#### **∇** PEOPLE



# Theodore A. Keyes Partner

#### Contact

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# Advises on the specialty areas of environmental law and insurance law in connection with transactions and litigation.

For more than two decades, Ted has advised prominent corporations, private equity firms, investment advisers, policyholders, insurance companies and other entities. He advises clients on environmental, health and safety risks associated with domestic and international mergers and acquisitions, financings, real estate and other transactions.

Ted counsels clients on a wide range of issues and disputes involving environmental law and/or insurance law in state and federal court as well as in the context of alternative dispute resolution, including environmental insurance coverage cases, cost recovery actions, regulatory matters and parkland alienation disputes.

In addition to insurance coverage litigation, he advises clients concerning various specialty insurance policies, including representation and

warranty, judgment protection, directors' and officers' liability, professional liability and specialty pollution insurance products.

Ted has been the author of the *New York Law Journal*'s Corporate Insurance Law Column since 2003, and in 2014, he received the Burton Award for Distinguished Legal Writing.

#### **Practices**

**ENVIRONMENTAL** 

SPECIAL SITUATIONS AND BANKRUPTCY LITIGATION

**COMPLEX COMMERCIAL LITIGATION** 

CYBERSECURITY AND DATA PRIVACY

**INSURANCE** 

**LITIGATION** 

**REAL ESTATE** 

#### **Bar Admissions**

New York

# Education

Fordham University School of Law, J.D.

The George Washington University, B.A.

#### Representations

- Representation of the federal government of Mexico in connection with claims related to the Deepwater Horizon Oil Spill. *United Mexican States (Estados Unidos Mexicanos) v. BP Exploration and Production Inc.*, MDL No. 2179 (E.D. Louisiana)
- Regularly counsels investment funds in connection with the negotiation of management insurance policies, including working closely with insurance brokers to negotiate favorable policy terms and providing assistance in the event that insurance claims arise.
- Representation of publicly traded financial services company in negotiation of agreements with primary and excess insurers for advancement of defense costs incurred in connection with SEC and DOJ investigations.
- Negotiation of CERCLA consent order on behalf of a demolition and recycling company in connection with work performed at an abandoned petroleum refinery and an off-site asbestos abatement of nearby properties. In the Matter of the Tallaboa Industrial Park Site (Puerto Rico).
- Representation of demolition and recycling contractor in connection with First Circuit appellate action for pre-enforcement review of CAA order alleging NESHAP violations in connection with work performed at an abandoned petroleum refinery in Puerto Rico. Homeca Recycling Center v. EPA.
- Representation of insurance carrier in connection with coverage dispute concerning Clean Air Act enforcement action. Cinergy Corp. v. St. Paul Surplus Lines Ins. Co., 915 N.E.2d 524 (Ind. Ct. App. 2009); Cinergy Corp. v. St. Paul Surplus Lines Ins. Co., 873 N.E.2d 105 (Ind. Ct. App. 2007); Cinergy Corp. Associated Elec. & Gas Ins. Servs., Ltd., 865 N.E.2d 571 (Ind. 2007).
- Representation of insurance carrier in environmental coverage litigation. Handy & Harman v. American International Group Inc. et al., Index No. 115666/07 (New York County).

- Challenge to New York City project adjacent to parkland under public trust doctrine. New York State Assemblyman Adam Clayton Powell, IV, et al. v. City of New York, et al., Index No. 108220/2006 (New York County).
- Defense of insurance carrier in lawsuit concerning environmental claims. Allegheny Energy, Inc., et al. v. Certain Underwriters at Lloyd's, London, Case No. 21-C-03-16733 (Cir. Court, Washington County, Md.).
- Representation of insurance carrier in connection with disputed claim under pollution insurance policy. AIU Insurance Company, et al. v. Louis Dreyfus Natural Gas Corp., No. 02CV3277 (S.D.N.Y.).
- Representation of insurance carrier in connection with settlement and arbitration of underlying complex case concerning contamination from chemical plant in Houston. *Port of Houston v. GB Biosciences Corporation et al.*, Cause No. 2001-07795, (Harris County Texas).
- Representation of parkland group in lawsuit to prevent alienation of parkland without legislative approval. Friends of Van Cortlandt Park v. City of New York, 95 N.Y.2d 623 (N.Y. 2001).
- Defense of insurance carrier in connection with lawsuit seeking coverage for environmental cleanup due to gasoline spill in Alaska. Wyoming Alaska Company, Inc., et al. v. Commerce and Industry Insurance Company, Civ. No. 2:00-CV-0499 (D.Ct. Utah).
- Defense of insured in connection with declaratory judgment action to rescind directors and officers' liability insurance policy. *Genesis Insurance Company v. Physician Computer Network, Inc.*, Civ. No. 99-CV-103 (D.N.J.).
- Representation of mortgagee seeking to intervene in lawsuit to prevent entry of Consent Decree governing CERLA remediation of mortgaged property. *United States v. Pitney Bowes, Inc., et al.*,25
   F.3d 66 (2d Cir. 1993).
- Defense of lender in private cost recovery lawsuit under CERCLA.
   EDO Corporation, et al. v. Elinco Associates Limited Partnership, et al., Civ. No. 393-CV-00504 (D. Conn.).

