in reinsurance disputes arising out of the allocation of legacy liabilities to particular insurance policies, environmental sites, and/or reinsurance treaties. Indeed, we have had an almost continuous docket of such arbitrations for several years.
- **Life Re, STOLI, and YRT.** These controversies are of more recent vintage, though they often involve decade-old treaties. Our lawyers have handled many of the most financially significant of these disputes, which always involve forging a strategic balance among legal duties, custom and practice, and the imperatives associated with very long-duration contracts.
- **Underwriting, Claims-Handling, and Other Behavior-Based Disputes.** Understanding the law and custom of “follow the fortunes” is just the beginning of the litigation process for many reinsurance claims that implicate careful evaluations of the methods and practices being used in underwriting and claims disposition. Innumerable reinsurance disputes arise from, and must be resolved with reference to, conduct and decision making that do not necessarily fit within traditional “follow-the-fortunes” thinking, not least because of the active markets that have developed to facilitate the movement and consolidation of liabilities after the fact. New species of bad faith claims have arisen between cedents and reinsurers, and these implicate long factual histories and extremely complex fact patterns. Our firm has been, and is, involved in many of the most important of these disputes, the outcome of which will likely guide market behavior for quite some time.
- **Insolvencies.** These regularly clutter the courts and regulatory dockets and often block the flow of liabilities—and their countervailing assets—through the insurance-reinsurance financial pipeline. Crowell & Moring’s bankruptcy practice is fully integrated with our (re)insurance practice and focuses on insurance-centric insolvency representations. No matter whether the issue lies in bankruptcy court or in a regulatory or liquidation proceeding, we continuously represent insurers and reinsurers facing exposures that may result from insolvency events.
- **First-Party, Property, Nat Cat, Surety.** These species of reinsurance claims often require a combination of reinsurance experience and great familiarity with complex facts, not to mention a more than passing familiarity with economics and damages jurisprudence. We have counseled about, and litigated, reinsurance issues arising out of weather events, business interruptions of all sorts, and construction problems or disasters.
- **Multiline, International Presence.** Our reinsurance practice is national and international and extends to any and all lines of business. We have litigated national and international arbitrations, litigated in state and federal and bankruptcy court, and represented clients whose insurance/reinsurance offerings span all of the major business groups and most of the significant subspecialties. Our understanding of the business of reinsurance inevitably allows us to handle major disputes more effectively and also more efficiently.

3

Internal and Governmental Investigations

All financial services companies are vulnerable to regulatory interventions that require independent investigation and fact finding. The insurance industry is highly regulated by a fragmented, worldwide network of regulations issued by the 50 states and by every foreign country. In addition, insurers are subject to the various extraterritorial anticorruption regimes established by the United States and other jurisdictions such as the Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act, economic sanctions systems such as those created by the U.S. Office of Foreign Assets Control (OFAC), and broad anti-money laundering (AML) regimes. These multifaceted regulatory schemes combine civil and criminal consequences for employee misconduct, on top of the more traditional financial reporting scrutiny imposed by the U.S. securities laws, non-U.S. equivalents, and international accounting standards.

By far, the best approach to these regulations is diligent preparation and the creation of systems and controls that assure compliance and company qualification for such “safe harbors” as exist in the law. But all such systems are vulnerable to employee misconduct and to allegations by regulators or whistleblowers, and every company needs a credible and trustworthy investigatory capability.

We believe that corporate investigations must be guided by a firm grasp of the business practices of the industry and the company undertaking such investigations. Business knowledge guides inquiry under the law and makes investigations more reliable and far more efficient. When coupled with a deep understanding of the law and regulations and, most importantly, the customs and practices of the responsible regulators, such business sophistication can drive investigations toward what really matters, away from expensive sideshows or wasted effort. The result, we have found, is successful resolution of the issues for the company, whether that entails defending the conduct in question fully, working through incidents of misconduct with the regulators, or adjusting systems and controls to prevent recurrence.

