



**Adam H. Fleischer** is a member of the management committee at BatesCarey LLP with a national reputation for innovative advocacy in complex insurance and reinsurance coverage issues with respect to the pre-litigation, litigation and appellate stages. His experience spans a broad range of disputes across the United States involving Fortune 500 companies, and issues such as environmental and health hazard matters, managed care and medical device claims, construction defect claims, and public entity insurance challenges. In particular, Adam has represented his insurance and reinsurance clients in analyzing and evaluating many complex high profile cases, including matters such as:

- **Opioid Epidemic** - Adam created the nation's first Opioid Coverage Task Force and amassed the leading legal team navigating opioid insurance matters globally and litigating multi-billion-dollar suits in London, California, Delaware, New York and beyond. He is actively engaged in assisting insurers in monitoring the novel and evolving liability theories faced by their insureds and in determining the extent to which the exposures from the opioid litigation may be covered by insurance;
- **NCAA concussion litigation** involving class action claims by former athletes alleging that the NCAA failed to warn and protect against the risk of concussions and Chronic Traumatic Encephalopathy;
- **COVID-19 litigation** - Adam also developed the firm's COVID-19 Team, achieving new legal precedent in multiple circuit courts of appeal and courts nationally. Since the start of the pandemic, the firm has secured a dozen important dismissals of COVID-19 business interruption claims for clients and has successfully argued issues of first impression in the U.S. Courts of Appeals for the Fifth, Sixth and Eighth Circuits that involved suits in Mississippi, Ohio, Texas, North Carolina and elsewhere;
- **Sandusky molestation litigation** involving claims against Penn State arising from its alleged involvement in failing to prevent child molestation by its former assistant football coach, Jerry Sandusky.

Chambers and Partners honored Adam as the top insurance litigator in Illinois and one of the top five insurance attorneys nationally in their 2023 rankings. For years this premier rankings entity has included Adam in its worldwide ranking of insurance coverage counsel, finding him to be "a great advocate" whose "recall of details and ability to communicate those both to the client and to judges are unparalleled."

In recent years, Adam was one of a handful of attorneys worldwide honored by their peers through selection to London-based Who's Who Legal for Insurance and Reinsurance. He is regularly recognized in Best Lawyers in America in the area of Insurance Coverage, selected for inclusion in the prestigious Leading Lawyers survey of top insurance attorneys, and honored by his peers by being selected to Illinois Super Lawyers in the category of insurance coverage.

In 2023, Adam was one of only four insurance coverage attorneys selected to *Crain's Chicago Business'* Notable Litigators and Trial Attorneys list. In 2020, he was named a Fellow by the American College of Coverage Counsel, a preeminent association comprised of only the most experienced and recognized lawyers involved in coverage and extracontractual matters. In 2019, the National Law Journal named Adam an Elite

## Contact Information

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## Practice Areas

- COVID-19 Team
- Commercial General Liability
- Cyber Risks, Technology, and Data Security
- Opioid Coverage Task Force
- Professional Liability
- Reinsurance
- Sexual Misconduct Coverage

## Education

- University of Illinois College of Law, J.D. 1994, *cum laude*
- University of Illinois, B.S. Journalism 1991, with high honors

## Memberships

- ARIAS—U.S.
- Claims & Litigation Management Alliance: National Steering Committee member for 50-State Claims Handling Guidelines
- International Underwriting Association of London, U.S. Representative to COVID-19 Claims Steering Committee
- American College of Coverage Counsel inductee

## Admissions

- Illinois

Boutique Trailblazer for his groundbreaking work in opioid coverage, and he was one of only two coverage attorneys named a Gen X Notable Leader in the Law by *Crain's Chicago Business*.

## REPRESENTATIVE MATTERS

***City of Newport v. Westport Ins. Co.*, No. 2022-CA-0384-MR, 2023 WL 6522204 (Ky. Ct. App. Oct. 6, 2023) (to be published)** Defeated \$28 million insurance claim and established Kentucky precedent that malicious prosecution “personal injury” “occurs” only on date of wrongful charging, and that insurance is not continuously triggered during the subsequent years of suffering and deprivation of rights.

