



Andrew B. Downs

Shareholder
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Andy Downs has been litigating and counseling clients regarding complex commercial and insurance coverage litigation, including the defense of class actions, for over 35 years. He is licensed to practice in both California and Nevada and practices throughout both states, having appeared during the course of his career in over 30 different courts. He appears regularly in the federal district courts in both California and Nevada, as well as the federal Ninth Circuit Court of Appeals and the Judicial Panel on Multi-District Litigation. He has also handled matters pro hac vice in Hawaii, Washington, Oregon, New Mexico, Utah and Guam.

Andy represents national and international insurance companies in connection with complex coverage and bad faith claims under first-party property, fidelity, inland marine and ocean marine policies and under specialized third-party policies, including Directors & Officers and Errors & Omissions policies. Andy provides counsel to those companies regarding their rights and responsibilities, and serves as trial counsel in coverage and bad faith actions. He has experience defending class actions, handling multi-district litigation, electronic discovery and managing complex disputes. Andy offers his clients timely, creative and practical advice regarding the defense and resolution of these claims in the context of the client's overall business needs.

Andy is consistently ranked in *Chambers USA*, America's Leading Lawyers for Business. In 2020, Chambers reported "he provides excellent practical advice and appreciates strategy,' according to his clients." In 2019, Chambers observed he "is a highly skilled and experienced litigator who is results-oriented' says a source." In 2017, Chambers noted he is a "very good coverage attorney who takes a big-picture approach to his cases and has an economical mindset to matters he handles." In 2016, Chambers noted "Clients assert that he is 'very good at negotiations when it comes to complex matters,' and speak positively about his ability to get favorable results." In 2015, Chambers noted he uses "exceptional analytical skills, a vast understanding of state and federal procedures and strategic thinking on issues." In 2011, Chambers noted he is "a go-to lawyer when it comes to complex insurance coverage matters. Chambers researchers' sources see him as 'one of the nation's premier experts in first-party coverage matters.'" In 2010, they reported, in mediations he "is amazing, and always on top of any situation,' interviewees say in praise."

Andy also represents businesses in connection with commercial disputes. In addition, he also has handled lawsuits involving maritime activities, including maritime lien and ship arrest actions, claims



against maritime businesses, and suits involving the navigation of both pleasure and commercial vessels. He has also acted as a commercial arbitrator.

Andy has served on the Board of Directors of the Federation of Defense and Corporate Counsel, a by-invitation-only organization of attorneys who represent businesses. He was the Program Chair for the Federation's 2015 Annual Meeting. He also served as Chair of the Federation's Social Media Committee and was its voice on Twitter. He has chaired the Federation's Property Insurance Section and has instructed at the Litigation Management College and Graduate Program. In addition, he also co-chaired the Federation's 2011 Insurance Industry Institute, and the Insurance Industry Committee.

Andy is a Fellow of the American College of Coverage Counsel and currently serves on its Board of Regents. He was the Co-Chair of its 2017 Insurance Law Symposium. He is also a former chair of the only national organization of property insurance attorneys. A co-editor of both the first and second editions as well as the upcoming third edition of the Property Insurance Litigator's Handbook published by the American Bar Association, he also is the author of the chapter on Concurrent Causation in the treatise Law and Practice of Insurance Coverage Litigation published by West and the ABA, co-author of a chapter in California CEB's California Property Insurance Law and Litigation and author of a chapter in the Defense Research Institute's recent Professional Liability Insurance: A Compendium of State Law. Andy also is a long time member of the editorial board of West Publishing's Insurance Litigation Reporter. A former member of the Claims Conference Committee for the Property Loss Research Bureau (PLRB), Andy is a regular author, instructor and speaker on claims handling, complex litigation, insurance coverage and bad faith issues.

Outside the office, Andy is a Nationally Certified Referee, Starter, Stroke & Turn Judge and Chief Judge for USA Swimming.

Representative Matters

- Successful representation of fidelity insurer in class action litigation arising out of the \$97,000,000 Ponzi scheme collapse of one of the largest Internal Revenue Code Section 1031 Qualified Intermediaries.
- Represented commercial property insurer in obtaining favorable verdict in bad faith jury trial in connection with alleged business income losses. Judgment affirmed on appeal.
- Representation of Directors & Officers insurer in successful defense of claims by the FDIC following a bank failure.
- Represented insurer in obtaining forum non conveniens dismissal of a \$22 million coverage and extra-contractual suit in Clark County, Nevada in favor of a New York forum, where the



insurer later defeated the suit.

- Represented market hull & machinery insurers and individual insurer issuing liability policy in connection with sinking in Guam of 800' floating dry dock containing petroleum substances. Won summary judgment on behalf of our clients, which was affirmed on appeal.
- Successful representation of holding company against alter ego claims regarding a former subsidiary.
- Successful representation of insurer in administrative proceeding before California Department of Insurance.
- Representation of market insurers in claims by ocean container lessors.

