

*The Orange County Bar Association  
Covid-19 Task Force Presents*

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**Insurance Issues Implicated by COVID -19:  
Insurance Policy Review, Legal Landscape &  
Advice and Recommendations**

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Friday, April 10, 2020



Speakers

**Jaco Sadie, Esq.**

*Forensic and Litigation Consulting*

**Ashley Vaccaro, Esq.**

*Rutan & Tucker, LLP*

Moderator

**Dan Robinson, Esq.**

*Robinson Calcagnie, Inc.*

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# Speaker Biographies

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## **JACO SADIE**

### *FTI Consulting*

Jaco Sadie is a Senior Managing Director at FTI Consulting in San Francisco. He is the leader of the Business Insurance Consulting practice which focuses on the preparation and resolution of complex Business Interruption, Property Damage, Product Recall, Fidelity and Cyber Crime claims. He has assisted policyholders to prepare their insurance claims, as well as assist insurance carriers to evaluate claims. He has practiced in the U.S, Europe, Asia, Latin America and Africa.

Mr. Sadie has also served as an accounting expert for counsel and clients on technical GAAP accounting matters dealing with a range of issues such as restatements, application of auditing standards, revenue recognition, consolidations, purchase price adjustments and SEC issues. Throughout his career he has performed and led fraud investigations, forensic accounting investigations, accounting malpractice matters, and breach of contract damages analysis across a wide range of industries, including providing expert witness testimony on behalf of the SEC involving a financial crime matter.

Mr. Sadie earned a B.A. in accounting (honors) at the Stellenbosch University in South Africa. He is Certified in Fraud and Forensics, and is a Certified Public Accountant (California), a Chartered Accountant (South Africa), and a Certified Fraud Examiner. He also served as an adjunct professor at Golden Gate University where he taught on Allegations of Audit Failures.



## ASHLEY VACCARO

**Senior Counsel**  
Litigation and Trial

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Orange County  
(714) 662-4685  
[avaccaro@rutan.com](mailto:avaccaro@rutan.com)

As an experienced litigator, Ashley handles all aspects of trial, pre-trial, and post-trial proceedings in state and federal courts throughout the country, including arbitration, mediation and settlement negotiations. Ashley's matters cover a range of practice areas, focusing on complex commercial litigation, and have included employment, insurance, breach of contract, securities, environmental, unfair business practices, and business tort claims. In addition to her litigation practice, Ashley represents clients in government investigations and enforcement actions, and advises clients in connection with internal audits. Ashley guides corporate clients through any business matter they may face, including reviewing and understanding contracts, identifying potential liabilities and coverage positions, understanding and abiding by corporate compliance programs, properly handling investigations, and improving training and related policies and procedures.

Ashley also has an active pro bono practice that spans all areas of law. She advises organizations in all facets of their business, from drafting and reviewing contracts; to developing programs, policies and training; to arbitrating, mediating, and litigating matters inside and outside of the courtroom. Ashley has successfully negotiated and settled claims for clients – both as plaintiff(s) or defendant(s) – and advised clients on how to navigate tricky internal issues to prevent future risks. Ashley has also brought suits against government agencies and employees, and has successfully obtained reversals of denials of medical coverage for patients on Medicaid.

Understanding the complexities of the legal practice and appetite for creative minds and collaboration, Ashley is intimately involved in recruiting, mentoring, and diversity efforts, helping support associates and their professional development.

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### Related Services

- [Litigation and Trial](#)
- [Business and Commercial Litigation](#)
- [Contract Litigation](#)
- [Securities](#)

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### Bar & Court Admissions

- State Bar of California
- U.S. District Courts for the Eastern and Central Districts of California
- U.S. District Court for the Eastern District of Texas
- U.S. District Court for the Southern District of New York

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### Education

- University of Chicago Law School (J.D., 2011)
- University of California, Los

## General Business Litigation

- Obtained favorable settlement on behalf of a major television network in an action for defamation, privacy-related, and emotional distress claims by a judge in response to an investigative report that certain judges were leaving the courthouse before the end of the business day.
- Obtained favorable settlement on behalf of animal rescue organization in lawsuit against a transportation company for damages stemming from a bus crashing into an animal rescue center.
- Represented private clients and their investment companies, including obtaining dismissal of suit brought by former employee for alleged violation of First Amendment rights resulting from a ban preventing the former employee from entering one of the investment company's ski resorts.
- Represented private educational institution in defending against breach of contract and defamation claims by expelled students.

Angeles (B.A., 2007)

- Universitat de Barcelona, Spain  
Intensive Spanish Language Program (2006)

## Securities Litigation

- Secured dismissal at pleading stage of putative class action lawsuit against Fortune 500 financial services firm alleging violations of federal securities laws and state-law fiduciary duties.

