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E&O for Lawyers, Accountants and Other Professionals

Wiley has a full-service nationwide insurance coverage practice focused on professional liability policies issued to lawyers, accountants, architects, engineers, insurance agents, real estate brokers, health care providers and other professionals. We provide coverage analysis and advice, represent insurers at settlement conferences and mediations, and act as lead counsel in coverage and bad faith litigation. We also routinely act as the insurer's strategic counsel, providing independent advice regarding the merits of complex underlying malpractice claims against insured professionals, and helping to develop and implement strategies for efficient claim resolution.

Representative recent matters including the following:

- Obtained dismissal of complaint filed by insured hospital, holding that coverage was unavailable under the professional liability insuring agreement providing claims-made coverage where the underlying malpractice litigation was not a "Claim" first made during the policy period and the insured had failed during the policy period to provide notice of circumstances that could give rise to a "Claim," and no other insuring agreement applied to the underlying malpractice litigation. *Day Kimball Healthcare, Inc., et al. v. Allied World Surplus Lines Insurance Company, et al.*, 493 F. Supp.3d 20 (D. Conn. 2020), *aff'd* 857 Fed. App'x. 685 (2d Cir. 2021).
- Obtained favorable summary judgment ruling, holding that a lawsuit arising out of three alleged errors constituted a single "claim" under consecutive architects and engineers policies. *Nova Southeastern Univ., Inc. v. Continental Cas. Co.*, No. 18-CIV-61842-RAR (S.D. Fla. Dec. 27, 2019).
- Obtained affirmance by the Second Circuit of judgment on the pleadings for professional liability insurer that no coverage was available for a lawsuit against an insured attorney for recovery of disputed legal fees because the relief sought did not constitute covered "damages," and the claimant was not seeking damages caused by an act or omission in the performance of "legal services" as required by the coverage agreement. *Continental Cas. Co. v. Parnoff*, 2019 WL 6999867 (2d Cir. Dec. 20, 2019).
- Obtained summary judgment that insurer owed no coverage to an insured design firm in connection with malpractice claim because an insured had prior knowledge of the potential for a claim where, before the policy incepted, the insured was aware of a demand letter asserting various issues with a condo conversion project, including design defects. *B Five Studio LLP v. Great American Insurance Co.*, No. 18-CV-01480 (E.D.N.Y. Sept. 29, 2019).

- Obtained summary judgment that insurer properly denied coverage under claim- made-and-reported policy where insured received a demand letter and entered into a litigation standstill agreement before the policy's inception date, notwithstanding insured's contention that the complaint filed against it during the policy period included eight counts that were unrelated to the demand letter and the standstill agreement. *CNEX Labs, Inc. v. Allied World Assurance Company (U.S.), Inc.*, No. 18cv334461 (Cal. Super. Ct., Santa Clara County July 17, 2019).
- Obtained dismissal of complaint filed by insured engineering firm alleging counts for breach of contract and "bad faith." The court held that a claims-made-and-reported policy unambiguously does not apply where the insured failed to notify the insurer of a claim before the policy's reporting deadline. The court also rejected the firm's arguments based on the "reasonable expectations" doctrine. *Southwest Energy Systems LLC v. Underwriters at Lloyd's, London*, Case No. 2017-015010 (Ariz. Super. Ct., Maricopa Cnty. Mar. 15, 2018).
- Obtained summary judgment for professional liability insurer that 11 claims against insured pharmacy and pharmacist arising from repackaging of two similar drugs into single-dose syringes for ocular injections on different dates constituted "related claims" under errors and omissions policies because the drugs were negligently repackaged by the same individual at the same pharmacy for the same doctor over a relatively short period of time." On appeal, the Eleventh Circuit affirmed, holding that all claims were logically connected because each syringe was prepared in the same location, by a single technician supervised by the same pharmacist, and the technician "used the same process to prepare all the syringes, repeating the same violations of health and safety regulations." *Am. Cas. Co. of Reading, Pa. v. Belcher*, 2017 WL 372094 (S.D. Fla. Jan. 26, 2017), *aff'd* 2017 WL 4276057 (11th Cir. Sept. 27, 2017).
- In a jury trial, obtained a verdict of "NO!" in response to the question whether the insurer had unreasonably delayed in asserting its right to rescind an accountants professional liability policy. Before trial, obtained published opinions granting partial summary judgment for the insurer on several important issues of New York law regarding rescission. *Cont'l Cas. Co. v. Marshall Granger & Co.*, 921 F. Supp. 2d 111 (S.D.N.Y. 2013), 6 F. Supp. 3d 380 (S.D.N.Y. 2014). Also obtained a decision by the Second Circuit affirming the judgment for the insurer. *Cont'l Cas. Co. v. Marshall Granger & Co.*, No. 16-2384, 2017 WL 2416902 (2d Cir. June 5, 2017).