***In re CVS Opioid Ins. Litig.*, No. N22C-02-045, 2023 WL 6059801 (Del. Super. Ct. Aug. 25, 2023)**, as corrected (Sept. 14, 2023) Obtained summary judgment ruling in coordination with other commercial general liability insurers that opioid lawsuits seeking to recover generalized economic losses suffered by governmental entities to abate the opioid crisis do not seek damages “because of” “bodily injury” or “property damage.”

***University Management, Inc. v. State Auto Property & Casualty Ins. Co.***, Case No. 20-CV-00138 (Mar. 15, 2022) (Granting insurer’s motion for summary judgment on absence of coverage under food-borne illness endorsement.)

***Westport Ins. Corp. v. Sycamore Community Unit School District #427***, --- F.Supp.3d ---, 2021 WL 3674614 (N.D. Ill.) Obtained judgment on the pleadings holding that insurer client owed no coverage in connection with an underlying sexual abuse claim because late notice and a criminal/dishonest acts exclusion barred coverage for, respectively, an insured school district and its alleged former employee.

***Sanders, et al. v. Ill. Union Ins. Co., et al.***, No. 124565 (Illinois Supreme Court) Obtained judgment holding that coverage under occurrence-based policies for malicious prosecution claims is triggered only at the time of the wrongful charging, and not in subsequent years of retrials or exoneration, at a cost-savings of \$10M to the insurers.

***Financial Pacific Insurance Company v. Gotham Insurance Company***, CV 2018-005881 (Superior Court of Arizona, Maricopa County) Obtained summary judgment ruling that insurer does not owe coverage for the liability of its policyholder’s alleged predecessor company, which the claimant alleged to be a legally indistinguishable entity from the insured policyholder.

***Rockhill Ins. Companies v. CSAA Ins. Exchange***, Case No. 3:17-cv-00496-HDM-WGC (D. Nevada), *affirmed* No. 19-16716 (9th Cir. 2020) Claim seeking over \$2.5 million for negligent spraying of Sporidicin excluded by general liability mold exclusion, and no bad faith under Contractor’s Pollution coverage where claimant never made settlement demand within the eroding limits of the pollution coverage, and where Rockhill’s settlement offers traced the advice of defense counsel.

***Westport Ins. Corp. v. California Casualty Management Co.***, 916 F.3d 769, 2019 WL 692668 (9th Cir.) On behalf of school district’s insurer, Westport Insurance Corporation, successfully recovered over \$3.3 million from the excess insurer of three school administrators that had refused to participate in Westport’s settlement of molestation claims. The U.S. Court of the Appeals for the Ninth Circuit upheld the District Court’s summary judgment in favor of Westport, and concluded that a California statute does not bar the insurer of a school district from seeking recovery from the insurer of public employees and that the non-settling insurer could not challenge Westport’s allocation of the settlement between the various victims and policy years.

***Gage County v. Nebraska Intergovernmental Risk Management Association***, Case No. CI 17-0339 (Lancaster County, NE) In a matter of first impression, obtained ruling for excess insurers that the date six wrongfully incarcerated individuals were first charged was the single date triggering their constitutional injuries, and that continuing constitutional wrongs into later insurance periods did not trigger new insurance for the \$28.1 million malicious prosecution judgment.

***Westport Insurance Corporation v. City of Waukegan, et al.***, 2017 WL 4046343 (N.D. Ill.) Achieved summary judgment ruling that insurer had no duty to defend or indemnify with regard to \$8 million claim involving wrongfully incarcerated inmate whose second conviction took place during insurer’s policy period.

***National Surety Corp. v. First Specialty Insurance Corp.***, 2016 WL 7057503 (N.J. Super. Ct.) *appeal dismissed* A-001554-16T1 (N.J. Super. Ct. App. Div.) Obtained summary judgment in favor of primary insurer establishing that the insurer could use its discretion to settle on behalf of one of two sets of Additional Insureds, and that doing so would extinguish the duty to defend all remaining insureds and Additional Insureds.