Practice Areas

Commercial Litigation
Insurance Law
COVID-19 Response
Admiralty & Maritime
Fidelity & Surety
Professional Liability / D&O

Industries

Insurance

Education

University of California, Los Angeles, School of Law - J.D., 1983
The Johns Hopkins University - B.A., 1980

Bar Admissions

- California, 1983
- Nevada, 2002

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California
- U.S. District Court, District of Nevada

Professional and Civic Involvement

- Federation of Defense & Corporate Counsel (Member, Board of Directors, 2012-2015; Program Chair, 2015 Annual Meeting; Chair, Social Media Committee, 2013-2015; Co-Chair, Insurance Industry Committee, 2012-2014; Vice Chair,



- Admissions Committee, 2018 -; Faculty Member, Litigation Management College, 2007-2009 & 2013; Faculty Member, Litigation Management College Graduate Program, 2014; Co-Chair, Insurance Industry Institute, 2011; Chair, Property Insurance Section, 2005-2007; Recipient Joseph R. Olshan Award for outstanding Committee Chair, 2014)
- American College of Coverage Counsel (Fellow); (Member, Board of Regents (2018 -), Co-Chair, 2017 Insurance Law Symposium, Co-Chair, Cyber Insurance and Computer Crime Committee, 2017-2018)
 - Bullivant Firm Representative to Insuralex, Global Insurance Lawyers Group
 - American Bar Association (Member; Tort Trial and Insurance Practice Section, Chair, Property Insurance Law Committee, 2002-2003)
 - Defense Research Institute (Member, Commercial Litigation Committee; Member, Fidelity and Surety Committee; Member, Insurance Law Committee)
 - Property Loss Research Bureau (Member, Claims Conference Committee, 2009-2011)
 - AIDA-US (Association Internationale de Droit des Assurances - US Chapter) (Member)
 - Association of Marine Underwriters of San Francisco (Member)
 - West Publishing (Member, Editorial Board, *Insurance Litigation Reporter*, 2001-Present)
 - USA Swimming/Pacific Swimming, Nationally Certified Referee, Starter, Stroke & Turn Judge and Chief Judge; Sanction Chair, Zone 3, Pacific Swimming

Awards and Honors

- AV[®] Preeminent[™], Peer Review Rated by Martindale-Hubbell
- Named one of California's top insurance lawyers by *Chambers USA* (2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010 — Insurance: Insurer)
- Selected for inclusion in *Northern California Super Lawyers* (2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010, 2009, 2008, 2007, 2006 — Insurance Coverage)
- Selected for inclusion in *The Best Lawyers in America*[®] (2020 — Commercial Litigation)
- Fellow, American College of Coverage Counsel

Publications and Presentations

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- Author, "Wildfire Insurance Problems are Economic, not Legal," *The Daily Journal* (January 7, 2020).
- Speaker, "Just Over the Horizon: Emerging Threats from the Policyholder Bar," Insuralex Global Insurance Lawyers Group



- (2019)
- Speaker, "When Disaster Strikes: Coverage for Natural Disasters," American College of Coverage Counsel (2019)
 - Speaker, "Hidden in Plain Sight - Bad Faith in ERISA Actions," Federation of Defense & Corporate Counsel (FDCC) (2019)
 - Speaker, "Claimants Who Play By Different Rules: Bankruptcy Trustees and Court-Appointed Receivers in Post-Ponzi Scheme Fidelity Claims," Fidelity & Surety Law Committee, Tort Trial & Insurance Practice Section, American Bar Association (2019)
 - Speaker, "Lessons Learned from California Wildfires and Other Disasters," Defense Research Institute, Insurance Coverage and Practice Symposium (2018)
 - Chapter Author (Nevada), "Claims Professional Desk Reference," Federation of Defense & Corporate Counsel (FDCC) (2018)
 - Co-Author, "Artificial Intelligence: Implications for Insurers, Policyholders & Lawyers," FDCC Insights (2018)
 - Speaker, "Withering Leaves: Acting Ethically When You Fear Your Client Has Not," Kentucky Defense Counsel (2018)
 - Speaker, "Is It Flood? Is It Wind? No, It's A Hurricane!" Property Insurance Law Committee, Tort, Trial & Insurance Practice Section, American Bar Association (2018)
 - Speaker, "Artificial Intelligence: Implications for Insurers, Policyholders and Lawyers," Federation of Defense & Corporate Counsel (FDCC) Insurance Industry Institute (2017)
 - Speaker, "Can We Talk? The Importance of Communication When Dealing With Excess and Reinsurers," Federation of Defense & Corporate Counsel (FDCC) (2017)
 - Speaker, "Website Update - Does Yours Measure Up? Everything you always wanted to hear but were afraid to ask about your website," Federation of Defense & Corporate Counsel (FDCC) (2017)
 - Speaker, "I Hate It When That Happens: Avoiding Unforced Errors in Good Faith Claims Handling," Association of Marine Underwriters of San Francisco (2017)
 - Speaker, "Challenges with Business Income and Inventory Loss Documentation," Property Claims Association of the Pacific (2017)
 - Speaker, "Covering the Soft Underbelly of American Business: Hot Topics in Coverage for Cyber Liabilities" American College of Coverage and Extracontractual Counsel (2017)
 - Speaker, "Stop, Look, and Listen: Strategies for Addressing the Unusual Claim" Claims Conference of Northern California (2016)
 - Speaker, "Insurance Litigation: Admissibility of Social Media, Internet and E-Mail Evidence" (2016)
 - Speaker, "Your Client Doesn't Have to be Homer Simpson: Strategies for Avoiding Preventable Bad Faith," Federation of Defense & Corporate Counsel (FDCC) (2016)
 - Speaker. "The Changing World of Intellectual Property Disputes