- Prosecution of fourth-party contribution action concerning responsibility for remediation of oxide box waste from former MGP. RMT, Inc. v. Giddings & Lewis, et al., 95 CV 00173 (Wis. Cir. Court, Fond du Lac County).
- Defense of insurance carrier in multi-site declaratory judgment action concerning former MGPs in New Jersey. *Jersey Central Power & Light Company v. American Casualty, et al.*, C-299-94 (N.J. Super. Ct. Middlesex County).
- Defense of insurance carrier in multi-site declaratory judgment action concerning former MGPs in New Jersey. New Jersey Natural Gas Company v. St. Paul Fire & Marine Ins. Co., et al., OCN-L-859-95 (N.J. Super. Ct., Ocean County).
- Defense of insurance carrier in coverage lawsuit concerning hydrogen sulfide release. Edwards Oil Service, Inc. v. National Union, et al., No. 93-305190-CK (Mich. Cir. Court, Wayne County).

#### **Publications**

- "Novolex Holdings: A Rare Look at an RWI Claim Dispute," New York Law Journal, April 10, 2024
- "Insured Capacity and Outside Capacity: Status Matters," New York Law Journal, Jan. 25, 2024
- "Judgment Preservation Insurance Emerges as a Valuable Risk Management Option," New York Law Journal, Nov. 15, 2023
- "Eastern District Holds That Exclusion Bars Defense Obligation," New York Law Journal, Sept. 29, 2023
- "Second Circuit Weighs In on Other Insurance and Additional Insured Dispute," New York Law Journal, June 29, 2023
- "Prior or Pending Litigation Exclusion Bars Coverage for Natural Resource Damages Claim," New York Law Journal, March 29, 2023
- "Second Circuit Clarifies Justiciability Standard for Declaratory Judgment Actions Concerning the Duty to Defend," New York Law Journal, Feb. 7, 2023
- "Southern District Finds That Final Adjudication Limitation in Conduct Exclusion Does Not Require Exhaustion of All Appeals," New York Law Journal, Nov. 10, 2022
- "Delaware Ruling Underscores Significance of Warranty Statements," New York Law Journal, Sept. 26, 2022
- "R&W Insurance and Public Company Transactions," *New York Law Journal*, June 16, 2022
- "Amendments to CPLR Impose New Insurance Disclosure Requirements on Defendants," New York Law Journal, March 29, 2022
- "Court of Appeals Reverses First Department, Holding Bear Stearns' Disgorgement Payments Are Not Excluded From Coverage," New York Law Journal, Jan. 27, 2022

