



### Joseph G. Finnerty III

**Partner**

joseph.finnerty@dlapiper.com

**New York**

T: +1 212 335 4800

F: +1 212 884 8660

Joseph G. Finnerty III is a litigation partner who served as Chairman of the firm's New York Litigation Practice Group for eight years and Vice Chairman of the firm's US Litigation Practice Group for seven.

Joe concentrates his commercial litigation practice in business litigation, with a concentration in counselling and dispute resolution for leading insurance companies worldwide. Joe has been focused most recently upon representing M&A transaction liability insurers in disputes arising under representations and warranties insurance and litigation risk insurance, including managing, quantifying and resolving pre-dispute insurance claims for alleged losses arising out of M&A transactions. Joe also regularly litigates non-insurance M&A, fiduciary duty, fraud and securities law claims for public and private companies and their management.

Joe has also successfully represented an array of liability insurers in claims seeking insurance to cover disgorgement and restitution remedies, including obtaining a final judgment for the largest insurer of investment banks in litigation claims seeking coverage for more than US\$300 million in SEC disgorgement and penalty orders.

Joe also led the successful defense of one of the world's largest insurance brokers in a consolidated class action MDL proceeding alleging the unlawful sale of cell phone replacement insurance and seeking the disgorgement of insurance premiums in excess of US\$500 million. He also led the successful defense and dismissal of two separate Alien Tort Claims Act class actions against Sheikh Mohammed bin Rashid Al Maktoum, the Ruler of Dubai.

More broadly, Joe's insurance practice includes litigation, investigations and counselling in connection with the full range of potential disputed questions under private equity management liability insurance, directors and officers liability insurance, alternative risk transfer products, captive insurance programs, professional liability insurance, business interruption insurance, manuscript new product coverages and, of course, transaction liability insurance (including representations and warranties, litigation risk and tax opinion insurance). Joe has represented the industry's leading liability insurance businesses, including Berkshire Hathaway, AIG, Munich Re, Chubb, Ironshore, Euclid, Zurich, St. Paul Travelers, CNA, AXIS, The Hartford and Beazley, as well as an array of Lloyd's syndicates and London underwriters, among many others.

Joe is committed on behalf of corporations and their managers to forming thoughtful, effective and lasting responses to the fluctuating liability exposure landscape. He is equally committed to DLA Piper's success in building a national and international law firm that provides the premium service and experience demanded by the most discriminating corporate executives.

#### RELATED SERVICES

- Litigation, Arbitration and Investigations
- Corporate and Securities Litigation
- Capital Markets
- Corporate
- Finance
- Insurance and Reinsurance Disputes

