Maryland's Child Victims Act: Defending and Pursuing Insurance Coverage for Abuse Claims

Cameron Argetsinger, Anderson Kill P.C.
Glen Feinberg, Feinberg & Gasbarro LLP
Sean Gugerty Goodell, Devries, Leech & Dann, LLP
Brian Della Torre, IAG

September 30, 2025

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CAMERON ARGETSINGER

202.416.6515 / cargetsinger@andersonkill.com

Cameron R. Argetsinger is a Shareholder in the D.C. office of Anderson Kill. He focuses his practice on insurance recovery counseling and dispute resolution.

Cameron has represented corporate policyholders in a broad range of insurance coverage disputes, including claims involving coverage for cyber liability, directors' and officers' liability, employment practices liability, environmental contamination, antitrust litigation, flood and hurricane damage, intellectual property liability, false advertising, lead-based paint, asbestos, the False Claims Act and overseas tort liabilities.

In addition to insurance recovery, Cameron has represented clients in a wide range of administrative and commercial disputes, including false advertising, construction design defects, international trade and class action litigation.

Recognized as a Washington, D.C. Super Lawyers "Rising Star," Cameron has represented clients in trial and appellate courts and arbitration tribunals all over the U.S., including federal and state courts in Virginia, Ohio, New York, Illinois, North Carolina and the District of Columbia, as well as the U.S. Court of International Trade. Moreover, he has successfully resolved many claims on behalf of policyholders through negotiations prior to filing litigation.

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GLEN FEINBERG

914.391.7671 / gfeinberg@feinberg-gasbarro.com

Glen Feinberg provides trial and litigation services to clients in commercial, employment/discrimination, and professional liability disputes. His career has seen him bring his skills to bear on the most delicate and highest-risk cases for an array of clients.

Glen focuses his practice on the defense of individuals and institutions sued for claims involving severe emotional distress and psychiatric injury. This work often implicates New York's Child Victims Act and similar laws throughout the country. In handling these ultra-sensitive matters, Glen invokes his network of esteemed local counsel, as well as his knowledge of neurobiology and cutting-edge psychotherapy techniques.

Glen's forward-looking approach makes him uniquely qualified to provide world-class counsel to the most vulnerable defendants.

Glen began his legal career as an Assistant District Attorney under Robert Morgenthau in Manhattan.

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SEAN GUGERTY

410.783.4994 / sgugerty@gdldlaw.com

Sean Gugerty is a partner with Goodell DeVries. Sean is co-chair of the firm's Product Liability practice group. Sean defends clients in complex product liability and commercial litigation, including representation of pharmaceutical manufacturers in product liability litigation in state and federal court. Sean has defended manufacturers in federal class actions and multi-district litigation.

Sean also represents healthcare providers and institutions in medical malpractice and other claims throughout the Maryland and D.C. judicial system. Sean also defends independent private schools, churches, and healthcare entities against claims brought under the Maryland Child Victim's Act (CVA)—which revived tort claims arising from alleged child sexual abuse dating as far back as the 1950s or 1960s.

Sean handles complex litigation in all its phases, including investigation, depositions, motions practice, alternative dispute resolution, and trial. He has prevailed in dispositive motions in both state and federal court, including in the In Re: Zantac multidistrict litigation in the Southern District of Florida, where he was the co-lead counsel for briefing and arguing motions that secured the dismissal of all claims against the Generic Manufacturers.

Sean is also part of Goodell DeVries's Appellate practice group, and has briefed and argued cases before the appellate courts of Maryland, D.C., California, and federal circuit courts. Sean briefed and argued the constitutional challenge to the CVA before the Maryland Supreme Court and is the lead appellate counsel for the Generic Manufacturers in the In Re: Zantac appeal before the Eleventh Circuit Court of Appeals, set for argument in October 2025.

Before joining the firm, Sean was the law clerk to the Hon. Joseph M. Getty at the Supreme Court of Maryland. He also clerked for the Hon. Peter B. Krauser, Chief Judge of the Appellate Court of Maryland (Ret.), and the Hon. Sherrie R. Bailey, Associate Judge of the Circuit Court for Baltimore County. Sean attended the University of Maryland School of Law, where he had a concentration in health law, and served on the Journal of Health Law Policy and the Maryland Law Moot Court Board.