- New York Supreme Court, Appellate Division, Third Judicial Department
- The Supreme Court of the State of Ohio
- United States District Court for the Northern District of Illinois
- United States District Court of Colorado
- United States District Court for the Southern District of Illinois
- United States District Court for the Southern District of Indiana
- United States District Court for the Western District of Michigan
- United States District Court for the Central District of Illinois
- United States District Court for the Eastern District of Pennsylvania
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Fifth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the Eighth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Tenth Circuit
- United States Supreme Court

**Michigan Millers Mut. Ins. Co. v. Westport Insurance Corporation (f/k/a Employers Reins. Corp.),** No. 1:14-cv-00151 (W.D. Mich.) Successfully represented reinsurer against its cedent regarding the allocation between multiple reinsurance treaties of \$14 million in loss and claim expense arising from five underlying lawsuits. Issues involved examination of bad faith liability as between umbrella and primary claims handling.

**City of Marion, IL v. U.S. Specialty Insurance Company,** and Case No. 12-cv-0999-SCW (S.D. Ill.) Summary judgment granted in favor of insurer holding that underlying claim against City for misuse of Tax Increment Financing funds did not present covered "loss". Insurer's initial acceptance of defense and subsequent denial without filing declaratory judgment did not estop insurer from later denying coverage for eventual underlying settlement.

**South Campus Development Team LLC v. First Specialty Insurance Corporation,** Case No. 11 (Cook County, IL) Summary judgment for insurer finding that construction defects and water intrusion into condominiums was not an "occurrence" or "property damage," and insurer that withdrew its defense without filing a declaratory judgment action was not estopped from challenging coverage.

**UnitedHealth Group Incorporated v. Columbia Casualty Co.,** Case No. 05-1289-PJS (D. Minn.) Served as lead counsel in disputing an insurance claim by UnitedHealth to recoup over \$450 million that UnitedHealth paid to reimburse its subscribers' medical bills which had allegedly been systematically underpaid by UnitedHealth.

**Arrowood Surplus Lines Insurance Company v. Westport Insurance Company,** 2010 WL 3933561 (2nd Cir.) Affirmed District Court holding that follow the fortunes cannot be applied to expand the scope of the reinsurance risk.

**City of Waukegan v. Princeton Excess and Surplus Lines Insurance Company,** No. 1-09-0144 (Ill App. Ct.) Affirmed trial court rulings granting summary judgment on both professional liability and general liability claims based upon late notice.

#### **COVID-19 Business Interruption Litigation:**

**Coventry's Deli v. State Auto Prop. & Cas. Ins. Co.,** 2022 WL 4537980 (S.D. Ohio) (Sept. 28, 2022) Obtained dismissal of a putative class action for insurer client over plaintiffs' allegations that presence of COVID-19 on their properties caused structural alterations that required repairs.

**Wild Eggs Holdings, Inc., et al. v. State Auto Prop. & Cas. Ins. Co.,** --- F.3d --- (6th Cir.) (Sept. 9, 2022) Obtained ruling for insurer client under Kentucky law that governmental COVID-19 business restrictions in Kentucky, Indiana and Ohio did not cause "direct physical loss" of property, and were not issued in response to infectious disease at any insured premises, as would be required to trigger commercial property insurance coverage.

**Planet Sub Holdings, Inc v. State Auto Prop. & Cas. Co.,** --- F.4th ---, 2022 WL 1951615 (8th Cir. June 6, 2022) Ruling that, under Oklahoma, Kansas and Missouri law, the actual presence of COVID-19 is not a "direct physical loss" to property, and that the relevant government orders did not "result from" any alleged infectious disease at the insured's described premises.

**Haisous, LLC v. State Auto Prop. & Cas. Ins. Co.,** 2022 WL 999987 (U.S. District Court for the Northern District of Illinois) Obtained judgment that insurer owed no coverage for business income loss given that COVID-19 restrictions on restaurant operations did not constitute "direct physical loss" of property under Illinois law.

