



Alan H. Packer

Office Managing Partner

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Managing partner in the firm's expanding Walnut Creek office, Alan Packer has practiced law in California for over 20 years. He focuses his practice on real estate, home building, commercial construction and insurance law. Clients rely on his extensive knowledge and experience in this highly regulated arena to navigate the maze of regulatory changes, new laws and construction guidelines with emphasis on project risk management covered by insurance.

Alan represents homebuilders, property owners, and business clients on a broad range of legal matters. He counsels on risk management and insurance matters and handles complex litigation including cost recovery actions and creative dispute resolution. A consummate problem-solver, Alan casts an experienced eye on the myriad issues that can impact his clients' interests to propose fresh solutions that propel business forward. He adeptly untangles complicated cases and charts a steady course to resolve complex issues that impact the building and development within the construction industry and threaten litigation in other key business sectors.

Real Estate and Construction Litigation

Over the course of his career, Alan has resolved countless contract disputes between builders, contractors and subcontractors, vendors, materialmen, purchasers, and real estate investors. He handles large scale construction and manufactured product defect claims to minimize litigation and defends nondisclosure claims involving alleged fraud in the sale of homes. He helps clients avoid litigation through wrap consultation and documentation, efforts to counter solicitation of homeowners, and subcontract documentation. He also handles mechanic's lien, stop notice, real estate, and payment and performance bond issues in residential and commercial contexts.

Policyholder Disputes

Alan's ability to craft favorable insurance policy provisions and endorsements make him a natural at successfully navigating insurance coverage disputes with primary carriers and under additional insured endorsements

nationwide. He provides risk management counseling regarding litigation avoidance techniques and the use of alternative dispute resolution.

Alan and other members of the firm's insurance coverage and litigation team are known for their ability to challenge denials for coverage and resolve insurance disputes for business and individual policyholders, recovering millions of dollars in fees and costs. Together, he and his colleagues actively challenge insurers to pay for claims with the potential for coverage, and participate in appeals to defend rights to such payments on behalf of clients and building industry associations.

Risk Management and Insurance

Fluent in the language of construction and related areas of law, Alan is a staunch advocate when it comes to managing risk and navigating insurance coverage issues that impact the bottom line. He works with his clients to determine the primary, umbrella, and excess policy towers to mitigate risk and ensure peace of mind. For his corporate clients, Alan negotiates policy review and placement to protect assets through finance, lease, merger, acquisition, purchase/sale, and all other phases of a company's life cycle.

Alan and the other members of Newmeyer Dillion's insurance team are adept at forcing insurers to make good on coverage claims. Whether in the context of an E&O claim where the insurer disputes the timeliness of the notice to them, a builder's risk claim where the insurer tries to clamp the policy shut without paying amounts due for soft costs, or a small business attempting to get its flood damage claim paid, he creatively finds ways past insurers' attempt to walk away from their obligations to policyholder clients.

Appeals

Frequently called upon to help clients and industry organizations on appellate issues, both within the insurance context and outside of insurance, Alan and others in the firm have been counsel of record, pro hac vice, or amicus in dozens of appeals in the past decades.

Right to Repair

Newmeyer Dillion has actively supported the building industry's efforts to resolve homeowner claims through the Right to Repair law enacted by the California legislature. As counsel for an amicus building industry association, the firm has filed briefs in several matters to support and protect the right to repair, and participated in oral argument in the critical matter that resulted in an upholding of the builders' position.

Services

- Real Estate Litigation
- Coverage & Bad Faith Litigation
- Business Litigation
- Risk Avoidance, Transfer & Management
- Appellate

- Construction Litigation
- Insurance Policy Review & Placement

Awards & Recognition

- Selected to the Northern California Super Lawyers list, 2008-2018
- AV® Preeminent Rating by Martindale-Hubbell Peer Review
- 2015 Top Rated Lawyer in Construction Law by ALM

Professional Affiliations

- California Building Industry Association
- BIA, Bay Area
- Claims and Litigation Management Alliance

Admissions

- California, 1986
- U.S. District Court, Northern District of California

Education

- Tulane Law School (*J.D.*, 1986)
 - Order of the Coif
- University of Illinois (*B.A.*, 1983)

Successes

Mission-Critical Change of Venue Saves the Day

Our client sought benefits due under its excess policies, and an international insurer sought to force arbitration in London. The unfriendly overseas venue could potentially leave the client juggling inconsistent legal determinations between the arbitration and pending litigation involving another insurer. We successfully convinced the trial court, and then the appellate court to deny arbitration based on public policy, California substantive law provisions, and the policy terms, resulting in a major victory for our client and a very favorable settlement.

Overtaken Unfavorable Ruling on Additional Insured Endorsements

Newmeyer Dillion successfully worked with local counsel in another state to obtain an order overturning an unfavorable ruling on whether our client was an additional insured under a trade partner's insurance policies. The victory preserved our client's ongoing relationships with local trade contractors.

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Twice Defeated Federal Lending Violation Claim

Our homebuilding client with a captive lending unit faced a claim for alleged federal lending violations. After having the claim kicked out of trial court, our client faced an appeal challenge at the 9th Circuit. The Newmeyer Dillion team successfully navigated the process and preserved the win, enabling our client to remain in business in a tumultuous housing market.

Defeat of Excess Insurer's Drop Down Refusal Yields \$30 Million

Our Fortune 500 builder client faced numerous claims as to which its excess insurer refused to drop down to defend or indemnify, premised upon an over-broad assertion of how follow-form excess policies work. The insurer claimed that although its policy contained no self-insured retention, provision, it was entitled to force our client to absorb the first million dollars on every loss. We defeated the insurer's position and recovered over \$30 million from the insurer.

Environmental Coverage Pays Off

When our national client purchased a cost-cap environmental policy from a large commercial insurer, it expected the clean-up and claims process to be straightforward. After years of delays, excuses, and outright obstruction from its insurer, the client asked us to help them get the benefits to which they were due. We teamed up with a series of experts, coordinated with the client on the extensive history on dozens of contaminated sites, and ultimately achieved a major victory of over \$40 million for the client that enabled them to fund their own clean-up, with carrier pre-funding, without any further bureaucratic shenanigans from the insurer.

Coverage Denial Overturned

Our client faced a coverage denial with a major carrier in Illinois, subject to less favorable legal conditions. Newmeyer Dillion evaluated other options, and ultimately filed suit in the insurer's home state of Georgia. The change of venue resulted in the denial of coverage being overturned, based on the choice of law principles in the insurer's own home state.

Substantial Recovery Under Crime and Ransom Policies

Our client was embroiled in bitter litigation with a former partner and his affiliates making explicit threats against the company that impacted its operations and stock pricing. Through creative policy arguments, we obtained a highly favorable, substantial recovery under the “Ransom” policies issued to the client.

Publications

July 14, 2020

Proposed California Legislation Would Eliminate Certain Obstacles to Coverage for COVID-19 Business Income Losses

April 16, 2020

California Insurance Commissioner Orders COVID-19 Premium Reduction Payments by Property & Casualty Insurers and Workers Compensation Insurers

April 8, 2020

Vertical vs. Horizontal Exhaustion – California Supreme Court Issues Ruling Favorable to Policyholders

March 31, 2020

More Restrictive Shelter In Place Orders Issued

March 20, 2020

Construction (Including Housing) Exempted from California Stay at Home Order

March 16, 2020

Coronavirus Business Interruption Losses – Do We Have Insurance For That?

March 6, 2018

You Make a Better Wall Than a Window: Why Policyholders can Rest Assured that Insurers Should Pay Legal Bills for Claims with Potential for Coverage