



## Kurt M. Zitzer

### Partner

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### Overview

Mr. Zitzer is a litigation attorney who practices out of the firm's Chicago, Illinois and Phoenix, Arizona offices, and is a leader of the firm serving on its Management Committee. He serves as the Practice Chair for the firm's Commercial Litigation and Professional Liability practice groups. Kurt was recently honored by his peers by being selected once again as one of the Top 50 attorneys in the Southwest by *Southwest Super Lawyers*® list. He is also included in the Illinois *Super Lawyers*® list. Additionally, *AZ Business* magazine recently selected Kurt as one of Arizona's top 100 lawyers and a top 10 lawyer in the area of Employee Benefits and Insurance Law. Kurt is also included in *The Best Lawyers in America*® in the areas of Insurance Law and Products Liability Litigation - Defense. And he has been named by *Best Lawyers* as a 2019 "Lawyer of the Year" for insurance law. He is also a Senior Fellow in the Litigation Counsel of America—an invitation-only honor society that limits its membership to the top 0.5 percent of trial lawyers. Kurt is a member of the Trial Law Institute and Diversity Law Institute. His practice focuses on writing coverage opinions for a wide variety of insurance product lines. When these positions are disputed, he defends them.

"The cases I enjoy most are those that derive from one-of-a-kind commercial insurance policies—cases that present brand-new issues to the courts and create new law."

He has defended commercial insurance cases in 14 states—in mediation, arbitration, litigation, on trial and on appeal. Kurt also has experience serving as an arbitrator in private arbitrations involving insurance coverage disputes, and as an expert witness involving coverage and bad faith claims.

Kurt also engages in reinsurance coverage opinion writing, mediation and arbitration—focusing primarily on facultative reinsurance agreements for property and casualty insurers.

In addition to insurance coverage and commercial litigation, he defends clients—especially lawyers and accountants—faced

### Services

- ◆ Commercial Litigation
- ◆ Employment
- ◆ Securities and Financial Services
- ◆ Corporate / Business Services
- ◆ Products Liability
- ◆ Professional Liability
- ◆ Construction
- ◆ Insurance
  - ◇ Insurance - Bad Faith
  - ◇ Insurance Coverage
  - ◇ Insurance - Reinsurance

### State Bar Admissions

- ◆ Arizona, 1992
- ◆ Illinois, 1990

### Federal Court Admissions

- ◆ United States District Court, District of North Dakota, 2022
- ◆ United States District Court, District of Colorado, 2019
- ◆ United States District Court, Central District of Illinois, 2019
- ◆ United States District Court, Southern District of Illinois, 2010
- ◆ United States Court of Appeals, Second Circuit, 2010
- ◆ United States Court of Appeals, Seventh Circuit, 2008
- ◆ United States Court of Appeals, Ninth Circuit, 2006
- ◆ United States District Court, District of Arizona, 1992
- ◆ United States District Court, Northern District of Illinois, 1990

with professional liability claims. He represents accountants confronted with disciplinary proceedings and malpractice claims, as well as other professionals in the fields of architecture, engineering, real estate and insurance. As an active member of the Professional Liability Underwriting Society, Kurt regularly speaks at this group's seminars on emerging issues in professional liability.

Kurt's practice includes the defense of product liability claims involving the manufacturing, distribution and sale of vehicles and their component parts, small machinery, household products, HVAC equipment, construction materials and other consumer products. He has successfully defended serious bodily injury and wrongful death claims as well as property damage claims in Arizona and other jurisdictions. He has resolved suits through trial, arbitration, motion practice and mediated settlement, and Kurt is regularly called upon to defend the interests of those companies accused of manufacturing, distributing or selling a dangerous or defective product.

Kurt also represents real estate developers, with a focus on projects that include hospitality, medical and professional office buildings. He uses his knowledge of insurance coverage to advise clients on risk management issues—including procurement of insurance and drafting of construction contracts.

"Before I became a lawyer, I ran a small business, so I understand that legal issues are just one of the many concerns faced by business owners. I take great pleasure in helping them successfully resolve a conflict, so they can get on with their lives and their business."

Kurt maintains close ties with his colleagues in the business community via his active involvement with the Scottsdale Chamber of Commerce, where he serves as Board Chair. Outside of the office, Kurt enjoys family activities, sports, coaching, travel and skating with other "over the hill" ice hockey players in local recreational leagues.

Kurt was profiled in the April/May 2010 issue of [Scottsdale@Work](#).