**Terry Black's Barbecue, LLC v. State Automobile Mut. Ins. Co.,** --- F.4th ---, 2022 WL 43170 (5th Cir.) (Jan. 5, 2022) Affirming the district court's entry of judgment in State Auto's favor upon finding that the insured failed to plausibly allege any tangible alteration or deprivation of its property which then caused its suspended operations, as necessary to satisfy the policy's "direct physical loss" prerequisite under the business income and extra expense provisions.

**University Management, Inc. v. State Auto Property & Casualty Ins. Co.,** Case No. 20-CV-00138 (Mar. 15, 2022) Granting insurer's motion for summary judgment on absence of coverage under food-borne illness endorsement.

**Classic Dining v. State Auto Insurance Companies,** Case No. 20-CV[1]004107 (Franklin Co., OH.) (Nov. 9, 2021) Finding the insured's restaurants had not been physically changed or ruined by the presence of COVID-19.

**Isaac's Deli v. State Auto Prop. & Cas. Ins. Co.,** Case No. 5:20-CV-06165, 2021 WL 1945713 (E.D. PA.) (May 14, 2021) Government orders regulating use of property fall within Policy's

ordinance or law exclusion.

**Bluegrass, LLC v. State Automobile Mut. Ins. Co.**, Case No. 20-CV-00414, 2021 WL 42050 (S.D. WV.) (Jan. 5, 2021) "I am unable to find that a regulatory shutdown order is a 'physical loss or damage' as contemplated by the plain language of the parties' contract."

**Natty Greene's Brewing Co. v. Travelers Cas. Co. of America, et al.**, Case No. 1:20- CV437, 2020 WL 7024882 (M.D. NC.) (Nov. 30, 2020) Court granted Motion for Judgment on Pleadings based on virus exclusion in all policies at issue.

## PRESENTATIONS

Artificial Intelligence: The Claims, The Coverage, The Future; World-wide client webinar (April 2024)

Opioid Liability Claims: Coverage and Litigation Considerations for Manufacturers, Distributors, Third-Party Payors CLE webinar (May 2019)

Wrongful Conviction - Practical Defense Tips and Coverage Analysis, CLM Annual Meeting (March 2019)

Opioid Lawsuit Insights: City of New Haven Ruling, Gen Re Executive Forum (January 2019)

America on Opioids: Is Insurance the Solution?, International Intelligent Technologies (IntAp) Conference, London (November 7, 2018)

Protecting Against Consent Judgments, National Association of Mutual Insurance Companies, Orlando Claims Conference (February 2018)

America On Opioids, The Claims and The Coverage, Products Expert Presentation (July 2017)

Evaluating Additional Insured Coverage and Contractual Indemnity Issues, Claims & Litigation Management Alliance continuing legal education seminar (April 19, 2017)

Committing Good Faith: From Reservations to Resolutions, national client training seminar (March 2017)

Autonomous Vehicles: Will They Drive Your Claims Staff Crazy?, Swiss Re Americas Claims Conference (June 16, 2016)

Preserving Coverage Rights, Gen Re Casualty Claims Conference (September 18, 2015)

Negotiation and Mediation Resolution Strategies, Claims & Litigation Management Alliance continuing legal education seminar (Kansas, July 16, 2015)

Independent Counsel: When Required & Strategies for Defense – national webinar as part of Claims & Litigation Management Alliance 2015 Webinar Series (March, 2015)

Crossroads: Where Med Mal Meets Product Liability (June 2014)

Laying Down The Law: Coverage Challenges In Law Enforcement Liability, CLM Insurance Conference, (Atlanta, February 2014)

Mediation and Negotiation Strategies in Complex Litigation, CLM Annual Illinois Event (July 2013)

Allocation, Aggregation, and Utmost Good Faith; featured oral argument, Spring 2013 ARIAS conference (May 2013)

Excess and Primary Insurer Rights and Obligations; who's making who drop down and for what? (2012, 2013)

How To Manage Construction Defect Claims (October 2012)

Who's On My Team? Protecting Privilege In Reinsurance Communications (November 2009)

