INSURANCE

Berger Singerman's Insurance Team, led by Michael J. Higer, assist clients in understanding the complex nature of an insurance policy's coverages and exclusions. We provide representation on behalf of policyholders in all insurance coverage disputes from business income claims to complex commercial or residential property losses that may have been denied, delayed or underpaid. Berger Singerman's Insurance Team is also well versed in losses resulting from wrongful or negligent acts committed by officers or directors of a company and when an insurance company is required to provide a defense.

Our attorneys are skilled at interpreting policy provisions and can protect their client's rights to coverage. A large part of our practice involves consulting with insureds prior to instituting litigation with regard to their compliance with an insurance policy's post-loss obligations. Our insurance attorneys provide the highest level of service to their clients and distinguish themselves by our extensive experience in litigating complex insurance coverage issues, including class actions, in state and federal courts. The team includes former defense attorneys who have many years of experience defending insurance companies, and who allow our clients to benefit from our unique knowledge.

Our attorneys are on the forefront of the continuously changing insurance industry and have represented the interests of policyholder's by educating the courts, insurance companies and agents regarding the impacts of legislative and judicial decisions and are familiar with the evolving insurance markets and the statutory regulations governing the conduct of insurance companies.

Areas of Practice:

- First Party Property– Commercial/Residential
- Business Income/Extra Expense/Loss of Use
- Directors & Officers Liability
- Errors and Omissions
- Bad Faith

Representative Matters

Representative First-Party Insurance Matters:

- Obtained jury verdict for a homeowner for 100% of the damages sought, successfully defended the verdict on appeal, obtained a significant award of over one million dollars in fees and costs including a 1.5 multiplier, and then obtained a significant bad faith settlement.
- Obtained a substantial settlement for the owner of a jai-alai/casino facility after filing suit where insurance company failed to acknowledge coverage for the significant losses insured incurred as a result of employee embezzlement. And through a pre-mediation, obtained a substantial settlement for this same facility in an unrelated roof collapse claim overcoming an unfavorable burden of proof with respect to the coverage provision in the policy and exclusions concerning a collapse.
- Obtained full policy limits for a company following a multimillion-dollar embezzlement scheme instituted by one of its employees following substantial requests for post loss compliance and document production.

- Representing the owner of large hotel/residential property in Miami Beach with respect to various damages resulting from construction defects at the property which exceed $10 million.
- As a result of a class action, our Insurance Practice Group filed on behalf of similarly situated policyholders challenging the impartiality language in the appraisal provisions in insurance policies in which an insurance company was objecting to insureds' chosen appraiser, the insurance company abandoned its objections, agreed prospectively not to enforce the applicable provision, paid the named insured the full amount of damages incurred, and paid 100% of the legal fees incurred.
- Through negotiation and without the necessity of litigation obtained $28 million in insurance proceeds for the owner of two neighboring, 19-story, residential apartment projects that were under construction at the time of Hurricane Irma. The hurricane caused well over $50 million dollars in building and other damages. Our Insurance Practice Group has assisted and continues to assist the property owner throughout the claim process in counseling it as to submittal of multiple proofs of loss to multiple layers of insurance companies, complying with post-loss requests, assessing and documenting the damages, assembling a group of experts to analyze and assess the damages, and analyzing and evaluating claims by and against third parties.
- Representing the owner of four commercial properties in South Florida – all of which suffered damages in excess of $65 million and representing this owner as to a fifth loss as to one of these properties which subsequently suffered a fire loss. Our Insurance Practice Group obtained a multimillion-dollar settlement just as to the fire loss As to the Irma claims, our Insurance Group continues to assist the owner throughout the claim process in counseling it as to the submittal of multiple proofs of loss to multiple layers of insurance companies, complying with post-loss requests, assessing and documenting the damages, assembling a group of experts to analyze and assess the damages, and analyzing and evaluating claims by and against third parties.
- Using a pre-lawsuit mediation, obtained a substantial recovery for a pharmacy which sustained damage to its property and equipment resulting from a break-in at its pharmacy. During the break-in, the perpetrators not only caused direct physical damage but also broke a pipe within the interior causing water damage throughout the pharmacy and a loss of a significant portion of its inventory. Our Insurance Practice Group ultimately prevailed despite the insurance company's denial of the claim prior to our involvement.
- Successfully represented numerous condominium associations in obtaining nearly 100% of the amount demanded without the necessity of the filing of a lawsuit which resulted in a multimillion-dollar recovery for the association and prompt recovery of funds.
- In the face of a summary judgment motion based on a presumptively late notice to the insurance company of the insured's claim, through mediation, our Insurance Practice Group, obtained a substantial six figure recovery for a property developer and preserved the balance of the construction defects claim for the developer to pursue against the contractor and related parties. This claim arose out of ensuing water damages from faulty construction. Despite the insurance company's contention that the reporting of the claim was presumptively late, we were able to overcome this prejudice assertion by showing the insurance company's investigation was insufficient and by showing there was ample evidence from which the insurance company could evaluate the claim.
- Recognizing that the federal forum was not advantageous for the insured, our Insurance Practice Group successfully argued that the federal court should remand the coverage dispute to the state court with respect to a commercial property loss which resulted in substantial damage from a plumbing leak. Thereafter, the state court granted the insured's motion to compel appraisal and forced the insurance company to appraise the loss. During the course of the appraisal, it was discovered that insured had sustained damage from a plumbing leak originating from another location. We reported this water event and asserted that it should also be appraised. The insurance company fought the inclusion of the additional claim in the appraisal and filed an action to determine coverage for the additional loss. Ultimately, the insurance company agreed to appraise the amount of the additional loss but maintained its conditions to coverage. We successfully obtained 100% recoveries for the insured as to both claims together with interest and fees.
- After years of extensive litigation, a state court approved a class action settlement in favor of a class of homeowner policyholders which alleged that the insurance company engaged in a general business

