



Robert W. DiUbaldo

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Overview

Rob DiUbaldo is a litigator, advisor, and counselor to companies engaged in the insurance, reinsurance, consumer finance and mortgage, and financial services sectors.

He is co-leader of the firm's Property & Casualty Insurance Practice, leads the group's primary and excess casualty insurance practice, and is co-leader of the firm's reinsurance division. He regularly counsels and represents domestic and international insurers and reinsurers on matters involving complex claims, coverage, regulatory, and commercial issues, and has litigated and arbitrated a wide variety of disputes in the P&C, life, and health space. He also has been involved in disputes involving third-party administrators, brokers, managing general agents and underwriters, asset managers, and insolvency proceedings, and advises (re)insurers on contract wording, transactional matters, and treaty/policy drafting, both first-party and third-party coverages.

Rob is also an active member of the firm's Consumer Finance and Title Insurance industry groups, representing lenders, mortgage servicers, financial institutions, title insurers, and other entities in dispute resolution and counseling involving a wide array of issues.

Experience

Reinsurance Experience

Represents cedents, reinsurers, run-off vehicles, asset managers, and other entities in the (re)insurance sector in dispute resolution, coverage matters, regulatory and transactional issues, and other matters that require counsel and advice. He has litigated and arbitrated disputes involving a broad range of issues in the P&C and life and health sectors, as well as many specialty lines, such as financial and surety products.

He has substantial experience in matters concerning allocation, aggregation, notice or sunset provisions, follow-the-fortunes and follow-the-settlements, follow-the-

form, underwriting and pricing, claims handling, utmost good faith, rescission, insolvency, subrogation, inuring coverage, regulatory issues, and a variety of different types of contract wording disputes arising under facultative certificates and reinsurance treaties.

Specific to the life reinsurance industry, Rob represents cedents and reinsurers in matters involving issues such as premium rate increases under YRT and other types of reinsurance treaties, recapture, actuarial and pricing issues, agent and broker misconduct, and administrative errors, as well as other situations involving reinsured products and customary or bespoke provisions in life reinsurance agreements.

He also counsels clients on the drafting of reinsurance contracts and commutation agreements, issues pertaining to (re)insurer insolvencies, and has assisted on transactions in the (re)insurance sector.

Property & Casualty, Life & Health and Specialty Lines Insurance Dispute and Coverage Experience

Acts as coverage counsel for, and litigates and arbitrates on behalf of, insurers in matters involving many different lines of business, including commercial general liability, D&O, E&O, representations and warranties insurance, professional liability, EPL, cyber, property, business interruption, life and health, lender-placed insurance products, workers' compensation, pollution, marine, and energy. He has substantial experience, at both the primary and excess layer, with a host of traditional insurance coverage issues, including trigger, exhaustion, allocation, number of occurrences and aggregation, other insurance provisions, scope of coverage, additional insured rights, recoupment, consent to settle or voluntary payment provisions, follow form clauses, and claims-made and notice requirements, as well as with both standard and unique exclusions or endorsements used in the industry.

In the CGL context, he has represented and counseled insurers on many different types of claims, including clergy sexual abuse, construction defect, lead paint exposure, diacetyl exposure, other types of alleged bodily injury, asbestos toxic tort, third-party property damage, antitrust and statutory violations, environmental damage, product contamination, food borne illness, and pollution. His experience includes representing insurers in matters involving excess policy limit verdicts and settlements or in which bad faith is alleged.

He also assists insurers in the drafting of insurance policy wordings, both in the first- and third-party contexts, and has advised clients in this capacity on wording-related issues arising under property, CGL, E&O, financial lines, and other specialty coverages.

Mortgage-Related, Consumer Finance, Title Insurance and General Commercial Litigation and Dispute Resolution

Represented financial institutions, lenders, mortgage servicers, title insurers, and other entities in complex litigation, arbitration, and regulatory matters involving,

among other things:

- Quiet title claims, disputes involving lien priority or defects, alleged violations of and compliance with TILA, RESPA, HOEPA, and other consumer protection statutes, real property disputes, erroneous satisfaction and lien release matters, loan modification disputes, and disputes involving fraud, contract-based, or negligence claims.
- Provided coverage advice to title insurers and litigated title insurance coverage disputes on matters involving consent to settle provisions, late notice and reporting provisions, bad faith and anti-assignment provisions in the context of access-easement issues, the scope of a carrier's duty to defend for covered and uncovered causes of action, and the applicability of certain exclusions, such as the "assumed or agreed to" exclusion.
- Reinsurance-related issues pertaining to the duty of utmost good faith, follow-the-fortunes, the duty to disclose, the alleged breach of certain underwriting guidelines, and agent misconduct.