At Crowell & Moring, we combine the broad experience of our insurance practitioners with the regulatory and investigatory knowledge of our investigators. This approach brings together professionals with significant backgrounds in insurance, including a former general counsel of a large international insurer, with investigatory lawyers, including former senior regulators and federal prosecutors as well as renowned civil and criminal defense lawyers. The resulting array of experience extends to every significant regulatory regime and to all of the meaningful risk exposures that insurers face. Our unique approach in combining leading insurance practitioners with skilled and experienced investigators will help assure regulators and prosecutors that our review of the internal conduct is thorough, comprehensive, and reliable. Often, this obviates the need for a full-blown governmental investigation of the same set of facts.

Our internal investigations have spanned all disciplines, including antitrust allegations, procurement fraud, accounting irregularities, foreign bribery, kickbacks/embezzlement, and every form of securities law enforcement action. In 2011, we litigated one of the very few FCPA cases to go to trial and obtained a complete dismissal. In many other cases, investigations led to clear and efficient resolution of the issues at hand. For example, in 2013, we secured the first-ever nonprosecution agreement with the SEC, along with a similar agreement with the Justice Department, in a groundbreaking resolution of significant FCPA allegations for a major global retailer based on conduct at one of its foreign subsidiaries. For the insurance industry specifically, our lawyers have investigated irregular insurance programs in multiple countries, allegedly improper insurance marketing practices in the U.S. and abroad (including S166 undertakings in the United Kingdom and sweeping allegations of bid rigging in the commercial insurance markets), and a wide variety of matters for health care insurers.

Our lawyers have successfully navigated investigations in Thailand; Mexico; various Middle Eastern, African, Asian, and South American countries; and all over Europe and the United States. These investigations regularly implicate questions of local law and regulation as well as the major extraterritorial regulatory regimes, and they often involve tensions between local law and acceptable custom, on the one hand, and extraterritorial reach on the other.

One result of this broad and diverse experience has been a solid and growing reputation for excellence in the field. Our White Collar & Regulatory Enforcement Group, which is home to most of our seasoned investigators, was named “White Collar Group of the Year” by *Law360* in 2012 and an “FCPA Powerhouse” in 2013. Six of our lawyers have received individual recognition for excellence in *Chambers USA* and other similar organizations. Besides being lauded for effective and efficient post-facto investigations, our lawyers have become a critical resource for clients looking to prevent trouble and to create effective compliance systems. These are invariably based not just on the letter of the law but on a thorough understanding of regulatory dynamics, risk factors, and the businesses being conducted.

Experience

- **Antitrust.** We have a long history as one of the most active firms in the country in dealing with antitrust allegations. We have represented clients accused by whistleblowers or prosecutors of price fixing or bid rigging in various retail or wholesale markets, including: energy, airlines, insurance, automotive parts, fruit, electronics components, transportation of commodities, and computer displays.
- **Financial Reporting, SEC, and Money Laundering.** We regularly represent companies and individuals under scrutiny for financial reporting irregularities. Our engagements have run the gamut of regulatory regimes, from revenue-recognition allegations in different industries, to risk-transfer and deposit accounting allegations for the insurance industry, to regulatory inquiries arising from, or leading to, financial restatements. We have carried out large-scale anti-money laundering (AML) investigations for global financial institutions and represented broker-dealers across a range of investigatory issues.
- **FCPA, OFAC, Sanctions, Embargoed Countries.** Our FCPA engagements have extended across a multitude of industries and countries of concern. We have dealt with internal FCPA investigations and corporate FCPA defense for operations in the telecom, aerospace, insurance, freight, aviation, mining, technology, and investment industries. Our work has included investigations in Egypt, China, Thailand, Mexico, Philippines, India, Qatar, and South Korea as well as more regional or entirely global allegations of corrupt practices. In addition, we regularly counsel clients, and defend them, in connection with the complex regulations issued to prevent U.S. companies from doing business in certain countries. Many of our lawyers were regulators or prosecutors and understand the priorities and inclinations of regulators who enforce these regimes.
- **For the Insurance Industry:** Although our investigatory practice spans all industries, our lawyers have had direct experience with the investigatory/regulatory issues of concern to the global insurance industry in recent years. These range from the so-called Spitzer investigation, where one of our lawyers represented a major international insurer, to a variety of financial and market conduct investigations of international insurer operations. Conversely, one of our lawyers was the co-lead prosecutor in the investigation of a major insurer for alleged securities fraud, and another Crowell lawyer supervised multiple SEC enforcement investigations involving accounting practices at public reinsurance companies. We also have extensive experience with investigations of health insurers, ranging from market conduct issues to corruption allegations.