BRIAN DELLA TORRE

212.697.2680 / bdellatorre@iagltd.com

Over the past 20 years, Brian has led research projects on behalf of clients in a broad range of industries and conducted document rows at manufacturing facilities, records storage centers, law firms and courts across the country.

Brian's corporate experience has included research of target companies' insurance programs as a critical part of due diligence in mergers and acquisitions.

Brian has brought his extensive expertise in corporate research to assist non-profits, universities, hospitals, churches and other religious organizations in reconstructing their past insurance programs. Brian has successfully conducted hundreds of onsite document reviews at churches, schools, missions, offices, archives and retreat centers.

Brian earned his RA in political science from American University. He received his M.A. in early modem political philosophy at the University of Chicago, researching the work of Machiavelli. Brian first put his education to use on Capitol Hill where he worked for the House of Representatives' Education and The Workforce Committee.

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Defense of CVA cases:

Damages Caps, Pretrial Management, and Charitable Immunity

Sean Gugerty

Partner

Goodell DeVries

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Firm Profile: Goodell, DeVries, Leech & Dann

- Full-service defense firm in Baltimore
- 40+ attorneys, multiple handling CVA cases
- Active CVA matters for:
  - independent schools
  - churches and religious orders
  - hospitals and health systems
  - other corporate defendants

CVA Damages Caps

CVA Cap: Md. Cts and Judicial Proceedings § 5-117

- For private entities, non-economic damages cap is $700,000 for actions filed after June 1, 2025
- Prior cap was $1.5M “for injuries arising from an incident or occurrence”
- Plaintiffs’ position: $1.5M per occurrence → plaintiff who claims abused 10 times, $15M
- Has to be litigated

CVA Damages Caps

General PI Cap: Md. Cts and Judicial Proceedings § 11-108

- General non-econ cap for personal injury claims: started at $350k in 1986, has grown each year
- CVA did **not** expressly revoke this cap for cases arising from juvenile sexual abuse
- For alleged abuse between 1986 and the present – argument that this lower cap applies

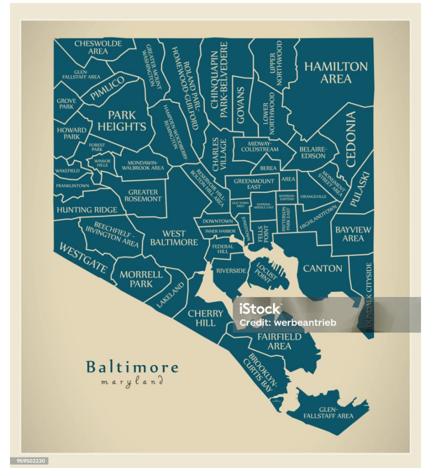
Stats on MD CVA cases

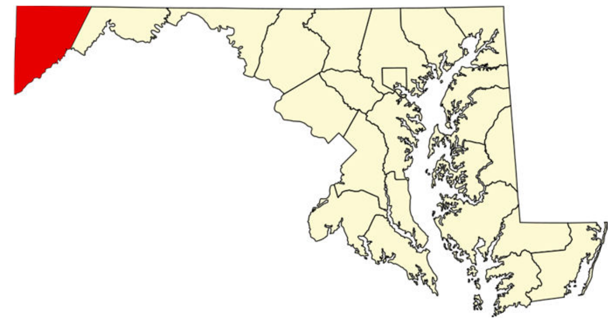
Best estimates:

