



Thomas H. Crouch

Partner

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Overview

Tom serves as chair of the Insurance Coverage practice group for the firm's Phoenix office. He provides insurance coverage analysis and advice to many commercial insurance companies. At one time or another, he has provided his clients with coverage advice under the laws of nearly all 50 states. Tom offers a unique depth of experience, having analyzed coverage under commercial general liability policies as well as commercial auto, professional liability, public officials liability, law enforcement liability, director and officer liability, and homeowners policies. He also delivers CLE programs on commercial insurance coverage issues.

Clients and colleagues often call upon Tom for his analysis and advice in complex insurance cases. They regularly seek his counsel on matters involving both liability insurance and first-party insurance. They also often seek his counsel in connection with extra-contractual liability claims.

In addition, Tom is one of the firm's top appellate attorneys. He has briefed or argued more than 50 appeals in many state and federal appellate courts across the country. In fact, he has handled appeals in nine different state courts and five different circuits of the United States Court of Appeals. Tom developed his interest in appellate practice early on, as a law clerk for two justices of the Minnesota Supreme Court – Justice Lawrence Yetka and Justice John Simonett.

In a high-profile case, Tom represented the Arizona Legislature in an action against Arizona's former Governor, Janet Napolitano, challenging the constitutionality of a partial veto. Tom successfully argued that the Governor had exceeded the line item veto power granted by the Arizona constitution.

Tom recently won an appeal of an employment matter in the Ninth Circuit. The case involved disability-inquiry claims under the Americans with Disabilities Act and the business-necessity defense. The EEOC filed an amicus brief and participated in oral argument. Tom successfully defeated the EEOC's arguments.

Services

- ◆ Employment
- ◆ Appellate
- ◆ Insurance
 - ◇ Insurance - Bad Faith
 - ◇ Insurance Coverage
 - ◇ Insurance - Reinsurance

State Bar Admissions

- ◆ Arizona, 2000
- ◆ Minnesota, 1987

Federal Court Admissions

- ◆ United States Supreme Court, 2007
- ◆ United States Court of Appeals, Sixth Circuit, 1989
- ◆ United States Court of Appeals, Seventh Circuit, 1989
- ◆ United States Court of Appeals, Eighth Circuit, 1990
- ◆ United States Court of Appeals, Ninth Circuit, 1998
- ◆ United States Court of Appeals, Tenth Circuit, 1989
- ◆ United States District Court, District of Arizona, 2000
- ◆ United States District Court, District of Colorado, 2013
- ◆ United States District Court, Central District of Illinois, 1994
- ◆ United States District Court, District of Minnesota, 1987

Tom is a highly competitive person who likes to win – for his clients and for himself. For many years, he trained for and competed in triathlons. Today, he participates in masters swimming and road cycling. Over the years, he has supported the swimming careers of his sons and has volunteered extensively at local Arizona swim meets.



Education

- ◆ Hamline University School of Law, J.D., *cum laude*, 1987
- ◆ University of Texas, B.S., with high honors, 1984

Clerkships

- ◆ Honorable Lawrence Yetka, Supreme Court of Minnesota, 1987-1988
- ◆ Honorable John Simonett, Supreme Court of Minnesota, 1987-1988

