



Denenberg Tuffley

PLLC



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Denenberg Tuffley is a national law firm offering a full range of services to individuals, insurance companies and businesses. The firm prides itself in providing its clients with exceptional and innovative legal services in a cost effective manner.

The firm has the resources and experience to handle any size matter, large or small. Indeed, the firm currently represents clients in numerous multi-million dollar cases (both as a Plaintiff and as a Defendant) throughout the United States, and in various other countries as well. At the same time, unlike many firms with a national and international practice, Denenberg Tuffley provides the flexibility, accountability and personalized attention typically associated with a smaller firm. For example, via cellular phones and other devices the firm's attorneys make certain they are available to respond to a client's needs 24 hours a day, 7 days a week.

Denenberg Tuffley's greatest attribute is the quality of its attorneys, who bring a broad range of practical experience and knowledge to the cases on which they work. Firm members are admitted to the State Bars in California, Florida, Michigan and Massachusetts. Many are also members of the Federal Trial Bar, and are admitted to practice before the U.S. Supreme Court, as well as numerous U.S. Courts of Appeal and U.S. District Courts across the country. Moreover, several of Denenberg Tuffley's attorneys have previously served clerkships with state and federal judges in Michigan and elsewhere.

The firm's attorneys have litigated countless property insurance coverage, liability insurance coverage, subrogation, corporate and other civil matters. They have successfully tried cases before judges and juries, and have prevailed before various state and federal appellate courts. Also, the firm's attorneys often lecture and/or teach on various topics for the insurance industry (including for the Property Loss Research Bureau, the Liability Insurance Research Bureau and the National Association of Subrogation Professionals) and other corporate entities.

Our firm provides a full range of services to its clients:

- Appellate Litigation
- Boiler & Machinery Insurance Coverage
- Civil Litigation
- Commercial Litigation
- Employee Dishonesty Claims
- Environmental Litigation
- Liability Insurance Coverage
- Liability Insurance Defense
- Property Insurance Coverage
- Reinsurance
- Subrogation

Please contact one of our knowledgeable attorneys regarding any of our areas of practice.

APPELLATE LITIGATION

One of the most important stages of litigation is the appeal. It is on appeal that a trial court victory can be preserved, or an adverse decision reversed (thereby providing a second chance for success in the trial court). Moreover, unlike trial court decisions, a decision by an appellate court affects more than just the case in question.

By establishing or reinterpreting rules of law, an appellate court decision can impact other cases for years to come. Some law firms overlook the importance of appeals, viewing them as nothing more than an afterthought. Denenberg Tuffley takes a different approach. Recognizing the importance of appeals, the firm has several attorneys who either specialize in appellate practice, or have extensive experience in arguing appeals. These attorneys also have prior experience working for state or federal appellate courts, giving them strong insight into how the appellate process works “from the inside. This invaluable experience yields tangible results, including a rate of success on appeal that far exceeds the national average.

With regard to appeals, the firm provides several services to its clients. First, it represents them in state and federal courts across the country. This includes filing the appeal, preparing the brief, and appearing at oral argument. Denenberg Tuffley not only handles appeals in cases it litigated before the trial court, it routinely handles appeals in cases in which the firm was not previously involved. Through a review of the lower court record and other relevant file materials, and by consulting with the attorneys who represented the client at trial, the firm’s attorneys will learn all that is needed to present the strongest arguments on its client’s behalf.

Second, even if Denenberg Tuffley does not actually handle the appeal, the firm consults with clients and their trial attorneys regarding an appeal. The firm’s attorneys can provide a “fresh look,” offering opinions on whether an appeal is practical, which arguments have the greatest chance of success, and what the overall chances are for victory on appeal.

SUBROGATION

One of Denenberg Tuffley’s largest areas of practice is subrogation. Its attorneys have litigated and tried countless subrogation cases throughout the United States and around the world.

Denenberg Tuffley’s belief is that in order to be successful with a subrogation action, it is critical the firm be available to get actively involved at a loss site at an early stage, often times while the fire (or other event) is still occurring. Consequently, the firm’s attorneys are available 24 hours a day to travel to a loss site, obtaining and preserving valuable evidence and information.

Moreover, the firm has a national network of experts in a wide array of fields. This permits the firm to contact an appropriate expert shortly after receiving notice of a loss, resulting in an expert visiting a site on the same day as the loss, or shortly thereafter.

