

# Insurance Coverage Litigation

Wiley's Insurance Group has argued cases in nearly every state and federal appellate circuit in the nation. We are equipped to litigate both swift declaratory judgment actions and discovery-intensive rescission and bad faith lawsuits. We have obtained seminal rulings on a full range of coverage issues. Representative recent matters include:

- *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). Dismissal on the grounds 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.
- *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). Summary judgment that specific litigation exclusion barred coverage for civil lawsuits, regulatory investigations, and hundreds of FINRA arbitrations. Appellate affirmance rejecting policyholder's attempts to avoid exclusion through claim-splitting.
- *Onyx Pharmaceuticals, Inc. v. Old Republic Ins. Co.*, No. CIV 538248 (Cal. Super. Ct., San Mateo County). Victory after bench trial upholding application of bump-up exclusion to merger claim.
- *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). Summary judgment and appellate affirmance that insured's notice of potential claim was insufficient to trigger coverage when an actual claim already had been made against the insured.
- *Stewart Engineering v. Continental Cas. Co.*, No. 5:15-CV-377-D, 2018 WL 1403612 (E.D.N.C. Mar. 20, 2018), *aff'd*, 751 F. App'x 392 (4th Cir. 2018). Summary judgment and appellate affirmance that multiple bodily injury claims arose out of related wrongful acts subject to single per-claim limit.
- *Travelers Indemnity Co. v. CNH Industrial America, LLC*, 2018 WL 3434562 (Del. July 16, 2018). Appellate victory in the Delaware Supreme Court reversing \$14 million judgment against insurer for CGL coverage for hundreds of asbestos claims.
- *Cont'l Cas. Co. v. Marshall Granger & Co., LLP*, 6 F. Supp. 3d 380 (S.D.N.Y. 2014), *aff'd sub nom. Cont'l Cas. Co. v. Boughton*, 695 F. App'x 596 (2d Cir. 2017). Jury verdict that insurer was entitled to rescind professional liability policy and appellate affirmance of same.