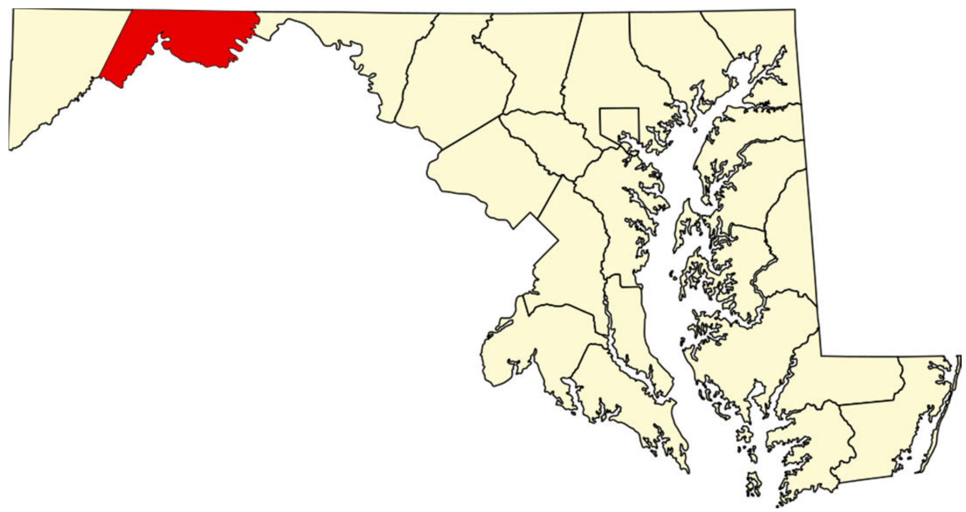
- In excess of 10-15k plaintiffs on file
- Over 2k plaintiffs naming Archdiocese of Baltimore & affiliated entities
- At least 750-1000 plaintiffs naming other private entities

Stayed:

- Baltimore City
- Garrett
- Allegany

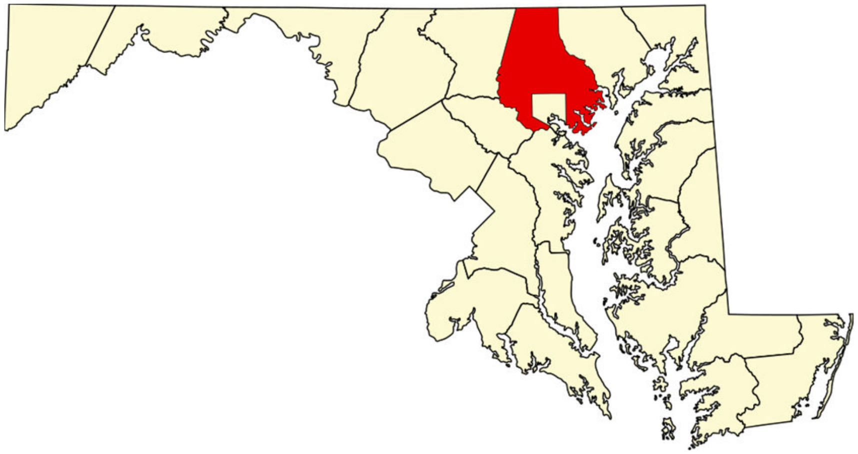


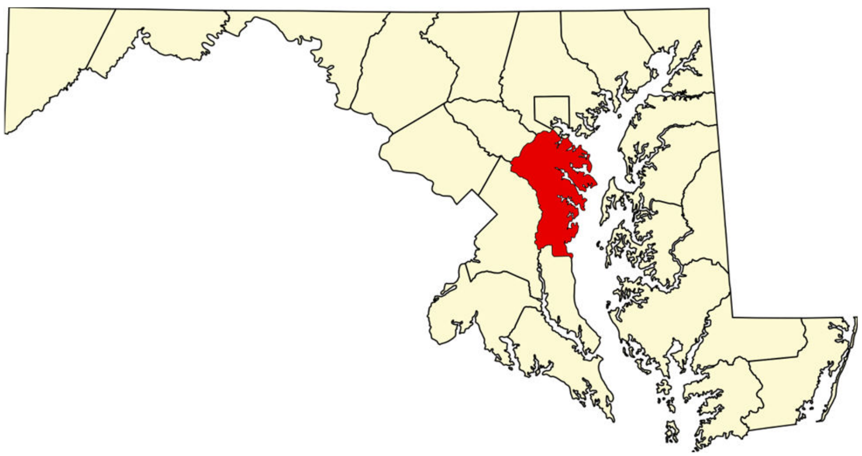




Fast:

