

Game Changer: Treating Insurance Policies as Contracts, Not Commodities

By Lynn Patrick Ingram

Even for most lawyers, insurance contracts are challenging. For the average layperson or business, they're exponentially more difficult. Trying to choose coverage and minimize risk is one of the most important things a company can do. Yet it's also an area that often gets overlooked, which can lead to disastrous results.

Enter Northville attorney Michael Hale, who is also an insurance agent and expert, and whose practice is truly innovative. Hale has combined legal and insurance principles with risk management for countless businesses throughout the state. And the results speak for themselves.

Hale recently spoke with me about how his unique approach is changing the legal landscape.

Tell me about your practice

My practice involves using legal principles to assist businesses in understanding the insurance policy contracts they have purchased or are considering. This typically includes:

- Analyzing business insurance policies in relation to how they cover the exposures of the business and what critical gaps exist
- Reviewing lease agreements and other contracts to determine how exposures might or might not be covered by insurance policies

- Drafting insurance requirements and waiver of subrogation provisions for leases, construction agreements, and other contracts
- Reviewing and comparing insurance coverage proposals offered by competing insurance agencies and advising clients on what they are buying
- Interviewing and making recommendations about insurance agencies
- Retaining other legal counsel for coverage disputes and agent errors and omissions matters

How and why did you come up with the idea to start a risk management firm?

Coming from a family in the insurance business, I recognized early on that policies are not commodities, but contracts. Through my years of experience as a coverage lawyer, I saw Michigan courts interpreting insurance policies according to their plain language and not by the reasonable expectations of the policyholder.

When viewed in light of Michigan law requiring policyholders to read their policies and raise any questions within a reasonable period, I saw a critical need in the legal industry for a firm focused on helping

businesses in this complicated and often misunderstood area.

With this in mind, in 2012 I formed Clairmont Advisors, LLC, which consults with businesses on gaps in their insurance programs and the buying process. Through our related law firm, Hale & Hirn, PLLC, we also advise companies on noninsurance risk management measures like indemnification agreements, looking at lease agreements and their insurance and rebuilding provisions, among other matters.

Few attorneys in Michigan have the background or training to be able to competently engage in the task of reviewing insurance policies in tandem with the marketplace available to address a company's exposures. Thus, I saw a need to fill.

How does it work and what sets you apart from a traditional practice?

We help businesses buy insurance policy contracts and understand what's covered. Insurance is one of the few industries where the product is almost always purchased sight unseen with the actual policy contract coming weeks or even months after buying it. This is a travesty, really, and is not given enough attention by businesses and their legal counsel. When you think

"Future of Law" is a regular column of the *Michigan Bar Journal*. Articles about lawyers who are innovating the practice of law are written by Lynn Patrick Ingram. To submit a story idea, please contact Lynn at lingram@michbar.org.

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Hale's Top Tips

- Lawyers are, by their nature, risk managers. Insurance is a large part of the risk management process, which should be given serious attention in protecting the client.
- When necessary, consult with or retain outside experts to advise on the integrity of the business insurance program and provide options to you and your client. Insurance coverage counsel can assist with drafting the nuances of insurance requirements and risk-of-loss provisions in leases and contracts.
- All policies differ—some significantly—over others. Don't look at insurance as a commodity when advising your clients.
- Work with the client's insurance broker to assess his or her competence but also as a resource on coverages and gaps. Sometimes the agent can be more important than the insurer.

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about it, one of the most important risk management measures a business can take is to transfer the risk of loss to an insurer.

Consider this: How often would an executive enter into a lease agreement without checking with legal counsel? What about a construction agreement or a purchase agreement? How about a land contract or equipment rental agreement? Most businesses engage their attorneys before signing these types of contracts. We think insurance policies should be treated much the same way. Coverage-savvy lawyers can add a tremendous value in the review and negotiation of insurance policies before a claim occurs.

How have clients responded?

Since 2012, we have added many companies to our portfolio of businesses that use our services as a way to help them buy insurance and manage it throughout the course of the year.

What else makes your practice unique?

We are unique in that our practice includes attorneys who are also licensed insur-

ance agents so that we understand the insurance marketplace, which enables us to better advise our clients.

Can you provide an example of how your approach has helped a client who might not have benefited from a traditional law firm?

One company we recently helped faced a policy limits demand on a lawsuit that involved its alleged negligence, which was claimed to have caused major lifetime injuries to a family. The insurer for this business issued multiple reservations of rights letters, citing specific provisions in the commercial general liability and umbrella policies such as exclusions and other insurance provisions. Worried about whether its assets were vulnerable, the client came to us for advice.

We managed the coverage issues and ultimately got the insurer to indemnify the client. However, this left the client with real questions about whether its insurance program was adequate and what holes might exist. We helped review all of the policies, interviewed and recommended a new agency, and participated closely in the negotiation of replacement policies.

Do you believe your approach is part of a growing trend? How do you see it fitting into the traditional legal landscape?

Insurance issues have always been a part of the litigation landscape in the U.S. Our regular review of LexisNexis data tells us that there are many declaratory judgment actions filed throughout the country every day. Many of these cases involve businesses. These kinds of cases are nothing new, and plenty of law firms are more than capable of handling them.

Much less frequently do we find lawyers seeking to protect their clients proactively by getting a handle on property and casualty insurance policies and potential gaps before the time of a loss. When they do, even fewer understand the nuances concerning what is available in the insurance marketplace to address the exposures. These areas present opportunities for law firms looking to expand their practices in business protection matters.

What would you tell other lawyers who might be interested in trying to do what you're doing?

Research insurance coverages. This is not always easy and may not be the most exciting endeavor, but a number of Michigan lawyers hold insurance designations such as Chartered Property and Casualty Underwriter (CPCU). This is a nationally recognized degree on all aspects of the property and casualty insurance industry. It involves passing nine examinations covering many types of insurance coverages as well as principles of law, economics, and accounting as related to the insurance industry. Obtaining this designation is a great start for the enterprising business lawyer looking to get into this area. ■

Note: This interview has been lightly edited for clarity.

Lynn Patrick Ingram, Esq., is publications development manager and legal editor at the State Bar of Michigan.