Denenberg Tuffley’s proactive approach to handling subrogation claims, coupled with the experience of its attorneys (several of whom were previously involved in such complex subrogation cases as the Kansas City Americold fire and the Rouge Powerhouse explosion in Michigan), has resulted in significantly better recoveries for its clients.

LIABILITY INSURANCE COVERAGE

Denenberg Tuffley's attorneys have extensive experience representing liability insurance carriers regarding coverage issues, both in Michigan and in other states. Whether in the context of a lawsuit brought by the insured, or via a declaratory judgment action brought on behalf of the insurer, the firm's attorneys regularly analyze and/or litigate liability coverage issues such as whether there has been an "occurrence," whether bodily injury or property damage was expected/intended by the insured, and whether a particular person is indeed an insured party under a liability insurance policy.

Moreover, because of the breadth of their experience in both residential and commercial coverage matters, the firm's attorneys have addressed more uncommon or esoteric coverage issues. These include the applicability of both limited and absolute pollution exclusions in a variety of contexts, "drop down" issues regarding excess liability carriers (where the primary insurer is either insolvent or has exhausted its policy limits), "other insurance" issues involving multiple liability carriers on a risk, and various unique conditions and exclusions pertaining to personal and advertising liability coverage. In short, Denenberg Tuffley is able to assist its insurer clients in analyzing and confronting a myriad of liability coverage issues.

Due to the firm's attorneys' background in this area, Denenberg Tuffley regularly provides liability insurance carriers with coverage opinions, and subsequent representation in litigation as required, in a variety of situations. These have included residential matters, environmental contamination cases, various employment-related disputes, and the Dow Corning breast implant liability insurance coverage litigation.

LIABILITY INSURANCE DEFENSE

Denenberg Tuffley has several members that specialize in the handling of complex liability defense cases at the trial and appellate level. The attorneys in this multi-state practice group have a diverse background, including medical malpractice, product liability, automobile/motor carrier negligence, premises liability, automobile no-fault insurance, construction law, environmental contamination and general negligence.

The firm takes an aggressive, yet cost-effective, approach to all liability defense litigation. Our attorneys work closely and directly with each client to develop the most appropriate defense strategy for a particular case.

We specialize in mastering the technical aspects of a product or complex subject matter. We often recommend early case strategy conferences, and in potential large loss cases, pre-suit attorney-directed investigation. This dynamic, pro-active approach identifies latent issues, permitting the carrier to confidently take a position, and enables our attorneys to prepare the strongest defenses - all before suit is commenced and the cost of extensive discovery is incurred.

The firm is then able to provide its client with the facts necessary to make an informed decision as to how to effectively defend each case, whether it be through a trial, arbitration, settlement, or by some other means.

PROPERTY INSURANCE COVERAGE

Denenberg Tuffley's attorneys have many years of experience in litigating property insurance claims throughout the United States. They are quite well-versed on a broad variety of coverage issues, including ordinance or law coverage or exclusions, the "direct physical loss" requirement, various questions that arise when multiple perils cause a loss (including the application of the efficient proximate cause rule and the impact of anti-concurrent causation provisions in property insurance policies), coinsurance, and the applicability of numerous exclusions found in property insurance policies. As a result, the firm's attorneys are often asked to lecture and/or write on various property insurance topics for organizations like the Property Loss Research Bureau, the Federation of Insurance and Corporate Counsel and the American Bar Association.

The scope of the firm's property insurance coverage practice is quite extensive, including homeowners, commercial, transportation (intrastate, interstate and international) and excess/surplus lines claims. The firm is often involved in every step of a property insurance claim, starting with the initial investigation, continuing through a coverage determination, and culminating (where justified and/or necessary) with litigation – first-party defense if the claim is denied, and subrogation if it is not. Moreover, if the only dispute is over the amount of a loss, and an appraisal ensues, Denenberg Tuffley will get involved (as required) in the appraisal process.