#### RELATED SECTORS

- Insurance
- Real Estate

## EXPERIENCE

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- Lead counsel in shareholder derivative litigation for current and former executives of VeriSign, Inc. in Delaware US District Court arising out of alleged misrepresentations in proxy statements regarding tax benefits of compensation plans. Won motion to dismiss
- Lead Counsel for market-leading financial institution insurers in litigation over coverage for more than US\$300 million in insurance claims by a bulge-bracket investment bank arising from the bank's settlement of litigation with the SEC and NYSE over alleged illegal mutual fund late trading and deceptive market timing practices. New York's Appellate Division, First Department, ruled that no insurance coverage was available as a matter of law, and the case was later remanded by the New York Court of Appeals and is pending in New York County Supreme Court
- Lead counsel for Sheikh Mohammed bin Rashid Al Maktoum, the Prime Minister and Vice President of the United Arab Emirates (UAE) and the Ruler of Dubai, and Sheikh Hamden bin Rashid Al Maktoum, the Minister of Finance of the UAE, in an alleged class action litigation in federal court asserting claims under the Alien Tort Claims Act for purported violations of international law on behalf of thousands of boys from South Asia and Africa who were allegedly trafficked to the UAE and forced to train and/or ride racing camels. Successfully obtained a complete dismissal
- Lead Counsel for Federal Insurance Company, a division of The Chubb Group of Insurance Companies, in litigation arising out of the demise of the long-defunct Commodore International Limited (the maker of the classic Commodore 64 personal computer). Former executives of Commodore sought US\$20 million in insurance coverage under excess directors and officers liability policies above insolvent policy layers. The US Court of Appeals for the Second Circuit affirmed a finding of no insurance coverage, rejecting an attempt to obtain coverage based on the former executives' exposure to liability, or an unpaid settlement obligations, but before any actual "payment" which was held to be required in order to trigger the excess policies
- Lead counsel for a market-leading computer modem manufacturer and its directors and officers against claims for more than US\$40 million in damages by vulture fund preferred shareholders alleging that directors breached federal securities laws and fiduciary duties relating to death spiral preferred shareholder agreement. A motion to dismiss with prejudice was granted on behalf of all defendants, and the decision was affirmed by the Second Circuit in a summary order
- Lead counsel for directors and officers of an information management and technology company in defense of claims for breach of fiduciary duties and conspiracy to breach fiduciary duties in state court in Florida, seeking damages in excess of US\$57 million
- Lead counsel for the nation's largest corporate provider of product replacement insurance and cellular telephone carriers in consumer class actions and consolidated MDL proceedings seeking disgorgement of more than US\$500 million
- Lead counsel for the country's largest insurer of investment banks and securities underwriters in insurance coverage matters arising out of more than 300 separate securities class actions against investment banks and IPO issuers alleging market manipulation and conflicts of interest in the IPO securities litigation, the IPO antitrust litigation, and in related regulatory proceedings by the SEC, the NASDR, and state and federal prosecutors, including litigation over insurance coverage for a US\$100 million SEC and NASDR penalty and disgorgement payment
- Lead counsel for directors and officers of a public company in defense of claims for breach of fiduciary duty, fraud, tortious interference with contract and breach of contract in state court in New York
- Lead counsel for the market-leading D&O insurer in rescission litigation arising out of claims against the management of public company for corporate waste, undisclosed executive compensation and accounting impropriety

## CREDENTIALS

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### Admissions

- New York

### Recognitions

The respected English publisher Chambers & Partners names him in *Chambers USA*, calling him "talented" and quoting clients who say he "gets things done. Few practitioners have such a broad understanding of the industry."

Joe has been named a New York Super Lawyer by *Law & Politics* magazine every year since 2006, including being recognized in the 2008 through 2014 *Super Lawyers Corporate Counsel Edition*® which highlights business litigators. He also was a finalist for Lawdragon's 500 Leading Lawyers in America in 2006 and 2007. In addition, he has been listed in the *Best Lawyers Annual Guide to Commercial Litigation 2010*, *Marquis Who's Who in America* for the last eight consecutive years, and multiple times in *Marquis Who's Who in American Law*, *Marquis Who's Who in the World*, and *Marquis Who's Who in the East*.

## Education

- J.D., University of Maryland School of Law 1987
- B.A., Hamilton College 1982

## Courts

- Supreme Court of Illinois
- Supreme Court of New Jersey
- Supreme Court of the United States
- United States Court of Appeals for the First Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Second Circuit
- United States District Court for the District of Arizona
- United States District Court for the District of Colorado
- United States District Court for the Eastern District of Arkansas
- United States District Court for the Eastern District of New York
- United States District Court for the Northern District of New York
- United States District Court for the Southern District of New York
- United States District Court for the Western District of Arkansas
- United States District Court for the Western District of New York

## Memberships

- Brooklyn Museum of Art, Board of Trustees (2005 – Present), Executive Committee (2007 – Present) and Audit Committee Chair (2007 – Present)
- American College of Coverage and Extracontractual Counsel, Founding Member (2013 – Present)
- ABA Tort Trial and Insurance Practice Section's Task Force on Corporate Governance (2005 – Present)
- Professional Liability Underwriters Society (1997 – Present)
- American Bar Association (1994 – Present)
- The Association of the Bar of the City of New York (1988 – Present)

## INSIGHTS

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## Publications

## W&I insurance: A global perspective on a growing product

5 July 2019

Insurance Horizons

Warranty and indemnity (W&I) insurance is on the rise. Although there are variances in coverage and forms between jurisdictions, its primary purpose is to transfer, to a third-party insurer, the risks associated with a seller's breach of warranty or liability under an indemnity in an acquisition agreement.