- "Court Narrowly Construes Bump-Up Exclusion in Willis Towers Watson Case," New York Law Journal, Nov. 2021
- "SPAC Litigation and Insurance Implications," New York Law Journal, June 28, 2021
- "Cybersecurity Threats, Responses and Preventative Measures with Schulte's Cybersecurity & Data Privacy Group," The Hedge Fund Journal, April 2021 (quoted)
- "Delaware Courts Continue To Issue Insured-Friendly D&O Insurance Rulings," New York Law Journal, March 31, 2021
- "Delaware Supreme Court Rules That Appraisal Actions Are Not Covered by Public Company D&O Insurance," New York Law Journal, Nov. 16, 2020
- "PPP Loan Insurance: An Introduction and Overview," New York Law Journal, Sept. 18, 2020
- "Southern District Denies Insured's Request for Preliminary Injunction Seeking Payment of COVID-19 Related Loss," New York Law Journal, June 15, 2020
- "Global M&A Insurance: Considerations for Cross-Border Transactions," New York Law Journal, April 9, 2020
- "Practical Insurance Advice in the Wake of COVID-19," Schulte Alert, April 1, 2020
- "Business Interruption and Related Insurance for Losses from COVID-19," Schulte Alert, March 17, 2020
- "Securing Insurer Advancement of Defense Costs Under D&O Policies," New York Law Journal, Jan. 31, 2020
- "California Courts May Not Apply New York Choice of Law Clauses," New York Law Journal, Nov. 29, 2019
- "Delaware Courts Take Narrower View of Related Claims Than NY Courts," New York Law Journal, Sept. 17, 2019
- "Representations and Warranties Insurance: A Real World Claims Discussion," New York Law Journal, June 27, 2019

- "Court: Joint Venture Clauses Doesn't Limit Insurers' Exposure for Defense Costs," New York Law Journal, March 29, 2019
- "Climate Change-Related Losses and Other Event-Driven Litigation Risks," New York Law Journal, Jan. 29, 2019
- "First Department Relies on 'Kokesh' to Rule That SEC Disgorgement Is Barred From Coverage," New York Law Journal, Dec. 4, 2018
- "Defense Costs Coverage 101," New York Law Journal, Sept. 19, 201
- "Court of Appeals Rejects Unavailability of Insurance Exception," New York Law Journal, June 15, 2018
- "Insurance for the Costs of Defending Regulatory Investigations," New York Law Journal, March 28, 2018
- "Second Circuit Affirms Sandy-Related Negligence Claim Against Broker," *New York Law Journal*, Jan. 30, 2018
- "Court Denies Coverage Under Reps and Warranties Policy," New York Law Journal, Nov. 27, 2017
- "SDNY Finds Coverage for Payment Instruction Fraud Loss," New York Law Journal, Sept. 19, 2017
- "SEC Disgorgement: Is It Insurable?," New York Law Journal, July 24, 2017
- "Court of Appeals Clarifies Anti-Subrogation Rule," New York Law Journal, March 31, 2017
- "Case Law Suggests Counsel Should Advise Clients About Available Insurance," New York Law Journal, Jan. 30, 2017
- "'Viking Pump': Changing the Allocation Landscape," New York Law Journal, Aug. 30, 2016
- "New Jersey Supreme Court Surprises With Late Notice Ruling," New York Law Journal, June 30, 2016
- "Representations and Warranty Insurance Comes of Age," New York Law Journal, March 31, 2016

- "Revisiting Non-Assignment Clauses: California Returns to the Majority Rule," New York Law Journal, Jan. 12, 2016
- "Insurance Implications of New Justice Department Policy Directive," New York Law Journal, Oct. 21, 2015
- "Cyber-Risk Insurance Update," New York Law Journal, July 27, 2015
- "Subrogation: Primer and Recent Environmental Cleanup Cases,"
   New York Law Journal, May 19, 2015
- "Return to the Bear Stearns' D&O Insurance Dispute," *New York Law Journal*, March 3, 2015
- "Direct Loss Requirement in Fidelity Insurance Bonds," New York Law Journal, Dec. 29, 2014
- "Hurricane Sandy: Courts Begin Issuing Insurance Rulings," New York Law Journal, Sept. 29, 2014; republished on Law.com Blog, Sept. 29, 2014
- "Related Claims Are in the Eye of the Beholder," New York Law Journal, July 15, 2014; republished on Law.com Blog, July 21, 2014
- "Court of Appeals Reverses Itself on the Consequences of an Insurer's Breach of the Duty to Defend," Law.com Blog, May 6, 2014
- "Management Liability Insurance Policy Pitfalls SEC and Market Changes Demand Special Attention," The Hedge Fund Journal, April/May 2014
- "K2' and Consequences of Insurers' Breach of Duty to Defend," New York Law Journal, May 6, 2014
- "Are Private Companies' Liability Risks Adequately Insured?," New York Law Journal, March 4, 2014
- "Key Rulings Concerning Cleanup of Former Grumman Sites," New York Law Journal, Dec. 11, 2013
- "Courts of Appeal Issue Rulings on D&O Insurance Disputes," New York Law Journal, Oct. 2, 2013
- "Privilege and Insured-Insurer Communications," New York Law Journal, Aug. 7, 2013

