



# FOR THE LOVE OF THE GAME

An Insurance Coverage Attorney Talks About Her Passion for This Niche Area of the Law

By *Taylor Rawal*

**M**ost people hear the word “insurance,” and their eyes glaze over. Yet, the insurance policy and its terms drive much of the litigation and claims process. Insurance coverage law is a niche area; not every person can spend hours struggling over what is meant by the placement of a comma, or by the word “or” in a phrase. But insurance coverage law is much more than that and offers its own unique rewards and challenges.

I had the privilege of interviewing

attorney Beth A. Jenson Prouty, partner at the Minneapolis, Minnesota law firm of Arthur Chapman, to dive further on what makes a coverage lawyer. Her practice primarily involves all things coverage, but she is also experienced in handling auto, trucking, employment, and appellate matters. Prouty is licensed in Minnesota state and federal courts, and is also admitted in North Dakota and Wisconsin federal courts and the Eighth Circuit.

**RAWAL: HOW DID YOU BECOME AN INSURANCE COVERAGE LAWYER?**

**PROUTY:** After law school, I clerked

for the Minnesota Supreme Court for a year and then went to Arthur Chapman. During my first few years at the firm, I focused on writing complex motions and appeals across a variety of practice areas. One day, the firm was hiring for its Insurance Coverage Group. It initially didn’t occur to me to apply until a partner sold me on the group, telling me it would fit my skill set of research, writing, and appeals. He was right. I hit the ground running with two appeals to the Minnesota Court of Appeals and one to the Eighth Circuit in my first year of coverage work.



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**RAWAL: EARLY ON, WHAT WAS ONE OF YOUR MOST MEMORABLE CASES?**

**PROUTY:** One of my first coverage cases was an appeal in *Earthsoils, Inc. v. Farm Bureau*, 812 N.W.2d 873 (Minn. App. 2012). In the case, Earthsoils (the insured) had been sued, with the liability claims alleging that the fertilizer that Earthsoils sold did not produce the quantity of corn that Earthsoils had represented that it would. There was no claim that the fertilizer harmed the crop so that it produced less than it would have if no fertilizer had been applied. Rather, the claim was that the fertilizer failed to enhance the production of the corn crop to its anticipated yield.

Farm Bureau denied coverage, concluding that the claim did not allege “property damage,” which the policy defined as “physical injury to tangible property.” The district court held that the claim did allege “property damage,” relying on cases where the definition of “property damage” had not required “physical injury to tangible property.” The Court of Appeals reversed [and] defined “physical injury to tangible property” as requiring “damage to the physical condition of a palpable item of property,” and held that loss of an anticipated crop yield alleged only an economic loss that did not fall within the definition of “property damage.”

**RAWAL: WHAT HAS BEEN ONE OF YOUR FAVORITE CASES TO DIVE INTO?**

**PROUTY:** *Rodenburg LLP v. Cincinnati Insurance Company*, 9 F.4th 103 (8th Cir. 2021) involves application of the catch-all provisions to the violation of statutes exclusion in a commercial general liability policy. The application of the exclusion is a developing area of coverage law throughout the country. My case involved claims alleging the insured wrongfully garnished wages in violation of the Fair Debt Collection Practices Act (FDCPA).

A notable holding from the District of North Dakota is that money in a bank account is intangible property so that a claim for garnishment of wages

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from a bank account does not allege “property damage.” Still, there were claims in the case that could allege “personal and advertising injury,” and so coverage depended upon whether the catch-all provision in the violation of statutes exclusion applied to exclude coverage. The specific provision excluded coverage for “[a]ny liability arising directly or indirectly out of any action or omission that violates or is alleged to violate...[a]ny statute, ordinance or[,] regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating[,] or distribution of material or information.”

The Eighth Circuit agreed that the FDCPA is a statute that prohibits or limits the sending, transmitting, communicating, or distribution of material or information. Therefore, it applied the exclusion to preclude coverage for the claims alleging a violation of the FDCPA. The court also agreed that the plain meaning of the exclusion applies broadly to “[a]ny liability arising directly or indirectly out of any action or omission that violates or is alleged to violate” the FDCPA. Therefore, the court applied the exclusion to also preclude coverage for common law claims that all arose out of the same conduct that was alleged to also violate the FDCPA.

**RAWAL: WHAT DO YOU LIKE MOST ABOUT INSURANCE COVERAGE LAW?**

**PROUTY:** A coverage case is like solving a puzzle. Generally, you apply the facts alleged in the liability complaint to the terms in the insurance policy, research for case law guidance, and then fit it all

together to decide if a claim could be covered by the policy or not. If there is any question about coverage, you reserve rights and consider whether to start a dec action. If coverage is clearly precluded, you deny coverage and consider whether to start a dec action (the specific process may vary from state to state.) It is all very logical and fact driven. And most often, coverage cases are decided on summary judgment as a matter of law.

**RAWAL: WHAT ADVICE WOULD YOU HAVE FOR A YOUNG COVERAGE LAWYER?**

**PROUTY:** Coverage is a specialized area with a steep learning curve. Insurance company clients often hire specific coverage attorneys based on their past coverage experience. This can make it difficult for a young coverage attorney to get real-world experience and to get their own coverage cases. However, if you enjoy coverage work, and have enough confidence in yourself and your work, keep going and don’t give up! I spent several years having my coverage opinions and reservation of rights letters redlined extensively. It wasn’t always fun, but looking back, I learned a lot and am a better lawyer because of it.

Coverage is also unique in that it doesn’t present as many opportunities to get inside of a courtroom, go to inspections, take depositions, or attend mediations. As such, make sure to pursue opportunities to appear in court on your coverage cases. This is a role in which you are always learning; don’t forget to cultivate other areas of practice that allow you to gain experience developing some of these other legal skills. ■