Certain reported decisions are listed below.

Representative Decisions and Engagements

Reinsurance

Rob represents, or has represented, some of the world's leading insurance and reinsurance companies in matters involving hundreds of millions of dollars in claims arising from the P&C, life, and health sectors. Many of these cases arose in the context of confidential arbitration proceedings and thus are not reported. Recent matters include:

- Represented (re)insurers in various arbitrations and pre-dispute matters involving a reinsurers' or retrocessionaires' ability to increase premium rates under YRT reinsurance treaties.
- Represented asset manager and reinsurers in the negotiation and implementation of various types of reinsurance structures (traditional and collateralized) covering a multitude of underlying P&C risks.
- Represented a life reinsurer in an arbitration involving the scope of a treaty's contested claims provision, related clauses, and the duty of utmost good faith.
- Represented a cedent in a life reinsurance dispute involving underlying regulatory settlements and related issues.
- Represented a large global reinsurer in recovering a nine-figure damages award in a dispute concerning a host of property reinsurance coverages and the effect of subrogation, salvage, and inuring recovery provisions.
- Represented cedents in life reinsurance disputes involving coverage issues pertaining to underlying claims involving alleged broker and agent misconduct.
- Represented numerous cedents and reinsurers in arbitrations involving a host of traditional reinsurance issues, including follow-the-fortunes and follow-the-settlements, allocation, aggregation and number of occurrences, notice and sunset provisions, and utmost good faith.
- *Star Ins. Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, No. 2:13-cv-13807 (E.D. Mich. 2013) (obtaining a modification of a preliminary injunction issued against an arbitrator involved in a reinsurance dispute and limiting the scope of the injunction with respect to the arbitrator).

- *Travelers Cas. & Sur. Co. v. Ins. Co. of N. Am.*, Nos. 06-4100, 06-4101 (two separate bench trials in the U.S. District Court for the Eastern District of Pennsylvania), *aff'd*, 609 F.3d 143 (3d Cir. 2010) (concerning the reasonableness of a reinsurance allocation of certain products/non-products claims under follow form facultative certificates).
- *ProNational Ins. Co. v. AXA Liabs. Managers, Inc.*, No. 2:08-cv-02022, 2010 WL 11582987 (N.D. Ala. Jan. 11, 2010) (motion to compel arbitration of claims brought by a cedent against a claims administrator under the Federal Arbitration Act and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards).
- *Seaton Ins. Co. v. Cavell USA*, No. 1:07-cv-07032 (S.D.N.Y. 2008) (granting motion to dismiss complaint in multimillion-dollar fraud action).
- *Suter v. Gen. Accident Ins. Co. of Am.*, No. 2:01-cv-02686, 2006 WL 2000881 (D.N.J. July 17, 2006) (verdict in a bench trial for the reinsurer based on bad faith claims handling and the cession of claims that were outside the scope of the reinsured policy).
- *In re Liquidation of Integrity Ins. Co.*, No. A-6972-03T5, 2006 WL 2795343 (N.J. Super. Ct. App. Div. Oct. 2, 2006), *aff'd*, 935 A.2d 1184 (N.J. Dec. 13, 2007) (representing the Reinsurance Association of America (RAA) in New Jersey state court against an insolvent insurance company's final distribution plan).
- *Travelers Cas. & Sur. Co. v. Ace Am. Reinsurance Co.*, 392 F. Supp. 2d 659 (S.D.N.Y. 2005), *aff'd*, 201 F. App'x 40 (2d Cir. 2006) (representing a ceding company that prevailed in recovering multimillion-dollar claims submitted to its reinsurer).

