CARLTON FIELDS

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Overview

For more than 30 years, Tom Morante's clients have relied on him to help them navigate an increasingly complex global regulatory, sustainability-focused, and technology-driven environment. He advises clients on U.S. and foreign insurance regulatory, compliance, and transactional matters, as well as cross-border business operations, with a focus on Latin America.

Tom counsels insurance and reinsurance companies; captive insurers; insurance agents; distributors and wholesalers; insurtechs; fronting insurers; financial institutions; and investment funds, with a focus on matters involving life and annuities, health, business interruption, extended warranty, reps and warranties, title, data privacy, cyber, parametric, credit, and political risk insurance.

Clients engaging in business in the United States and abroad also seek Tom's counsel with respect to mergers and acquisitions, joint venture transactions, capital formation, import/export, and licensing and distribution agreements. Collaborating with foreign law firms around the world, Tom has also handled regulatory compliance and enforcement matters abroad. He is fluent in Spanish and completed undergraduate study in Colombia and Spain, and legal studies in Mexico.

Insurance clients regularly ask Tom to assist in the development of offshore life insurance, annuities, and investment products in Bermuda, the Cayman Islands, and other offshore jurisdictions. He also counsels them on the foreign laws implicated in the distribution and cross-border sale of insurance products, with an emphasis on Latin America and Asia. He advises U.S. insurers with respect to establishing operations in various foreign countries and foreign insurers on engaging in insurance business in the United States.

Tom's representative insurance matters include domestic and foreign insurance company formation and authorization, mergers and acquisitions and sale of policy portfolios, captive insurance company formation, and policy contract drafting and coverage analysis. In addition, he handles insurance agent, agency, managing general agent, and third-party administrator licensing under state insurance laws; advising on sales practices such as digital marketing and insurtech transactions, fronting and reinsurance transactions, structuring domestic and offshore private placement life insurance (PPLI) and private placement variable annuities (PPVA) as well as insurance dedicated funds; and cybersecurity and data privacy compliance.

Tom also advises insurance clients on Office of Foreign Assets Control (OFAC) regulations and related sanctions programs, the USA Patriot Act and foreign country anti-money laundering laws, and the Foreign Corrupt Practices Act (FCPA) and foreign anti-corruption legislation. Further, Tom counsels clients on the financial services chapter of the U.S.–Mexico–Canada Agreement (USMCA), which replaced the North American Free Trade Agreement (NAFTA), and on U.S. free trade agreements with numerous Latin American countries. In addition, he monitors China's Belt and Road Initiative (BRI) in the context of trade, lending, and investment in Latin America, with an emphasis on financial services.

Tom leads Carlton Fields' International Insurance Regulatory team and co-chairs its Mexico Desk. In addition, Tom is the co-chair of the firm's Global Anti-Corruption practice, which provides comprehensive global guidance to companies and individuals involved in international business transactions or subject to governmental investigations. He is the former chair of both the ABA Business Law Section's International Coordinating Committee and International Business Law Committee, and currently co-chairs the ABA Business Law Section/International Law Section's International Task Force. Tom also serves on the board of advisors of Inter-American Dialogue's *Financial Services Advisor* publication.

Experience

State Insurance Regulatory

Tom has counseled clients on compliance with the insurance laws of numerous states. His clients include *Fortune* 500 and regional companies.

State-specific advice includes:

- Represented a U.S. insurance company in connection with the sale of its subsidiary insurance company in Mexico.
- Advised on the nature and availability of rep and warranty insurance coverage in light of the client's sale of business.
- Advised on the acquisition of a national insurance agency that also acts as a captive insurance company manager.
- Advised on collateral protection insurance under the insurance laws of specific states, including forced placed insurance issues in the context of residential mortgages.
- Advised on insurance issues involved in a change-of-control when the new structure includes two new subsidiaries and other mergers; also, what and how insurance subsidiary domicile laws apply.

- Advised an insured relative to the sale to a premium finance lender of life insurance policies under applicable state insurance laws.
- Analyzed insurance requirements to be accommodated in a loan agreement regarding an additional insured, loss payee and related incident to insuring the collateral pledged as security for the loan.
- Advised an efficacy insurer on language for inclusion in a policy to provide coverage for a contractor's failure to renovate a building to ensure more energy efficiency.
- Advised on a state-specific law with respect to the sale of crop insurance by a farm credit entity.
- Advised a creditor of an insurer subject to the state-initiated administrative supervision of the insurer.
- Analyzed issues for a foreign insurer client related to tax and corporate structuring for establishing a Florida insurance company under an amended Florida law affording exemption from certificate of authority requirements for a foreign insurer.
- Assisted insurance companies in connection with M&A transactions, sale of policy portfolios, securing authorization pursuant to state certificate of authority requirements and product development approval.

