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Close-Up



Dominic Nesbitt, left, and Gary Osborne

Osborne & Nesbitt: Cold-case detectives for the insured

By Catherine MacRae Hockmuth

SAN DIEGO -- When Dominic Nesbitt and Gary Osborne opened their law firm in 1996, their practice centered where it always had: representing insurance companies.

Then they took on a case involving a Riverside company that was fighting its insurance carrier. It didn't take long before they recognized a market with untapped potential: liability insurance policyholders holding wrongful denials of coverage.

The redirection of Osborne & Nesbitt made the pair just two of a small pool of San Diego attorneys who specialize in representing policyholders in insurance coverage disputes.

Most businesses purchase comprehensive liability insurance in which insurance companies agree to defend the business if it is sued. But all too often businesses don't file a claim, or the claim is rejected in long and complicated letter that gets filed away and forgotten.

Although many of these denials are wrongful, business owners and their defense attorneys are not sufficiently versed in the complexities of insurance law to recognize wrongful denials when they occur. The business owner must then pay for their own defense, which can cost thousands if not millions of dollars.

"When businesses buy insurance they don't give it that much thought, they simply want an insurance policy that will protect them from liability claims," Nesbitt said. "They'll probably be surprised to learn that many claims that might

be alleged against them are not covered. It's called a comprehensive or commercial general liability policy and they assume that means what it says."

Nesbitt, who trained as a Lloyds insurance broker with **J.H. Minet & Co.** in London and spent about 12 years representing insurance companies, said claims are denied for one of three reasons: the claim was filed late; the carrier asserts the claim falls outside the coverage area; or the claim falls within the coverage area but among one of many "exclusions" included in the policy.

Nesbitt heads up the firm's coverage analysis, or phase one, in examination of insurance coverage denials. Osborne is in charge of litigation, should the need arise.

Their mission is to level the playing field, on which they say insurance carriers have an indisputable advantage.

"Right now that playing field is drastically tilted in favor of insurers because they monopolize the expertise in this area," Osborne said. "They have professionals, thousands and thousands, and lawyers, armies of lawyers, who do nothing but insurance coverage all day long."

Among Osborne & Nesbitt's services is auditing a closed litigation file. That means that the lawsuit against the business policyholder has been resolved in court or through a settlement, and the litigation files sealed and stored for posterity. The firm pores through the paperwork to find proof of a wrongful denial. Call them cold-case detectives for the insured. *Continued*

"At the end of that litigation, that denial letter, if it's a wrongful denial, could be a business asset worth literally hundreds of thousands or millions of dollars," Osborne said. The payout could include all the money spent on defense costs as well as settlement and judgment costs. The firm gets paid only if it finds a wrongful denial.

Insurance companies are sometimes surprised to get their calls. Nesbitt recalls an incident when -- after announcing himself as insurance coverage counsel for the insured -- an indignant adjuster declared that only the insurance company hires insurance coverage counsel.

Not so, for the clients of Osborne & Nesbitt, which include individuals like doctors and lawyers sued for malpractice and companies large and small. And the larger companies are no more likely to have in-house insurance attorneys

"The reason they buy insurance is because the insurance company promises that if you are sued for a particular claim, we will be there shoulder to shoulder with you to be your financial partner," Osborne said. "Our job is to make sure that they're there next to the company giving them the protection that they've already bought and paid for with their premiums."

The pair speaks of insurance like it's fun. One wonders how a guy who spent two years traveling around Mexico and France could think so. Osborne, a Midwesterner who speaks French and Spanish as a result of his travels, came to San Diego because of its proximity to Mexico. After graduating from the University of Chicago Law School in 1989, Osborne came to San Diego for a job interview. It was love at first sight as his airplane descended on the city.

Nesbitt came to San Diego in 1988 with the intention of staying a year then moving on to Atlanta, where he had worked as a summer associate while completing law school in England. He worked as an insurance coverage lawyer for the industry at Adams Duque & Hazeltine and then **Luce Forward Hamilton & Scripps** and eventually met Osborne.

Nesbitt proposed a merger over a beer at Shakespeare Pub in 1995. And so, Osborne & Nesbitt was born