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OVERVIEW

Robert Conlon has extensive trial, appellate and litigation experience representing major manufacturers, mid-size and large companies, insurers and reinsurers in complex matters. He handles a broad range of cases including aviation, class actions, commercial, construction disputes, transportation, intellectual property, products liability and professional malpractice litigation. Robert also represents numerous domestic, London based and European insurers and reinsurers in major coverage disputes, including those involving professional liability, bad faith, first party property, environmental and asbestos, Chinese drywall, municipalities, school districts and construction related issues. Robert also provides coverage advice to construction companies and engineering firms, and represents them in coverage litigation. Robert has arbitrated, tried and litigated cases in Illinois, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin. Robert has argued before the Delaware Supreme Court and The New York Court of Appeals and the New York Appellate Division – First Department. He has also handled appeals before the appellate courts of Illinois, Michigan, New Jersey, Ohio, Washington, and before the Federal Circuit Court of Appeals, and the Second, Third, Sixth, Seventh, Ninth and Eleventh Circuit Courts of Appeals.

FOCUS AREAS

- Appellate
- Bad Faith Litigation
- Commercial
- Complex Tort Litigation
- Directors and Officers

- First Party Property
- Insurance and Reinsurance
- Litigation
- Professional Liability/Errors & Omissions

CREDENTIALS

ADMISSIONS

- Illinois
- U.S. District Court, N.D. Illinois
- U.S. District Court, S.D. Illinois
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the 2nd Circuit
- U.S. Court of Appeals for the 3rd Circuit
- U.S. Court of Appeals for the 6th Circuit
- U.S. Court of Appeals for the 7th Circuit
- U.S. Court of Appeals for the 9th Circuit
- U.S. Court of Appeals for the 11th Circuit

EDUCATION

- DePaul University, J.D.
- University of South Carolina, B.A.

EXPERIENCE

NOTABLE DECISIONS

Representative cases include:

- On July 13, 2018, Robert Conlon and Doug Walker obtained summary judgment from a Pennsylvania state court for a professional liability insurer in a bad faith lawsuit alleging failure to settle. *Anastasios Papadopoulos v. Westport Ins. Corp.*, No. 03367, Pa. Comm. Pls., Philadelphia Co., Jul. 13, 2018.
- In August 2017, Robert Conlon and Christopher Shannon obtained summary judgment in the United States District Court for the Southern District of Florida with the court finding the insured's claim was not covered by Westport's policy pursuant to its prior knowledge exclusion. *David R. Farbstein, P.A. v. Westport Ins. Co.* , 2017 WL 3425327 (S.D. Fla. Aug. 9, 2017).
- On October 17, 2016, an Illinois federal judge ruled in Robert Conlon, Ryan Rodman and Christopher Wadley's favor holding that the record failed to contain sufficient concrete evidence showing that an excess insurer acted in bad faith in a coverage dispute arising from an April 27, 2010, grain elevator explosion that injured three workers. *West Side Salvage, Inc. v. RSUI Indemnity Co.* , 215 F. Supp. 3d 728 (S.D. Ill. Oct. 17, 2016)

- In September 2016, Robert Conlon, Eric Blanchard, Kevin Mikulaninec and William Bila obtained a reversal in the Seventh Circuit on behalf of Landmark American Insurance Company. Reversing a decision by the United States District Court for the Northern District of Illinois, the Seventh Circuit held that Landmark is entitled to conduct discovery regarding whether a defendant to a lawsuit is an insured as defined by the Landmark policy. *Landmark American Ins. Co. v. Peter Hilger*, 838 F.3d 821 (7th Cir. Sep. 22, 2016)
- In August 2016, Robert Conlon and Douglas Walker secured a significant ruling from a Pennsylvania federal judge that an underlying professional malpractice lawsuit against an insured attorney constituted a single "claim" under a professional liability insurance policy. The judge ruled that the insurer's contractual liability defense and indemnity was limited to $500,000. *Westport Ins. Corp. v. Peter G. Mylonas, et al.*, No. 14-5730, 2016 U.S. Dist. Lexis 114867 (E.D.Pa Aug. 25, 2016).
- On June 6, 2016, the United States District Court for the Middle District of Florida, entered its Order granting Robert's client's motion for summary judgment. The Court found that Robert's client had no duty to cover an underlying $40 million consent judgment arising from claims of real estate fraud because every underlying claim asserted against the insured shares the same factual basis as a 2008 counterclaim that was "first made" before the policy's inception. *RSUI Indemnity Co. v. Attorney's Title insurance Fund, Inc.* , No. 13-670 (M.D. Fla, June 6, 2016).
- In November 2015, the Pennsylvania Appellate Court affirmed the trial court's dismissal of a claim involving a $4 million consent judgment against a professional liability carrier alleging wrongful denial of coverage under a claims made policy. *Reifer v. Westport Insurance Corp.* , No. 321 MDA 2015, 2015 WL 7354650 (Pa Super. Ct. Nov. 2015)
- In May 2013, Robert Conlon and Robert Arnold won an appeal on behalf of WWM's client, a professional liability insurance carrier, in the United States Court of Appeals for the Third Circuit. The ruling affirmed the United States District Court for the District of New Jersey (USDCNJ) grant of summary judgment for WWM's client. Robert's client declined coverage for a third-party claimant's lawsuit for legal malpractice against one of the insured law firm's attorneys on the basis that the lawsuit related back to another claim against the attorney made outside of the policy period and, thus, did not constitute a "Claim" made during the policy's term of coverage. In response to the denial, the insured attorney and law firm filed a declaratory judgment action against his client in New Jersey state court alleging that the client breached the insurance contract by declining coverage for the claim. Robert successfully removed the matter to the USDCNJ and thereafter the insureds filed a motion for summary judgment, and filed a cross-motion for summary judgment.