Experience

Reported & Unpublished Cases

- ◆ *Cantex, Inc. v. Giles Engineering Assocs., Inc.*, 2017 WL XXXXXX (Ariz. App. 2017) (vacating summary judgment and \$100,000 award of attorney fees, holding that Arizona’s law of comparative fault does not render apportioned claim one for “sole negligence” within an exception to an indemnity clause, and ordering summary judgment be entered in favor of engineering firm client on contractual defense and indemnity claim in excess of \$500,000).
- ◆ *Colony Insurance Company v. Estate of Lakeisha Anderson*, 2016 WL 796983 (Ariz. App. 2016) (holding that \$2.2 million judgment against insured group home for death of resident fell outside the coverage of claims-made-and-reported policy in effect at time of death because claim was not reported during the policy period, further, death fell outside the coverage of the second claims-made-and-reported policy given the retroactive date).
- ◆ *Nelson v. Navigator Insurance Company*, 624 Fed.Appx. 599 (9th Cir. 2015) (holding that general liability insurer did not provide coverage for \$4.2 million judgment on spoliation of evidence suit under CGL Policy and Excess Policy because spoliation of evidence is for economic loss, not bodily injury or property damage, and the Insured’s subjective expectation of coverage for the suit did not rise to the level of objective reasonableness under the evidence presented).
- ◆ *American Casualty Co. of Reading, Pennsylvania v. United National Ins. Co.*, 2012 WL 2415540 (Ariz. App. 2012) (holding that settlement by client-insurer could not be undone by proposed intervenor-insurer as proposed intervenor-insurer did not seek timely intervention and lacked sufficient interest to merit intervention as of right).
- ◆ *American Safety Cas. Ins. Co. v. City of Waukegan*, 2012 WL 882504 (7th Cir. 2012) (holding, on cross appeal, that City of Waukegan’s notice to Scottsdale Insurance Company was late as a matter of law, and that Illinois’ estoppel rule did not apply because Scottsdale timely commenced a declaratory judgment action).
- ◆ *Secura Ins. v. Horizon Plumbing, Inc.*, 670 F.3d 857 (8th Cir. 2012) (holding that breach of contract claim arising from construction defects did not allege an “occurrence” resulting in “property damage,” and thus did not trigger a duty to defend, even though underlying defects included plumbing defects leading to water intrusion).
- ◆ *Goodman v. Physical Resource Engineering, Inc.*, 270 P.3d 852 (Ariz. App. 2011) (reversing jury verdict for breach of contract where there was no evidence that a contract existed between plaintiff landowner and defendant surveyor).

- ◆ *Ventana Medical Systems, Inc. v. St. Paul Fire and Marine Ins. Co.*, 2011 WL 5008591 (9th Cir. 2011) (holding that no duty to defend was triggered by complaint for patent infringement, where the complaint did not contain allegations of disparagement within the meaning of policy's insuring agreement for personal injury or advertising injury and where, in any event, coverage was precluded by intellectual property exclusion).
- ◆ *Kirkish v. Mesa Imports, Inc.*, 2011 WL 2647995 (9th Cir. 2011) (holding that, as a matter of law, employer's inquiry regarding employee's use of pain medications did not violate Americans with Disabilities Act, because employer's inquiry was justified by business necessity).