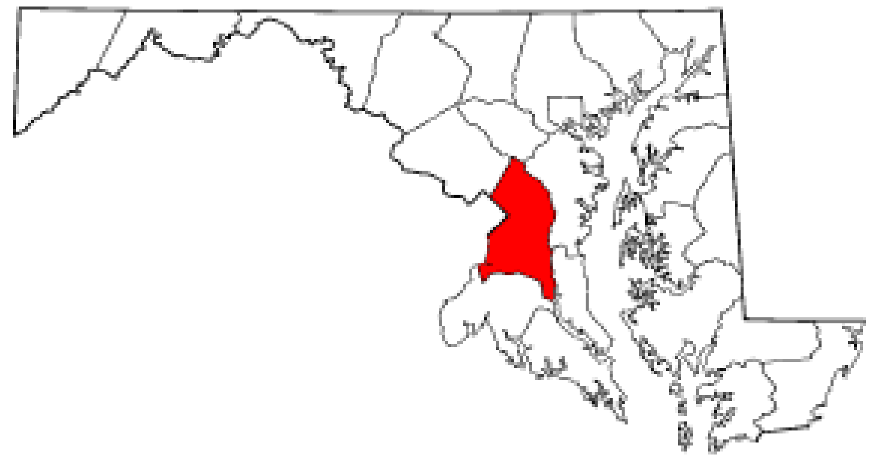
- Baltimore County
- Anne Arundel

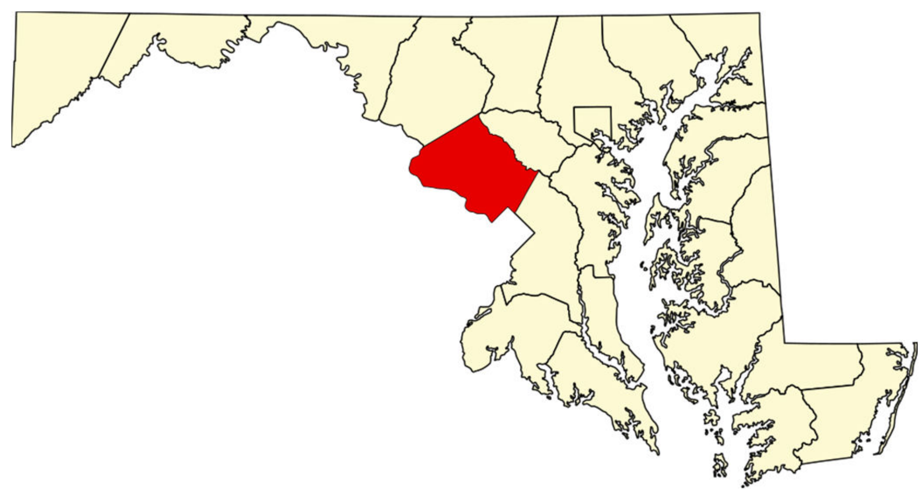




Mixed Approach:

- Prince George's
- Montgomery





Charitable immunity

Elements:

- Charitable in nature
- Funds held in trust
- Liability limited to the extent of insurance coverage

Schappelle v. Roman Catholic Archdiocese of Washington, Montgomery County

- Defendant's MSJ granted
- Affidavits regarding insurance
- Insurance coverage exhausted

Rules committee changes

- Proposed rule passed September 4th
- CVA cases transferred to one county for pretrial management
- Pretrial judge's role unclear
- Goes to Maryland Supreme Court in November or December

CVA litigation so far: first steps

Openness to strong confidentiality & protective orders

TBD on scope and intrusiveness of discovery

Willing to stay to allow for initial settlement talks

CVA litigation so far

Judges unclear about basics

- Duty
- Evidentiary standards
- Scheduling order
- How much coordination

Openness to strong confidentiality & protective orders

TBD on scope and intrusiveness of discovery

Plaintiff must prove that he or she was abused.

Reasons to suspect false memory:

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- The story makes no sense

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- Signs of mental illness that may suggest a tendency to confabulate.

Reasons to suspect false memory:

- The story makes no sense
- Signs of mental illness that may suggest a tendency to confabulate.
- Recovered memory of abuse later in life

Notice of dangerousness:

Notice of dangerousness:

- Plaintiff must prove that the defendant knew or should have known of the abuser’s dangerous propensity

Actual notice – someone told you the abuser had abused a child.