## Insurance Litigation

- Obtained favorable jury verdicts and settlements on behalf of a Fortune 500 chemical manufacturer in multiple trials against insurers/reinsurers for coverage of costs associated with environmental damage remediation.

## Employment Litigation

- Achieved dismissal and favorable settlements of claims brought by former employees against a biopharmaceutical company resulting from alleged sexual harassment by its former CEO.
- Achieved dismissal of wrongful termination claim based on age and disability brought by retired officer against an investment firm, and consulted counsel for franchise of restaurants in settlement of same claims.
- Represented large real estate company in defeating wrongful termination claims brought by terminated employee who claimed s/he was fired because s/he was transgender.

## Corporate Investigations and Business Consulting

- Conducted internal investigation of Fortune 100 multinational car manufacturer related to a major recall. Represented manufacturer in criminal action, which was dismissed as a result of an extremely favorable deferred prosecution agreement.

- Conducted internal investigation and consulted Universities related to claims of admissions and tax fraud.
- Conducted internal investigations of potential F.C.P.A. violations by, and provided resulting consulting services to, national and international clients (with many interviews conducted in Spanish in Central and South America).
- Conducted numerous confidential internal investigations related to all types of business issues ranging from breaches of contract, unfair business practices, employment, tax, bribery, and other potential criminal matters.

## Civil Rights Litigation

- Represented multiple families across the nation in coverage disputes and related §1983 civil rights actions against Medicaid agencies for denial of coverage of an FDA-approved orphan drug aimed to treat Duchenne Muscular Dystrophy.
- Represented inmate in §1983 trial against the state, the County Police Department, and police officers for use of excessive force.

## Recent Publications

- *Ensuring Insurance Amidst the COVID-19 Crisis*, Orange County Business Journal, March 2020

## Memberships & Associations

- Member, State Bar of California
- Member, Orange County Bar Association (2017-Present)
- Orange County Bar Association Diversity Committee (2018-Present)
- Board Member, Orange County Hispanic Bar Association (2017-Present)
- President, Orange County Coalition for Diversity in the Law (former Secretary, Member since 2017)

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# Program Chair

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## Daniel S. Robinson

PARTNER

“The due administration of justice is the firmest pillar of good Government.”

– President George Washington, 1789

Daniel S. Robinson is a partner in the Newport Beach office of Robinson Calcagnie, Inc., specializing in civil litigation. Mr.

Robinson is admitted to practice law in New York, Pennsylvania and California. Mr. Robinson has conducted several trials to date, including a 2010 trial where a Los Angeles jury awarded a plaintiff \$14.54 million, and a 2019 trial where an Orange County jury awarded \$2.95 million.

In 2016 and 2019, Dan was selected by the Daily Journal as one of the Top 25 and Top 30 Plaintiffs Lawyers in California respectively. He has been selected for The Best Lawyers in America®, a nationwide peer-reviewed survey, every year since 2013. Dan has been selected as one of the top 50 lawyers in Orange County twice by Super Lawyers and has been selected as a “Super Lawyer” every year since 2014. In 2015, he was named as one of the Daily Journal’s Top 20 Attorneys Under 40 in California in 2015, and in 2014 received the American Association of Justice “Wiedemann & Wysocki” Award for demonstrating a “commitment to the profession and support for improving the civil justice system.” In July 2017, Dan received the AAJ “Above and Beyond” Award. In 2012, The National Trial Lawyers named Dan as one of the Top 40 Lawyers Under 40 in the United States. Dan was awarded the 2011 Young Gun Award by the Orange County Trial Lawyers Association for “exceptional trial skills, ideals of legal ethics, and dedication to the principal of preserving access to a justice system for every person.”

Mr. Robinson has been appointed to several leadership roles, including Interim Co-Lead Counsel in Yahoo! Inc. Private Information Disclosure Cases, JCCP 4895; Co-Lead Counsel in the Risperdal® and Invega® Product Liability Cases, JCCP No. 4775; Interim Co-Lead Counsel in Dodge v. PHH Corporation, et al., 8:15-cv-01973; Interim Co-Lead Counsel for In Re Experian Data Breach Litigation (SACV 15-1592 AG CD CAL); Interim Co-Lead Counsel in In re 21st Century Oncology Customer Data Security Data Breach Litigation, MDL 2737; Co-Lead Counsel in the St. Joseph Health System Medical Information Cases, JCCP No. 4716; Lead Counsel in Blue Cross of California Website Security Cases, JCCP 4647; Plaintiffs’ Executive Committee in the Biomet M2a Magnum MDL; Plaintiffs’ Steering Committee in the In re Actos Product Liability Cases, JCCP No. 4696; Plaintiffs’ Steering Committee in In re Fosamax/Alendronate Sodium Drug Cases, JCCP No. 4644; Plaintiffs’ Executive Committee for the Contaminated Heparin Litigation,



MDL 1953. In 2019, Mr. Robinson was appointed by the Hon. Paul W. Grimm to the Plaintiffs' Steering Committee of MDL No. 2879, In Re Marriott International, Inc., Customer Data Security Breach Litigation.

