Rachel E. Hobbs
Partner

rhobbs@selmanlaw.com
11766 Wilshire Boulevard
Sixth Floor
Los Angeles, CA 90025-6538
Tel: 310.689.7048
Fax: 310.473.2525

EDUCATION

University of California, Los Angeles, J.D., 1996
University of Illinois, B.S., 1993

PRACTICE AREAS

- Insurance

BIOGRAPHY

Rachel Hobbs is a Partner in Selman Breitman's Los Angeles Office and is a Member of the firm's Insurance Practice Group. Rachel represents insurance companies in a wide array of trial and appellate court matters, including cases arising out of business, entertainment, and construction disputes and catastrophic commercial auto losses. Rachel's clients include large and mid-size insurance companies that operate throughout the Western Region of the United States.

Rachel's extensive experience with nearly all facets of insurance law provides her with a unique ability to handle large, multi-party coverage disputes. She has successfully defended a number of class actions against insurers alleging unlawful and/or unfair claims practices under Business & Professions Code section 17200. Rachel specializes in complex law and motion and appeals and is a senior member of the firm's Writs and Appeals department. Over the years, she has played an important role in developing and refining insurance law at the appellate level. She has obtained over 15 published insurance law decisions in the Courts of Appeal, California Supreme Court, and Ninth Circuit Court of Appeals. These cases involved key issues ranging from an insurer's right to reimbursement of defense costs paid but never owed, to the confidentiality of intra-corporate claims handling communications.

Among Rachel's published decisions are *Insua v. Scottsdale Ins. Co.* (2002) 129 Cal.Rptr.2d 138 (insurer is not responsible for voluntary, pre-tender payments irrespective of whether it can demonstrate substantial prejudice); *Zurich American Ins. Co. v. Superior Court (Watts)* (2007) 155 Cal.App.4th 1485 (attorney-client privilege applies to insurer's intra-corporate communications reflecting legal advice); *Scottsdale Ins. Co. v. M.V. Transportation* (2005) 36 Cal.4th 643 (insurer is entitled to full reimbursement of defense costs paid under a reservation of rights but never owed); *Najah v. Scottsdale Ins. Co*. (2014) 230 Cal.App.4th 125 (second mortgage holders who made a "full credit bid" to buy the insured property at a foreclosure sale thereby extinguished their insurable interest and were not entitled to coverage for alleged vandalism).

Rachel is called upon by trial attorneys within and outside of the firm to provide consultation concerning complex appellate issues of all types. She has given presentations to other attorneys regarding persuasive brief writing at the trial and appellate court levels. In addition, she has been recognized as a Super Lawyer in the area of Appellate Law from 2013 through 2015. Rachel's published articles relating to insurance law are available on her articles page.

Rachel is originally from the suburbs of Chicago, Illinois, and presently resides in Los Angeles, California. When not helping clients with their legal needs, she spends time hiking, reading, volunteering and enjoying the outdoors.

REPRESENTATIVE MATTERS

Litigation

- Plaintiff obtained a default judgment against the defendant Estate in an action involving death of a minor and serious injury to another. On behalf of the firm's client, Eldon Edson, Rachel Hobbs and Tam Glunt challenged the default judgment. They argued that the default judgment was void due to plaintiff's failure to comply with the Code of Civil Procedure and Probate Code. Ultimately, they secured a $10 million reduction in the amount of the default judgment.
- Obtained directed verdict on no duty to defend the insured, an armed security guard company, when its employee shot and killed a 19-year-old man on the premises of an apartment complex that had hired the insured, based on the assault and battery exclusion.

Insurance

- Represented insurance brokers in suit for professional negligence arising from an alleged failure to obtain appropriate "design team" E&O coverage for plaintiff insurer's participation in construction of a wastewater treatment facility. Plaintiff alleged that the brokers negligently obtained a policy that (1) failed to identify the insurer as a named insured and (2) did not obligate the insurer to defend plaintiff insurer.

NOTEWORTHY

Publications

- Construction Protective Services, Inc. v. TIG Specialty Ins. Co.

Selman Breitman represented an insurer which had issued a Comprehensive General Liability policy before the California Supreme Court. The Supreme Court agreed with Selman Breitman that the Court of Appeal had erred in finding that a defendant may not obtain an award of affirmative relief against a plaintiff by way of a set-off against a demand for money. Rather, the defendant may only assert the set-off defensively to defeat the plaintiff's claim in whole or in part. The Supreme Court declined to decide the substantive issue as to whether a set-off claim could be covered under the specific terms of the TIG policy as the plaintiff had failed to prove the terms of the policy

- Insua v. Scottsdale Ins. Co.

Obtained full affirmance of the judgment in favor of the insurer client following a court trial. Successfully argued that the insurer was not obligated to pay pre-tender amounts incurred by the insured, regardless of whether it could show "prejudice" (as in late notice cases).