Constructive notice- the defendant engaged in observable conduct that should have led you to suspect he had a propensity to abuse children.

What is grooming?

The grooming included but was not limited to the teacher allowing PLAINTIFF to stay in in the classroom to read during recess, the teacher cajoling and otherwise requiring PLAINTIFF to stay in from recess to review schoolwork, the teacher allowing PLAINTIFF to take board games and books from the classroom closet for his personal and exclusive use and the teacher asking PLAINTIFF about his family.

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It is difficult – if not impossible- to detect grooming before an act of abuse has been committed.

Did your organization depart from the standard of care by failing to provide reasonable supervision?

The standard of care must be judged by what was known at the time of the abuse and how similar organizations acted at that time.

The defendant may be held liable only for damages caused by its negligence.

The defendant is not responsible for:

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The defendant is not responsible for:

- Pre-existing or unrelated mental illness

The defendant is not responsible for:

- Pre-existing or unrelated mental illness
- Damages resulting from other events such as parental neglect and abuse

Resolution Strategy

Assess liability and damages early

Use discovery to educate plaintiff's counsel about:

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Use discovery to educate plaintiff's counsel about:

- Whether the plaintiff was abused

Use discovery to educate plaintiff’s counsel about:

- Whether the plaintiff was abused
- Whether the defendant had notice of the abuser’s propensity

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Use discovery to educate plaintiff’s counsel about:

- Whether the plaintiff was abused
- Whether the defendant had notice of the abuser’s propensity
- The extent to which factors other than abuse caused plaintiff’s problems

Insurance for Sexual Abuse Claims

Claims Can Be Covered Under Various Policies:

- Comprehensive General Liability ("CGL") Policies (*occurrence*)
- Directors & Officers ("D&O") Policies (*claims-made*)
- Sexual Abuse & Molestation ("SAM") Policies\Endorsements (*claims-made*)
- Umbrella Policies

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Insurance for Sex Abuse Claims (cont.)

Comprehensive General Liability ("CGL") Policies:

- "Occurrence" policies that cover bodily injury caused by accidents that occur during the policy period

- This type of policy is important for policyholders who are facing a large number of claims or claims that span many years. This is because, even where allegations of abuse occurred decades ago, CGL policies will still respond today

- Most CGL policies cover defense costs outside of policy limits

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Insurance for Sex Abuse Claims (cont.)

Directors & Officers ("D&O") Policies:

- "Claims made" policies that cover <u>claims</u> that are <u>made</u> against you <u>during the policy period</u>
- Usually have a broad coverage grant that encompasses claims for "Wrongful Acts" directed against the company, its directors, or officers.
- Coverage is broader for private companies and non-profits than for public companies.
- Defense costs typically count against policy limits

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Insurance for Sex Abuse Claims (cont.)

Sexual Abuse and Molestation Policies:

- Also "claims made" policies, but defense costs may be outside of the policy limits
- Generally, cover Sexual Misconduct or Molestation as well as negligent hiring, supervision or investigation of a person alleged to have engaged in Sexual Misconduct or Molestation
- Insureds defined flexibly and can include the entity, directors, officers, employees and volunteers

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Insurance for Sex Abuse Claims (cont.)

Umbrella Excess Policies:

- Business Umbrella policies sit excess of multiple underlying insurance programs, including GL
- Often respond if GL policies respond and provide additional limits on a per year basis
- Can sometimes cover sexual misconduct if there is no specific exclusion
- But trend is for carriers to insert sexual misconduct exclusions

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Maryland CVA: Revival of Historic Claims Means Revival of Historic CGL Policies

- **Historic Liabilities:**
  - The CVA revives claims that previously had been barred by the SOL years or even decades ago

- **Historic CGL Insurance Policies**:
  - CGL policies respond to accidents/injuries that occurred **<u>during the policy period</u>**

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Historic Claims = Historic CGL Policies (cont.)