Insurance Coverage and Insurance-Related Litigation

- *Nat'l Union Fire Ins. Co. of Pittsburgh v. Roman Catholic Diocese of Brooklyn*, No. 653575/2014 (N.Y. Sup. Ct. 2017) (insurance coverage dispute involving underlying claims of sexual/physical abuse, granting motion for partial summary regarding pro rata allocation of defense and indemnity costs, number of occurrences, and exhaustion of multiple self-insured retentions), *appeal dismissed* (N.Y. App. Div. 2019).
- *AIG Claims, Inc. v. Pier View Condo. Ass'n, Inc.*, No. 157730/2018 (N.Y. Sup. Ct. Apr. 15, 2019) (granting petition to quash non-party subpoena issued by plaintiff in underlying construction defect action seeking the production of documents pertaining to other insurance coverage, policies, and claims-related information).
- *Unimax Corp. v. Continental Ins. Co.*, No. 2016-cv-279282 (Ga. Super. Ct. 2017) (granting motion to dismiss environmental insurance coverage action), *aff'd*, (Ga. Ct. App. 2018), *cert denied*, (Ga. 2018).
- *Francese v. Am. Modern Ins. Grp., Inc.*, No. 2:17-cv-02246, 2019 WL 1615086 (D. N.J. Apr. 16, 2019) (obtaining dismissal of class action brought against lender-placed insurers and mortgage loan servicers alleging "illegal kickbacks" of premium charges and misappropriation of insurance proceeds based on the "filed-rate" doctrine and mortgagor's lack of standing to pursue policy benefits).
- *Cty. of Suffolk v. Lexington Ins. Co.*, No. 604661/2017 (N.Y. Sup. Ct. 2018) (obtaining summary judgment for second layer excess insurer in dispute involving E&O coverage provided by an excess liability policy, on grounds that the underlying claim did not involve a "wrongful act" implicating the policy's insuring agreement, lacked the requisite fortuity required by New York law, and was barred by the policy's breach of contract exclusion).

- *Patrico v. Voya Fin., Inc.*, No. 1:16-cv-07070 (S.D.N.Y. 2017) (granting pre-answer motion to dismiss putative class action complaint alleging violation of ERISA based on fees charged for investment advisory services offered to 401(k) plan participants).
- *Scott v. Am. Sec. Ins. Co.*, No. 16-01195 (Bankr. S.D.N.Y. 2017), *aff'd*, No. 1:17-cv-05881, 2018 WL 3104088 (S.D.N.Y. June 21, 2018) (granting motion for judgment on the pleadings with respect to purported insured plaintiff/debtor's adversary complaint, and motion to dismiss cross-claims, without leave to amend, in action alleging various statutory and common law claims related to a property insurance policy).
- *Harbour House (Bal Harbour) Condo. Ass'n, Inc. v. Am. Int'l Specialty Lines Ins. Co.*, No. 15-28921 (Fla. Cir. Ct. 2016) (obtaining pre-answer dismissal of declaratory judgment action brought by a developer seeking additional insured coverage for an underlying construction defect suit under various primary CGL policies issued to a subcontractor involved in a condominium project).
- *Roman Catholic Diocese of Brooklyn v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 87 A.D.3d 1057 (N.Y. App. Div. 2011), *aff'd*, 991 N.E.2d 666 (N.Y. 2013) (summary judgment for insurers in a dispute concerning the number of occurrences for underlying claims of sexual abuse, exhaustion of multiple SIRs, pro rata allocation, and waiver under New York law).
- *Morgan Fuel & Heating Co. v. Lexington Ins. Co.*, No. 272/11 (N.Y. Sup. Ct. Dec. 21, 2011), *aff'd*, 106 A.D.3d 706 (N.Y. App. Div. 2013) (summary judgment for insurers in a dispute concerning the scope of coverage afforded by the insuring agreement of certain CGL policies and application of the policies' workers' compensation exclusion).
- *Murphy v. Allied World Assurance Co. (U.S.)*, No. 1:08-cv-04196, 2009 WL 513747 (S.D.N.Y. Apr. 30, 2009), *aff'd*, 370 F. App'x 193 (2d Cir. 2010) (summary judgment for a D&O excess insurer concerning coverage for the directors and officers of Refco Inc.).
- *Pryor v. AGLIC*, No. 1740/05 (N.J. Super. Ct. June 22, 2007) (motion to dismiss a claim against a professional liability insurer based on late notice and failure to comply with the provisions of a claim made and reported policy).

