

PRESS RELEASE

Wiley Rein Secures Favorable Outcome for Insurer in Jury Trial Related to Ponzi Scheme Coverage

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Washington, DC—On June 3, 2016, after a multi-day trial in a hotly contested case, a New York jury found that Continental Casualty Company did not unreasonably delay in seeking to rescind an accountants professional liability policy and therefore had not waived its right to rescind the policy.

Wiley Rein Insurance partner Richard A. Simpson represented Continental in the case, *Continental Casualty Co. v. Marshall Granger & Co., LLP, et al.*, Case No. 11 Civ. 3979 (S.D.N.Y.), leading a team that included consulting counsel Ashley E. Eiler and partner Kimberly A. Ashmore.

In 2011, Continental filed an action in the U.S. District Court for the Southern District of New York, seeking to rescind an accountants professional liability policy it had issued to Marshall Granger & Co., LLP, after it came to light that former Marshall Granger partner Laurence M. Brown had been perpetrating a Ponzi scheme. Joseph J. Boughton, Jr., and Northstar Investment Group, Ltd., who had asserted claims against Marshall Granger, intervened in the rescission litigation after obtaining an assignment of rights from former Marshall Granger partner Ronald Mangini, who was also implicated in the Ponzi scheme.

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In ruling on several rounds of dispositive motions, the court previously held that Marshall Granger had made material misrepresentations on the application for the policy by not disclosing the Ponzi scheme, and that Continental had a right to rescind the policy in its entirety, including as to any “innocent” insureds, unless it had waived that right by unreasonably delaying in filing the rescission action.

Mr. Boughton and Northstar asserted that Continental did not rescind the policy promptly enough and that the time it took to investigate before rescinding was unreasonable. Continental defended its actions, arguing that it acted cautiously, prudently, and properly by not making a final decision to rescind without first completing a detailed and thorough investigation into the complex facts presented by the Ponzi scheme allegations.

The jury quickly returned a verdict in favor of Continental, concluding that Boughton and Northstar had not proven, by a preponderance of the evidence, that Continental had unreasonably delayed in pursuing rescission.

Wiley Rein’s Insurance Group is one of the most prominent insurer-side practices in the United States with a deep bench of more than 40 lawyers who are widely recognized as leaders in the field. The team provides strategic counseling and litigation services to insurers on professional liability; general liability; property; and cyber, technology, and media insurance issues. In high-profile and business-critical matters, insurers rely on the firm’s deep knowledge of the insurance industry and underlying exposures, effective negotiation at the mediation table, and persuasive advocacy in trial, appellate, and bankruptcy courts nationwide.