



David Cutter focuses his practice on representing insurers in coverage disputes. David has a diverse practice, handling disputes across numerous product lines, including management liability, professional liability, commercial general liability, commercial transportation, and property coverages.

David also litigates commercial matters across a variety of subject areas involving contracts, business torts, securities, and professional liability.

David has a nationwide litigation practice. In the last three years alone, David has served as lead counsel in state and federal courts in nearly twenty states, as well as several domestic and international arbitrations.

As David is known to say, litigation should be used as a tool to resolve disputes. Clients appreciate this perspective, as well as David's ability to creatively use litigation to move matters towards resolution. When matters are not amenable to a compromise, however, David's breadth of experience enables him to efficiently obtain favorable results for clients.

While much of David's practice involves litigation, David also provides insurers advice in a monitoring role for claims involving complex underlying matters and coverage issues. In that capacity, David helps his clients understand their coverage, defense, and settlement obligations, assists with the evaluation of underlying exposures, and develops unique strategies for closing claims.

David has been consistently recognized by Chambers, The Legal 500, Best Lawyers and Super Lawyers as a leading commercial lawyer. As noted in recent editions of Chambers, clients say of David that he "understands the insurance coverage world inside and out. He is very effective in advocating for our company's positions"; he "is an excellent lawyer and advocate for his client"; he "is respected in the field as an excellent litigator"; and he is "a very smart and hard-working trial lawyer."

## REPRESENTATIVE MATTERS

### *Appellate Victories*

**Hanover Ins. Co. v. R.W. Dunteman Co.**, 51 F.4th 779, 782 (7th Cir. 2022). Coverage unavailable under management liability policy because claim was made in first of two successive policy period but not reported until the second policy period.

**XL Specialty Ins. Co. v. AR Capital**, 181 A.D.3d 546, 121 N.Y.S.3d 269, 270 (2020). Trial court properly denied insured's motion to dismiss action in lieu of competing Delaware action.

**Hanover Ins. Co. v. MRC Polymers, Inc.**, 2020 IL App (1st) 192337. Products and liability services exclusion barred coverage.

**RLI Ins. Co. v. Acclaim Res. Partners, LLC**, 2020 IL App (4th) 190757-U. Contractual fee dispute did not trigger coverage under a professional liability policy because there was no "wrongful act."

### *Trial Court Victories*

## Contact Information

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## Practice Areas

- Bad Faith
- Commercial General Liability
- Counseling and Risk Management
- Coverage Litigation
- First-Party Property
- General Commercial Litigation
- Professional Liability

## Education

- Catholic University of America, J.D. 1995, *magna cum laude*, Class salutatorian, Executive Editor and staff member of Catholic University Law Review.
- University of Michigan, B.G.S. 1989

## Clerkship

- United States District Court for the District of Columbia (1996-1997)

## Memberships

- James B. Moran Center for Youth Advocacy (Board Member)
- Women Helping Others, Inc. (Co-Founder and Board Member)
- Noah's Playground For Everyone Committee (Co-Chair)
- Jewish Reconstruction

**Rimini St., Inc. v. AXIS Ins. Co.**, 2022 WL 17487749 (N.D. Ill. Dec. 7, 2022). Granting motion to dismiss based upon application of prior or pending litigation exclusion.

**Alain Dery v. Aviva Ins. Co. of Canada**, No. 49D01-2202-PL-004720 (Ind. Comm. Ct. October 17, 2022). Granting motion to dismiss action against Canadian insurers due to a lack of personal jurisdiction.

**Arch Ins. Co. v. PCH Mgmt. Alpha, LLC**, No. 2018-L-012681 (Ill. Cir. Ct. Apr. 28, 2022). Granting motion for judgment on the pleadings finding that the claim was interrelated to a claim made in a prior policy period and not reported and prior or pending litigation exclusion barred coverage.

**Morris v. Arch Ins. Co.**, 2022 WL 507474 (S.D. Ill. Feb. 18, 2022). Granting insurer summary judgment finding insured was not entitled to UIM coverage based upon choice of law and effective rejection of certain higher limits.