4

Appellate Work and Law Creation

Law is created in many ways, and our lawyers are involved in all of them on behalf of the insurance industry.

Appeals and Amicus Briefs

From the beginning of the insurance litigation explosion in the 1980s, Crowell lawyers have been continuously engaged on behalf of the industry in appellate courts around the country. Beginning with state-by-state judicial efforts to craft interpretations of policy language pertinent to huge asbestos and environmental claims (e.g., pollution exclusion, owned property exclusion, occurrence definition, personal liability definition, horizontal and vertical allocation) and continuing on to today's emerging controversies (e.g., horizontal reinsurance allocation and "follow the fortunes," various legislative and judicial expansions of insurer duties), our lawyers have engaged dynamically and successfully for insurance clients in an era that has seen the creation of more insurance and reinsurance law than ever before.

We have represented insurers facing ten-figure claims in states where the relevant CGL language was under-interpreted and therefore open-ended. We have litigated major pollution exclusion cases to positive outcomes in state supreme courts. We have briefed and prevailed in cases posing arithmetically complex allocation questions. We regularly brief late notice issues for nearly every relevant coverage line. And our lawyers have, with great frequency, been retained as coordinating counsel for lines of exposure that turn on the interpretation of "standard" insurance policy language and for appeal of bankruptcy court outcomes in insurance-centric insolvency proceedings.

We also have regularly represented industry organizations seeking to advocate before the courts for the proper development of bodies of law that are of acute importance to insurers, particularly liability insurers. For example, over the past five years, we have filed amicus briefs on behalf of an insurance trade group in 17 legally significant tort or mass tort cases in support of attempts to restrict the expansion of tort exposures beyond clearly discernible limits based on science, sensible standards of causality, and market-realistic definitions of duties.

We consider appellate work central to our broad mandate on behalf of the insurance industry. We attribute our success in the field to more than just good preparation and a certain amount of insight about insurance and about the law. We consider our appellate presentations to be a bridge between a very complex industry facing intricate and interrelated legal challenges, on the one shore, and judiciaries generally intent on doing the right thing, but without the resources to develop an in-depth, nuanced understanding of insurance, on the other. We try to package readable, cogent content together with business-savvy themes to assist courts in understanding the full consequences of their rulings. In insurance, most often, everything relates to everything else, and we know how to communicate how important that is.

Legislatures and Regulators

Courts say that they do not make law, even though they do. But legislatures and regulators do not pretend to just interpret. Often writing statutes and regulations on blank sheets of paper, they can enhance or totally upend the carefully crafted mosaic of insurance law, and in fact they do so just about every day. Our lawyers have represented companies and trade groups in helping to craft legislation and regulation, in trying to oppose bad ideas, and in trying to make markets more open and efficient. The list of topics we have worked on is broad— asbesto, including the proposed asbestos trust fund; Congressional proposals to limit offshore reinsurance or tax it into oblivion; federalism issues arising out of proposals for optional federal charter authority; capital requirements; conflicting international accounting and financial reporting regimes; global supervision of international insurers by individual states; and the general topic of inter-regulator clash.

Again, our approach is bridge building, on the theory that more and better information usually leads to more sensible outcomes, and on the theory that regulators, too, are intending rational outcomes to the best of their ability. Because of this approach, we often find ourselves with leadership positions in coalitions and with good access to governmental decision makers.

