

# Wiley Rein *Amicus* Brief Cited in Connecticut Supreme Court Decision on the American Rule

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Wiley Rein secured a key victory for its client the Complex Insurance Claims Litigation Association (CICLA), a group of major property-casualty insurers, in *ACMAT Corp v. Greater New York Mutual Insurance Co.*, No. SC 17740 (Conn. May 29, 2007) as the Connecticut Supreme Court affirmed its fidelity to the American rule, deciding that a policyholder cannot shift the costs of litigating an insurance coverage action to the insurer in the absence of insurer bad faith.

The opinion, which favorably quotes the CICLA *amicus* brief, adds to a string of recent decisions regarding the American rule in insurance coverage cases and creates strong precedent that attorney's fees are generally not recoverable.

In response to policyholder claims that bargaining power disparities supported an exception to the American rule, the court stated it found "more persuasive the argument of the *amicus curiae* that this position assumes too much and sweeps too far, because, '[a]s with contracts generally, there are insurance policies written between large insurers and relatively small scale policyholders, but there are also many insurance policies written between [midsized] or large insurers and major corporate or business entities....'"

The policyholder in this case is an acoustics tile manufacturer purportedly facing numerous asbestos liabilities stemming from historical business operations. In this action, the policyholder sought to prove the existence of a lost policy allegedly issued to it by the defendant insurer. Ultimately, the trial court ruled that a policy was issued, but denied judgment for the policyholder on its bad faith allegations. After that result was affirmed by the Supreme Court of Connecticut, the trial court granted the policyholder its attorney fees

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for litigating the coverage action. The only issue on appeal was the trial court's award of attorney's fees.

Wiley Rein LLP partners Laura A. Foggan and John C. Yang represented CICLA in this matter. Ms. Foggan is a co-chair of the firm's appellate practice and member of the insurance practice. Mr. Yang is a member of the firm's insurance practice.