International and Cross Border

Tom counsels insurance companies and other financial services businesses with respect to establishing operations and addressing compliance challenges in foreign countries. He also has advised on foreign country laws implicated in the distribution and cross-border sale of offshore insurance products.

Representative Latin American transactions include:

- Researched laws implicated in offer and sale, on both an admitted and nonadmitted basis, of international health insurance policies issued by both a Latin America-based insurance company and an offshore insurance company in connection with insurance compliance considerations.
- Analyzed the laws of numerous Latin American and Asian countries in connection with issues related to transacting insurance business, solicitation and tax implications of the purchase of offshore variable and universal life insurance policies and annuities products with respect to persons resident in those countries, and developed distribution guidelines in connection therewith.
- Reviewed the U.S. Free Trade Agreements relative to the sale of offshore life and annuities products in light of cross-border provisions.
- Advised a foreign health insurance company on the laws of Latin American countries with respect to reinsurance and fronting arrangements in the context of global health insurance products to be marketed through a local authorized insurer.

- Handled enforcement actions against U.S. insurers in Argentina and Brazil in connection with transacting insurance business, solicitation, and tax implications of the purchase of offshore life policies insuring persons resident in those countries.
- Analyzed the laws of Brazil in connection with a possible regulatory enforcement action brought by a regulator regarding the sale of offshore variable life insurance policies by a foreign insurer in connection with what constitutes transacting life insurance business.
- Counseled a U.S. holding company with respect to structuring a Bermuda reinsurance company as a segregated cell company with each cell insuring separate workers compensation and related risks.
- Analyzed reinsurance laws of select foreign countries in connection with a U.S. insurer seeking to reinsure risks of local life insurance companies.
- On behalf of foreign corporations, analyzed the possible creation of a captive insurance programs in offshore jurisdictions to insure certain risks of subsidiaries.
- Advised a U.S. hedge fund and asset managers in connection with the creation of insurance-dedicated funds to be incorporated on a platform of offshore insurers in connection with the sale of variable life and annuities products.
- Advised fund managers on U.S. securities and insurance regulations governing the offer and sale of insurance-dedicated funds.

Federal Laws Affecting Insurance Clients

Federal law applies to clients' insurance issues in many ways and the regulatory environment in the United States, including compliance considerations with respect to money laundering and asset controls, poses numerous operational changes.

Representative transactions include:

- Developed compliance procedures for an insurance client in the context of the application of Export Administration Regulations and OFAC Asset Control Regulations to insurance companies, particularly in connection with reinsurance and issues related to Iran and Cuba.
- Reviewed a reinsurance agreement and use of a trust to ensure that the reinsurer deposited sufficient funds in a trust account to be maintained with a financial institution to permit the ceding insurer (as beneficiary) to access funds on deposit in order to pay claims.
- Advised an insurance-dedicated fund manager in connection with the investor control doctrine arising under federal tax laws in connection with variable insurance products.
- Analyzed the availability of insurance provided by the Overseas Private Investment Corporation (OPIC) in connection with construction and infrastructure products in various developing countries.

- Advised a U.S. insurer in connection with the updated guidelines of the International Association of Insurance Supervisors (IAIS) regarding anti-corruption and anti-money laundering activities and with respect to the activities of the U.S. Treasury's Federal Insurance Office as mandated by the Dodd-Frank Act in that context.
- Advised a global reinsurance intermediary in connection with the Iran Sanctions legislation.

Captive Insurance

Representative transactions include:

- Assisted a major U.S. national event organizer with respect to the possible creation of a captive insurer (either domestic or offshore) to accommodate their current self-insurance program, create tax savings, reduce commercial insurance costs, and review commercial policies in the context of captive feasibility.
- Assisted in developing and drafting a captive insurance law for a U.S. state.
- Advised a nutritional supplements manufacturing and distribution company on the benefits of creating a captive insurance company, including cost savings, efficiency of claims settlements, and tax advantages in the context of private wealth planning for the family-owned company.
- Assisted a real estate developer with respect to analyzing the possible creation of a captive insurance company to self-insure construction risks along with other related risks including workers' compensation.
- Assisted a timeshare developer in analyzing the insurance, tax, and securities law implications of creating a captive insurance company to be used in connection with providing credit insurance to timeshare owners in connection with a loan program and loan defaults.
- Advised a health care company with respect to the formation of a captive insurance company in the context of risk retention issues to accommodate insurance laws.
- Advised a major investment adviser in connection with its proposal to manage — on behalf of a client — the technical reserves of a captive insurer owned by the client, relative to the legal implications under insurance and securities laws of the proposed arrangement and the potential liability associated with the failure of the captive to comply with the laws.
- Advised a public company insurer with respect to its acquisition of a national insurance agency/consultancy in connection with the insurer's captive insurance formation and management business.
- Advised a foreign manufacturing company in connection with the formation of a captive insurance subsidiary in select offshore jurisdictions.
- Advised a major global transportation company relative to the sale of its captive insurer and related subsidiaries in the context of change-of-control implications under state insurance laws advised a real estate brokerage firm in connection with the formation of a captive insurer (micro) to accommodate select insurance risks and discussion feasibility studies, costs, IRS compliance considerations, and related matters.