Non-Governmental Organizations (NGOs)

Although they clearly do not make law, NGOs often initiate the processes that lead to law, and NGOs in the legal field are quite influential in moving judges and regulators in certain directions. Our lawyers have partnered with NGOs, and the academic world more generally, to assure that the voice of reason is heard before the voice of the bar or the academy is spoken publicly. We are participants, for example, in the ongoing ALI effort to create a new *Restatement of the Law of Liability Insurance*, and our lawyers speak regularly at conferences of the bar and the academy on topics of critical importance to the development of the law and the efficient delivery of financial security products.

Participation in many law-creation exercises not only allows us to represent our clients' interests, but it also keeps us at the center of emerging developments in the law and in the industry.

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Transactions and Corporate/Regulatory Advisory Services

Our multidisciplinary teams assist legal departments in the insurance industry as they react to rapidly changing conditions and as they create such change via transactions large and small.

Design and Execution of Transactions

The breadth of the Crowell & Moring corporate practice for insurers extends to all segments of the industry, virtually all transaction types, and all of the major corporate organizational issues that insurers face. Our deal lawyers have helped navigate transactions of every kind to conclusion, from mergers and acquisitions to corporate reorganizations and redomestications. Our corporate/transactional practitioners work with large international and domestic public companies, midsize and emerging businesses, privately held firms, private equity sponsors and hedge funds, investment firms, and high net worth individuals across a wide range of industries. And our corporate and insurance lawyers regularly advise insurance clients interested in efficient and effective organizational structures, state-of-the-art contract and policy language, the creation and legally compliant management of captives and other risk-sharing vehicles, and entry into new geographic and product markets.

For transactions, we deploy experience from all of the disciplines relevant to a given deal. Although our transactional teams have extensive experience on behalf of the insurance industry, we couple that knowledge with specific experience that is “industry-agnostic” whenever necessary. Our transactional practice has historically had a specific focus on M&A, private equity, venture capital raising, access to capital markets in all its forms, joint ventures, and a wide variety of investment vehicles. For insurers in particular, our lawyers have efficiently executed transactions running the gamut: domestic and cross-border M&A, joint ventures, purchases and sales of renewal rights, issuance of debt, creation and licensing of new subsidiaries, and creation and proper management of runoff entities, including the purchase or sale of those entities.

We staff transactions from our Washington, DC, New York, and California offices, as circumstances may require. Where a transaction requires substantial or special insurance-related due diligence, as with most M&A and nearly all transactions involving runoffs, we rely on our insurance and reinsurance litigators to provide hands-on, substantively sophisticated assessments. Our competition/antitrust group, located primarily in Washington, DC, consults whenever necessary.

In the international arena, Crowell & Moring offers a unique suite of services designed to provide full support for companies seeking to enter new geographic markets or to manage their exposures and regulatory risks in foreign venues. We combine our international trade legal practice with the experience of our colleagues at C&M International, our regulatory and public policy consulting affiliate. This array of disciplines—involving the practice of law and the art of international relations—is in turn combined with our traditional strengths in insurance advisory services. The result, we believe, is unsurpassed depth and sophistication for clients seeking practical advice about how to approach new international markets. (See Tab 6.)

Corporate Advisory Services; Product Development

But there is far more to a corporate practice for insurers than just transactions. Our lawyers are continuously collaborating with insurers about the corporate and insurance issues “du jour,” which are always abundant, complicated, and critically important. Our insurance lawyers craft policy language for new products and manuscript arrangements, advise clients about legal developments as they arise, connect emerging developments in the tort system to policy language and vice versa, and assist insurance clients with managing the risks of change

in the legal environment generally. Our experience allows us to connect all of the different strands of a situation together—legal, regulatory, political, contractual, and cultural—to find solutions that work in the context of a given insurance business’s operations.