- ◆ *Rodgers v. Anthem Community Council, Inc.*, 2011 WL 2586374 (Ariz. App. 2011) (holding that homeowners had standing to bring suit against Community Council in a dispute over enforcement of covenants, conditions, and restrictions applicable to parcel occupied by a church).
- ◆ *Czapski v. Maher*, 954 N.E. 2d 237 (Ill.App. 1st Dist., 2011) (holding that a test driver of an automobile is a "customer" within meaning of policy exclusion that customers do not qualify as insureds under \$5 million dollar commercial umbrella policy, and holding that client had no duty to indemnify any part of a \$13.7 million dollar wrongful death verdict).
- ◆ *Leflet v. Redwood Fire & Casualty Ins. Co.*, 226 Ariz. 297, 247 P.3d 180 (Ariz.App. 2011) (court restricts the use of Morris agreements and finds insureds who enter into such agreements to the benefit of one carrier and to the detriment of another carrier violate the policy's cooperation clause).
- ◆ *College Book Centers, Inc. v. Carefree Foothills Homeowners Association*, 225 Ariz. 533, 241 P.3d 897 (App. 2010) (reversing jury verdict against association that it had waived right to enforce CC&R's and ruling that implied easement claim failed as a matter of law).
- ◆ *Stonedge at Troon North Homeowners' Association, Inc. v. National Fire Insurance Company of Hartford*, 2009 WL 4750457 (Ariz. App. 2009) (holding that lower court did not commit a procedural error in entering stipulated judgment, but allowing insurer to challenge enforcement of judgment on remand).
- ◆ *Johnson v. Clarke*, 2009 WL 3756332 (Ariz. App. 2009) (holding that legal malpractice was time barred by two-year statute of limitation).
- ◆ *C&G Les Springs Family Home v. Hinz*, 2009 WL 2031936 (Ariz. App. 2009) (affirming dismissal of claims against board members of homeowners association).
- ◆ *National Casualty Company v. Forge Industrial Staffing, Inc.*, 567 F.3d 871 (7th Cir. 2009) (ruling that underlying employment claims did not create a conflict and thus insurer was not obligated to provide insured with independent counsel).
- ◆ *DeSantiago v. Pargas*, 2009 WL 794929 (Ariz. App. 2009) (vacating and remanding for further proceedings on issue whether \$8.3 million stipulated judgment in wrongful death case was unreasonable).
- ◆ *Monterey Homes Arizona, Inc. v. Federated Mutual Insurance Company*, 212 P.3d 43 (Ariz. App. 2009) (holding that insurer should have been allowed to intervene to assert subrogation claim for attorney and expert fees).
- ◆ *Czapski v. Maher*, 896 N.E.2d 394 (Ill. Ct. App. First Dist. 2008) (holding that coverage issue over whether umbrella and excess policies were applicable to wrongful death claim was not justiciable).
- ◆ *Sharp Structural Steele v. Franklin Mfg., Inc.*, 2008 WL 2570685 (9th Cir. 2008) (Affirming jury verdict of product liability claim).
- ◆ *Townhomes Owners' Association v. Transcontinental Ins. Co.*, 178 P.3d 485 (Ariz. App. 2008) (affirming judgment on late notice, but reversing award of prejudgment interest).
- ◆ *Lankford v. Scottsdale Insurance Co.*, 947 A.2d 1121 (Del. 2008) (holding that liquor liability exclusion applied to claims arising from intoxication of insured's employee, including claim that insured was negligent in permitting employee to drive while intoxicated).