- Scottsdale Ins. Co. v. MV Transp.

Obtained California Supreme Court review of the Court of Appeal's decision that insurer client could not seek reimbursement of defense costs it paid under a reservation of rights but was ultimately found not to have owed as a matter of law. The Supreme Court agreed with our argument that in keeping with the seminal *Buss v. Superior Court (Transamerica Ins. Co.)* (1997) 16 Cal.4th 35 decision and principles of equity, insurer client was entitled to full reimbursement of defense costs it never owed.

- Western Heritage Ins. Co. v. Superior Court

On behalf of insurer client, Selman Breitman intervened in liability action against the insured health care provider and its employee after the employee defaulted. After the trial court ruled that insurer could defend the damage but not liability claims against the insured in default, filed a successful writ petition overturning the ruling. The Court of Appeal issued a published decision providing an invaluable roadmap for insurers seeking to intervene when their insured is in default or is otherwise unable or unwilling to participate in the defense of a liability action (*e.g.*, due to a suspension of corporate powers for failure to pay franchise taxes). The Court of Appeal's decision states that intervening insurers may defend against both damage and liability claims against the absent insured, that the default is not binding on the other parties even if they are alleged to be vicariously liable, and that an insurer defending under a reservation of rights has no "conflict of interest" precluding its defense of claims against the absent insured.

- Wallman v. Suddock

Successfully moved for summary judgment on behalf of excess insurer client. Argued that the insurer's policy was excess to and "followed form" with the underlying 2005 to 2006 Capital policy with $1 million limits. Since the underlying 1994 loss occurred outside the effective dates of the underlying Capital policy, it was likewise not covered under the insurer's "follow-form" excess policy. Defeated plaintiffs' argument that the excess policy was "ambiguous" as to whether it was excess to a different policy, namely, a 1993 to 1994 Crusader policy with $500,000 limits. Crusader had defended the action arising out of the 1994 loss and contributed its $500,000 limits to the $1 million settlement (with the plaintiffs contributing the balance). Plaintiffs contended that the excess policy's Schedule of Underlying Insurance was "ambiguous" and could be interpreted to refer to Crusader because the Capital policy number was described as "TBD." We argued that to be ambiguous, a policy provision must be subject to more than one "reasonable" interpretation. The reference in the Schedule of Underlying Insurance to a 2005 to 2006 Capital policy with $1 million limits could not reasonably be interpreted to refer to a 1993 to 1994 Crusader policy with $500,000 limits. The Second Appellate District affirmed. It agreed that the Schedule of Underlying Insurance was not reasonably subject to the interpretation plaintiff espoused, namely, that Crusader was the underlying insurer. The Court of Appeal further agreed with our argument that there was no amount in "excess" of $1 million as required to trigger excess coverage in any event, since the underlying settlement was for exactly $1 million.

- Zurich American Ins. Co. v. Superior Court

Convinced the Court of Appeal to grant writ review of trial court's erroneous decision compelling insurer client to produce intra-corporate communications falling within the scope of the attorney-client privilege. The Court of Appeal reversed and remanded the trial court's decision, agreeing with our argument that the attorney-client privilege applies to intra-corporate communications not directly involving an attorney if the communications nonetheless reflect legal advice.

- Ortega v. Topa

Selman Breitman's insurer client issued a restricted auto policy to the plaintiff. Both the policy application and the policy stated that the insurer would pay 100% of reasonable repair costs incurred at one of its Preferred Repair Facilities ("PRFs"), and 80% of costs incurred at an unapproved facility. The plaintiff's vehicle was damaged, and he took it to a PRF. He was dissatisfied with the PRF's repairs. The plaintiff thereafter brought a class action suit against the insurer. He argued that the insurer's "two-tiered" system of payment and the use of non-equipment manufacturer ("non-OEM") repair parts involved unlawful "steering." He also argued that the insurer failed to prominently disclose its two-tiered payment system in the application as Insurance Code section 758.5 requires. Selman Breitman argued that the use of a two-tiered payment system and non-OEM repair parts is lawful. Further, the application prominently disclosed that a two-tiered payment system would apply. The trial court agreed with Selman Breitman's arguments and struck the class claims. The Second Appellate District affirmed. It stated that as a matter of first impression, the insurer prominently disclosed its two-tiered payment system in its application. The Court further held that there is nothing unlawful about the mere use of a two-tiered payment system or non-OEM parts.

Insurance

- Zurich American Ins. Co. v. Superior Court

Convinced the Court of Appeal to grant writ review of trial court's erroneous decision compelling insurer client to produce intra-corporate communications falling within the scope of the attorney-client privilege. The Court of Appeal reversed and remanded the trial court's decision, agreeing with our argument that the attorney-client privilege applies to intra-corporate communications not directly involving an attorney if the communications nonetheless reflect legal advice.

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- Super Lawyers 2009 – 2014
- Los Angeles County Bar Association, Appellate Courts Committee