

# SEXUAL ABUSE LITIGATION & COVERAGE CONFERENCE

NEW YORK CITY BAR ASSOCIATION | OCTOBER 7, 2025

## FINDING COVERAGE FOR SEXUAL MOLESTATION AND SEX TRAFFICKING CLAIMS AND COVERAGE LITIGATION UPDATE



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# Agenda

- ▶ What Types of Coverage May Apply?
- ▶ What is Insurance Archaeology?
- ▶ Incomplete Policies or Evidence of Policies
  - Insurer's Perspective
- ▶ Updates on Coverage Litigation – Sexual Abuse and Sex Trafficking Claims



# What Types of Coverage May Apply?

- ▶ Commercial General Liability (CGL)
  - Unintended, unexpected bodily injury to others
  - Damage to others' property
- ▶ Other Types of Coverage
  - Professional Liability/Errors & Omissions (E&O)
  - Directors and Officers (D&O)
  - Employment Practices Liability (EPLI)
  - Broadform Educators' Liability
  - Hospital Professional/Med Malpractice
  - Manuscripted or ISO Misconduct/Abuse Coverage
  - Specialty Tail/M&A Wrap Coverage



# What is Insurance Archaeology

- ▶ The practice of locating and retrieving proof of the existence, terms, conditions and limits of lost or destroyed insurance policies.
- ▶ Insurance Archaeology is performed to locate funds to defend against third-party liabilities
- ▶ When to retain an Insurance Archaeologist?
- ▶ Who hires an Insurance Archaeologist?







# Components and Process

- ▶ What are the components of insurance archaeology?
  - Boots on the ground
  - Investigation & interviews
  - Review of files which may include meeting minutes
  - Internal database research
  - Policy library
- ▶ How long does an insurance archaeology investigation take?
- ▶ Once evidence of coverage is located, what happens next?



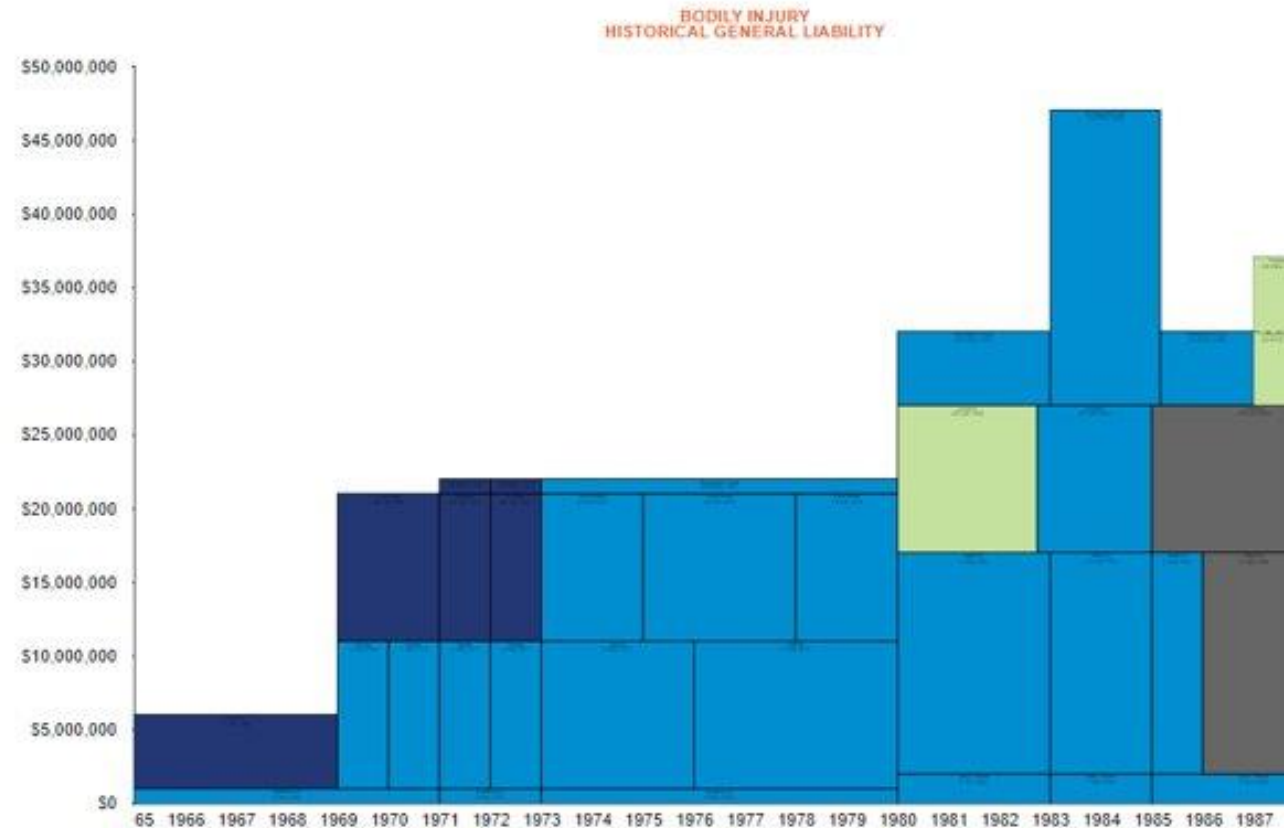
# Organizing Data and Documents

- ▶ Map the insurance to the claim
- ▶ Evidence log
- ▶ Flags for key information
- ▶ Policy database
  - All available policy evidence
  - Form numbers
  - Quality of evidence
  - Source
  - Exhaustion of limits and past settlements
  - Link to the document(s) supporting the policy
  - Notice status
- ▶ Shared folder structure/mechanism for other parties' review