- ◆ *Estate of Clem v. Western Heritage Ins. Co.*, 195 Fed.Appx. 328 (6th Cir. 2006) (unpublished) cert. denied 127 S.Ct. 1264 (U.S. Feb. 4, 2007) (holding that participant exclusion precluded coverage for injuries sustained by person who fell from a float that was used in a parade).
- ◆ *Holy Trinity Greek Orthodox Church v. Church Mut. Ins. Co.*, 476 F.Supp.2d 1135 (D. Ariz. 2007) (granting insurer's motion for summary judgment on plaintiff's punitive damage claim).
- ◆ *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 143 P.3d 1023 (2006) (holding that governor's partial veto exceeded the line item veto power granted by the Arizona Constitution and was therefore ineffective).
- ◆ *Town of Gilbert v. Maricopa County*, 213 Ariz. 241, 141 P.3d 416 (App. 2006) (holding that legislation was an unconstitutional special law and therefore unenforceable).
- ◆ *Holy Trinity Greek Orthodox Church v. Church Mutual Ins. Co.*, 2006 WL 18488 (D. Ariz. Jan. 4, 2006) (unpublished) (holding that earth movement exclusion precluded coverage for alleged damage to the foundation of a building caused by soil movement resulting from water pipe leak).
- ◆ *Brotherhood Mutual Ins. Co. v. Church Mutual Ins. Co.*, 2003 WL 22228988 (9th Cir. Sept. 26, 2003) (unpublished) (holding that coverage did not exist for fraud claims under directors, officers, and trustees liability policy and did not exist under multi-peril policy).
- ◆ *Valley Forge Ins. Co. v. Carpio*, No. CA-CV 02-0193 (Ariz. Ct. App., December 19, 2002) (unpublished) (holding that, as a matter of law, employee did not have permission to drive employer's truck at time of accident and thus did not qualify as an insured under employer's automobile liability policy).
- ◆ *Hestenes v. National Fire Ins. Co. of Hartford*, No. CA-CV 02-0196 (Ariz. Ct. App. December 19, 2002) (unpublished) (holding that statute requiring offer of underinsured motorist coverage did not apply to general liability policy that provided hired and non-owned automobile liability coverage).
- ◆ *Winthrop & Weinstein v. Travelers Cas. & Sur. Co.*, 187 F.3d 871 (8th Cir. 1999) (holding that a prior insurance provision of Travelers' fidelity bond did not cover losses incurred prior to Travelers' policy).
- ◆ *T. Randal Productions, Inc. et al. v. IVI Publishing, Inc., et al.*, No. C8-98-1092 (Minn. App. March 2, 1999) (business tort litigation).
- ◆ *Hawkins Chemical, Inc. v. Westchester Fire Ins. Co.*, 159 F.3d 348 (8th Cir. 1998) (holding that endorsement attached to policy was unenforceable where insurer had not obtained regulatory approval of such form).
- ◆ *Paul Oil Co. v. Federated Mutual Ins. Co.*, 154 F.3d 1049 (9th Cir. 1998) (holding that insured failed to demonstrate that a claim was made during the policy period or that a pollution incident occurred during the policy, thus precluding coverage under a pollution liability insurance policy).
- ◆ *Weeks v. American Family Mutual Ins. Co.*, 580 N.W.2d 24 (Minn. 1998) (holding that statute of limitation for uninsured motorist claim commenced at time of the accident, not at time insurer refused to pay claim).
- ◆ *Toro Co. v. Columbia Cas. Co.*, 137 F.3d 615 (8th Cir. 1998) (enforcing policy provision that allows insurer to settle cases without insured's consent, and rejecting insured's claim that insurer improperly settled claim against insured's wishes).
- ◆ *County of Anoka v. Petrik*, 1998 WL 531864 (Minn. App. Aug. 25, 1998) (civil rights).
- ◆ *Monette v. Clinch*, 1998 WL 481892 (Minn. App. Aug. 18, 1998) (medical malpractice).
- ◆ *Western Nat'l Mut. Ins. Co. v. Frost Paint & Oil Corp.*, 1998 WL 27247 (Minn. App., Jan. 27, 1998) (holding that lost profits were covered because they were consequential damages that flowed from damage to tangible property) (represented insured).
- ◆ *Smith v. Brutger Companies*, 569 N.W.2d 408 (Minn., Oct. 23, 1997) (negligent misrepresentation).

