wiley

D&O and Financial Institution Liability

We represent insurers as monitoring and coverage counsel on a wide array of D&O and Financial Institution matters. We are regularly involved in the industry's most complex and high-severity cases. Our attorneys provide strategic advice to insurers in assessing legal exposures that directors and officers of private and public companies face, determining damages in securities cases, and evaluating claims faced by private equity firms and hedge funds. We have substantial expertise in the coverage issues that arise in this dynamic sector, including related claims, definitions of "Claim" or "Securities Claim," and the scope of covered Loss. We leverage our experience and deep bench to obtain favorable outcomes for our clients at mediation and through coverage litigation.

Representative recent matters include the following:

- *Joy Global Inc. v. Columbia Casualty Company*, No. 18-cv-02034, 2021 WL 3667077 (E.D. Wis. Aug. 18, 2021). Joy Global sought coverage for $20.8 million in settlements of shareholder lawsuits challenging the acquisition of the company by Komatsu Mining Corp. Wiley obtained summary judgment that the settlements were not covered under Joy Global's D&O policies because they constituted settlements of claims alleging that the price of the acquisition was inadequate and were carved out from the definition of covered "Loss."
- *UBS Fin. Serv. Inc. of Puerto Rico v. XL Specialty Ins. Co.*, 289 F. Supp. 3d 335 (D.P.R. 2018), *aff'd*, 929 F.3d 11 (1st Cir. 2019). UBS sought coverage for lawsuits, regulatory investigations, and hundreds of arbitrations alleging mismanagement of its closed-end mutual funds following the collapse of the Puerto Rican bond market. Wiley obtained summary judgment that a specific litigation exclusion barred coverage for all of the underlying matters. The First Circuit affirmed our client's trial court victory in all respects, rejecting the policyholder's attempts to avoid the specific litigation exclusion through claim-splitting.
- *First Horizon Nat'l Corp. v. Houston Cas. Co.*, No. 15-cv-2235, 2017 WL 2954716 (W.D. Tenn. June 23, 2017), *aff'd*, 742 Fed. App'x 905 (6th Cir. 2018). The insured mortgage lender sought coverage for a $200 million settlement with the U.S. Department of Justice for alleged False Claims Act violations. On the eve of trial, Wiley won summary judgment for our client. The court held that the policyholder's "non-specific," "boiler-plate" notice of potential claim was insufficient as a matter of law. The Sixth Circuit unanimously affirmed, concluding that the policyholder's notice of a potential claim could not trigger coverage when an actual claim already had been made against the insured.

- *In re: Wells Fargo & Co. Shareholder Derivative Litigation*, No. 3:16-cv-05541 (N.D. Cal.). Wiley represented one of Wells Fargo's D&O insurers in one of the largest shareholder derivative lawsuit settlements to date. The case stemmed from claims arising out of Wells Fargo's unauthorized account sales practices scandal, which resulted in more than $200 million in compensation and benefits clawbacks from former executives of the company, a $142 million settlement with Wells Fargo's customers, $185 million in fines and penalties, and a $480 million securities class action settlement. Wiley and its client played a key role in the insurer group in developing and executing a strategy resulting in a settlement of the derivative litigation for a cash payment of $240 million, non-cash benefits of $80 million, and a zero-dollar contribution from Wiley's client.
- *SunTrust Banks, Inc., v. Certain Underwriters at Lloyd's London*, No. 2014-cv-249230 (Ga. Super. Ct.). SunTrust sought $575 million from its insurers on four different towers in connection with settlements arising out of SunTrust's loan origination, securitization, mortgage servicing, and foreclosure practices. Wiley and its client took a leading role in litigating and positioning the case for settlement. After Wiley briefed and argued the case on summary judgment, the court issued rulings in May 2019 that reduced the insurers' potential exposure by more than 60%, including eliminating two insurance towers from the litigation. Following the rulings, the insurers were able to negotiate a favorable settlement at mediation.