- "Insuring Against Cyber Risks: Coverage, Exclusions, Considerations," New York Law Journal, May 22, 2013
- "Second Circuit Finds an Exception to Pro Rata Allocation Rule,"
   New York Law Journal, March 4, 2013
- "Representations and Warranties Insurance as Deal Making Tool,"
   New York Law Journal, Sept. 24, 2012
- "Enforceability of Non-Assignment Clauses in Asset Purchase Deals," New York Law Journal, June 29, 2012
- "The SEC and Litigation: Oil and Water?," New York Law Journal,
   March 29, 2012
- "2011 Wrap-Up: New Agency, Other Noteworthy Developments," New York Law Journal, Jan. 31, 2012
- "New York Courts May Be Wavering on 'Zeig," New York Law Journal, Dec. 8, 2011
- "Second Circuit Upholds Coverage for Investigation-Related Costs," New York Law Journal, Sept. 21, 2011
- "'Zeig' Still Governs Exhaustion of Underlying Policy Limits in New York," New York Law Journal, June 30, 2011
- "Dispute Resolved over Overlapping GL and D&O Insurance Policies," New York Law Journal, March 30, 2011
- "Revisiting 'Bi-Economy' and Consequential Damages," *New York Law Journal*, Jan. 31, 2011
- "Courts Differ on Insurer's Right to Recoupment of Defense Costs,"
   New York Law Journal, Nov. 2, 2010
- "BP Oil Spill: An Insurance Perspective," New York Law Journal, Aug. 18, 2010
- "Green Building and Insurance," New York Law Journal, June 2, 2010
- "Existing SEC Requirements Serve as the Baseline for Climate Change Risk Disclosure," ABA Environmental Disclosure Committee Newsletter, April 2010

- "Things to Know About Your D&O Insurance Before Investigation Begins," New York Law Journal, March 16, 2010
- "SEC Issues Guidance on Climate Change-Related Disclosure by Public Companies," Schulte Alert, Feb. 8, 2010
- "Continuing Influence of Repealed Statutory Pollution Exclusion," New York Law Journal, Jan. 5, 2010
- "SEC Mandatory Climate Change Risk Disclosure is on the Horizon," Securities Regulation & Law Report, Nov. 16, 2009
- "Scope of Prior Knowledge Exclusions in Professional Liability Policies," New York Law Journal, Nov. 9, 2009
- "Allocation of Defense Costs Among Overlapping Insurance," New York Law Journal, Sept. 4, 2009
- "Court Finds Laches Defense Bars Coverage for Asbestos Claimants," New York Law Journal, July 1, 2009
- "Agency Opinion Seeks to Impose Duty to Defend on D&O Insurer,"
   New York Law Journal, March 6, 2009
- "New Late Notice Law Requires Insurers to Show Prejudice," New York Law Journal, Jan. 2, 2009
- "Narrow View of Prior Knowledge Exclusion Adopted," New York Law Journal, Nov. 3, 2008
- "Consequential Damages: Only if Foreseen at Time of Pact," New York Law Journal, May 8, 2008
- "World Trade Center Debris: Meaning of 'Contamination'," New York Law Journal, March 6, 2008
- "Choice of Law Can Be the Key to an Insurance Case," New York Law Journal, Jan. 4, 2008
- "Key Issues Directors and Officers Insurance Should Address," New York Law Journal, Nov. 5, 2007
- "Repudiation vs. Ordinary Breach: Insured's Policy Duties," New York Law Journal, July 2, 2007

