

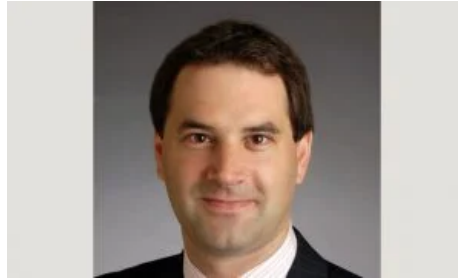
# Insurance Coverage Law Center

## You've Got a Friend in Me: A Conversation with Marshall Gilinsky of Anderson Kill

Marshall Gilinsky of Anderson Kill talks about the distinctive elements of Huntington Ingall's claim that led the Supreme Court of Vermont to issue a favorable ruling in the company's COVID-related business interruption suit.

By Kelly Helton, JD

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**Marshall Gilinsky, shareholder in the Boston office of Anderson Kill. Courtesy photo.**

In the slew of business interruption cases related to the COVID-19 pandemic, many *amicus curiae* briefs have been filed for both insurers and policyholders. An “amicus brief,” as it is commonly called, is filed by law firms and/or attorneys who are not involved in the case itself, but who wish to vocalize their support for either the plaintiff or the defendant. Many amicus briefs for insurers have been filed by lawyers who are paid by trade associations that are funded, unsurprisingly, by insurers. Policyholders do not have such allies on standby, but neither are they without friends. United Policyholders, a nonprofit with more than 30 years’ experience of pro-policyholder insurance litigation, has helped fill that gap. Attorneys from firms such as Anderson Kill, Covington, and Hunton Andrews have logged many pro bono hours helping policyholders, be they individuals or businesses, advocate their own cases on behalf of United Policyholders.

In [\*Huntington Ingalls Industries v. Ace American Ins. Co.\*](#), 2022 VT 45 (Vt. 2022), the Supreme Court of Vermont ruled that Huntington Ingalls Industries (Huntington Ingalls), the largest military shipbuilder in the U.S., had made sufficient allegations to survive a motion for judgment on the pleadings, reversing the trial court’s grant of judgment on the pleadings to Ace American and other reinsurers of Huntington Ingalls’s commercial property policy. Marshall Gilinsky, a shareholder at the Boston office of Anderson Kill, filed an amicus brief for Huntington Ingalls in its appeal to the Supreme Court of Vermont.

### **Business Interruption Checklist**

Gilinsky named four key factors for a businessowner’s COVID-based business interruption suit: physical loss or damage to the insured property; restriction of access to the insured property; lost profits due to the covered event; and quantification of the alleged loss.

“To the extent an insurance company attempts to restrict coverage based on an exclusion,” he said, “It is the insurance company that bears the burden of proving that the exclusion unambiguously applies.”

What distinguished the Huntington Ingalls claim, according to Gilinsky, was how their property policy was among the 17 percent of commercial property policies that, according to the National Association of Insurance Commissioners (NAIC), did not contain a virus, communicable disease, or pandemic exclusion.

“They also had experienced coverage counsel at the Pasich firm that did an excellent job in explaining the impact of COVID on property, the terms of the policy, and the controlling precedent to the Vermont Supreme Court,” he added.

### **Direct Physical Loss or Direct Physical Damage**

Gilinsky also pointed out that counsel for Huntington Ingalls focused on how the policy spoke to “physical loss *or* damage,” which meant that the principles of contract interpretation meant physical loss and physical damage were separate concepts. Therefore, Huntington Ingalls only had to show they had suffered physical loss *or* physical damage to trigger policy coverage. As Gilinsky put it, the COVID-19 virus caused physical damage to Huntington Ingalls’s facilities because it turned property that was safe and fit for its intended use into an unsafe place that could not be used as intended and could even be deadly.

“Businesses purchase business interruption insurance to cover losses when property cannot be used to drive the business’ revenues,” Gilinsky said. “It does not matter if the loss is caused by a volcano spewing unsafe to use – the impact to the property and the business is the same. That is what business interruption insurance is for.”

*Gilinsky's views are his own.*

*[Marshall Gilinsky](#) is a shareholder in the Boston office of Anderson Kill. During his 25-year career representing policyholders, Marshall has recovered hundreds of millions of dollars for his clients, successfully litigating disputed claims under a variety of insurance products, including property and business interruption insurance, commercial general liability insurance, errors and omissions insurance, and directors’ and officers’ insurance.*