

# THE LOSS ADVISOR

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## It's All About the Team

by Marvin Milton, FPPA

The success of the New England Patriots is based on excellent preparation, exploiting match-ups and playing smart, creative football. Likewise, the results obtained by the combination of the Anderson Kill Loss Advisors and the team of attorneys at Anderson Kill & Olick, P.C. are premised on the same guiding principles.

The processing of property insurance and business interruption claims is not for the faint hearted today. Like the Patriots, excellent preparation, exploitation of match-ups and smart, creative claims processing are the keys to success. Insurers are constantly looking for exit routes from coverage in the policy and manipulating their offers on losses to place their policyholders at a financial disadvantage. Insurance companies adopt these practices because they are not motivated by the two factors that drive most other American businesses — they don't care about customer satisfaction and they are not interested in continuing relationships. Bottom line: it's all about the money.

Most insurers have put in place a very hostile claims system; hostile in the sense that it is not designed to react to the needs of the policyholder and deliver a speedy, efficient resolution to the claim but its purpose is to curtail the exposure of the insurer and minimize the payout.

A recent review of matters brought to closure by the combination of the skills of an AKLA member firm and the attorneys at Anderson Kill & Olick, P.C. attest to the effectiveness of countering insurance company malaise and intransigence with "smart, creative football" — an aggressive policyholder assertiveness and attention to details backed by substantial lawyering skills.

For instance, after an earthquake in the Seattle area damaged the real estate holdings of a large national realty company, the insurance company's adjuster bunkered into his office and, despite persistent pleas for co-operation and dialogue in the survey of the property and the assessment of damages, refused to commit to a course of action to remedy the effects of the earthquake. As a result, the property remained in disrepair and tenants vacated and declined to renew their leases.

ANDERSON KILL LOSS ADVISORS  
1251 Avenue of the Americas  
New York, NY 10020-1182  
(212) 278-1000 Fax: (212) 278-1733

1600 Market Street  
Philadelphia, PA 19103  
(215) 568-4202 Fax: (215) 568-4573

One Gateway Center  
Suite 901 Newark, NJ 07102  
(973) 642-5858 Fax: (973) 621-6361

2100 M Street, N.W.  
Suite 650  
Washington, DC 20037  
(202) 218-0040 Fax: (202) 218-0055

1821 Walden Office Square  
Suite 400  
Schaumburg, IL  
(847) 925-5430  
Fax: (847) 925-5431

ANDERSON KILL & OLICK, P.C.  
Two Sound View Drive  
Suite 100  
Greenwich, CT 06830  
(203) 622-7668 Fax: (203) 622-0321

[www.andersonkill-la.com](http://www.andersonkill-la.com)

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## who's who

**Marvin Milton**  
is President of  
Anderson Kill  
Loss Advisors

and Senior Vice President of Swerling Milton Winnick Public Insurance Adjusters, Inc. Mr. Milton has been a Public Insurance Adjuster since 1958 and is the author of articles on insurance subjects which have appeared in National Publications. He has also been a Lecturer on Business Interruption Insurance for the Northeastern University Insurance Institute, a Member of the Commercial Line Industry Liaison Panel, ISO, and a Lecturer for the Independent Insurance Agents of Massachusetts on Condominium Insurance and Loss Adjustments. Mr. Milton can be reached at [marvin@swerling.com](mailto:marvin@swerling.com) or (781) 416-1000 ext. 112.

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The AKLA California firm documented all of the calls for action and failures to respond so that when that adjuster was removed from the case, his ineptitude had placed the insurer in a irreconcilable position and backed into a corner. After the insurer's offer of \$600,000 was rebuffed and AKO instituted suit, the case settled for close to \$2,000,000 because the insurer was on the edge of bad faith.

Nowhere is the alliance and teamwork between Anderson Kill Loss Advisors and the attorneys at Anderson Kill & Olick, P.C. more in evidence than in the cases resulting from the disastrous events of September 11, 2001. Here was an opportunity for insurers to shine but, instead, they raised even more obstacles to recovery. After AKLA firms had documented the damages to the property and to the stream of income, they were met with a disquieting approach to policy interpretation by insurers and a resistance to making interim payments as the policyholders attempted to hold their businesses together.