- Can Insurers Keep Up?, American College of Coverage and Extracontractual Counsel (2016)
- Speaker, "Claim Litigation, Bad Faith Assertions and Jury Issues: How to Present Your Case," American Bar Association, Tort Trial & Insurance Practice Section (TIPS), Fidelity & Surety Law Committee (2015)
- Program Chair, Federation of Defense & Corporate Counsel 2015 Annual Meeting
- Faculty Member/Speaker, Litigation Management College Graduate Program, Federation of Defense & Corporate Counsel (FDCC) (2014)
- Speaker, "Insurance Litigation: Admissibility of Social Media, Internet and E-Mail Evidence" (2014)
- Speaker, "Tweeting on Twitter," Federation of Defense & Corporate Counsel (FDCC) (2014)
- Co-Executive Editor, "Property Insurance Litigator's Handbook, Second Edition," American Bar Association, Tort Trial and Insurance Practice Section (TIPS) (2013)
- Speaker, "Property Insurance Primer," Bar Association of San Francisco (2013)
- Speaker, "Turning New Guns on Old Targets: Class Actions against Insurance Companies," Federation of Defense & Corporate Counsel (FDCC) (2013)
- Speaker, "Coverage Triggers for Business Interruption," American Bar Association, Tort Trial and Insurance Practice Section (TIPS), Property Insurance Law Committee (2012)
- Chapter Author, "Professional Liability Insurance: A Compendium of State Law," Defense Research Institute (DRI) (2012)
- Speaker, "What Happens in Vegas Doesn't Always Stay in Vegas – Anatomy of a Conspiracy and Its Implications for Defendants, Insurers, and Their Attorneys," Federation of Defense & Corporate Counsel (FDCC) (2012)
- Author, "What's In A Claim? A Lot, Depending On Policy Language," Law360 (2012)
- Coordinating Editor, "The Tripartite Relationship: Guidebook for Defense Lawyers," Federation of Defense & Corporate Counsel (FDCC) (2011 Revision)
- Chapter Co-Author, "California Property Insurance: Law and Litigation," Continuing Education of the Bar - California 2011)
- Speaker, "Enforcing Policy Conditions and Warranties in a Hostile Environment," Federation of Defense & Corporate Counsel (FDCC) (2011)
- Speaker, "CAFA Notice Requirements for Class Action Settlements," Federation of Defense & Corporate Counsel (FDCC) (2010)
- Speaker, "Post-Meltdown Property Insurance Claims by Financial Institutions," Property & Liability Resource Bureau (PLRB) & Federation of Defense & Corporate Counsel (FDCC)



