

Barnes & Thornburg Bronze Sponsor Of The 2015 ABA Women In Litigation Conference

November 20, 2015 | [Claims, Insurance, Policyholder Protection](#)

Barnes & Thornburg was proud to be a bronze sponsor at this year's ABA Women in Litigation Conference held in Chicago from Nov. 11-13. Kara Cleary and Andrea Warren of the firm's Insurance Recovery and Counseling Practice Group attended the conference, which featured a host of excellent panels ranging from hot topics in insurance coverage to product liability litigation, as well as jury selection and trial tips. A large focus of the conference also was dedicated to empowering female litigators in the courtroom and at their firms. Some key takeaways include:

- the rise of privacy claims and types of policies that can respond;
- the rise of false claims act suits and potential coverage issues relating to the same;
- and jury selection tips for insurance coverage cases.

Claims handlers, as well as attorneys representing both policyholders and carriers, attended the conference. Listening to the claims handlers, Kara and Andrea had three key takeaways for policyholders: **If you want independent counsel, stand your ground** Some policyholders welcome panel counsel, others want or need their own choice of counsel. In instances involving the latter, policyholders must be prepared to stand their ground. The claims handlers explained that some carriers have implemented strategic initiatives to encourage policyholders' acquiescence to panel counsel, which they portray as more effective and more experienced with the courts and judges. Carriers have ensured their underwriters work with brokers to sell the concept of panel counsel—hoping brokers can then sell the concept to policyholders. It appears to be working—the claims handlers reported an upward trend in policyholders accepting panel counsel. That said, the claims handlers noted one of their big concerns is that more policyholders in certain jurisdictions are becoming aware of their right to independent counsel and asserting that right. As always, fully evaluate any recommendation given by your broker or carrier, including any recommendation to accept panel counsel. You must be diligent in analyzing conflicts and concerns that may entitle you to independent counsel and, where appropriate, be ready to assert (and probably fight for) your right to independent counsel. Anticipate push-back from the carrier and, when necessary, stand your ground on the right to independent counsel.

Understand that muddying the waters isn't a bad thing Some carriers have noticed an upward trend in "claims advocates" within broker companies getting involved in policyholder claims. When the claims are "clear cut," the claims handlers perceive these claims advocates as muddying the waters and making claims linger. When expressed by a carrier, policyholders should consider taking "clear cut" coverage determinations with a grain of salt and understand and embrace the fact that muddying the waters isn't a bad thing. On some claims, it is essential for getting coverage. Carriers often see any challenge to their coverage position as "muddying the waters." This is yet

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another indication that there is an expanding need for vigilance in pursuing coverage. Moreover, policyholders should consider being cautious on solely relying on the broker claims advocates. It may be best to retain coverage counsel and work with these claims advocates. **Note the rise in claims against individual claims adjusters** Some carriers stated that they've seen a rise in complaints that individually list claims adjusters as defendants. They noted that these complaints seek to hold the claims adjusters independently liable for torts committed in the course of their claims handling. Policyholders should keep this in mind and consider its incidental implications on diversity jurisdiction. Co-authored by [Kara Cleary](#) and [Andrea Warren](#).