

Bad Faith & Extra-Contractual Claims

Wiley has substantial experience representing insurers in cases where the policyholder or claimant is seeking extra-contractual damages by attacking the insurer's good faith conduct or alleged failure to settle within policy limits. Our broad experience includes representing insurers in commercial general liability, errors and omissions (E&O), directors and officers (D&O), lawyers, and other professional liability lines. A bad faith claim against a carrier can arise in many different contexts, from an add-on claim in an insured's suit seeking coverage, to an attempt by the claimant and the insured to "set up" the carrier for an excess judgment. Regardless of the circumstances in which the bad faith claims first arise, Wiley has a strong motions, trial, and appellate practice capable of representing the insurer effectively through each phase of litigation.

Wiley attorneys have successfully defended insurers against bad faith claims, including by obtaining favorable rulings for the insurer at the summary judgment stage. In other cases, Wiley has negotiated a settlement of bad faith claims, sometimes shortly before or during trial, on terms that were favorable to the carrier. Below are some recent examples of Wiley's experience in defending insurers against bad faith allegations:

- Obtained dismissal with prejudice of a coverage action alleging breach of contract, bad faith, fraud, and right to reformation. *Cove Partners, LLC v. XL Specialty Ins. Co.*, 2016 WL 461918 (C.D. Cal. Feb. 2, 2016).
- Obtained dismissal with prejudice based on consent-to-settle and no-action clause of a lawsuit alleging that an insurer breached the contract and committed statutory bad faith by failing to settle a securities class action within the policy limit. *Piedmont Office Realty Trust, Inc. v. XL Specialty Ins. Co.*, 11 F. Supp. 3d 1184 (N.D. Ga. 2014), *aff'd* 769 F.3d 1291 (11th Cir. 2015).
- Won a unanimous ruling from the Georgia Supreme Court on certified questions in a case involving allegations of bad faith regarding the insurer's rights under Georgia law regarding consent-to-settle and no-action clauses. *Piedmont Office Realty Trust, Inc. v. XL Specialty Ins. Co.*, 771 S.E.2d 884 (Ga. 2015).
- Obtained summary judgment for insurer that "premium finance" and "premium payment guaranty" exclusions in life insurance agent's E&O policy barred coverage for a multi-million dollar claim against a life insurance agent and that the insurer did not act in bad faith in its denial of coverage. *Columbia Casualty Co. v. Mostafa Abdou*, No. 15-cv-00080-LAP-KSC (S.D. Cal. Dec. 16, 2015).
- Prevailed in the trial court and on appeal on motion to dismiss complaint seeking coverage under accountants professional liability policy and finding that the insured's claim for breach of the implied covenant of good faith lacked any basis as a matter of law. *Financial Strategy Grp., PLC v. Cont'l Cas.*

Co., 2014 WL 5449577 (W.D. Tenn. Sept. 23, 2014), *aff'd*, No. 14-6296 (6th Cir. Aug. 4, 2015).

- Prevailed on summary judgment in litigation alleging bad faith and seeking extra-contractual damages. *Christensen, et al. v. Darwin National*, No. 2:13-cv-9056 (D. Nev. Apr. 14, 2014). Currently on appeal, No. 14-15914 (9th Cir.).
- Obtained favorable summary judgment ruling regarding application of an exclusion in an employment practices liability policy, that none of the relief sought in the underlying action qualified as "Loss," and that the "genuine dispute doctrine" barred the insured's bad faith claim. *M Bar C Constr. Inc. v. Cont'l Cas. Co., et al.*, No. 2012-37-00088258 (Cal. Super. Ct., San Diego Cty. Jan. 3, 2014).
- Represented insurer in coverage and alleged bad faith litigation regarding an architects and engineers professional liability policy in the District of New Jersey, obtaining a decision that the insured had failed to meet the unambiguous requirement that it obtain prior written consent to receive reimbursement of claims expenses. *Paulus Sokolowski & Sartor, LLC v. Cont'l Cas. Co.*, No. 12-7172 (D.N.J. Aug. 30, 2013).
- Prevailed on summary judgment in coverage action alleging bad faith. Insurer denied coverage for the claim on the basis that covered "damages" were not at issue because the insured's liability arose under contract. The court agreed, finding that the insurer acted reasonably when it denied coverage under the policy, which precluded any finding of bad faith. *Helen Singletary, Family Assistance Mgmt. v. Beazley Ins. Co.*, No. 2:13-cv-1142-DCN (D.S.C. Nov. 5, 2013). Also prevailed on appeal, No. 14-1058 (4th Cir. Nov. 12, 2014).
- Retained six weeks before trial to act as lead trial counsel in a commercial general liability (CGL) coverage and related bad faith case in California with an underlying default judgment of more than \$50 million in favor of a claimant who had suffered catastrophic injuries in a workplace accident. The case was resolved by a confidential settlement on the night before trial was set to commence.
- Retained to act as lead defense counsel for an insurer in a pending case in Kentucky state court in which the insured asserted bad faith claims arising out of a \$42 million default judgment, where the insured's CGL policy had a \$1 million limit. The insured, which was represented by a nationally recognized West Coast policyholder bad faith firm and a prominent Kentucky trial lawyer, sought bad faith damages as a multiple of the \$42 million judgment. The case was resolved by a confidential settlement.