Areas of Focus

Practices

- Financial Services Regulatory
- International Insurance Regulatory
- International: Mexico
- Global Anti-Corruption
- Life, Annuity, and Retirement Solutions
- International
- Business Transactions
- International Tax
- Blockchain and Digital Currency
- Mergers and Acquisitions
- Representations and Warranty Insurance
- Reinsurance
- Life, Annuity, and Retirement Litigation
- International: Latin America
- International: Europe
- International: Cuba
- International: Brazil
- International: Asia
- Hospitality
- Cyber Insurance Coverage Disputes
- Captive Insurance
- Insurtech
- International Privacy Compliance

Industries

- Life, Annuity, and Retirement Solutions
- Securities & Investment Companies
- Property & Casualty Insurance
- Life, Annuity, and Retirement Solutions

Insights

02.08.2024
Impact Investing: Keys to a Responsible Exit
Business Law Today

09.08.2022
US-Mexico Presidents Shake Hands on Cross-Border Trade Talks

05.11.2022
Foreign Ownership of Florida Insurers: Concern With Country Concentration

12.20.2021
Chinese Insurers Look Beyond Infrastructure Risk in Latin America
Business Law Today

05.05.2021
Mexico Imposes Digital Services Tax on Online Activities

04.09.2021
Non-Fungible Tokens (NFTs) as Art Loan Collateral
Business Law Today

03.04.2021
Virginia Is for…Privacy? The Virginia Consumer Data Protection Act: What You Need to Know

03.04.2021
COVID-19 Economic Stimulus Programs: Different Countries, Similar Programs
Business Law Today

01.07.2021
Recent Tax Shelter Disclosure Requirements in Mexico and Argentina
Business Law Today

12.15.2020
A New Era for Insurtech in Latin America

11.17.2020
Challenges and Opportunities for Captive Insurance in Mexico
Captive International

09.24.2020
Insurtech Regulatory Developments in Latin America
Business Law Today

04.28.2020
Will a Public-Private Hospital Deal Help Ailing Mexicans?
Latin America Advisor

04.02.2020
Insurance Implications of COVID-19 in Mexico
Business Law Today

06.11.2019
Q&A: Mexico's Insurance Sector
Financial Services Advisor

01.20.2019
Will North American Insurance Thrive Under the USMCA?
Financial Services Advisor

12.12.2018
What Can Brazilian Banks Expect Under Bolsonaro?
Financial Services Advisor

05.11.2018
Can Argentina's Macri Prevent an Economic Crisis?
Latin America Advisor

04.15.2018
Captive Insurance Deskbook for the Business Lawyer
American Bar Association

11.02.2017
Takeaways From The Tax Court's First Micro-Captive Insurance Ruling
Taxnet Pro

06.27.2017
Will Argentina's Banking Sector See Higher Profits?
Latin America Advisor

01.23.2015
What Will Be the Impact of Relaxed U.S.-Cuba Restrictions?
Financial Services Advisor

06.18.2014
The Troubled Asset Relief Program
Corporate Compliance Answer Book

04.02.2014
How Much Does Cybercrime Threaten Latin American Companies?
Financial Services Advisor

03.18.2014
Economic Sanctions in Iran: Coping With the Changing Landscape
Ethisphere Magazine

01.08.2014
Would a Banking Reform Measure Boost Mexico's Economy?
Financial Services Advisor

News

11.02.2023
Tom Morante Quoted in Captive Insurance Times: "Great Expectations"

10.10.2023
Carlton Fields Featured in Law360 and Latinvex: "Carlton Fields Launches Global Anti-Corruption Practice"

10.10.2023
Carlton Fields Launches Global Anti-Corruption Practice

09.27.2021
A View of an International Lawyer: Tom Morante and the Legal Profession in a Global World

04.09.2021
Carlton Fields' Tom Morante Authors Business Law Today Article on NFTs in the Art World

02.26.2021
COVID-19 Economic Stimulus Programs: Different Countries, Similar Approaches

09.11.2020
Carlton Fields' Thomas F. Morante and Yani R. Contreras Featured in Captive Insurance Times

09.10.2020
Carlton Fields Bolsters Insurance and International Practices; Adds Diverse Legal Team of Tom Morante and Yani Contreras