- **CVA claims trigger coverage under CGL policies**
  - Negligent hiring/supervision claims are "accidents"

- **Historic CGL Policies**
  - Broad coverage
  - Fewer sexual abuse exclusions
  - Duty to defend, with unlimited defense costs

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The Importance of Timely Notice

When faced with allegations of abuse, it is important to notify insurance companies as quickly as possible. This keeps the insurance company from using "late" notice as an excuse not to provide coverage

To expedite the process, follow these steps:

- Locate your insurance policies.
- Review the scope of your policies.
- Give notice under all policies that might apply.
- Communicate with your insurance companies.

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Insurance Company Response

After you notify the insurance company of your claim, you typically receive an immediate acknowledgement, followed by a substantive response

Potential Responses:

- Accept coverage
- Reservation of rights
- Denial of coverage

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Potential Coverage Issues

- Late Notice
- Number of occurrences
- Intentional acts exclusions / “Accident”
- Expected or intended injury exclusion
- Sexual abuse / molestation exclusions
- Prior acts or prior claims exclusions

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Working with Your Insurance Company

Best practices for communicating with your insurance company:

- Provide notice right away.
- Provide the company with all reasonably requested information as soon as possible – create a system to confirm receipt.
- Communicate frequently so that the resolution functions more like a partnership than a provided service or obligation.
- Take note of any insurance company misconduct or failure to perform and seek counsel if necessary.

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Insurance Co. Claims Handling Approach

Insurance companies often try to use a policyholder's discomfort against it.

- Embarrassment
- Control
- Fear of other claims

Insurance Companies often force vulnerable policyholders to absorb otherwise covered costs in order to accomplish a quick, non-public resolution.

Insurance companies have much more experience handling these types of claims than insureds do.

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Claims Handling Tactics (cont.)

Precedent Allows Policyholders To Push Back:

- Insurance companies have a duty to work with the policyholder to negotiate and pay reasonable settlements – in full.

Considerations include, among other factors, the reputational harm and potential loss of goodwill that can result from a failure to settle. See ***Landow v. Medical Ins. Exch.***, 892 F. Supp. 239, 241 (D. Nev. 1995) ("in determining whether to settle, the insurer has a duty to consider injury to the insured, such as emotional distress and injury to business goodwill that proximately flow from the failure to settle"); ***Bodenhamer v. Superior Court***, 192 Cal. App. 3d 1472, 1478-1479 (1987) ("An express term of the liability contract is to pay claims of third parties where the insured is liable. An implied promise is to process the claims in a manner which will not injure the insured, which in this case includes injury to the business."); ***Tan Jay Internat. v. Canadian Indem. Co.***, 198 Cal. App. 3d 695, 704 (1988) (allowing bad faith award based on damage to policyholder's reputation because of insurance company's failure to settle); ***United States Fire Ins. Co. v. Button Transp., Inc.***, 2006 Cal. App. Unpub. LEXIS 3472, at *59 (Apr. 26, 2006) (allowing bad faith award based on policyholder's loss of goodwill because of insurance company's failure to settle); ***Rawan v. Continental Cas. Co.***, 483 Mass. 664, 685, 670-71 (Mass. 2019) (noting that a valuable purpose of liability insurance is the protection of the policyholder's reputation and goodwill, and affirming the insurance company's contractual obligations even where the policyholder acts unreasonably in connection with settlement negotiations in order to protect its reputation).

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Insurance Archaeology: A Necessity in Maryland

Potential charitable immunity claims result in plaintiff's counsel insisting on certification of a thorough search

<u>Potential Results—A Win-Win</u>

- Identify historic coverage
  - Defense in addition to limits of liability
  - Typically no aggregate limit for Bodily Injury premises operations prior to the early 1980s
- Find evidence the organization did not purchase liability coverage in the pertinent period—Good case for charitable immunity
- Identify insolvent coverage—Good case for charitable immunity
- Cannot identify coverage—Good case for charitable immunity

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The Search Begins at Home

Rule #1:
Key documents will be found in records that "were destroyed"

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Go Beyond “Insurance” Records

<u>Purchase of Insurance</u>
- Accounting/Financial
- Board Minutes/Resolutions
- Correspondence of the business office

<u>Claims and Litigation</u>
- Litigation records
- Correspondence of officers

<u>Places you sent a certificate of insurance</u>
- Mortgage and lease
- Camps, parks and fields
- Catering halls and offsite events
- Foreign travel