A common response from insurers to a request for an interim payment is that the insurance policy does not require them to make any. The attorneys at AKO did not take "no" for an answer but, instead, asserted that by not providing any source of funds to the policyholder while he was down and out and trying to get back on his feet, the insurer exacerbated the loss and that the insurer should be held liable for the consequential damages. The United States District Court for the Southern District of New York agreed with AKO in three separate business interruption cases from 9/11.

As a matter of fact, the United States District Court went so far as to hold, in one case, that the very purpose of business interruption insurance was to provide funds after the business ceased to operate as a result of physical damage from an insured peril, and that failure to provide these funds was a breach of contract and the policyholder became entitled to consequential damages.

Also, after 9/11, insurers gave a reading to the period of restoration in the business income policy that had no precedent and was contrary to what governed the adjustment of business income claims in the past. Demands were placed on policyholders to mitigate damages despite the fact that no money was paid to assist their efforts.

But then came the day of reckoning as AKO's allegations of consequential damages for failure to pay were sustained by the courts and insurers were held to bear the fallout from their intransigence. Finally, the crowning achievement was the 2nd Circuit Court of Appeals decision in Zurich American Insurance Co. v. ABM Industries, Inc. where AKO received a summary judgment victory of immense proportions, i.e. over 100 million, based upon an application of the policy language to the facts on the ground.

As usual, the insurance industry criticized the decision in ABM as pushing the limits of business interruption coverage beyond where it had ever been. Actually, it is a fact driven decision that is not very different than most other cases except that the policyholder utilized the same site as did its customers.

What all of these cases illustrate is the necessity of teamwork in the processing of substantial property and business interruption claims: insightful preparation of the claim documents by an AKLA member firm in accordance with a legally sustainable reading of the policy coverage; assertive and aggressive presentation of the claim to the insurer's personnel with demands for interim payments; and positioning the policyholder to move on to the attorneys at AKO in the event that the claims processing meets a dead end. ■

**To learn more about the Loss Advisors Network Visit: [www.andersonkill-la.com](http://www.andersonkill-la.com)**

## Members List

<b>Marvin Milton, SPPA</b>	Swerling Milton Winnick 36 Washington Street Suite 310 Wellesley Hills, MA 02481	(781) 416-1000 marvin@swerling.com www.swerling.com
<b>Ronald J. Papa, SPPA</b> President	National Fire Adjustment Company One NFA Park Amherst, NY 14228	(716) 632-7272 rpapa@nfa.com www.nfa.com
<b>Charles (Dick) R. Tutwiler, CPCLA</b>	Charles R. Tutwiler & Associates Inc. Suite 757 5401 W. Kennedy Boulevard Tampa, Fl. 33609	(813) 287-8090 ext. 105 tutwiler@publicadjuster.com www.publicadjuster.com
<b>John Apicella, SPPA</b>	Apicella Adjusters, Inc. 284 S. Lambert Road Orange, CT 06477	(203) 795-3111 x314 John@ApicellaAdjusters.com www.apicellaadjusters.com
<b>Jack H. Kunz</b> President and Director	Alex N. Sill Company The Genesis Building 6000 Lombardo Center Suite 600 Cleveland, OH 44131	(216) 524-9999 jkunz@sill.com www.sill.com
<b>Richard Cohen</b>	Clarke and Cohen 425 Belmont Avenue Bala Cynwyd, PA 19004	(610) 668-0144 rcohen@clarkeandcohen.com www.clarkeandcohen.com
<b>Michael Rubin, SPPA</b>	Rubin, Palache & Associates, LLC 16542 Ventura Boulevard Suite 310 Encino, CA 91436	(818) 728-0900 mrubin@9adjust.com www.9adjust.com
<b>Finley T. Harckham</b> President	Anderson Kill Insurance Services 1251 Avenue of the Americas New York, NY 10020-1182	(212) 278-1543 Fax: (212) 278-1733 fharckham@andersonkill.com www.andersonkill-la.com

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