



## Ewell, John R.

**Position: Partner**

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**Co-Chair :**

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### **Location**

Buffalo, New York Newark, New Jersey

## **Practice Areas**

[Insurance Solutions](#)

[Construction](#)

[General Litigation](#)

[Appellate Advocacy](#)

[Risk Reduction and Loss Avoidance](#)

[Product Liability, Fire and Life Sciences](#)

## **Admissions**

All U.S. District Courts in New York, New York, New Jersey, U.S. District Court for the State of New Jersey



## Biography

John concentrates his practice on insurance coverage litigation and analysis in New York and New Jersey, insurance regulatory matters, reinsurance, and civil defense litigation. He is a member of the firm's Insurance Solutions practice group where he focuses on pre-suit proactive resolution of matters. He handles all aspects of litigation in state and federal courts around the United States. John's broad coverage experience encompasses issues ranging from first-party property coverage, casualty, "personal and advertising injury" (Coverage B), automobile liability, as well as uninsured and underinsured motorist claims. Focal points of his practice include construction-related coverage disputes and risk transfer. He regularly counsels clients on fraud and material misrepresentation, bad faith, and Child Victims Act claims. John prides himself on practical advice leading to cost-certain results for clients. He ensures clients receive concrete answers advising them of likelihood of success, not vague assertion. He views his role as protecting the insurer's interests and making strategic recommendations about how to advance a claim to efficient and successful resolution. John is a lawyer's lawyer in the courthouse. He handles declaratory judgment actions, rescission actions, applications to stay UM/SUM arbitration, as well as defense litigation in the areas of product liability, professional liability, premises liability, and general negligence. Before joining Gerber Ciano, John worked for a mid-size New York law firm where he had an insurance coverage practice in both New York and New Jersey. He previously served as a student clerk for Hon. Eugene M. Fahey, Associate Judge of the New York Court of Appeals, and interned with the United States Attorney's Office. John received his Juris Doctor *cum laude* from the University at Buffalo Law School, where he was a Publications Editor for the *Buffalo Law Review*. He was a member of the school's trial advocacy program and competed in numerous national trial competitions. He received Honorable Mention in the 2015 *Buffalo Law Review* Associates' Writing Competition for a Top Ten Piece. During his third year of law school he was awarded the Honorable John T. Elfvin Memorial Scholarship for academic excellence and trial advocacy. John is an alumnus of Canisius College where he received his Bachelor of Arts degree in English, graduating with All College Honors. Outside of work, John enjoys spending time with his wife and their dog, Donald. He spends his free time playing acoustic guitar, hiking, and mixing cocktails (mojitos are his specialty).

## Education

- University at Buffalo Law School, J.D., *cum laude*, 2016
- Canisius College, B.A., All College Honors, 2011 (Major: English, Minor: Classics)

## Honors

- Upstate New York Super Lawyers, Rising Stars 2019-2022



- Listed in Best Lawyers: Ones to Watch 2021-2023
- Hon. John T. Elfvin Memorial Scholarship (for academic excellence and trial advocacy)
- Buffalo Law Review, *Publications Editor*
- Honorable Mention in the 2015 Buffalo Law Review Associates' Writing Competition

## Community

- Desmond Law Society of Canisius College, Mentor
- Former Coach, UB Law Trial Advocacy Program

## Presentations

- Presenter, "How to Read a Property Insurance Policy (And Actually Understand It)", New York State Bar Association, February 25, 2021
- Presenter, "How to Read an Insurance Policy (And Actually Understand It)", UB Law Alumni Association, GOLD Group, December 3, 2020.
- Presenter, "Watch Your Step! Navigating Insurance Coverage Issues in Premises Liability Claims, New York State Bar Association, October 4, 2019.

## Representative Matters

**Obtained Declaration Enforcing Rescission of Insurance Policy / Independent Contractor Exclusion** Insurer discovered material misrepresentations on the insurance application and rescinded the policy. Insured corporation opposed summary judgment, seeking question of fact by producing a different application – one completed with the retail broker. Court found no material issues of fact and enforced the insurer's rescission. Even if the policy hadn't been void, the independent contractor exclusion barred coverage. *Union Mutual v. 2958 Jerome et al.*, Index No. 27154/2017E (Bronx Sup. Ct. 2020). **Successful Tender to Adverse Insurer Without Need for Litigation** Claimant fell on icy sidewalk and sued property owner. Insurer for the snowplow contractor denied tender and refused to produce policy. Using the certificate of insurance to locate the AI endorsement form, successfully rebutted adverse insurer's position – who accepted tender and immediately reimbursed defense costs. **Obtained Declaration Insurer Had No Duty to Defend or Indemnify Counterclaim** Claimant counterclaimed against insured seeking damages for intentional destruction of a dock and trespassing. After coverage was denied, insured sued her insurer challenging disclaimer. Since only intentional conduct was alleged, and only non-covered claims alleged, the Court ruled insurer had no duty to defend or indemnify counterclaim. *Wentworth v. Erie Ins. Co.*, Index No. EFCA2020-000637 (Oneida Sup. Ct. 2020). **Dispute Whether a CGL or Auto Loss. Fended Off Adverse Carrier's Tender** Claimant, a truck driver, sustained injury when a warehouse's loading dock malfunctioned and dropped onto his feet. Warehouse tendered to the insurer of the truck, contending loss was an auto loss since the truck was being unloaded. Since the



warehouse's dock caused the injury, the auto was not a proximate cause of the injury (New Jersey law). Successfully fended off the tender. **Obtained Permanent Stays of SUM Arbitration** Obtained permanent stay of SUM arbitration, applying New Jersey law New York resident, who did not purchase SUM coverage, had an accident in New Jersey. He filed demand for SUM arbitration in New York, arguing New Jersey's Deemer Statute imposed SUM (UIM) coverage through his New York policy. *Mid-Century v. Andujar-Marrero*, Index No. 60068/2018 (Westchester Sup. Ct. 2018). Insured sued driver who struck him and bar who allegedly overserved that driver. Insured settled with and released a party without his insurer's consent. Months later, he demanded SUM arbitration. Successfully obtained permanent stay of the SUM arbitration by establishing the insured prejudiced the carrier's subrogation rights. *State Farm v. Jerez*, Index No. 808638/2017 (Erie Sup. Ct. 2018). **Fended Off Challenge to Executed Release** After a car accident, the claimant executed a release, releasing the driver who hit her, owner of the vehicle, and their liability insurer. Claimant then sued seeking the release be invalidated, asserting the release was executed under duress. Summary judgment dismissal obtained for the auto liability insurer and its insureds. *Grange v. Babcock and Progressive Cas. Co.*, Index No. 808521/2018 (Erie Sup. Ct. 2019). **Obtained AI Coverage for Mutual Insureds** Sued adverse insurer seeking additional insured coverage for mutual insureds and declaration as to priority of coverage between the two insurers. Immediately after, the underlying action swiftly resolved at mediation, obviating need for further litigation. *Tokio Marine v. Maxum Indem. Co.*, Civ. Index 1:20-cv-05227 (SDNY 2020).

## Languages

Ancient Greek (Reading Comprehension)