Recognition

- AV Rated by Martindale-Hubbell
- *The Best Lawyers in America*, Insurance Law, International Trade and Finance Law, Tax Law (2005–2024)
- Top Lawyers, Palm Beach Media Group (2023)
- Business Law Section Chair's Award, American Bar Association (2016)
- *Chambers USA* (2011–2012)
- Florida Super Lawyers, *Super Lawyers Magazine* (2006–2022)
- Founders Award, Washington College of Law (2019)
- Distinguished Alumni, Washington College of Law Business Law Society (2013)

Professional & Community Involvement

- American Bar Association
  - Business Law Section
    - Programs Board Member - International Representative
    - Co-Chair, ABA Relations Board
    - Chair, Publications Subcommittee, Director to the International Business Law Committee, and Former Chair, International Coordinating Committee
    - Editorial Board, *The Business Lawyer*
    - Contributing Editor, *Business Law Today: Insurance Law*
    - Content Board Adviser, International
    - Rule of Law Working Group
    - Former Chair and Current Adviser, Business Law Now Board: "In The Know" and "Business Law Basics" Webinars
    - Substantive Committees: Cyberspace Law; Captive Insurance; Corporate Governance; Federal Regulation of Securities; International Business Law; Legal Analytics
  - Former Member, United Nations Representatives (UNR) Committee (part of the Center for Global Programs)
  - Senior Lawyers Division
    - Co-Vice Chair, International Committee
- District of Columbia Bar
  - International Law Community
- The Florida Bar
  - International Law Section
  - Business Law Section
- Virginia State Bar
  - International Practice Section
- Inter-American Dialogue
  - Board of Advisors, *Latin American Financial Services Advisor*
- American University Washington College of Law
  - Dean's Advisory Council
- Hispanic Bar Association of the District of Columbia

Speaking Engagements

- "International Suite Talks," American University Washington College of Law (November 11, 2020)

- "The Pandemic of 2020 - Current and Future Legal Implications and the Impact on Life, Work, and Family," Inaugural WCL-NOW Event Series Launch, American University Washington College of Law (October 22, 2020)
- "The New NAFTA: What Does It Mean and What Are the Implications for Cross-Border Transactions?," ABA Business Law Section Spring Meeting, Vancouver, BC (March 28–30, 2019)
- "Captive Insurance for the Middle Market," Oxford Risk Management Group (September 25, 2018)
- "Managing Key Risks in International Business," American Bar Association (November 28, 2017)
- "The New Paradigms: An Introduction to Legal Informatics for the Business Lawyer," ABA Business Law Section Annual Meeting (September 9, 2016)
- "Global Expansion of Insurance Products," 14th Annual Private Placement Life Insurance and Variable Annuities Forum (May 17–18, 2016)
- "The Long Arm of the Law: The Extra-Terrestrial Reach of U.S. Anti-Corruption Legislation," Thomson Reuters (April 21, 2016)
- "Planning with Micro-Captives After the 2015 PATH Act," Crump Life Insurance (March 21, 2016)
- "Iran Sanctions Update," Thomson Reuters (March 2, 2016)
- "Doing Business in Sanctions 'No Man's' Land," Thomson Reuters (October 8, 2015)
- "Russian Sanctions Trade War: Global Sanctions Against Russia Lead to Russian Retaliatory Sanctions," Thomson Reuters (October 15, 2014)
- "Structuring Hard-Asset IDFs – MLPs, Real Estate, and Private Equity Funds; Implementing Private Placement Solutions Outside the U.S.," 12th Annual Private Placement Life Insurance and Variable Annuities Forum (June 3–4, 2014)
- "Latest International Insurance Regulatory Developments," Private Placement Life Insurance and Annuities (May 20, 2014)
- "Avoiding Corporate Data Disasters: Establishing Compliance Procedures to Mitigate Risk and Protect Against Improper Use," Ethisphere Institute (March 13, 2014)

Credentials

Education

- Georgetown University Law Center (LL.M.)
- American University Washington College of Law (J.D., 1977)
- Union College (B.A., magna cum laude)
  - Phi Beta Kappa

Bar Admissions

- District of Columbia
- Florida
- Virginia

Languages

- Spanish

Background

- Partner, Kaufman Dolowich & Voluck LLP, Ft. Lauderdale, FL
  - Chair, Insurance Regulatory & Transactional Practice Group
- Partner, Holland & Knight LLP, Washington, D.C.
  - Co-Chair, Insurance Industry Team
- Partner, Jorden Burt LLP, Washington, D.C.