**XL Specialty Ins. Co. v. AR Capital, LLC**, 2021 WL 353853 (N.Y. Sup. Ct. Feb. 02, 2021). Granting insurers summary judgment because insureds were not acting in an insured capacity, capacity exclusion barred coverage, and some portions of the settlement constituted uninsurable disbursement.

**AR Capital, LLC v. XL Specialty Ins. Co.**, 2020 WL 4907990 (Del. Super. Ct. Aug. 3, 2020). Granting motion to stay Delaware action in favor of competing New York action.

**U.S. Specialty Ins. Co. v. Vill. of Melrose Park**, 455 F. Supp. 3d 681 (N.D. Ill. 2020). Finding prior and pending litigation exclusion barred coverage.

#### Active Matters

**Hallmark Specialty Ins. Co. v. Sentia Wellness, Inc.**, Case No.: 3:23-cv-00075-HZ (D. Oregon). Representing insurer in declaratory judgment action involving application of prior acts exclusion.

**Clover Health Investments Corp. v. Berkley Insurance Company**, C.A. No. N22C-06-004 MMJ CCLD (Del. Super. Ct.). Defending primary insurer in declaratory judgment action seeking a declaration that coverage is available under two towers of insurance for securities class action, derivative actions, and SEC investigation relating to a SPAC merger.

**Wilmington Savings Fund Society, FSB v. Everest National Insurance Company**, C.A. No. N22C-10-621 MAA (Del. Super. Ct.). Defending insurer in declaratory judgment action involving application of certain policy exclusions.

**U.S. Specialty Insurance Company v. City of Youngstown**, No. 4:22-cv-00749-JRA (N.D. Ohio). Representing insurer in declaratory judgment action seeking a ruling that coverage is unavailable because the insured breached the notice and reporting requirements of a CGL policy.

**Pro-Mark Services, Inc. v. Atlantic Specialty Insurance Corp.**, 3:22-cv-158 (D.N.D.). Defending primary insurer in declaratory judgment action seeking a declaration that coverage is available for subpoena and search warrant issued in course of SEC investigation.

**Piney Lake Opportunities ECI Master Fund, LP v. Eric Blue**, Case No. 1:21-cv-02333 (N.D. Ill.). Defending individual against statutory securities, common law fraud, and breach of fiduciary duty claims.

**Dale Grapperhaus v. Country Mutual Insurance Company**, Case No. 2021-L-437 (Ill. Cir. Ct.). Defending insurance company in action for declaratory judgment and breach of contract arising out of a first-party property claim.

**U.S. Specialty Insurance Company v. City of Grosse Pointe Park**, Case No. 21-017573-CB (Mich. Cir. Ct.). Representing insurer in declaratory judgment action seeking declaration that \$5,000 per Claimant deductible in sewage sublimit endorsement applies to underlying sewage backup claims.

**Turn Key Health Clinics, LLC v. Certain Underwriters at Lloyd's of London Subscribing to Policy No. MEO1687382.17**, No. CJ-2021-3130 (Okla. Dis. Ct.). Defending insurer in lawsuit by insured alleging breach of contract and bad faith based on its application of a statutory cap endorsement contained in the professional liability policy.

**IMEG Corp. v. Atlantic Specialty Ins. Company**, Case No. 1:20-cv-03316 (N.D. Ill.). Representing insurer in declaratory judgment action seeking a ruling that there is no coverage for settlement of the insureds' self-disclosures to state and federal governments for potential violations of the False Claims Act and related state law regulations.

**Hansen v. Country Mutual Insurance Company**, Case No. 1:18-cv-00244 (N.D. Ill.). Defending insurer in putative class action asserting breach of contract, fraud, and statutory bad faith related to the estimation of losses associated with first party residential property claims.

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Committee

- Youth and Opportunity United, Inc. (Board Member) (2012-2018)

#### Admissions

- Illinois
- District of Columbia
- Maryland
- Numerous federal courts, including the Trial Bar of the US District Court for the Northern District of Illinois