- (2010)
- Speaker, "The Lawyer Game: Responding to Unethical Conduct," Federation of Defense & Corporate Counsel (FDCC) (2010)
- Speaker & Author, "Withering Leaves—Acting Ethically When You Fear Your Client Has Not," Defense Research Institute (DRI) Insurance Coverage and Practice Symposium (2010)
- Speaker, "Managing the Case of a Lifetime," Federation of Defense & Corporate Counsel (FDCC) (2009)
- Testimony, "Proposed Amendments to Rule 56, Federal Rules of Civil Procedure," Advisory Committee on Civil Rules Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States (2009)
- Speaker, "Effective Management of the Complex Multi-Jurisdictional First Party Coverage Matter: Class Actions and Multi-District Litigation," Property & Liability Resource Bureau (PLRB) & Federation of Defense & Corporate Counsel (FDCC) Critical Issues Seminar (2008)
- Speaker, "Practical Issues in Property Insurance Litigation," American Bar Association, Tort Trial and Insurance Practice Section (TIPS), Property Insurance Law Committee (2008)
- Speaker, "Property Case Law Update," Property & Liability Resource Bureau (PLRB) (2008)
- Speaker, "Thorny Issues with Commercial Property Forms," Property & Liability Resource Bureau (PLRB) (2008)
- Faculty Member/Speaker, Litigation Management College, Federation of Defense & Corporate Counsel (FDCC) (2007-2009, 2013)
- Speaker, "Lender Involvement: Avoiding Sub-Prime Claims Handling," Property & Liability Resource Bureau (PLRB) (2007)
- Moderator, "Litigating Mass Disasters in the Public Eye," Federation of Defense & Corporate Counsel (FDCC) (2007)
- Co-Executive Editor, "Property Insurance Litigator's Handbook," American Bar Association, Tort Trial and Insurance Practice Section (TIPS) (2007)
- Speaker, "Mortgagee Claims: Rights and Responsibilities," Property & Liability Resource Bureau (PLRB) (2006)
- Speaker, "Thorny Issues in Commercial Property Claims," Property & Liability Resource Bureau (PLRB) (2006)
- Speaker, "Insurance Litigation: Katrina-Related Claims," Law.Com and the Recorder (2005)
- Speaker, "Mortgagee Claims," Property & Liability Resource Bureau (PLRB) (2005)
- Author, "Now What Do We Do? Time Element Claims following a Megaloss," American Bar Association, Tort Trial and Insurance Practice Section (TIPS), The Brief (2005)
- Speaker, "The Direct Physical Loss Requirement," Defense Research Institute (DRI) Insurance Coverage & Claims Institute (2005)
- Author. "Business Interruption Coverage: A Primer on the



- Physical Loss Requirements," Nevada Lawyer (2004)
- Speaker, "From Here to Infinity: A Brief Overview of the Connection between Physical Damage and Business Interruption Coverage," Federation of Defense & Corporate Counsel (FDCC) (2004)
- Speaker, "Mortgagee Claims," Property & Liability Resource Bureau (PLRB) (2004)
- Speaker, "Now What Do We Do? Time Element Claims following a Mega Loss: Partial Suspensions of Operations and the Period of Restoration," American Bar Association, Tort Trial and Insurance Practice Section (TIPS), Property Insurance Law Committee (2004)
- Speaker, "Rescission in a Changed World," Property & Liability Resource Bureau (PLRB) & Federation of Defense & Corporate Counsel (FDCC) Critical Issues Seminar (2004)
- Author, "The Connection between Physical Damage and Business Interruption Coverage," 54 FDCC Quarterly 307 (2004)
- Speaker, "Can Mold Be Managed?" (2003)
- Speaker, "Supplementary Payments," Liability Insurance Research Bureau (LIRB) (2003)
- Speaker, "The Mortgage Clause," Property Loss Research Bureau (PLRB) (2003)
- Panelist, "Fraud Investigation: Non-Arson Fraud," Property & Liability Resource Bureau (PLRB) (2002 & 2001)
- Contributing Editor, "Bad Faith Law Report" (2001)
- Speaker, "Coping with Excessive, Unduly, Burdensome or Abusive Discovery," Mealey's™ Bad Faith Litigation Conference (2001)
- Program Chair, "Earth, Wind, Fire & Water: Cutting Edge Issues in Property Insurance Claims following a Natural or Man Made Disaster," American Bar Association, Tort Trial and Insurance Practice Section (TIPS), Property Insurance Law Committee (2001)
- Panelist, "Fraud Investigation: Non-Arson Fraud," Property & Liability Resource Bureau (PLRB) (2001)
- Speaker, "All Hell Breaks Loose: Conflicts of Interest in Subrogation Claims," American Bar Association, Tort Trial and Insurance Practice Section (TIPS), Property Insurance Law Committee (2000)
- Speaker, "Avoiding Ambiguity," American Institute of Marine Underwriters & Marine Underwriters of Southern California (2000)
- Chapter Author, "Causation Issues in Property and Casualty Insurance Law and Practice of Insurance Coverage Litigation," West Group (2000)
- Panelist, "Mortgagee Clause and Adjusting Claims by Financial Institutions," Property & Liability Resource Bureau (PLRB) (2000)



- Co-Author, "Recent Developments in Property Insurance Law,"
35 Tort & Insurance Law Journal 581 (2000)

Outside Interests

Andy volunteers as a Stroke & Turn Judge, Chief Judge, Deck Referee, Starter, Administrative Official and Meet Referee for USA Swimming, working local, regional, High School and national level swim meets. Currently, he is the Sanction Chair for Zone 3 of Pacific Swimming.