- "Duty to Defend: Four Corners Rule, Duty to Look Beyond," New York Law Journal, May 9, 2007
- "Impact of reservation of Rights on Contesting Settlement," New York Law Journal, March 2, 2007
- "NFL Goes Back to Basics to Win 'Clarett' on Extra Point," New York Law Journal, Jan. 5, 2007
- "Late Notice: Insured's Implied Waiver of Privilege," New York Law Journal, Nov. 29, 2006
- "Contra Proferentum: Sophisticated Entities Negotiating," New York Law Journal, Aug. 30, 2006
- "Insurers, Tort Declaratory Judgment Actions, Bad Faith Liability,"
   New York Law Journal, July 10, 2006
- "Identifying Late Notice as Defense in Specific Reservation of Rights," New York Law Journal, April 17, 2006
- "State and Federal Courts of Appeal Enforce Noncumulation Clauses," New York Law Journal, Feb. 28, 2006
- "Wind vs. Water: Insurance Coverage for Storm Damage," New York Law Journal, Nov. 29, 2005
- "Public Policy Ruled Not a Mandate for Extended Reporting Periods," New York Law Journal, Aug. 24, 2005
- "Misrepresentations in Insurance Application Can Void the Policy," New York Law Journal, June 30, 2005
- "Late Notice Law: Does the Insurer Need to Show Prejudice?," New York Law Journal, Feb. 22, 2005
- "Beware of Deemer Clauses Treating Related Claims as Single Claim," New York Law Journal, Nov. 8, 2004
- "Directors' and Officers' Insurance: Allocation of Defense Costs,"
   New York Law Journal, Aug. 24, 2004
- "New Transactional and Government Investigation Insurance," New York Law Journal, July 1, 2004

- "Pollution Insurance in Business and Real Estate," New York Law Journal, April 21, 2004
- "Late Notice Law: Does the Insurer Need to Show Prejudice?," New York Law Journal, Feb. 20, 2004
- "Proceeds of D&O Liability Insurance Property of Debtor's Estate?,"
   New York Law Journal, Nov. 12, 2003
- "The Terrorism Risk Insurance Act of 2002: Analysis and Review,"
   New York Law Journal, Sept. 8, 2003
- "Limits of No-Assignment Clause: Assigning Rights in Asset Purchase," New York Law Journal, July 9, 2003
- "New York State Court of Appeals Reaffirms the Rule of State Legislative as Gatekeeper of Public Parklands," The New York State Environmental Lawyer, Vol. 21, No. 4, Fall 2001

## **Speaking Engagements**

- "Insurance," Schulte 30th Annual Private Investment Funds Seminar, Jan. 2021
- "Insurability of Disgorgement and Restitution Claims After Kokesh,
   TIAA-CREF and J.P. Morgan," Strafford CLE Webinar, Sept. 2019
- Willis Towers Watson D&O in the Age of Accountability Webinar, Oct. 2018
- "Professional Liability and Regulatory Risk," Crystal & Company Alternative Asset Management Forum & Reception, May 2016
- "Data Protection and Collection: Cybersecurity, Insurance and Data Scraping," Schulte 25th Annual Private Investment Funds Seminar, Jan. 2016
- "Regulatory Risk: Exams, Investigations and Penalties, Oh My!"
   Crystal & Company 2015 Hedge Fund Seminar Cybersecurity & Regulatory Risk, May 2015
- "SEC Investigation Response for Asset Managers: How to Prepare and Mistakes to Avoid," Willis of New York Webinar, June 2014
- Schulte Liability Insurance Luncheon for Investment Fund Managers, March 2014
- Herbert L. Jamison & Co. LLC SEC Investigation Response for Hedge Fund Managers: How to Prepare and Mistakes to Avoid, May 2013
- "Insurance Implications and Considerations of an Investigation,"
   Herbert L. Jamison & Co. LLC SEC Investigation Response for
   Hedge Fund Managers: How to Prepare and Mistakes to Avoid, Dec.
   2012
- "Understanding Side A D&O Coverage for Hedge Fund Directors,"
   Herbert L. Jamison & Co. LLC Webinar, Sept. 2011
- "Things to Know About Your D&O Policy Before an SEC Investigation," Herbert L. Jamison & Co. LLC Shifting Landscape of the Regulatory Focus for Hedge Funds, March 2011

- "SEC and Insurance Response to Climate Change," NYSBA Annual Meeting, Jan. 2011
- Things to Know About Your D&O Insurance Before an SEO Investigation Begins Webinar, May 2010
- Recent Developments in New York Corporate Insurance Law Webcast, Dec. 2009
- Bronx Talk Prime Time, Television Appearance, Discussion of Proposed Croton Water Filtration Plant Siting Issue, March 2001

# Memberships

- American Bar Association Environmental Section
- New York State Bar Association Environmental Section

### Distinctions

Burton Award for Distinguished Legal Writing, 2014