## **Background**

Before working at Robinson Calcagnie, Inc., Mr. Robinson was a civil litigator at a large, national defense law firm where he handled matters of general business litigation. Prior to that, Mr. Robinson served as an Assistant District Attorney in the New York County District Attorney's Office under the Hon. Robert M. Morgenthau. As a New York City prosecutor, Mr. Robinson conducted numerous criminal trials, investigations and grand jury proceedings in the Trial Bureau Division, as well as in the Domestic Violence, Public Assistance Fraud, Counterfeit Trafficking, and Identity Theft Units. Mr. Robinson received his Bachelor of Arts degree in English from Williams College in Williamstown, MA and his Juris Doctor from Loyola Law School in Los Angeles, CA, where he was awarded the International Academy of Trial Lawyers and the Hon. William M. Byrne, Sr. graduation awards. Mr. Robinson competed for Loyola's nationally-ranked Byrne Trial Advocacy Team where he and co-counsel took first place in the 2003 National Trial Competition Regional Championship, the 2002 Byrne Trial Advocacy Competition and the 2001 William W. Daniel Mock Trial National Championship.

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# Program Materials

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Orange County Bar Association  
COVID-19 TASK FORCE

LIVE WEBINAR

# INSURANCE ISSUES IMPLICATED BY COVID-19

FRIDAY, APRIL 10, 2020  
12:00PM

*Complimentary Program*

## SPEAKERS



**Ashley Vaccaro, Esq.**  
Senior Counsel - Litigation and Trial  
*Rutan & Tucker, LLP*



**Jaco Sadie**  
Senior Managing Director  
*Forensic and Litigation Consulting*



**MODERATOR:**  
**Dan Robinson**  
*Robinson Calcagnie, Inc.*

# INSURANCE ISSUES IMPLICATED BY COVID-19



**Ashley N. Vaccaro**

Rutan & Tucker, LLP  
611 Anton Boulevard, 14th Floor  
Costa Mesa, CA 92626  
(714) 662-4685 (direct)

[avaccaro@rutan.com](mailto:avaccaro@rutan.com)

[www.rutan.com](http://www.rutan.com)

**RUTAN**



**Jaco Sadie**

Senior Managing Director  
Forensic and Litigation Consulting

**F T I Consulting**

+1.415.283.4230 direct

+1.415.205.9683 mobile

[jaco.sadie@fticonsulting.com](mailto:jaco.sadie@fticonsulting.com)

50 California Street, Suite 1900  
San Francisco, CA 94111  
USA

[www.fticonsulting.com](http://www.fticonsulting.com)

# Overview of Webinar:

- Insurance Policy Review: Potential Policies/Coverages/Exclusions Triggered by COVID-19 and Related Government Ordinances
- Legal Landscape: Types of Cases Being Filed Against Insurers, and Insurance-Related Proposed Legislation
- Advice and Recommendations: Tips on Filing Claims, Considerations, and Potential Renewal Issues

# Insurance Policy Review:

- Policies:
  - Property vs. Liability
    - Coverage for physical harm/damage/loss to property vs. losses to others (incl. bodily injury)
  - All-Risks vs. Special Peril
    - Coverage provided unless specifically excluded vs. special coverages identified in policy
- Special Coverages:
  - Business Interruption/Income and Contingent Business Interruption
  - Event/Booking Cancellation
  - Pandemic Event
  - Communicable Disease
  - Civil Authority and Ingress/Egress
  - Crisis Management
- Exclusions:
  - Virus or Disease
  - Government Ordinance/Law
  - Contaminants/Pollution *(both potential current exclusion, potential future exclusion related to third-party liability claims)*

*Practitioner's Tip: Exclusions are interpreted narrowly in litigation.*

# Other Insurance:

- Directors & Officers (D&O) Insurance:
  - Will there be claims that financial disclosures were not accurate, not appropriate or not updated?
  - Will there be claims about mismanagement in response to COVID-19 or failure to implement reasonable responses?
- Cyber Insurance:
  - Coronavirus themed cyber attacks increased significantly
- Employment-Practices Liability (EPL):
  - Potential liabilities with respect to layoffs, furloughs, or firings

