

# Problem Solving in The Insurance Industry

Lewis Roca Rothgerber Christie LLP has extensive experience working with insurance entities to understand complex problems and to design and implement comprehensive solutions to those problems, including all aspects of litigation, transactional and regulatory services. Our depth and experience in representing the insurance industry is unique among law firms. Our insurance industry services are generally set forth below, although there is often substantial overlap among services in assisting insurance entities to develop and implement solutions.

- **Litigation**
  - Insurance Litigation – Class Action, Coverage, Bad Faith and Claim Disputes
  - ERISA Litigation
- **Guaranty Associations and Insurance Insolvencies**
- **Regulatory and Government Relations**
- **Insurance Transactions**
  - Insurance Agreements, including assumption agreements, reinsurance and administrative services
  - Business Transactions, including mergers, acquisitions, divestitures, and other corporate work
  - Captives
  - Real Estate Services, including acquisition, divestiture, portfolio management, leasing and other commercial real estate transactions
  - ERISA and Tax
- **Affordable Care Act (“ACA”)**

## **Insurance Litigation – Class Actions, Coverage, Bad Faith and Claim Disputes**

Lewis Roca Rothgerber Christie has extensive experience representing insurers and related regulated entities in complex commercial litigation, including state and federal courts throughout the country, arbitrations, mediations, and administrative hearings. Some of our representative experience includes:

- Advising insurers on coverage questions and defending insurers in coverage disputes;
- Defending insurers against bad faith claim

- Defending insurers in class actions;
- Providing a defense for insureds under certain limited circumstances;
- Representing NOLHGA and Insurance Guaranty Associations in liquidation proceedings and related matters in state courts around the country;
- Serving as counsel for the Receiver of insolvent insurers in Receivership Proceedings and prosecuting and defending related matters;
- Litigating reinsurance disputes involving insurance insolvencies.

## ERISA Litigation

With more than 30 years of representing life, health, and disability insurers, Lewis Roca Rothgerber Christie lawyers have developed an unparalleled depth of experience in all aspects of ERISA and coverage-based litigation. We have successfully defended cases throughout the Eighth, Ninth and Tenth Circuits, both at the trial level and on appeal. Through litigation, as well as writing and speaking engagements, Lewis Roca Rothgerber Christie attorneys keep up-to-date on rapidly evolving federal and state laws. We regularly counsel clients during the claim process and through litigation on matters including:

- Claim administration;
- Underwriting;
- Plan language;
- Discovery;
- Rescission;
- Subrogation;
- Plan reimbursement;
- Federal preemption;
- Tribal law and jurisdiction;
- Insurance agent issues;
- Trade secrets;
- Provider relations.

We represent health insurers and health plans, both self-funded and insured, against individual participants as well as against health care providers.

Our clients benefit from this wealth of experience because it results in efficient litigation. In addition, our long relationship with the industry gives our attorneys a unique strategic perspective. We understand that our clients provide services nationwide and that each case can have widespread implications. At the same time, we have familiarity with local Judges and Magistrates and relationships with experienced mediators that can facilitate advantageous settlements when appropriate.

## Guaranty Associations and Insurance Insolvencies

### Guaranty Associations

For more than 20 years, we have represented life and health insurance guaranty associations, as general counsel, helping them in all aspects of their operations, including, but not limited to multi-state insolvencies, single-state insolvencies, service agreements, assumption agreements, reinsurance disputes, defense and prosecutor litigation, legislation, statutes, regulation, coverage questions, liquidation plans, trust agreements, plans of operation, privacy and security policies..


We represent the following insurance guaranty associations either as general counsel or for special projects:

- California Life and Health Insurance Guarantee Association
- Life and Health Insurance Protection Association, in Colorado
- Hawaii Life & Disability Insurance Guaranty Association
- Idaho Life and Health Insurance Guaranty Association
- Illinois Life and Health Insurance Guaranty Association
- Illinois Health Maintenance Organization Guaranty Association
- Maine Life and Health Insurance Guaranty Associations
- Montana Life and Health Insurance Guaranty Association
- Oregon Life and Health Insurance Guaranty Association
- Wyoming Life and Health Insurance Guaranty Association

### Insurance Insolvencies

In addition to our guaranty association work, we serve as counsel to the National Organization of Life and Health Insurance Guaranty Associations (“NOLHGA”) representing NOLHGA and appointed Task Forces with respect to several insurance insolvencies. Those services may include working with regulators and receivers, developing liquidation plans, liquidating trusts, service agreements and assumption agreements, seeking court approval, negotiating and litigating disputes with other creditors and reinsurers, and both defense and prosecutor litigation. In this capacity, we have served as NOLHGA Task Force Counsel on insolvencies in numerous states including Alabama, California, Delaware, Indiana, Pennsylvania, Texas and Wyoming.

In limited circumstances, our firm has served as counsel to Receivers and/or Liquidators of insolvent insurance companies in Colorado and Hawaii with respect to insurers that issue policies other than life and health (for example, property and casualty companies, HMOs, or risk retention groups). We work closely with state regulators and attorney general counsel in order to commence the proceedings, develop a claims process, collect and liquidate the assets, pay the claims



pursuant to court order and statutory established priority systems, close the estate, and seek court approval as appropriate. We have also litigated and defended claims involving other creditors in the receivership courts and other courts.

In addition to our representation of NOLHGA, Guaranty Associations, and Receivers, our partners serve on the NOLHGA Legal Committee, the NOLHGA Annual Legal Seminar Planning Committee and are active members with the International Association of Insurance Receivers.