Consumer Finance & Title Insurance Defense

- *Saxon Mortg. Servs., Inc. v. Wright*, No. 707856/2017 (N.Y. Sup. Ct. July 22, 2019) (granting lender's motion for summary judgment to secure the cancellation and discharge of record of an erroneous satisfaction of mortgage, declaring the subject mortgages valid and subsisting liens on the subject premises, and striking answer interposed by borrower).
- *Saxon Mortg. Servs., Inc. v. Trovato*, No. 610603/2017 (N.Y. Sup. Ct. July 30, 2018) (obtaining declaratory relief discharging erroneous satisfaction of mortgage and declaring the operative CEMA and mortgages valid and subsisting liens and encumbrances on the subject property).
- *Wilmington Tr. Co. v. Manning*, No. 023957/15 (N.J. Sup. Ct. July 6, 2018) (granting motion for equitable assignment of mortgage).
- *Sirio v. Morgan Stanley*, No. 151132/2014 (N.Y. Sup. Ct. Oct. 29, 2015) (granting pre-answer motion to dismiss complaint against lender and mortgage servicer alleging breach of contract, negligent misrepresentation, promissory estoppel and violations of New York's General Business Law arising from a forbearance agreement and loan modification).
- *Lindow v. Royal Realty Assocs., LLC*, No. 8588/2014 (N.Y. Sup. Ct. 2018) (in

quiet title dispute, obtaining dismissal of fraud and unjust enrichment claims brought against insured by plaintiff seeking to unwind a foreclosure judgment and alleging the misappropriation of real property).

- *SMI Home Mortg. v. Solano*, No. 0381270/2009 (N.Y. Sup. Ct. 2017) (obtaining judgment in favor of a mortgage servicer declaring an erroneous satisfaction of mortgage null and void, directing the city register to cancel and discharge said satisfaction of mortgage, and declaring that a CEMA/mortgages are valid and subsisting liens and encumbrances on the subject property).
- *SMI Home Mortg. v. Clemons*, No. 503244/2015 (N.Y. Sup. Ct. Mar. 29, 2016) (vacating an erroneous satisfaction of mortgage and obtaining a declaration that the consolidated mortgages at issue are valid and subsisting liens on the subject property).
- *Brown v. Ocwen Loan Servicing LLC*, No. 8:14-cv-03454, 2015 WL 5008763 (D. Md. Aug. 20, 2015), *aff'd*, 639 F. App'x 200 (4th Cir. 2016) (obtained dismissal for securitized trust's sponsor and depositor in action alleging fraud, violations of TILA, HOEPA, and RESPA, and various other claims).
- *Jean-Baptiste v. Saxon Mortg. Servs., Inc.*, No. CAE13-04688 (Md. Cir. Ct. July 16, 2015) (obtaining dismissal of lawsuit against servicer/lender alleging violations of TILA, Maryland's Consumer Protection Act, and RESPA and asserting claims of rescission, conversion, wrongful foreclosure, and breach of fiduciary duty).
- *Craig v. Saxon Mortg. Servs., Inc.*, No. 2:13-cv-04526, 2015 WL 171234 (E.D.N.Y. Jan. 13, 2015) (obtaining dismissal of complaint alleging fraud, unjust enrichment, violations of the FDCPA and TILA, and other claims against lender/mortgage servicer).
- *Mayor & City Council of Baltimore v. Saxon Mortg. Inc.*, No. 23651-14 (D. Md. 2015) (obtaining dismissal of action against lender alleging certain violations related to abandoned property and seeking fines/violations).
- *SMI Home Mortg. v. Coyne*, No. 17838/2009 (N.Y. Sup. Ct. 2014); *SMI Home Mortg. v. Downs*, No. 18262/2009 (N.Y. Sup. Ct. 2014); *SMI Home Mortg. v. Goodman*, No. 23786/2009 (N.Y. Sup. Ct.); *SMI Home Mortg. v. Sakla*, No. 005220/2009 (N.Y. Sup. Ct.); *SMI Home Mortg. v. Hakanjin*, No. 10870/2009 (N.Y. Sup. Ct.) (obtaining discharge of erroneous satisfaction of mortgage and declaration that CEMAs are valid and subsisting liens on the subject premises, taking priority over other liens).
- *Deramo v. Laffey*, No. 15061/2011 (N.Y. Sup. Ct. 2014) (mortgage servicer not liable in action to determine adverse claims to property under New York's Real Property Actions and Proceedings Law).
- *Suero-Sosa v. Cardona & Saxon Mortg. Servs., Inc.*, 112 A.D.3d 706 (N.Y. App. Div. 2013) (mortgage servicer not liable in tort for a plaintiff's alleged injuries).