Rule #2:
A single line on a single piece of paper can lead to millions of dollars of insurance coverage

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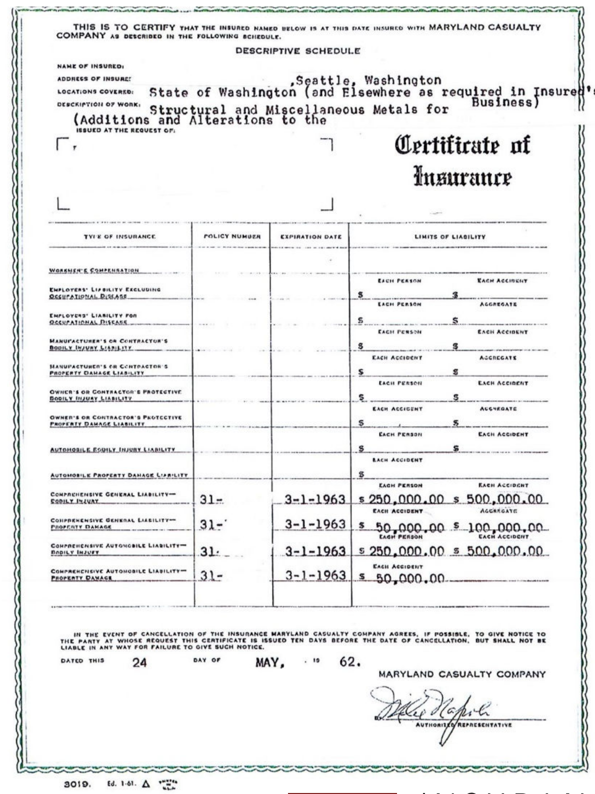
Review Records: What to Look For

Records with insurance information
- References to other policies
- Policy details such as limits of liability
- Personnel that handled insurance
- Brokers including individuals on the account

Records without insurance information
- Claims and litigation—even if the available records do not reference insurance
- Mortgages and leases
- Third parties that required evidence of insurance



THIS IS TO CERTIFY THAT THE INSURED NAMED BELOW IS AT THIS DATE INSURED WITH MARYLAND CASUALTY COMPANY AS DESCRIBED IN THE FOLLOWING SCHEDULE.

DESCRIPTIVE SCHEDULE

NAME OF INSURED:

ADDRESS OF INSURED: ,Seattle, Washington

LOCATIONS COVERED: State of Washington (and Elsewhere as required in Insured's Business)

DESCRIPTION OF WORK: Structural and Miscellaneous Metals for (Additions and Alterations to the

ISSUED AT THE REQUEST OF:

Certificate of Insurance

TYPE OF INSURANCE	POLICY NUMBER	EXPIRATION DATE	LIMITS OF LIABILITY	
Workmen's Compensation				
Employers' Liability Excluding Occupational Disease			Each Person $	Each Accident $
Employers' Liability for Occupational Disease			Each Person $	Aggregate $
Manufacturer's or Contractor's Bodily Injury Liability			Each Person $	Each Accident $
Manufacturer's or Contractor's Property Damage Liability			Each Accident $	Aggregate $
Owner's or Contractor's Protective Bodily Injury Liability			Each Person $	Each Accident $
Owner's or Contractor's Protective Property Damage Liability			Each Accident $	Aggregate $
Automobile Bodily Injury Liability			Each Person $	Each Accident $
Automobile Property Damage Liability			Each Accident $	
Comprehensive General Liability—Bodily Injury	31-	3-1-1963	Each Person $ 250,000.00	Each Accident $ 500,000.00
Comprehensive General Liability—Property Damage	31-	3-1-1963	Each Accident $ 50,000.00	Aggregate $ 100,000.00
Comprehensive Automobile Liability—Bodily Injury	31-	3-1-1963	Each Person $ 250,000.00	Each Accident $ 500,000.00
Comprehensive Automobile Liability—Property Damage	31-	3-1-1963	Each Accident $ 50,000.00	

IN THE EVENT OF CANCELLATION OF THE INSURANCE MARYLAND CASUALTY COMPANY AGREES, IF POSSIBLE, TO GIVE NOTICE TO THE PARTY AT WHOSE REQUEST THIS CERTIFICATE IS ISSUED TEN DAYS BEFORE THE DATE OF CANCELLATION, BUT SHALL NOT BE LIABLE IN ANY WAY FOR FAILURE TO GIVE SUCH NOTICE.