- ◆ *Johnson Bros. Corp. v. Aetna Casualty and Surety Co.*, 1997 WL 406629 (Minn. App., July 22, 1997) (holding that shareholder's action against corporation did not include any claim for breach of fiduciary duty by an employee benefit plan fiduciary, and thus Aetna's Fiduciary Responsibility Insurance Policy did not cover the shareholder's action).
- ◆ *Koehler v. Abbott-Northwestern Hosp., Inc.*, 1997 WL 370376 (Minn. App. July 8, 1997) (psychiatric malpractice).
- ◆ *McLaughlin Gormley King Co. v. Terminix Internat'l Co. L.P.*, 105 F.3d 1192 (8th Cir. (Minn.), Jan. 29, 1997) (contractual indemnity claim).
- ◆ *Petrik v. Stattmiller*, 1997 WL 30836 (Minn. App., Jan. 28, 1997) (negligence - automobile).
- ◆ *Hermel v. Vanderlinde*, 1996 WL 706820 (Minn. App., Dec. 10, 1996) (subject matter jurisdiction).
- ◆ *Messerli & Kramer, P.A. v. Levandoski*, 1996 WL 453605 (Minn. App., Aug. 13, 1996) (attorney fee/malpractice dispute).
- ◆ *F.D.I.C. v. Hartford Acc. and Indem. Co.*, 97 F.3d 1148 (8th Cir. 1996) (holding that insured did not file suit within the two-year contractual limitation period specified in Financial Institution Bond, and doctrines of waiver and estoppel did not prevent insurer from relying upon the bond's two-year limitation period).
- ◆ *Allstate Ins. Co. v. Steele*, 74 F.3d 878 (8th Cir. 1996) (holding that insurance policy did not cover negligent supervision claims against parents whose son committed sexual assault, because the injuries resulted from son's intentional acts and the policy excluded such injuries from coverage).
- ◆ *Fireman's Fund Ins. Co. v. Hartford Fire Ins. Co.*, 73 F.3d 811 (8th Cir. 1996) (holding that insurer was not obligated to cover property-damage claims because the property damage did not occur during the insurer's policy period).
- ◆ *James v. In Home Services, Inc.*, 1995 WL 479647, 7 NDLR P 41 (Minn. App., Aug. 15, 1995) (defamation action).
- ◆ *Hermel v. Vanderlinde*, 1995 WL 450750 (Minn. App., Aug. 1, 1995) (subject matter jurisdiction).
- ◆ *First State Ins. Co. v. Minnesota Mining and Mfg. Co.*, 535 N.W.2d 684 (Minn. App. 1995) (holding that district court did not abuse its discretion in issuing an anti-suit injunction, which prohibited insured from pursuing duplicative insurance declaratory judgment actions).
- ◆ *Babcock & Wilcox Co. v. Arkwright-Boston Mfg. Mut. Ins. Co.*, 53 F.3d 762 (6th Cir. 1995) (holding that policy was not triggered because the event giving rise to liability did not take place during the policy period, and also holding that each asbestos claim arose from a separate occurrence).
- ◆ *Crescent Oil Co., Inc. v. Federated Mut. Ins. Co.*, 20 Kan. App.2d 428, 888 P.2d 869 (Kan. App., Jan. 27, 1995) (holding that absolute pollution exclusion applied to release of petroleum from filling station, and rejecting insured's argument that a products-hazard coverage should apply because petroleum is insured's product).
- ◆ *Klen v. Asahi Pool, Inc.*, 268 Ill. App.3d 1031, 643 N.E.2d 1360, 205 Ill. Dec. 753, Prod. Liab. Rep. (CCH) P 14,138 (Ill. App. 1 Dist., Dec. 2, 1994) (product liability).
- ◆ *A.R.B. v. Youngberg*, 1994 WL 637798 (Minn. App., Nov. 15, 1994) (business owner liability for assault occurring on business property).
 ◆ *Martinez v. Allstate Indem. Co.*, 1994 WL 614874 (Minn. App., Nov. 8, 1994) (underinsured motorist coverage).
- ◆ *Larsen Oil Co. v. Federated Service Ins. Co.*, 859 F. Supp. 434 (D. Or. 1994) (holding that absolute pollution exclusion applied to release of heating oil into a basement, even though insured's liability was based on negligently failing to cap a fill pipe and someone other than the insured actually released the heating oil into the basement).
- ◆ *Resolution Trust Corp. v. Hartford Acc. & Indem. Co.*, 25 F.3d 657 (8th Cir. 1994) (holding that two-year contractual limitation provision was enforceable under South Dakota law).
- ◆ *Manufacturer's Gasket v. Transcontinental Ins. Co.*, 9 F.3d 1548 (table), 1993 WL 468905 (6th Cir. 1993) (holding that pollution exclusion precluded coverage for products liability claim against a gasket manufacturer, where gasket on a tank

