

**STRATEGIES FOR OPTIMIZING INSURANCE COVERAGE  
FOR BUSINESS LITIGATION**

ACCA Luncheon Presentation

February 20, 2003

**COVERAGE CHART**

PAUL A. HILDING  
HILDING KIPNIS LYON & KELLY  
11975 El Camino Real, Suite 200  
San Diego, CA 92130  
858-623-1111  
Email: [hilding@hklk.com](mailto:hilding@hklk.com)  
[www.hklk.com](http://www.hklk.com)

<b>TORTS</b>	<b>POLICY</b>	<b>POLICY LANGUAGE</b>	<b>CASES/COMMENTS</b>
ABUSE OF PROCESS	CGL	"malicious prosecution"	<u>Lunsford v. American Guarantee &amp; Liability Ins. Co.</u> (9th Cir. 1994) 18th F. 3d 653
ANTITRUST	CGL UMB	"unfair competition" "libel", "slander"	<u>CNA Cas of CA v. Seaboard Ins. Co.</u> (1986) 176 CA3d 598
ASBESTOS	CGL UMB	"bodily injury"; "loss of use of tangible property ;" private occupancy"	<u>Armstrong World Industries v. Aetna Cas &amp; Sur. Co.</u> (1996) 45 Cal.App.1
ASSAULT/ BATTERY	CGL UMB	"bodily injury"; "false arrest"; etc	<u>Gray v. Zurich</u> (1966) 65 C2d 263; <u>Zelda v. Northland Ins. Co.</u> (1997) 56 CA4th 1252
CONSTRUCTION DEFECT	CGL	"loss of use of tangible property"; "physical injury to tangible property"	<u>Maryland Cas. Co. v. Reeder</u> (1990) 221 CA3d 961
CONSORTIUM	CGL	"bodily injury"	<u>Abellon v. Hartford Ins. Co.</u> (1985) 167 CA3d 21
CONTRACT	CGL	"legally obligated to pay"	<u>Vandenberg v. Superior Ct.</u> (1999) 21 Cal.4th 815
CONVERSION	CGL UMB	"loss of use of tangible property"	<u>Collin v. American Empire Ins. Co.</u> (1994) 21 CA4th 787
COPYRIGHT INFRINGEMENT	CGL UMB	"loss of use of tangible property" "infringement of copyright" "style of doing business"	<u>Zurich Ins. Co. (U.S. Branch) v. Killer Music, Inc.</u> (1993) 998 F.2d 674; <u>Sentry Ins. Co. v. R.J.Weber Co.,Inc.</u> (5th Cir. 1993) 2 F. 3d 554

DEFAMATION	CGL E&O	"defamatory ... material", "libel", "slander"	<u>Nichols v. Great American Ins. Co.</u> (1985) 169 CA3d 766; <u>Frank &amp; Freedus v. Allstate</u> (1996) 45 CA4th 461; <u>HS Services v. Nationwide</u> (9th Cir. 1997) 109 F.3d 642
DISCRIMINATION	UMB	"discrimination"	<u>American Motorists v. Allied-Sysco</u> (1993) 19 CA4th 1342 <u>Save Mart Supermarkets v. Underwriters at Lloyds</u> (ND DC 1994) 843 FS 597
DISPARAGEMENT	CGL	"disparagement"	<u>Atlantic Mutual Ins. Co. v. Lamb</u> (2002) 100 Cal.App.4th 1017
EMOTIONAL DISTRESS	CGL	"bodily injury"	<u>Employers Cas. Ins. Co. v. Foust</u> (1972) 29 CA3d 382: physical symptoms required; <u>Chatton v. National Union Fire Ins. Co.</u> (1992) 10 CA4th 846; <u>Waller v. Truck Ins. Exchange</u> (1995) 11 Cal.4th 1
EMOTIONAL DISTRESS	UMB	"mental anxiety"	physical symptoms not required
ENVIRONMENTAL CLAIMS	CGL	"property damage" "bodily injury" "wrongful entry" "private occupancy"	<u>Montrose v. Sup.Ct.</u> (1993) 6 C4th 287; <u>AIU v. Superior Court</u> (1990) 51 C3d 807 <u>Shell v. Winterthur</u> (1993) 12 CA4th 715; <u>Brian Chuchua's Jeep v. Farmers Ins. Co.</u> (1992) 10 CA4th 1579
FRAUD	D&O	"Wrongful acts"	<u>Raychem Corp v. Federal Ins. Co.</u> (N.D. Cal. 1994) 853 FS 1170
HUMILIATION		"humiliation"	<u>American Motorists v. Allied-Sysco</u> (1993) 19 CA4th 1342
INDEMNITY	CGL	"liability assumed..."	<u>Cal-Farm Ins. Co. v. TAC</u> (1985) 172 CA3d 564
INTERFERENCE WITH CONTRACT	CGL	"disparagement"	<u>Atlantic Mutual Ins. Co. v. Lamb</u> (2002) 100 Cal.App.4th 1017
LIBEL	CGL UMB E&O	"libel"	<u>Nichols v. Great American Ins. Co.</u> (1985) 169 CA3d 766; <u>Microtec Research Inc. v. Nationwide Mutual Ins. Co.</u> (9th Cir. 1994) 40 F. 3d 968 (Trade Libel not "libel")