Defending the Reinsurer: An Overview of Reinsurance Defenses

## PUBLICATIONS

"Insurance for Public Nuisance: *Masters Pharma* gets it *Rite*" International Association of Claims Professionals, *Declarations Magazine* (October 2022)

"Delaware High Court Gets It Right With Opioid Nuisance Ruling" *Law360* (January 11, 2022)

"Courts Should Heed Contract Law In COVID-19 Physical Loss" *Law360* (July 29, 2021)

"Recent Rulings Expose Flaws in COVID-19 Business Interruption Claims" *BatesCarey* (September 3, 2020)

"Breaking News: MDL Panel Hears COVID-19 Arguments" *BatesCarey* (July 30, 2020)

"Why COVID-19 Insurance Suits Should Not Be Consolidated" *Law360* (May 6, 2020)

"Civil Authority Coverage: Does it Apply to COVID-19?" *BatesCarey* and *Law360* (March 23, 2020)

"Coronavirus, Courts, and Coverage" *BatesCarey* (March 19, 2020)

"Can America's Opioid Epidemic Squeeze into Tort or Insurance Law?" *For the Defense* (December 2019)

"What does the \$572 million Oklahoma opioid judgment mean for other opioid defendants and insurers?" *Advisen Front Page News* (September 3, 2019)

"How Opioid 'Negotiating Class' Would Affect Civil Claims" *Law360* (July 1, 2019)

"9th Circ. Gets It Right On Molestation Insurance Coverage" *Law360* (March 12, 2019)

"Outside the Courts: As Opioid Legal Actions Unfold, Solutions to This Societal Problem May Lie Elsewhere" *CLM Magazine* (October 2018)

"Settlement Aspirations Enter the Opioid MDL" *Law360 Expert Analysis* (January 10, 2018)

"MDL Hearing Signals a New Phase in Opioid Suits," *Law360 Expert Analysis* (December 1, 2017)

"America On Opioids," *CLM Magazine* cover story (August 2017)

"Senate Bill May Force Rise in Suits For Opioid Funding," *Law360 Expert Analysis* (June 27, 2017)

"Illinois Joins State Trend on Malicious Prosecution Claims," *Law360* (September 16, 2014)

"US brain injury litigation threatens future of American football," *London Insurance Day* (Thursday, 30 January, 2014)

"Environmental Coverage Summary : 2013," 28 *Mealey's Litigation Report: Insurance*, No. 8 (Dec. 18, 2013) [Read more and download full report.](#)

"Construction Defect Coverage Summary 2013: The Business Risks Shift To Insurers," 10 *Mealey's Litigation Report: Construction Defect Insurance*, No. 11 (December 2013)

"The 2013 Captive Quandary and The Duty of Utmost Good Faith," 23 *Mealey's Litigation Report: Reinsurance*, No. 24 (April 19, 2013)

"The Risky Business of the Business Risk," 18 *Mealey's Emerging Insurance Disputes*, No. 13 (July 8, 2010)

"Climbing the Great Drywall of China," *White Paper* (Sep. 30, 2009)

"Coverage Issues Raised by E-mail and the Internet," *Illinois Institute for Continuing Legal Education* (2005)

"Insurance Claims for 'Blast Faxes': Why the Courts Have It Wrong," 10 *Mealey's Emerging Insurance Disputes*, No. 2 (Jan 18, 2005)

"Advertising in Cyberspace; The Changing Face of Injury," *For the Defense*, (May 2000)

"Internet Torts and Cyberspace Insurance: New Issues for the E-economy," 268 *Ill. Bar J. Vol.* 88 (May 2000)

"Cyberspace Insurance Challenges," For the Defense (January 2000)

"What a Tangled Web: The New Legal Liabilities Created by the Internet" 4 Mealey's Emerging Insurance Disputes, No. 18 (Sept. 1999)

"Untangling The Tangled Web: Insurance Litigation in Cyberspace" 4 Mealey's Emerging Insurance Disputes, No. 18 (Sept. 1999)