## Education

- ◆ University of Illinois Chicago School of Law, J.D., *cum laude*, 1990
- ◆ Trinity College, B.A., 1985



## Experience

## Recent Decisions

- ◆ *Geurden v. Quantum Transportation, et al.*, \_\_\_F.Supp.3d \_\_\_, 2018 WL 1522481 (D.Ariz. 2018) (insurance carrier not bound by purported Damron Agreement for \$25 million since the carrier did not actually breach the duty to defend and the anticipatory breach of policy obligations cannot be the predicate for a Damron Agreement).
- ◆ *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).
- ◆ *Catlin Specialty Ins. Co. v. Parks Industries, et al.*, \_\_\_ F. Supp. 3d \_\_\_, 2015 WL 300625 (N.D. Ill., January 21, 2015) (summary judgment for Catlin finding no coverage under successive commercial general liability policies for claims involving allegedly defective auxiliary power units the Insured manufactured for installation on semi-trailer trucks to operation climate control and other functions, holding that claim did not involving an "occurrence" causing "property damage").
- ◆ *S P Syntax, LLC v. XL Specialty Ins. Co., et al.*, CV 2011-019071 Maricopa County Superior Court, Arizona (January 7, 2014) (summary judgment in favor of excess D & O insurer client wherein court found that Tower 2 coverage side A excess policy was not required to drop down and provide primary coverage, and that claim was otherwise excluded under Tower 2 based upon interrelated claim and prior notice exclusion).
- ◆ *Nat'l Fire Ins. Co. of Hartford, et al. v. Lewis, M.D., et al.*, 898 F.Supp.2d 1132 (D.Ariz. 2012) (holding that general liability insurer did not have a duty to indemnify insured medical practice in eight underlying lawsuits for vicarious liability and negligent hiring, supervision and retention of cardiologist to the extent that the cardiologist groped and fondled the breasts of his female patients because such conduct, and all derivative theories of liability arising from such conduct, fell within the professional services exclusion).
- ◆ *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).
- ◆ *Phillips & Associates, P.C. v. Navigators Ins. Co.*, 764 F. Supp. 2d 1174, 2011 WL 537509 (D.Ariz., February 11, 2011) (finding that subject to a determination of no coverage, a carrier has the right to recovery from the insured defense and indemnity payments so long as carrier properly reserves those rights).
- ◆ *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).
- ◆ *Goble, et al. v. Beckwith, et al.*, No. CV2008-051863 (Maricopa County Sup. Ct., Ariz., Dec. 2, 2010) (holding that legal malpractice claims are barred by the statute of limitations because plaintiffs knew or should have known of the damages they sustained as a result of the alleged malpractice more than two years before filing suit).
- ◆ *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).

- ◆ *Nationwide Mutual Fire Ins. Co. v. Jones*, 695 F.Supp.2d 978 (D.Ariz. 2010) (motor vehicle exclusion precluded coverage for ATV accident on public street).
- ◆ *Scottsdale Ins. Co. v. Market Finders Ins. Corp.*, 2009 WL 5125771 (9th Cir. 2009) (reinstating cause of action for professional negligence against managing general agent).
- ◆ *Johnson v. Clarke*, 2009 WL 3756332 (Ariz. App. 2009) (holding that legal malpractice was time barred by two-year statute of limitation).
- ◆ *American Safety Cas. Ins. Co. v. City of Waukegan*, 2009 WL 855795 (N.D. Ill. 2009) (granting summary judgment to carrier based upon insured's failure to timely tender defense of suit).
- ◆ *Colony Ins. Co. v. Events Plus, Inc.*, 585 F.Supp.2d 1148 (D. Ariz. 2008) (granting summary judgment to carrier based upon liquor liability exclusion).
- ◆ *National Cas. Co. v. Forge Indus. Staffing, Inc.*, 2008 WL 4874508 (N.D. Ill. 2008) (granting summary judgment to carrier holding that insured was not entitled to "Peppers" counsel).
- ◆ *Scottsdale Ins. Co. v. City of Waukegan*, 2007 WL 2740521 (N.D. Ill. 2007) (granting carrier's motion to dismiss claim of bad faith).
- ◆ *Holy Trinity Greek Orthodox Church v. Church Mut. Ins. Co.*, 2006 WL 18488 (D. Ariz. 2006) (granting carrier's motion for summary judgment dismissing claim for bad faith).

## Professional Affiliations

- ◆ American Bar Association
- ◆ State Bar of Arizona, Construction Law Section
- ◆ Arizona Association of Defense Counsel
- ◆ Association of Professional Responsibility Lawyers
- ◆ Claims & Litigation Management (CLM) Alliance
- ◆ Illinois State Bar
- ◆ Litigation Counsel of America, Senior Fellow
  - ◇ Diversity Law Institute
  - ◇ Trial Law Institute
- ◆ Scottsdale Chamber of Commerce, Chair, Board of Directors
- ◆ Phoenix Chamber of Commerce
- ◆ Professional Liability Defense Federation
- ◆ Professional Liability Underwriting Society
- ◆ Defense Research Institute
  - ◇ Insurance Law Committee
  - ◇ Chair, Professional Liability Subcommittee
  - ◇ Commercial General Liability

- ◇ Commercial Litigation Committee
- ◇ Construction Law Committee
- ◆ Arizona Chapter of the American Institute of Architects, Affiliate Section Chairperson (2001- 2006)
- ◆ The National Foundation for Women Legislators, Steering Committee (2005)