practice referred to as “post-claims underwriting.” The Class alleged that once an insured made a claim to the insurance company it would conduct a very simple underwriting analysis it did not do in the first place and would void the policy “ab initio” so that it could effectively deny coverage based on purported, “incorrect statements” in the applications. Although the practice is not per se illegal and Chapter 627.409, Florida Statutes, allows for this practice, the Florida Office of Insurance Services, the Florida Office of the Insurance Consumer Advocate, and the Florida Legislature have all described this practice as against the public policy of Florida. After extensive discovery and litigation, the parties reached a settlement in which the insurance company created a substantial reserve to compensate the victims of its improper practice.

- Our Insurance Practice Group successfully compelled appraisal of a restaurant’s business income loss resulting from a fire damage which destroyed the restaurant and successfully obtained a substantial six figure recovery for the owner.
- Just prior to the formation of our Insurance Practice Group, Michael Higer represented a developer of a non-combustible solar sausage facility suffered substantial damage as the result of the deflation of over one thousand solar sausages. Although the policy excluded coverage for all design and construction defects, it did not exclude coverage for the ensuing losses from such defects. As a result and notwithstanding the insurance company’s motion for summary judgment based on its otherwise applicable exclusions, Mr. Higer was able to obtain a multimillion-dollar recovery which resulted in a 100% recovery as to the loss of all of the solar sausages. The recovery also compensated the developer for the millions of dollars in damages that it suffered through the lost opportunities based upon a federal tax credit that is only available for a limited period.
- Just prior to the formation of our Insurance Practice Group, Michael Higer represented a developer in what is now one of the landmark decisions on the issue of coverage for ensuing losses. Prior to the completion of construction of an apartment building, the developer encountered leaks in several of the units which had resulted from defective construction and design of the window structure which had caused water to leak into the interiors and spread throughout the apartment buildings. The insurance carriers disputed coverage and claimed that the damages were the result of construction defects. The federal court determined on summary judgment in favor of the developer that the ensuing losses resulting from the faulty workmanship were covered under the policy’s ensuing loss exception. This decision has become one of the cornerstone opinions on Florida’s ensuing loss provisions and led to a multimillion-dollar resolution in favor of the developer.
- Just prior to the formation of our Insurance Practice Group, Michael Higer represented a condominium association in two claims against an insurance company for damages resulting from a substantial water loss and exposure to contaminated sewage water. The insurance company improperly categorized the sewage loss as a Category 1 or 2 in an attempt to avoid its contractual obligation to compensate the association for the complete removal and replacement of the affected drywall throughout its property as well as the necessary cleaning of the wall cavities. The insurance company also improperly limited its payments to the cost of drying a portion of the drywall instead of removing and replacing the drywall as required by the proper protocol for a Category 2 or 3 water loss. After the association filed its lawsuit, the insurance company relented and issued full payment based on the proper assessment of the claim.
- Obtained a multimillion-dollar recovery for a prominent real estate developer in a dispute against the insurance company for interior water damages sustained during a construction project.
- Represented billionaire real estate investor in D&O litigation that followed the unfortunate demise of a resort project that was caused by the 2008 financial crises.
- Represented a Fortune 100 mortgage industry client in coverage litigation involving a $200mm D&O policy in regard to coverage for five separate shareholder derivative actions.
- Represented plan trustee in D&O related coverage issues in the Taylor Bean & Whitaker Mortgage Corporation bankruptcy.
- Represented a liquidating plan trustee in Fidelity Bond coverage litigation involving a $90MM policy
- Represented Chapter 7 trustee in banking related litigation claims for fraudulent transfers and aiding and abetting breaches of fiduciary duty and related coverage issues.

- Represented plan trustees and Chapter 7 trustees in a number of high profile accounting malpractice litigation claims and related coverage issues.