# Establishing Direction

**Overlapping insurance coverage policies untangled**

## THE CHALLENGE

Three years ago, a Santa Fe jury awarded what was then the largest verdict in New Mexico history to the family of a man killed in a trucking accident near Carlsbad. The award was initially set at $58.5 million in damages — $47 million of which was in punitive damages. The case later settled for $43 million.

The damages were assessed against three business entities involved, Standard E&S, Zia Transport and Bergstein Enterprises. Standard E&S and Bergstein Enterprises had separate insurance coverages. The policies covered the accident involving the vehicle at issue were 1) a $1 Million American Automobile Insurance Company Standard E&S Policy; 2) a $4 Million "follow form" excess First Mercury Standard E&S Policy; 3) a $1 Million American Automobile Insurance Company Bergstein Enterprises Policy; and 4) a $4 Million umbrella policy by Commerce and Industry Insurance Company.

At issue is the priority of coverage of three policies and the ultimate liability for the settlement amount of the underlying wrongful death trucking accident matter.

## THE SOLUTION

The day after the New Mexico jury awarded the damages, Modrall Sperling was called in for advice and counsel by its client, American Automobile Insurance Company, part of the Fireman's Fund Insurance Group.

After lengthy discovery, R. E. Thompson and Jennifer Anderson established that after American Automobile Insurance Company tendered its policy limits under its Standard Energy Policy, First Mercury had responsibility for conducting the settlement negotiations. On that basis, the First Mercury Standard Policy limits were not exhausted and the AAIC Bergstein Enterprises Policy was never triggered because of the "other insurance" provision in each of the three policies at issue. Thompson, shareholder and former firm president, asserts, "The policies should be interpreted and applied in terms of 'vertical exhaustion' – that the primary and excess Standard E&S policies' coverage must both be exhausted in order to trigger payments from remaining policies."

Modrall Sperling is responsible for litigating this matter. It is filed in United States District Court for the District of New Mexico.

## THE RESULT

This matter is being closely watched by insurance carriers both because of the novelty of the coverage issues being litigated by the two named insurers and because underlying jury award was the highest reported verdict in New Mexico for some period of time.

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## RELATED ATTORNEYS

Jennifer G. Anderson

## RELATED PRACTICES

Litigation

- Insurance

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