PUBLISHED CASES HANDLED BY DENENBERG TUFFLEY ATTORNEYS

AGK Holdings, Inc. v. Essex Insurance Company, 142 Fed. Appx. 889 (6th Cir. 2005) (construction of “water under the ground surface” exclusion in a property insurance policy)

Allen Park Theater Co., Inc. v. Michigan Millers Mut. Ins. Co., 48 Mich. App. 199, 210 N.W.2d 402 (1973) (coverage under civil authority clause for business interruption)

Allstate Insurance Company v Hugh Cole Builder, Inc., No. 1990046 (Ala. Sup. Ct. 6/2/00)(2000 W.L. 709509) (limits placed on the “insured made whole” rule in subrogation)

American Auto. Ins. Co. v. Kevreson, 131 Mich. App. 759, 347 N.W.2d 1 (1984) (insurer’s policy defenses not waived by raising of defenses 30 days after appraisal award)

Ames Privilege Associates Ltd. Partnership v. Utica Mut. Ins. Co., 742 F. Supp.704 (D. Mass. 1990)(court determined that policy exclusions including rot, decay, etc. barred claim under property policy)

Arkin Distributing Co. v. American Ins. Co., 85 Mich. App. 359, 271 N.W.2d 430 (1978)(affirmation of appraisal award)

Bakhuyzen v. National Rail Passenger Corp., 20 F. Supp.2d 1113 (W.D. Mich. 1996) (federal preemption)

Barker v. Underwriters at Lloyd’s, London, 564 F.Supp. 352 (E.D. Mich.1983)(court affirmed arson verdict)

Bayley Products, Inc. v. American Plastic Products Co., 30 Mich. App. 590, 186 N.W.2d 813 (1971)(actual cash value of building appropriate as measure of damages in subrogation action)

Broadway Coney Island v Commercial Union Insurance Co., 217 Mich. App. 109, 550 N.W.2d 838 (1996)(a property insurer’s “no insurable interest” defense was not frivolous or sanctionable)

Butler Mfg. Co. v Americold Corp., 835 F. Supp.1274 (D. Kan. 1993)(a party cannot contractually exculpate itself from liability for its own gross negligence)

Charleston County School Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)(court ordered appraisal consistent with South Carolina statute)

Citizens Insurance Company of America v Buck, 216 Mich. App. 217, 548 N.W.2d 680 (1996)(a no-fault insurer’s subrogation claim was not time-barred)

Citizens Insurance Company of America v Bloomfield Township, 209 Mich. App. 484, 532 N.W.2d 183 (1994) (a trespass-nuisance claim circumvents governmental immunity)

Columbus Jack Corp. v. Swedish Crucible Steel Corp., 393 Mich. 478, 227 N.W.2d 506 (1975) (no business interruption coverage at undamaged building)

Crossley v. Allstate Ins. Co., 139 Mich. App. 464, 362 N.W.2d 760 (1984) (dismissal of bad faith claim in arson case)

Davis v. National American Ins. Co., 78 Mich. App. 225, 259 N.W.2d 433 (1977)(court relies upon broad evidence rule to affirm appraisal award)

Doshi v Michigan Basic Property Insurance Association, 229 Mich. App. 595, 582 N.W.2d 542 (1998)(a property insurer need not provide its insured with notice of cancellation of a policy when cancellation was requested by a premium finance company)

Emmons v. Lake States Ins. Co., 193 Mich. App. 460, 484 N.W.2d 712 (1992)(insured not entitled to overturn appraisal award)

Fitzgerald v. Great Cent. Ins. Co., 842 F.2d 157 (6th Cir. 1988)(directed verdict in arson case reversed)

George v. Travelers Indem. Co., 81 Mich. App. 106, 265 N.W.2d 59 (1978)(arson and fraud verdict affirmed)

Hennes Erecting Co. v. National Union Fire Ins. Co. of Pittsburgh, Pa., 813 F.2d 1074 (10th Cir. 1987)(court determined policy exclusions barred claim under property policy)

Home Insurance Co. v Detroit Fire Extinguisher Co., Inc., 212 Mich. App. 522, 538 N.W.2d 424 (1995) (the UCC does not apply as a matter of law to a subrogation claim where issues of fact remain whether the transaction in question was primarily for goods or services)

Imperial Kosher Catering, Inc. v. Traveler's Indem. Co., 73 Mich. App. 543, 252 N.W. 2d 509 (1977)(criminal conviction of arson bars claim under property policy)

In re San Juan Dupont Plaza Hotel Fire Litigation, 687 F.Supp. 716 (D. P.R. 1988)(applicability of 10 year statute of limitations to claims against architects)

J.C. Wyckoff & Associates v. Standard Fire Ins. Co., 936 F.2d 1474 (6th Cir. 1991)(fraud verdict upheld by court)

Kelly's Auto Parts, No. 1, Inc. v. Boughton, 809 F.2d 1247 (6th Cir. 1987)(lack of criminal charges not admissible in civil arson case)