## **Regulatory and Government Relations**

### **Regulatory**

Lewis Roca Rothgerber Christie has well-established government relations practices in Arizona, Colorado, Nevada, New Mexico and Wyoming with a specific focus on helping clients navigate the complexities of the highly-regulated insurance industry. As one of the West's oldest and largest firms, we offer the advantage of a well-established network of industry relationships and a thorough understanding of the politics and history of the region.

Specific to insurance regulation, we represent insurers and related regulated entities with respect to disputes and transactions involving regulatory participation and/or approval including, among others:

- Serving as administrative and regulatory counsel for various insurance companies regarding Form A applications, new company formation, rate filings, market conduct examinations and other regulatory matters;
- Serving as transactional counsel for insurers, HMOs and life and health insurance guaranty associations associated with designing and drafting assumption reinsurance agreements, joint ventures and strategic alliances, privacy and security plans, and plans of operations and securing applicable regulatory approvals; and
- Serving as counsel for insurance entities in obtaining insurance commissioner regulatory approval for entity structure and ownership changes.

As part of our regulatory practice, several of our partners regularly attend the National Association of Insurance Commissioners ("NAIC") meetings. In addition, our partners are active members of the Federation of Regulatory Counsel ("FORC").

### **Government Relations**

Lewis Roca Rothgerber Christie regularly represents client interests before the Legislature, the Governor's Office and administrative agencies on a wide variety of matters. The firm's Government Relations group members also develop, coordinate and implement strategies before governmental bodies.

For any government relations matter, we develop the right team, then design and implement a plan to educate key people in the community about the need for appropriate legislation and policies which will strengthen targeted public policy interests. In the course of our representation, we strive to achieve the following:

- Establish a position of stature in the political community by building relationships with decision-makers who have jurisdiction and responsibility over matters affecting client interests;
- Active representation during the legislative session including preparing, tracking and lobbying for legislative proposals as needed to promote your interests;
- Attend appropriate hearings and meetings where your legislative goals are addressed;
- Identify acceptable outcomes in legislative and regulatory matters and continually access progress and prospects for success;
- Develop opportunities to work together with stakeholders having common interests, to devise a coordinated strategy;
- Share our thorough knowledge of the regulatory process with you;
- Conduct regular meetings to update you on the current status of our government relations strategy.

## **Insurance Transactions**

### **Insurance Agreements and Related Corporate Work**

We work extensively with insurers on negotiating, drafting and implementing key agreements including mergers, acquisitions, joint ventures and strategic alliances, new company formations, asset sales, service agreements, assumption agreements, reinsurance agreements, conversions, and the like.


Related to the insurance-specific agreement, we provide traditional corporate practices for our insurance clients. With respect to our corporate practice, our attorneys have extensive experience on entity selection, advising regarding shareholder, director and officer issues, negotiating and drafting affiliated business arrangements, representing buyers and lenders in secured and unsecured financing arrangements, public and private offerings of equity, debt and derivative securities, and general representation of clients regarding all types of Securities and Exchange Commission compliance issues, among others.

### **Captives**

We have experience forming captive insurers, including working closely with clients, regulators and other consultants to develop the Captive application and the related corporate documents and business agreements.

### **Real Estate**

Lewis Roca Rothgerber Christie represents insurance companies and financial institutions throughout the country in real estate investment projects that involve the purchase of land and development of retail, industrial, office, multifamily and mixed-use commercial properties. Our work for insurance companies is comprehensive and includes project due diligence, land use and other approvals, structuring of the development agreement, creation of the appropriate transaction entity structure



(including sophisticated joint venture vehicles), and handling subsequent property sales and leasing. These projects range from modest investments to projects valued in the tens and hundreds of millions of dollars. We help our clients to meet all fiduciary requirements in these investments, including the structuring of such sophisticated financing vehicles as forward commitments (which extend financial credit for project completion), and collateralized mortgage debt securities (CMDS) and other asset securitizations.

## **ERISA and Tax**

We regularly practice in the area of employee benefits planning, plan design and implementation, representing large and small governmental and private employers with all types of pension and welfare benefits issues. We have experience designing benefit plans that meet the legal requirements of ERISA, COBRA, HI PAA, the Family and Medical Leave Act, the Older Workers Pension Benefit Protection Act, the AEA, the Americans with Disabilities Act, and Health Care Reform.

In addition, we frequently assist clients with the design, implementation, and maintenance of executive compensation programs; golden parachute arrangements and other severance programs; insured and self-insured health and other insured and self-insured welfare benefits, such as disability, dental, and vision benefits and including retiree benefits; EBAs; stock option plans; tax-qualified retirement plans, including leveraged and un-leveraged ESOPs, (k), 403(b), and 457 plans, PERA, cash balance and traditional pension plans; and cafeteria plans.

In addition, we also represent numerous nonprofit organizations regarding operational issues, joint ventures with for-profit organizations, financing, and related activities with respect to tax-exempt status and related tax issues. In addition, we also have extensive experience advising regarding taxation issues associated with corporations, partnerships, limited liability companies and other entities regarding compensation, benefits, qualified and nonqualified options, self-funded welfare benefit plans, and ERISA-related matters, among others.

## **Affordable Care Act**

We have extensive experience assisting clients on problems that are directly affected by the ACA in ways that combine virtually all of the various services we provide for insurance entities. We have served as legal counsel for NOLGHA Task Forces and for individual Guaranty Associations associated with providing coverage for some of the first health companies (multi-state and single-state) to fail in the country. Also, we work with solvent companies on ACA issues related to their business.

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