## **Notable**

### Accolades

- ◆ Senior Fellow, Litigation Counsel of America, (A trial lawyer honorary society, with membership limited to one-half of one percent of American lawyers, and by invitation only)
- ◆ Barrister, Order of Veritas and Order of Certus, Litigation Counsel of America
- ◆ Fellow, American Bar Foundation (Membership is limited to one percent of the lawyers admitted to practice in each jurisdiction of the United States, by invitation)
- ◆ Named by Best Lawyers® as a 2019 Insurance Law "Lawyer of the Year" in Scottsdale
- ◆ Named by AZ Business magazine (March/April 2019 issue) as a Top 100 Lawyer in insurance coverage, commercial litigation, and professional liability (2019)
- ◆ Named by [AzBusiness Leaders Magazine](#) as a [Business Leader in Insurance Law](#) (2018, 2019)
- ◆ Awarded the Platinum Client Champion award by Martindale-Hubbell®, a top award that recognizes attorneys who excel at service and representation as affirmed by their clients (2017-2022)
- ◆ Awarded the highest possible Martindale-Hubbell Peer Review Rating, AV® Preeminent™ (AV is a registered certification mark of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies)
- ◆ Named to the Illinois Super Lawyers® list (2021-2022)
- ◆ Named to Southwest Super Lawyers® Top 50 list (2013-2020)
- ◆ Named to Southwest Super Lawyers® list (2012-2022)
- ◆ Selected for inclusion in The Best Lawyers of America® in the areas of Insurance Law and Product Liability Litigation-Defendants (2015-2022)
- ◆ Named by AZ Business magazine (March/April 2017 issue) as a Top 100 Lawyer in insurance coverage, commercial litigation, and professional liability (2017)
- ◆ Named by AZ Business magazine (March/April 2016 issue) as a Top 100 Lawyer in insurance coverage, commercial litigation, and professional liability (2016)
- ◆ Named by AZ Business magazine (March/April 2015 issue) as a Top Lawyer in Insurance (2015)
- ◆ Named by AZ Business magazine (March/April 2014 issue) as a Top Lawyer in Insurance (2014)
- ◆ Selected as one of [Arizona's Finest Lawyers](#) (2011)
- ◆ America's Most Honored Lawyers 2020 - Top 1% by [American Registry](#)
- ◆ Former Editor-in-Chief of The John Marshall Law Review

## Speaking Engagements

- ◆ Defense Research Institute (DRI) Insurance Coverage and Practice Symposium, New York, New York, The Coverage Side of Claims-Made Professional Liability Policies (December 2019)
- ◆ Claims Litigation Management (CLM) Construction Community Webinar, Significant Construction Defect Litigation and CD Coverage Decisions for 2017 (January 2018)
- ◆ Claims Litigation Management (CLM) Construction Community Webinar, Construction Claims - Case Law and Statutory Updates (October 2017)
- ◆ State Bar of Arizona CLE, Arizona Tort Law Handbook Seminar, Phoenix, Arizona, Design Professional Liability (June 2013)
- ◆ Defense Research Institute (DRI) Insurance Coverage and Practice Symposium, New York, New York, Hot Issues in Professional Liability Coverage: Lessons from the DRI Compendium (December 2012)
- ◆ State Bar of Arizona CLE, Bad Faith Insurance Law Seminar, Phoenix, Arizona, Third-Party Bad Faith (August 2012)
- ◆ Panelist on the subject of legal ethics, malpractice and risk management for law firms, Arizona State Bar Annual Convention (June 2012)
- ◆ The Defense and Indemnity of Claims in Arizona, Navigators Group of Companies, San Francisco, California (August 2010)
- ◆ Arizona State Bar CLE by the Sea in Scottsdale, Arizona, Ethical Considerations for Law Firm Management (June 2010)
- ◆ Arizona State Bar CLE by the Sea in San Diego, California, Minding the Store, Internal Ethics and Liability Management (July 2009)
- ◆ Hot Topics in Professional Liability Insurance: Electronic Data and Bad Faith, Professional Liability Underwriting Society in Denver, Colorado (April 2008)

## Publications

- ◆ "When Claims and Potential Claims May Intersect in Claims Made Coverage" Covered Events, DRI Newsletter of the Insurance Law Committee (March 2020)
- ◆ "The "Insured v. Insured" Exclusion as Applied in Bankruptcy" Covered Events, DRI Newsletter of the Insurance Law Committee (March 2017)
- ◆ Co-author for Arizona section, "Professional Liability Insurance: A Compendium of State Law" published by the Defense Research Institute (October 2012)
- ◆ Co-author, Chapter on Design Professional Liability, Arizona Tort Law Handbook, published by the State Bar of Arizona (2012) "Continuous Impact" Best's Review 82 (June 2005)