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- "Best practices for Rep and Warranty insurance claims," *M&A Masters Podcast* (April 2018)
- Author, "Reducing Shareholder Claims," *Risk & Insurance* (September 2014)

## Events

- Panelist, "Challenging Times for M&A Insurance," JAMS New York, December 11, 2019
- Speaker, "Pre-arbitration, Pre-litigation, Dispute Resolution," Advisen Transaction Insurance Insights Conference, January 30, 2019
- Speaker, "Understanding Claim History in M&A Insurance," Expert Webcast, December 12, 2017
- Speaker, "Representations and Warranties Insurance – Capitalizing on Recent Trends, and Avoiding Common Pitfalls," ACG Capital Connection Conference, November 14, 2017
- Speaker, "How Transactional Liability Has Changed The Way Private Equity and Corporations Approach Public and Private M&A Transactions," ACCEC Insurance Law Symposium, October 20, 2017
- Speaker, "What Happens After the Deal Closes?" AIG, October 19, 2017 (Toronto, Canada)
- Speaker, "What Happens After the Deal Closes?" AIG, June 15, 2017 (Los Angeles, CA)
- Speaker, "What Happens After the Deal Closes?" AIG, June 14, 2017 (Sunnyvale, CA)
- Speaker, "What Happens After the Deal Closes?" AIG, May 25, 2017 (Chicago, IL)
- Speaker, "What Happens After the Deal Closes?" AIG, May 23, 2017 (Atlanta, GA)

## NEWS

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### MEDIA MENTIONS

- "The Biggest Insurance Decisions of 2018," *Law360* (December 14, 2018)
- "Kokesh Defeats JPMorgan's \$286M Coverage Award: NY Court," *Law360* (September 20, 2018)
- "Court Decisions Appellate Division, First Department," *New York Law Journal* (September 20, 2018)
- "9th Circ. Takes Lloyd's Off Hook For \$5M Excess Policy Claims," *Law360* (April 2, 2018)
- "Second Circuit Gives Broad Reading to 'Insured v. Insured' Exclusion," *FC&S Legal: The Insurance Coverage Law Information Center* (September 27, 2017)
- "2nd Circ. Affirms Tech Co.'s D&O Coverage Loss," *Law360* (September 19, 2017)
- "Primary Insurers Must Cover Investor Claims, 9th Circ. Told," *Law360* (September 19, 2017)
- "Insurers Say Kokesh Means JPMorgan Can't Get \$300M," *Law360* (August 16, 2017)
- "Insurers Make Last-Ditch Kokesh Play In Bear Stearns Fight," *Law360* (June 6, 2017)
- "Beazley Asks 2nd Circ. To Affirm D&O Coverage Denial," *Law360* (April 25, 2017)
- "Insurers Look To Skirt \$300M Bear Stearns Settlement Tab," *Law360* (April 12, 2017)
- "Jury Finds That Ex-Tech Execs Not Covered By D&O Policy," *Law360* (September 23, 2016)
- "Ex-Tech Execs' Deals Are Covered Losses, NY Judge Says," *Law360* (September 20, 2016)

- "Insurer's Coverage Denial Relieves Policyholder's Obligation to Obtain Consent to Settlement," *The D&O Diary* (July 27, 2016)
- "Bear Stearns Didn't Need Insurers' OK For Settlement: Judge," *Law360* (July 22, 2016)
- "No Coverage for 5 Suits Brought by Purchasers of Mortgage-Backed Securities," Mealey's Insurance Panel (October 22, 2015)
- "2nd Circ. Backs Insurer In \$15M Nomura Coverage Battle," *Law360* (October 21, 2015)
- "Nomura Presses 2nd Circ. For RMBS Coverage From Federal," *Law360* (October 13, 2015)
- "Insurers Can't Rely on Exclusion Language, Panel Says," *New York Law Journal* (January 16, 2015)
- "Insurers Again Appeal \$200M JPMorgan Market-Timing Suit," *Law360* (October 8, 2014)
- "Nomura Loses Bid To Make Insurer Pay For RMBS Litigation," *Law360* (September 11, 2014)
- "Antitrust Exemption In MLS' Policy Doesn't Let FIC Off Hook," *Law360* (May 22, 2014)
- "Insurer Says \$6M MLS Policy Frees It From Antitrust Coverage," *Law360* (May 14, 2014)
- "Insurers Must Cover Bear Stearns Settlement, Judge Says," *New York Law Journal* (March 4, 2014)
- "Insurers Take Hit In JPMorgan Market-Timing Coverage Suit," *Law360* (March 3, 2014)
- "SEC's 'aggressive' focus on wrongdoing to continue: SEC Official," *Business Insurance* (January 29, 2014)