  New Jersey Federal District Judge Peter J. Sheridan found in his 20-page Memorandum and Order that (1) the "interrelated wrongful act" provision contained within the policy was "clear and unambiguous"; and (2) the malpractice lawsuit filed during the policy period and the prior claim constituted a single "Claim" that fell outside of the coverage of the policy. The Court rejected the insureds' contention that the policy's prior firm endorsement required unconditional coverage for the lawsuit. Judge Sheridan granted the client's cross-motion for summary judgment, denied the insureds' motion, and specifically determined that the underlying legal malpractice lawsuit is excluded from coverage by the policy's "interrelated wrongful act" provision. In light of this determination, the Court held that WWM's client has no duty to defend or

indemnify the insureds in connection with the underlying legal malpractice lawsuit.

The Third Circuit Appellate Court affirmed found that the language of the Interrelated Wrongful Acts Provision was unambiguous and "any subjective misunderstanding that may have occurred could not rise to the level of showing that reasonable expectations were frustrated." In addition, the court agreed that the Prior Firm Endorsement was unambiguous and that both complaints refer to the same "nucleus of events." *Szaferman, Lakind, Blumstein & Blader PC, et al. v. Westport Insurance Corporation*, 2013 WL 2233915 (3d Cir. May 22, 2013).

- In January 2013, Robert secured a significant "number of occurrences" ruling from the Illinois Appellate Court in the Wrigleyville Porch Collapse coverage litigation. This case was a coverage dispute that arose out of the tragic porch system collapse in the Lincoln Park neighborhood of Chicago in June 2003 that took the lives of 13 young adults and severely injured 29 others. Robert represented First Specialty Insurance Corporation ("FSIC"), which issued a comprehensive general liability insurance policy to the owner of the property at which the collapse occurred. The coverage issue was whether the injuries resulting from the porch collapse arose out of one or multiple occurrences under the policy issued by FSIC to the property owner. On January 11, 2013, the First District, Fifth Division entered its unanimous Opinion finding that the porch collapse was only one occurrence under the policy language and Illinois law. The Court's ruling provided clarification and refinement of Illinois law on the issue of number of occurrences. More specifically, the First District expressly limited the use of the "time and space" test adopted by the Illinois Supreme Court in *Addison Ins. Co. v. Fay* to cases involving "ongoing negligent omissions", an argument advanced by Robert on FSIC's behalf.
- On November 2, 2012, the United States District Court for the Southern District of Mississippi, Jacksonville Division, entered its Order granting Robert's client's motion for summary judgment and denying the plaintiff's cross-motion for summary judgment in its entirety. Addressing two questions of first impression under Mississippi law, the Court first found that the requirement that a claim be reported by a certain date is a valid, unambiguous condition precedent to coverage under a claims-made-and-reported policy such as the client's. The court further held that the client had not waived the reporting condition, nor was it estopped from asserting untimely claim reporting as a defense to coverage. Rather, the Court concluded, the reporting requirements in the policy "are akin to coverage creating provisions that cannot be waived or overcome by estoppel."
- In October 2012, Robert received a ruling from the United States District Court for the Southern District of Florida granting his client's motion to dismiss, denying the opposition's motion for leave to file an amended complaint and closing the case. In this coverage dispute, an underlying claimant initiated a declaratory judgment action against the carrier client as well as the named insured in Florida state court. After successfully removing the Complaint to federal court, Robert promptly moved to dismiss the Complaint based, *inter alia*, on plaintiff's failure to comply with the pre-conditions to suing a liability insurer under Florida' non-joinder statute, F.S.A. § 627.4136. In response to the motion, Plaintiff asserted that it secured judgments against a non-party named additional insured to the policy and that the carrier was obligated to indemnify the additional insured for the underlying judgments. In reply, Robert argued that Plaintiff still could not satisfy the non-joinder statute as the policy did not respond to the claim

because the "wrongful acts" alleged against the additional insured were committed prior to the policy's prior acts limitation date. After the motion to dismiss was fully briefed, Plaintiff sought leave to amend its complaint to add the additional insured as a party. Robert argued that plaintiff's proposed amendment was a poor attempt to confuse the Court and to circumvent the non-joinder statute. On October 24, 2012, the District Court entered its Order granting the carrier's motion to dismiss and denying Plaintiff's motion for leave to amend. Crucially, the Court took the extra step to rule that there was no coverage for the additional insured based on the prior acts limitation date and, thus, amendment of the complaint to add the additional insured could not satisfy the non-joinder statute. Sharp General Contractors, Inc. v. Mack, Mack & Waltz Insurance Group, Inc. , Case No. 0:12-cv-60977-MGC (S.D. Fla. Oct. 24, 2012).