All Insights

10.17.2018 Florida Insurance Commissioner Issues Hurricane Michael Emergency Order

04.13.2018 New York Trial Court Finds Lexington Has No Duty to Provide Coverage for Damages Stemming from an Insured's Knowing and Intentional Conduct

08.24.2017	Hurricane Harvey: Insurance Statutes and Regulations
10.12.2016	Post-Hurricane Matthew: Insurance Statutes and Regulations
11.30.2015	The Arbitrability of Statutes of Limitations in Reinsurance Disputes
11.18.2015	NY Insurance Law 3420(d)(2) Is Strictly Enforced
10.27.2014	The Significance of 2nd Circ.'s Indian Harbor Decision
06.01.2014	US Insurance & Reinsurance Section
11.01.2013	Hydro-fracking: Potential Growth and Potential Risks
09.05.2013	What to Expect From NY's Landmark Decision in Diocese
11.13.2012	Q&A with Attorneys on Emerging Business Insurance Topics
06.01.2012	Federal Court Finds that Reinsurer is Not Directly Liable to Third Parties
12.01.2011	Recent Developments in Excess Insurance, Surplus Lines Insurance and Reinsurance Law
02.24.2009	Second Circuit Finds that Insured Cannot Assert Direct Action against Reinsurer
12.01.2008	Evolving Issues in Reinsurance Disputes: The Power of Arbitrators
11.01.2008	Arbitration Round-Up
09.01.2008	Disregarding the Law
12.01.2007	US Legal Outlook 2008 - Follow the allocation? Not so fast ...
10.01.2007	Follow the Fortunes: Implied or Not Implied, That is the Question
07.01.2007	New York Court Compels Nonparty Discovery in Arbitration
06.01.2007	Preserving Finality in Commutations
01.01.2007	Confidentiality in Reinsurance Arbitrations: What Happens When an Arbitrator Breaches the Nondisclosure Agreement?

All News

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- 02.01.2019 Media Shines Spotlight on Carlton Fields' New Office and Lawyers; Firm Opens New Jersey Office and Bolsters Real Estate and Insurance Litigation Practices
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- 01.07.2019 Carlton Fields Opens New Jersey Office, Adds Five Attorneys
-
- 11.15.2018 Roben S. West Joins Carlton Fields in Atlanta
-
- 10.18.2018 New York Metro Super Lawyers Honors Carlton Fields Attorneys on 2018 Lists
-
- 08.09.2018 Carlton Fields Adds New York Attorney, Continues 2018 Growth of Property & Casualty Insurance Practice
-
- 05.30.2018 Carlton Fields Adds Two Lawyers, Continues Growth of Property & Casualty Insurance Practice
-
- 08.03.2017 BTI Ranks Carlton Fields among Firms with Best Insurance Industry Client Relationships
-
- 03.02.2017 Insurers Win In NYC Foster Home Abuse Deductible Dispute

Recognition

- Selected for inclusion in *New York Metro* and *New Jersey Super Lawyers Rising Stars* (2011-2018)
- Named in *Reactions Magazine* "Insurance Industry Rising Star" (2013)

Professional & Community Involvement

- Board Member and Founder, U.S. Reinsurance Under 40s Group
- Board of Directors, *Fordham Urban Law Journal*

Speaking Engagements

- "Insurance and Reinsurance Coverage for Autonomous Vehicles and Ride Sharing," Reinsurance Association of America's Demystifying Reinsurance: A Basics of Property/Casualty Reinsurance Conference, New York (May 17, 2019).
- "The Year in Review: A Discussion of Significant 2018 Cases Arbitrators Need to Know," ARIAS-U.S., New York (February 2019).
- "KGM Re Case Study," Reinsurance Association of America Re Claims Conference, New York (July 2018).
- "Collateral Damage: The Environmental Impact of Fracking, Mining and

Wastewater Disposal," Reinsurance Association of America, New York (April 2018).

