

Wiley Rein Helps Persuade New York Appeals Court to Rehear Important Insurance Coverage Case

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Wiley Rein, representing two leading trade associations of property and casualty insurers, helped persuade New York's highest court to rehear a precedent-setting coverage appeal, in *K2 Investment Group v. American Guarantee & Liability Insurance Co.* The case will be set down for a future session of the court.

American Guarantee & Liability had sought the rehearing in response to a June ruling by the New York State Court of Appeals that brought about a significant change in state law concerning an insurer's obligations to indemnify an insured where the insurer is found to have breached its duty to defend. A *Law 360* article reported on the September 3 decision to grant a rehearing in the case, a rare step for the appeals court.

Law360 also cited an *amicus* brief that Wiley Rein submitted in July on behalf of the Complex Insurance Claims Litigation Association (CICLA) and the American Insurance Association (AIA). The brief, filed in support of American Guarantee, was co-authored by Laura A. Foggan, chair of Wiley Rein's Insurance Appellate Group, and associate Jennifer A. Williams.

The *amicus* brief noted that the New York high court departed from almost 30 years of precedent when it ruled against American Guarantee. In its June 11 ruling, the court held that the insurer breached its duty to defend a policyholder in a malpractice lawsuit, and therefore could not rely on policy exclusions to avoid indemnifying the policyholder for a \$3 million judgment.

Practice Areas

D&O and Financial Institution Liability
Insurance
Insurance Appellate

"A failure to defend should not result in the 'automatic' imposition of indemnity upon an insurer, estopping it from raising any coverage defenses," CICLA and AIA said in the brief, which was quoted in yesterday's *Law360* article. "Such a result is contrary to the overwhelming weight of authority in New York and nationwide."