Our advisory work has also extended to corporate organizational issues, including advice about the corporate veil, preservation of the attorney-client privilege, and the best options for organizing legal departments, compliance operations, and the interrelationship between the legal and claims departments. We approach these matters from a position of both knowledge and experience: deep knowledge of the relevant legal principles combined with an understanding of corporate and legal organizations as well as human nature. We believe that legal and compliance operations must be both comfortably embedded in their businesses and sufficiently independent to do their jobs effectively. Choices about organizational structure set the stage for success or failure of what are often very expensive undertakings in and of themselves—undertakings that also plainly implicate the efficiency and productivity of a wide range of business practices throughout a company.

Our corporate advisory work is both domestic and global, and it is both strategic and highly tactical. To be effective, strategic insight requires consistent execution. Conversely, action plans taken without a strong and sophisticated strategic sensibility too often lead to inefficiency and ineffectuality. Our collective experience allows us to couple strategic coherence with practical business and organizational know-how developed over several decades representing all segments of the insurance industry. The result, we think, is integrated advice that offers a proper balance between the conceptual and the practical and that manages risks while not destroying rewards.

Our regulatory advisory services for the insurance industry form a part of the long tradition at Crowell & Moring that strives to assist insurance clients in satisfying the often dizzying array of commercial rules imposed by courts, legislators, and regulators around the world. For the insurance industry specifically—especially the multinationals—such regulation is often intense, contradictory, and politically or culturally charged. We can help clients navigate compliance with these regimes, particularly when (as seems to happen every week or so) regulations, interpretations, or enforcement philosophies suddenly change.

Regulatory Relations and Compliance

Regulatory interventions are a fact of life in the insurance industry—much more so than in most industries. We help companies design solutions to regulatory interventions into ongoing business practices, and we help create compliance systems that reduce the risks of such interventions without doing violence to business models.

This begins with compliance architecture, which in turn must be premised on a solid understanding of the law and more than an intuitive sense of the regulators’ enforcement intentions. Given the complexity of modern financial regulation, an understanding of regulatory and prosecutorial discretion is central to building the right systems. Indeed, many of the more intrusive regulatory regimes (e.g., FCPA) have within them “safe harbors” for companies that have the right compliance architecture but nevertheless endure some form of misconduct.

Compliance architecture also depends on the nature of the businesses and processes that must be compliant. But compliance is like the scaffolding on a building; it is not the building itself. Therefore, compliance systems must be carefully crafted to operate both within and without the relevant businesses, must be both facilitative and independent, and must operate without unnecessary infliction of inefficiency. Our knowledge of the insurance industry has helped us to advise clients facing these seeming paradoxes about how best to act. Our lawyers have acted as legal counsel to compliance architecture projects and have also supervised the building of entire compliance systems. Our experience extends to all of the major extraterritorial regimes and to traditional

insurance regulations issued by states and countries. It extends to all segments of the insurance industry and to all of the parts of those businesses—financial reporting, market conduct, and claims operations.

Sadly, no compliance system is fail-safe, and we are almost continuously representing insurance industry clients facing scrutiny by regulators of every kind. Our lawyers appear before the state insurance regulators, the courts, and often internationally in order to defend insurers against misguided allegations and to resolve regulatory concerns about employee behavior, selling practices, financial reporting (be it under statutory accounting or GAAP), and other matters. We approach such regulatory litigation by organizing teams with the specific regulatory experience necessary as well as the strategic and tactical sensibilities necessary for effective litigation.

We approach all of these legal/organizational problems with an eye toward efficacy as well as efficiency, understanding that dogmatic solutions are rarely actually solutions. Our lawyers have helped to construct sensible, balanced legal and compliance organizations, and we have done this on an international plane as well as a domestic one.