- "An Insurer's Duty to Settle: Factors and Considerations," DRI Insurance Coverage and Practice Symposium, New York (December 2016).
- "The Ever Changing Duty to Defend and How It's Currently Leading to Bad Faith," ACI Insurance Coverage & Extra-Contractual Disputes Conference, Philadelphia (November 30, 2016).
- "Intervention in Underlying Action for Special Jury Verdicts to Affect Allocation: Questions to Ask in the Underlying Case to Avoid Impairing Coverage Issues," ACI Insurance Allocation Conference, New York (June 2016).
- "Cyber Liability," CPCU Society's Reinsurance Symposium (March 2016).
- "Supply Chain Risks and Legal/Claims Issues," Reinsurance Association of America – Re Underwriting Conference, Bermuda (March 2015).
- "Cyber Risks: What Are the Risks?" 2015 CPCU Reinsurance Symposium – Emerging Issues, Philadelphia (March 2015).
- "Reinsurance Contract Wording Issues," IRU's Next Generation Leadership Seminar, New York (July 2014).
- "New York Insurance Law 3420(d)(2)," West LegalEdcenter Webinar (June 2014).
- "Insurer's Duty to Defend Notwithstanding Coverage Defenses: Part 2," West LegalEdcenter Webinar (May 2014).
- "Sports Concussions Litigation – Latest NCAA and High School Research, Developments and Findings," Perrin Webinar (May 2014).
- "Insurer's Duty to Defend Notwithstanding Coverage Defenses: Part 1," West LegalEdcenter Webinar (May 2014).
- "Hydrofracking Risks and Opportunities," International Association of Claim Professionals 2012 Annual Conference, Orlando, FL (September 2012).
- "Climate Change, Extreme Weather Events and Underwriting Implications," Re Claims 2012, Reinsurance Association of America, New York (October 2012).
- "Effect of an Insured's Bankruptcy and Insolvency on Coverage for Construction Defect and CGL Claims" (December 2011).

Credentials

EDUCATION

- Fordham University School of Law (J.D., 2004)
 - Managing Editor, *Fordham Urban Law Journal* (2003-2004)
 - Note – *A Second Take: Re-Examining Our Regulatory Takings Jurisprudence Post-Tahoe*, 30 *Fordham Urb. L.J.* 1949 (2003) (cited by various secondary sources and court decisions)
- Binghamton University (B.A., 2001)

COURT ADMISSIONS

- U.S. Court of Appeals, Second Circuit
- U.S. District Court, District of New Jersey
- U.S. District Court, Eastern District of New York
- U.S. District Court, Southern District of New York

- Dean's List

BAR ADMISSIONS

- New Jersey
- New York

Background

- Partner, Locke Lord LLP, New York (2006-2015)
- Associate, Budd Lerner PC, Short Hills, NJ and New York (2004-2006)

Areas of Focus

PRACTICES

- Class Actions
- Consumer Finance
- ERISA Employee Benefit Plan Litigation
- Financial Services Regulatory
- Life, Annuity, and Retirement Litigation
- Life, Annuity, and Retirement Solutions
- Litigation and Trials
- Property & Casualty Insurance
- Real Property Litigation
- Reinsurance
- Title Insurance

INDUSTRIES

- Banking, Commercial, and Consumer Finance

Covenant House

Each year, Rob participates in the (Re)insurance Industry “Sleep Out”, a unique charity event that benefits the Covenant House, an organization dedicated to youth homelessness. During the Sleep Out, Rob spends a night at Covenant House, talking with homeless kids and learning how they're building new lives. At midnight, when the kids go to sleep in their beds, Rob and other professionals in the insurance and financial services industry head outside, to spend the night sleeping in cardboard boxes.



This year, Rob personally raised over \$6,000 for the event, and the event as a whole raised over \$380,000. Over the past 4 years, Rob has raised in excess of \$25,000 through his participation in the Sleep Out event. Rob is also involved with Covenant House throughout the year, assisting with job readiness, training, and placement programs. The New York office of Carlton Fields has hosted Covenant House youth programs over the past two years, providing advice, mentoring and insight to the youth as they start their journey into the workforce or pursue their careers. For more information about the event, or to donate, visit www.sleepout.org.