# Future Implications to Policies:

- Insurance market's reaction will be driven by the value of actual losses paid and new legislation
- Past events are an indication of what to expect
  - **After 9/11, introduction of "terrorism" exclusions**
    - Terrorist Risk Insurance Act (TRIA) enacted in 2002
    - *See proposed "Pandemic Risk Insurance Act of 2020"*
  - **After 2003 SARS outbreak**
    - Introduction of "virus" and "disease" exclusions
  - **After California wildfires**
    - Certain areas fire coverage not available or specific wildfire deductions



# Current Legal Landscape:

- Recent Litigation: *Whether presence of COVID-19 amounts to "property damage"; carriers denied, claiming restaurants have not suffered "direct physical loss" to property*
  - *Oceana Grill vs. Lloyd's London* ([link](#))
    - All risk policy; no exclusions related to viruses
    - COVID-19 presence amounts to property damage as virus can be physically present on surfaces for up to 28 days
    - Reference intrusion of lead or gaseous fumes held in other cases to amount to physical loss
  - *French Laundry vs. Hartford Insurance* ([link](#))
    - Policy contains "Civil Authority" special coverage; no exclusions related to viruses
    - Napa County Health Officer Order specifically states that the Order is based in part on evidence that COVID-19 has a "proclivity to attach to surfaces and *cause temporary physical damage to property.*" ([link](#))
    - *Note: Orange County Health Officer Order does not contain same language regarding physical damage to property*
  - *Billy Goat Tavern v. Society Insurance* ([link](#))
    - All risk policy with business income loss coverage; no exclusions related to viruses
    - Claim sustained a "direct physical loss" of premises because of COVID-19 and Executive Orders

# Federal Reinsurance Bill: Pandemic Risk Insurance Act of 2020

- House Financial Services Committee Chairwoman Maxine Waters (D-Calif) is leading a proposed federal backstop—the “Pandemic Risk Insurance Act of 2020” (“PRIA”) ([Link](#))
- Bill would provide coverage **to insurers** for “business interruption losses resulting from a pandemic or outbreak of communicable disease” in excess of \$250 million
- A federal loss-sharing program for insurance claims relating to losses resulting from a certified pandemic or epidemic, like COVID-19
- Effectively reinsurance for commercial property/casualty insurers for losses exceeding \$250MM, capped at \$500B
- Would be administered by the Department of Treasury
- Losses in excess of deductible would be shared between federal government and insurer, government paying 95%
- Similar to TRIA, after 9/11

# State-Specific Legislation:

- **Proposed Bills:** *Representatives in many states (e.g., Ohio, Mass, NJ, NY, Penn) are proposing bills that would require insurance carriers to provide coverage for business losses*
  - **Ohio** ([link](#)): Proposed bill ([H.B.589](#)) introduced March 24 that would require that property insurance policies “shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic during the state of emergency.”
  - **New York** ([link](#)): Proposed bill ([A. 10226](#)) introduced March 27 that would require that “every policy of insurance insuring against loss or damage to property, which includes, but is not limited to, the loss of use and occupancy and business interruption, shall be construed to include among the covered perils under that policy, coverage for business interruption during a period of a declared state emergency due to the coronavirus disease 2019 (COVID-19) pandemic.”
  - These and similar bills also would:
    - Require automatic renewal of the policy at current rate
    - Invalidate exclusions related to viruses
    - Apply to companies with less than 100 employees
    - Allow the carrier to potentially seek reimbursement from the Superintendent of Insurance

# Advice & Recommendations:

- Notice:
  - Place your insurance carrier on notice ASAP
  - Filing your claim protects your rights
- Typical process for filing claim
  - What you can do *now* to prepare
  - Consider Waiting Periods, Sublimits and Co-insurance
- Triggering of the Coverage
  - For an all risks policy, what would be the exact date that the policy is triggered?
- 2020/21 Potential Renewal Issues
  - Work closely with broker and carefully read the new policy language

***Practitioner's Tip:** Though one may not have a claim now, to the extent there is a change in law through proposed legislation, a claim may arise later. Keep apprised of updates.*

# Questions?

## Thank you!



**Ashley N. Vaccaro**

Rutan & Tucker, LLP  
611 Anton Boulevard, 14th Floor  
Costa Mesa, CA 92626  
(714) 662-4685 (direct)

[avaccaro@rutan.com](mailto:avaccaro@rutan.com)

[www.rutan.com](http://www.rutan.com)

**RUTAN**



**Jaco Sadie**

Senior Managing Director  
Forensic and Litigation Consulting

**F T I Consulting**

+1.415.283.4230 direct

+1.415.205.9683 mobile

[jaco.sadie@fticonsulting.com](mailto:jaco.sadie@fticonsulting.com)

50 California Street, Suite 1900  
San Francisco, CA 94111  
USA

[www.fticonsulting.com](http://www.fticonsulting.com)