Experience

- **Mergers and Acquisitions and Other Business Dispositions.** We regularly represent companies across the spectrum in all aspects of M&A transactions through thoughtful and practical business-driven advice. We have represented insurers in acquisitions and divestitures of insurance plans in various states, sales of specific lines of business, and whole company transactions. This includes nine- and ten-figure acquisitions of domestic and foreign insurance companies operating in the property-casualty, life, and health segments.
- **Disposition of Legacy Liabilities.** Our lawyers have had vast experience with transactional solutions to legacy liability problems. We have advised large insurers about the creation of effective liability-limiting structures for legacy liabilities such as asbestos and environmental claims. Our lawyers have advised about the creation and reorganization of runoff entities, including the reorganization of one of the world's largest runoff entities and the disposition of entities within it. Our experience extends to the proper negotiation and documentation of transactions, insurance litigation due diligence and reserve evaluation, and presentation to regulators and deal defense in public hearings.
- **Capital Markets and Commercial Finance and Lending Transactions.** We advise on a range of investment transactions, including initial public offerings (IPO) and other registered and underwritten public offerings, private placements, Regulation S offshore offerings, and Rule 144A resale transactions. Our borrower clients are active in a broad spectrum of industries and range from large, publicly traded and privately held portfolio corporations to smaller, closely held and family-owned companies and to startup enterprises. Our lender clients have included insurers, federal and state chartered banks, investment banks, commercial finance companies, opportunity funds, hedge funds, investment groups, and individual investors. We have also executed life securitization transactions and the full range of transactions for the health insurance industry.
- **Insurance, Corporate, and Organizational Counseling.** Our lawyers have extensive advisory experience in a wide variety of corporate governance issues, including financial reporting; board fiduciary duties; board and committee composition, structure, and processes; conduct of board, committee, and shareholder meetings; business ethics and conflict of interest policies; and corporate social responsibility. In addition, we regularly advise boards of directors, independent directors, and special committees on matters of significant importance to the company. For insurers in particular, our lengthy experience with the industry allows us to provide sound and practical advice concerning corporate structure, managerial structure, and the various issues facing general counsels of international insurers seeking to create effective reporting lines within their legal departments. Our lawyers are also continuously involved in advising insurer and reinsurer clients about policy wordings and filings, new insurance products, and large individual insurance transactions.

- **Compliance and Regulatory Counseling.** Our lawyers have crafted compliance systems and practices for major insurers, including appropriate organizational structures suited to the demands of the business being addressed. We have regularly defended business practices in regulatory proceedings, whether by defending the practices or by placing them within a more secure and compliant framework. Our lawyers have advised on all of the major regulatory changes since the financial crisis, including groupwide supervision, SIFI, capital requirements, reinsurance collateral and inter-regulator reciprocity, and the trend toward neuroscience-based market and marketing restrictions. And we regularly advise clients within and without the insurance industry about compliance with the major extraterritorial regulatory regimes such as FCPA, AML, and anti-bribery regulations.

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International Trade and New Markets

Crowell & Moring offers our clients distinctive legal and advisory assistance as they open operations overseas, navigate cross-border transactions, and seek multijurisdictional regulatory approvals for new or expanded businesses. Our model is unique: We combine our insurance and international trade legal knowledge with the decades of experience resident in our affiliated international policy and regulatory affairs consulting firm, C&M International. The result is an ability to deal with issues in real time based on realistic assessments of risk and reward, timing to completion, and local custom and practice. This collective advisory capability also entails a worldwide network of local law firms and advisors with proven records of success.

Established more than 25 years ago, C&M International helps companies and the industry associations that represent them create the political and regulatory conditions that maximize commercial success. Our team includes more than a dozen senior policy professionals and trade negotiators with decades of experience helping clients at home and abroad break down international barriers and resolve challenges posed by agencies, officials, and politicians. We help Fortune 100 corporations and other multinational enterprises gain access to foreign governments, navigate ministries and agencies, seek and obtain licenses to operate, and influence policy and legislation worldwide.

Our directors and consultants have worked at the top levels of government—including service on the White House Council of Economic Advisors in the United States, with the office of the U.S. Trade Representative, and at the U.S. Department of State, U.S. Department of Commerce, and U.S. Patent & Trademark Office—and in appointments as senior trade officials and negotiators for the governments of Australia and New Zealand, among other positions of leadership.