failed and caused the release of jet fuel).

- ◆ *First Dakota Nat'l Bank v. St. Paul Fire & Marine Ins. Co.*, 2 F.3d 801 (8th Cir. 1993) (affirming in part and reversing in part district court's rulings that some of losses fell within employee dishonesty coverage and some did not).
- ◆ *St. Paul Fire and Marine Ins. Co. v. National Chiropractic Mut. Ins. Co.*, 496 N.W.2d 411 (Minn. App. 1993) (holding that claim fell within both insurers' policies and thus both insurers had to pay equal amounts of underlying settlement).
- ◆ *Reitzner v. State Farm Fire and Cas. Co., Inc.*, 510 N.W.2d 20 (Minn. App. 1993) (holding that the vendor on a contract for deed, who was named as an additional insured on fire policy obtained by contract for deed vendee, could not recover proceeds of fire policy where vendee intentionally set fire).
- ◆ *Perron v. State Farm Mut. Auto. Ins. Co.*, 1993 WL 339064 (Minn. App., Sept. 7, 1993) (holding that plaintiff's injuries did not arise out of the maintenance or use of a motor vehicle, and thus plaintiff was not entitled to uninsured motorist coverage, where plaintiff sustained injury as a passenger on a snowmobile that struck an uninsured parked car).
- ◆ *Kline v. Doughboy Recreational Mfg. Co., a Div. of Hoffinger Industries, Inc.*, 495 N.W.2d 435, Prod. Liab. Rep. (CCH) P 13,546 (Minn. App. Feb. 2, 1993) (product liability).
- ◆ *Transamerica Ins. Co. v. F.D.I.C.*, 489 N.W.2d 224 (Minn., 1992) (holding that bookkeeping entries did not constitute a loss for purposes of bankers blanket bond; rather, a loss results only if there is an actual depletion of bank funds).
- ◆ *Adair State Bank v. American Cas. Co. of Reading, PA*, 949 F.2d 1067 (10th Cir. 1991) (holding that bank vice presidents were in collusion with bank president, who was involved in check-kiting scheme, and thus the vice president's knowledge of the scheme did not trigger the termination and notice provisions of bankers blanket bond).
- ◆ *St. Louis Bank for Sav., FSB v. American Cas. Co. of Reading, PA*, 927 F.2d 1042 (8th Cir. 1991) (holding that joint venture exclusion in director and officer liability policy precluded coverage).
- ◆ *Trail Leasing, Inc. v. Drovers First American Bank*, 447 N.W.2d 190, 10 UCC Rep. Serv.2d 145 (Minn., Nov. 3, 1989) (UCC holder in due course case).
- ◆ *National City Bank of Minneapolis v. St. Paul Fire & Marine Ins. Co.*, 447 N.W.2d 171 (Minn., 1989) (holding that bank's loss on certain loans that were secured by fake stock certificate was not covered because the stock certificates were not counterfeits within the meaning of the bankers blanket bond and because the bank did not have actual physical possession of the certificates when it made the loan).
- ◆ *Suburban Nat'l Bank v. Transamerica Ins. Co.*, 438 N.W.2d 119 (Minn. App. 1989) (holding that insured's losses arising from fictitious credit card slips were excluded from coverage under employee dishonesty policy, based on exclusion for loss resulting from the purchase of evidences of debt).

Professional Affiliations

- ◆ State Bar of Arizona
- ◆ Arizona Association of Defense Counsel
- ◆ [Defense Research Institute \(DRI\)](#)

Notable

Accolades

- ◆ Named to Southwest Super Lawyers® list (Appellate, Insurance), 2012-2021, 2023

Speaking Engagements & Published Articles

- ◆ Concurrent Causation, Insurance Law Institute State Bar of Arizona (August 2020)
- ◆ Economic Losses & Commercial General Liability Insurance Coverage Issues, Insurance Law Institute State Bar of Arizona (January 2016)
- ◆ 2015 Insurance Coverage for Cyber Risks, Insurance Law Institute State Bar of Arizona (January 2015)
- ◆ 2014 Arizona Insurance Law Institute, Morris Panel, State Bar of Arizona (January 2014)
- ◆ 2013 Arizona Insurance Law, State Bar of Arizona (January 2013)
- ◆ 2012 Arizona Insurance Law, State Bar of Arizona (January 2012)
- ◆ Legal Writing for Maximum Impact: Achieving Precision and Persuasion, National Business Institute (February 2008)
- ◆ Insurance Coverage Trends, National Business Institute (February 2007)
- ◆ Commercial Insurance Coverage Issues in Arizona, National Business Institute (September 2002)
- ◆ "Judicial Scrutiny Under the Equal Protection Clause: *Bandemer v. Davis*" 106 S.Ct. 2797 (1986), 10 Hamline L. Rev. 313 (1987)