MALICIOUS PROSECUTION	CGL UMB	"malicious prosecution"	<u>Downey Venture v. LMI Ins. Co.</u> (1998) 66 Cal.App.4th 478; <u>California Casualty Management Co. v. Martocchio</u> (1992) 11 CA4th 1527
MALPRACTICE	E&O	"act, error or omission"	
MISREPRESENTATION	D&O CGL	"wrongful acts" "occurrence"	<u>American Int'l Bank v. Fidelity &amp; Deposit Co. of Maryland</u> (1996) 49 CA 4th 1558
NUISANCE	CGL UMB	"loss of use of tangible property" "wrongful entry" "private occupancy"	<u>Titan Holdings v. Keene</u> (1st Cir. 1990) 898 F.2d 265; <u>Martin Marietta Corp. v. Ins. Co. of North America</u> (1995) 40 CA 4th 1113
PATENT	CGL D&O UMB	"piracy" "style of doing business" "idea misappropriation"	<u>Everett Associates, Inc. v. Transcontinental Ins. Co.</u> (N.D.Ca. 1999) 57 F.S.2d 874
SECURITIES VIOLATIONS	D&O	"wrongful acts"	<u>Nordstrom Inc. v. Chubb &amp; Son, Inc.</u> (WD Wa. 1992) 820 FS 530; <u>aff'd</u> , 54 F.3d 1424 (9th Cir.1995)
SEXUAL HARASSMENT/ MOLESTATION	CGL WC	"bodily injury"	<u>Horace Mann v. Barbara B</u> (1993) 4 C4th 1076; <u>appeal after remand, Barbara B. v. Horace Mann</u> (1998) 71 Cal.Rptr. 350; <u>Melugin v. Zurich Canada</u> (1996) 50 CA 4th 658; <u>State Farm v. Century</u> (1997) 59 CA 4th. 648
SLANDER	CGL UMB E&O	"slander"	<u>Nichols v. Great American Ins. Co.</u> (1985) 169 CA3d 766
TRADE DRESS	CGL	"style of business"	<u>Peerless Lighting v. American Motorists Ins. Co.</u> (2000) 82 CA4th 995; <u>American Economy v. Roboans</u> (N.D. Cal 1995) 900 FS 1246
TRADEMARK	CGL UMB	"piracy" "unfair competition" "Style of doing business" "title or slogans"	<u>American Economy Ins. Co. v. Roboans, Inc.</u> (N.D. Cal. 1995) 900 FS 1246; <u>Lebas Fashion Imports of USA v. ITT Hartford Ins. Group</u> (1996) 50 CA 4th 548
TRADE SECRETS	CGL	"misappropriation of advertising ideas"	<u>Hameid v. National Fire Ins. Co.</u> (2002) 94 CA 4 <sup>th</sup> 1155; <u>Sentex Systems, Inc. v. Hartford Accident &amp; Indemnity Co.</u> (9th Cir. 1996) 93 F.3d 578
TRESPASS		"wrongful entry"	<u>American States Ins. Co. v.</u>

			<u>Canyon Creek</u> (N.D.Cal.1991) 786 FS. 821; <u>Tinseltown Video, Inc. v. Transportation Ins. Co.</u> (1998) 71 Cal.Rptr. 2d 371
UNFAIR COMPETITION	CGL	"unfair competition"	<u>Bank of the West v. Sup Ct</u> (palming off) (1992) 2 Cal.4th 1254; <u>American Cyanamid v. American Home Assurance Co.</u> (1994) 30 CA4th 969
WRONGFUL EVICTION	CGL	wrongful ... eviction"	<u>General Accident Ins. Co. v. West American Ins. Co.</u> (1996) 42 CA 4th 95; <u>Fragomeno v. ICW</u> (1989) 207 CA3d 822; <u>Zelda v. Northland Ins. Co.</u> (1997) 56 CA.4th 1252
WRONGFUL TERMINATION	WC CGL	"bodily injury" "bodily injury" "personal injury"	<u>La Jolla Beach &amp; Ten Club v. Industrial Indemnity Co.</u> (1994) 9 C4th 27, modified 9 C4th 823; <u>HS Services, Inc. v. Nationwide Mut. Ins. Co.</u> (9 <sup>th</sup> Cir, 1997) 109 F.3d 642; <u>Culligan v. State Comp.</u> (2000) 81 CA4th 429; <u>Horace Mann, supra.</u>
WRONGFUL TERMINATION	UMB	"mental anguish ... humiliation ... caused by an <u>event</u> ;"	<u>United Pac. Ins. Co. v. The McGuire Group</u> (1991) 229 CA3d 1560
WRONGFUL TERMINATION	D&O	"wrongful acts"	

**NOTE:** This chart is intended as a starting point for coverage analysis. The allegations of the plaintiffs and the facts otherwise made known to the insurer, not the names of the torts identified in the complaint, are determinative of coverage. Gray v. Zurich (1966) 65 Cal.2d 263.