DATED THIS 24 DAY OF MAY, 19 62.

MARYLAND CASUALTY COMPANY

AUTHORIZED REPRESENTATIVE

3019. Ed. 1-61.

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External Sources

Where to Turn When Internal Sources are Exhausted

- Insurance Brokers: Broker records can be an invaluable source of information. Even if records have been purged, interviews of brokers can develop information on coverage placed and claims.

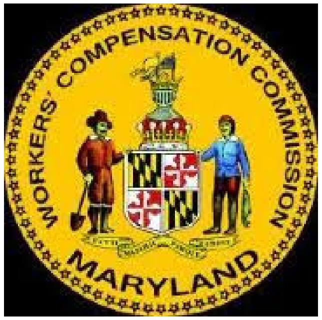
- Outside Counsel: Board Counsel from the pertinent period may have files with evidence of policy information, in relation to old lawsuits or claims, leases or contracts. Defense counsel from third party liability claims also may retain records that identify insurance details.

- Insurance Carriers: Carriers are legally obligated to make a good faith search. They should also search in their reinsurance, underwriting and application files.

Government Sources

Where to Turn When Internal Sources are Exhausted

- Maryland Workers Compensation Commission: Records exist back to the 1960s



- Court Research: Records for tort claims ranging from trip and falls to deaths can include insurance information

- Government or Other Third-Party Vendors: If you leased property or had contracts with a local, state, or federal entity you may have had to provide proof of insurance.

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Why Insurance Archaeology?

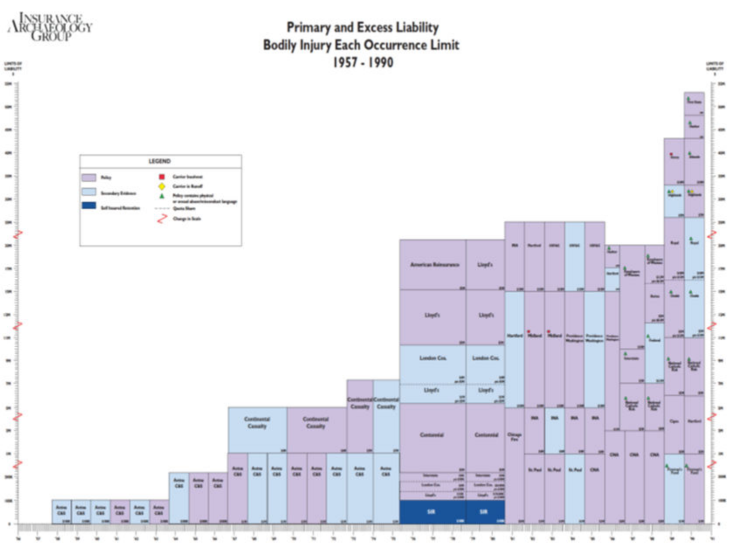
Where to Turn When Internal Sources are Exhausted

- Records are often in places no one wants to go and searches are painstaking. Employee time, inefficiencies and delays can be costly.

- After decades of consolidation nearly every aspect of the research requires time and specialization to identify current successors
  - Insurers
  - Brokers
  - Certificate Holders
  - Law Firms

- Individual insurers' limits and years of exposure are clearly defined which creates efficiency and saves time. Prepare for potential changes to alleged dates of abuse

- Avoid having volunteers or staff deposed about the thoroughness of the search



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Questions & Answers

THANK YOU

Cameron Argetsinger / 202.416.6515
cargetsinger@andersonkill.com

Glen Feinberg / 914.391.7671
gfeinberg@feinberg-gasbarro.com

Sean Gugerty / 410.783.4994
sgugerty@gdldlaw.com

Brian Della Torre / 212.697.2680
bdellatorre@iagltd.com

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