Maher v. Northland Ins. Co., 991 F.Supp. 878 (E.D. Mich. 1998)(policy cancellation)

McKenney v. Crum & Forster, 218 Mich. App. 619, 554 N.W.2d 600 (1996)(No-fault)

Melson v. Prime Insurance Syndicate, Inc., 429 F.3d 633 (6th Cir. 2005)(construction of a coinsurance provision in a property insurance policy)

Mina v General Star Indemnity Co., 218 Mich. App. 678, 555 N.W.2d 1 (1996)(a preponderance of the evidence standard applies to a fraud or false swearing defense)

Navajo Nation v. Intermountain Steel Bldgs., Inc., 42 F. Supp.2d 1222 (D. N.M. 1999)(jurisdiction decided by tribal exhaustion rule)

New Light Company v Wells Fargo Alarm Services, 247 Neb. 57, 525 N.W.2d 25 (1994)(a party cannot contractually exculpate itself from liability for its own gross negligence)

New Light Company v Wells Fargo Alarm Services, 252 Neb. 958, 567 N.W.2d 777 (1997)(a plaintiff may amend its complaint to correct an error in naming a party to the case)

Noran Neurological Clinic, P.A. v The Travelers Indemnity Company, 229 F.3d 707 (8th Cir. 2000)(surface water exclusion precludes coverage for water loss claim)

Northland Ins. Co. v. Guardsman Products, Inc., 141 F.3d 612 (6th Cir. 1998)(insurance coverage; lost profits claim)

Palmer v. Hastings Mut. Ins. Co., 119 Mich. App.271, 326 N.W.2d 462 (1982)(defense verdict based upon arson affirmed)

Pennsylvania Lumbermens Mutual Insurance Co. v Landmark Electric, Inc., 110 Ohio. App.3d 732, 675 N.E.2d 65 (1996)(an expert can testify based on evidence obtained from another expert who cannot testify)

Pennsylvania Lumbermens Mutual Insurance Co. v Sunrise Club, Inc. 711 So.2d 593 (Fla. Ct. App. 1998)(a verdict for a property insurer based on a fraud or false swearing defense is affirmed)

Rossi v. Transamerica Car Leasing Co., 141 Mich. App. 403, 368 N.W.2d 880 (1984)(reasonableness of structured settlement)

Royal Property Group v. Prime Insurance Syndicate, Inc., 267 Mich. App. 708, 706 N.W.2d 426 (2005) (construction of a coinsurance provision in a property insurance policy)

Society of St. Vincent De Paul v Mt. Hawley Ins. Co., 49 F Supp.2d 1011 (1999) (an agreed value policy is not the same thing as a valued policy – agreed value provisions simply suspend the operation of a coinsurance penalty)

Stadelmann v. Glen Falls Ins. Co. of Glen Falls, 5 Mich. App. 536, 147 N.W.2d 460 (1967)(claimant not “resident of household” under homeowners policy)

Travelers Insurance Co. v Guardian Alarm Co., 231 Mich. App. 473, 586 N.W.2d 760 (1998)(the statute of repose does not bar a subrogation claim arising out of an improvement to real property installed less than 6 years before suit was filed)

Union Lake Associates, Inc. v. Commerce and Industry Ins. Co., 89 Mich. App. 151, 280 N.W.2d 469 (1979) (affirmation of appraisal award)

United Gratiot Furniture Mart, Inc. v. Michigan Basic Property Ins. Association, 159 Mich. App.94, 406 N.W.2d 239 (1987) (insured corporation’s claim barred by arson of shareholder who dominated and controlled corporation)

United Services Auto Association v Nothelfer, 195 Mich. App. 87, 489 N.W.2d 150 (1992)(an insurer is not precluded from subrogating because the insured previously settled his own case against the defendant for his uninsured losses)

Usher v. St. Paul Fire & Marine Ins. Co., 126 Mich. App. 443, 337 N.W.2d 351 (1983)(claim under jewelers block policy barred by breach of warranty)

3910 Super K, Inc. v Pennsylvania Lumbermens Mutual Insurance Co., 219 A.D.2d 588, 631 N.Y.S.2d 520 (1995)(the trial court properly denied a motion for new trial based on evidence that was not “newly discovered”)

3910 Super K, Inc. v Pennsylvania Lumbermens Mutual Insurance Co., 219 A.D.2d 589, 631 N.Y.S.2d 364 (1995)(a verdict for a property insurer based on arson and fraud or false swearing defense is affirmed)