On the largest-scale issues, our professionals have played roles in the creation of virtually every major international trade agreement between the United States and the countries and markets of the Asia-Pacific region, Europe, South America, the Middle East, and Africa. We have extensive personal contacts in Washington, DC, trade policy circles, at trade and foreign ministries across the globe, and in major international trade organizations, including the World Trade Organization (WTO), the World Health Organization (WHO), the Asia-Pacific Economic Cooperation (APEC) forum, and the Organisation for Economic Co-operation and Development (OECD). This broad experience informs our judgment about what it takes for companies to navigate regulatory complexity and achieve the outcomes they want, be it an operating license or the resolution of a regulatory obstacle. For every engagement, we ask a simple question: “What is the fastest, best way to achieve the results our clients want?” With that information, we regularly help companies and organizations:

- Understand and enter new markets.
- Shape policy and regulation in markets, countries, regions, and internationally.
- Resolve problems, disputes, and other challenges involved in doing business internationally.
- Realize trade-related cost savings.

C&M International’s political and regulatory experience dovetails with Crowell & Moring’s international trade legal practice, which provides practical, sophisticated advice and cross-disciplinary counsel. *Chambers Europe, Chambers USA, Legal 500, The World’s Leading Lawyers Guide, and Best Lawyers* have all ranked the

firm among the top international trade practices for export control, trade litigation matters (including antidumping, countervailing/antisubsidy, and safeguard matters), and customs. In a recent editorial describing its selection rationale, *Chambers Global* noted that “sources applaud the quality of [the firm’s] expertise.”

With experienced lawyers practicing in the firm’s Washington, DC, Brussels, London, New York, and California offices, we are well positioned to provide dispute resolution and litigation counsel on emerging trade issues worldwide. Working with C&M International, we also help facilitate communications with national governments and international trade agencies across North America, Latin America, Europe, Asia, and the Middle East.

Our lawyers counsel clients on licensing requirements, perform internal investigations, assist with voluntary disclosures, and design and implement compliance programs. We also represent clients in civil and criminal enforcement proceedings, prepare license and agreement applications, and provide training on a variety of issues arising out of international trade and operations. We act for national governments, trade associations, and corporate clients on trade remedy matters, giving us a particular understanding of the challenges faced by all parties to a trade dispute.

All of this is coupled with the insurance experience of our insurance and reinsurance groups to assure that we provide integrated and sound advice across the board. We understand the business of insurance as well as the regulation of trade. Whenever necessary, we work with a network of local contacts and advisors around the world, one that we have compiled through decades of working in the international field.

Experience

- **Corporate Citizenship and Migration.** Our lawyers have advised major multinationals concerning corporate residency implications and political/legal stability as well as related tax issues. We have coordinated the redomestication of a major international insurer from the Cayman Islands to Switzerland and are quite familiar with the legal and regulatory requirements associated with different jurisdictions’ residency and taxation requirements with regard to the corporation itself and senior management as well.
- **New Countries; New Products.** Our lawyers and professionals regularly counsel clients about international expansion across many industries, and we have helped to open new operations in developing countries, as well as new or expanded product lines, for the insurance industry in particular. Our capabilities include senior international trade advisors at the highest levels as well as the former general counsel of one of the largest international property-casualty and life insurers with operations in more than 50 countries.
- **Compliance and Regulatory Dispute Resolution.** Taken together, our C&M International professionals, our international trade lawyers, and our insurance litigators have handled most of the species of significant regulatory compliance that face insurers around the world. We have experience and capability in efforts to prevent such controversies via sound and efficient compliance programs. And we have the ability, with local partners, to litigate them aggressively as needed.

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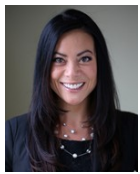
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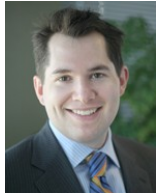
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