# Deliverables/Reporting



- ▶ Policy schedule
- ▶ Coverage charts
- ▶ Insurance carrier status reports
- ▶ Insolvencies
- ▶ Past agreements
- ▶ Erosion





# Insurer's Perspective

- ▶ Notice of Loss
  - Complaint, policy information, alleged policy documents - The more information the better!
- ▶ Policy search
  - Process takes time – especially when searching for historic policies
- ▶ Review and analysis of findings
- ▶ Coverage analysis





# Burden of Proof

- ▶ The insured typically has the burden to prove the existence and contents of a missing policy
- ▶ Preponderance of the evidence or clear and convincing evidence standard
- ▶ Expert testimony
- ▶ The insured may rely on secondary evidence in certain circumstances
  - *Guided Discoveries, Inc. v. New Hampshire Ins. Co.*, 2025 WL 211973 (C.D. Cal. Jan. 9, 2025)

# Policy Language Analysis



- ▶ Named insured and additional insureds
- ▶ Notice condition
- ▶ Bodily injury definition
- ▶ Occurrence definition
- ▶ Sexual abuse and molestation exclusions
- ▶ Consent to settle
- ▶ Policy specific endorsements

PI-FT-IL (07/06)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ABUSE OR MOLESTATION EXCLUSION  
ABUSE OR MOLESTATION SUBLIMIT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

1) Except to the extent coverage is provided in 2) below, this insurance does not apply to "bodily injury," "property damage," "personal and advertising injury," or any other "injury," arising out of:

(a) the actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured, or

(b) the negligent

(i) employment;

(ii) investigation;

(iii) supervision;

(iv) reporting to the proper authorities, or failure to so report; or

(v) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (a) above.

This exclusion shall apply regardless of the legal form any "suit" may take. As an example, this insurance shall provide no coverage for a claim alleging that an insured was negligent or in breach of contract due to the hiring of an employee accused of sexual abuse. However, notwithstanding the foregoing, the insured shall be protected under the terms of the policy as to any claim and/or allegation which may be covered by the policy upon which suit may be brought against the insured, for any such alleged behavior by an insured unless a judgment or final adjudication adverse to the insured shall establish that such behavior occurred as an essential element of the cause of action so adjudicated.

2) (a) If a limit is shown in item (b) below, the above exclusion shall not apply, subject to the following additional conditions:

i) The most we will pay for a claim otherwise excluded in Item 1) above is the limit stated in this endorsement.

ii) We will not pay any claim or defense cost on behalf of any person who personally takes part in inflicting physical or sexual abuse, sexual molestation, sexual exploitation or sexual injury upon another person; or

On behalf of any person who remains passive upon gaining knowledge of any alleged physical or sexual abuse, sexual molestation, sexual exploitation, or sexual injury committed by an employee or volunteer of the insured.

iii) We will not pay any claim or defense costs on behalf of any person who commits an intentional or criminal act.

iv) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments and settlements under this endorsement.

Page 1 of 2

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# Update on Coverage Litigation

- ▶ *Peerless Indem. Ins. Co. v. Tilma, Inc.*, 2025 WL 2052479 (E.D. Va. July 22, 2025)
  - Coverage B applied – definition of “personal injury” includes false imprisonment
  - Intentional Torts Exclusion, Criminal Act Exclusion, and Contractual Liability Exclusion did not apply.
- ▶ *BOJ of WNC, LLC v. Westfield Nat’l Ins. Co.*, 2025 WL 1953116 (S.D. Ga. July 16, 2025)
  - Abuse or Molestation Exclusion precluded coverage under a businessowners liability policy
  - The Employer’s Liability Exclusion, Workers’ Compensation Exclusion, and Employment-Related Practices Exclusion did not apply



# Update on Coverage Litigation (cont.)

- ▶ *Travelers Prop. Cas. Co. of Am. v. Salesforce.com, Inc.*, 2024 WL 4286968 (9th Cir. Sept. 25, 2024)
  - Coverage A and Coverage B applied
  - Alleged violations of Texas's sex-trafficking statute could constitute an "accident" and the Expected or Intended Injury Exclusion and Knowing Violation of Rights of Another Exclusion did not negate duty to defend
- ▶ *Northfield Ins. Co. v. Northbrook Indus., Inc.*, 749 F. Supp. 3d 1325 (N.D. Ga. 2024)
  - Coverage A and Coverage B applied
  - Abuse or Molestation Endorsement and Assault or Battery Endorsement did not negate duty to defend

# Update on Coverage Litigation (cont.)



- ▶ *Markel Insurance Co. v. Secret Harbor*, 2025 WL 745566 (W.D. Wash. Mar. 7, 2025)
  - Question over duty to indemnify court granted summary judgement in part over facility not listed in Designated Premises Endorsement
  - Left open the question on continuing injury following initial year of abuse

# Questions?



# THANK YOU!



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