- In June 2012, Robert Conlon and Christopher Wadley defended, on appeal before the Ninth Circuit, a trial judgment they obtained in favor of a legal malpractice liability insurer in a complex, multimillion-dollar coverage and bad faith lawsuit. The case arose out of two underlying lawsuits involving the insured attorney. Robert was hired to evaluate and recommend a course of action for responding to the insured attorney's claim for attorney's fees in these underlying lawsuits. The carrier reimbursed the insured attorney for a portion of the attorney's fees he claimed, but denied coverage for the remainder. The insured attorney sued the carrier, claiming coverage for the remainder of alleged attorney's fees and also alleged that the carrier denied coverage in bad faith. Following a trial on the attorney's claims, the district court found the attorney was only entitled to an additional $18,000 of the approximately $2 million in fees he claimed from the underlying lawsuits. The court also found that the carrier did not breach its duty to defend or act in bad faith, denying coverage for the additional fees and thus concluded that the attorney was not entitled to any additional recovery. The insured attorney appealed to the Ninth Circuit, which affirmed the district court.
- In May 2012, Robert secured summary judgment on the duty to defend in the Eleventh Circuit Court of Appeals. This coverage dispute arose out of the tender of a claim by an insured law firm to its professional liability insurer for the defense and indemnity of an action brought against the firm in Florida state court involving the firm's work in connection with the sale of a property. The underlying lawsuit alleged that the firm acted as an "unlicensed broker" during the sale of the property and misrepresented several material facts regarding the state of the property that it knew or should have known were false. After the claim was denied, the insured firm filed a declaratory judgment action against its professional liability carrier in Florida state court. After successfully removing the matter to the United States District Court for the Middle District of Florida, Robert secured summary judgment on the carrier's behalf. The insured firm appealed to the Eleventh Circuit. On May 25, 2012, the Eleventh Circuit ruled that the carrier had no duty to defend or indemnify the insured firm against the claim because the underlying complaint sued the involved attorney exclusively in his capacity as a real estate broker and not as an attorney as required under the professional liability policy. *Rissman, Barrett, Hurt, Donahue & McClain, P.A. v. Westport Insurance Corporation*, No. 11-13827 (11th Cir. May 25, 2012).
- In December 2011, Robert Conlon won summary judgment on behalf of his client, a professional liability insurance carrier, in the United States District Court for the District of New Jersey. The client declined coverage for a third-party claimant's lawsuit for legal malpractice against one of the insured law firm's

attorneys on the basis that the lawsuit related back to another claim against the attorney made outside of the policy period and, thus, did not constitute a "Claim" made during the policy's term of coverage. The court found that (1) the "interrelated wrongful act" provision contained within the policy was "clear and unambiguous"; and (2) the malpractice lawsuit filed during the policy period and the prior claim constituted a single "Claim" that fell outside of the coverage of the policy.

- In July 2011, Robert won summary judgment on behalf of Robert's client, a professional liability insurance carrier in the United States District Court for the Middle District of Florida. Robert's client declined coverage for a third-party claimant's lawsuit against the insured law firm on the bases that the allegations did not fall within the scope of coverage provided by the policy's Insuring Agreement; and, were also barred by an exclusion. The court found in favor of Robert's client, declaring that: (1) the policy provides no coverage for the matters alleged in the underlying lawsuit; (2) the client did not, and does not, have a duty to defend the underlying lawsuit; and, (3) the client does not have a duty to indemnify the insured for any loss resulting from the matters alleged in the underlying lawsuit.
- In October 2010, Robert Conlon and his partner Chris Wadley won an appeal on behalf of their client, a professional liability insurance carrier, in the United States Court of Appeals for the Ninth Circuit. WWM's client appealed from a trial court ruling that the insured, an attorney, was entitled to coverage for an underlying legal malpractice claim filed against him. Robert and Chris assumed handling of this matter after the notice of appeal was filed. The Ninth Circuit reversed and entered judgment in favor of Robert's client, finding that an exclusion in the policy that barred coverage for claims that the insured could have reasonably foreseen at the time he purchased insurance unambiguously precluded coverage for the malpractice claim. The Ninth Circuit also found that Westport was not required to prove that it was prejudiced by the insured's failure to timely report the circumstances that led to the claim.
- In August 2010, Robert Conlon won dismissal of an appeal on behalf of his client in the United States Court of Appeals for the Second Circuit. In the trial court below, Robert won summary judgment for their client that it was entitled to rescind a professional liability policy issued to its insured attorney on grounds that his application contained misrepresentations. A third-party claimant from an underlying action against the insured appealed. Robert moved to dismiss the claimant's appeal on grounds of mootness and lack of standing. Robert briefed the dismissal issues and substantive misrepresentation issues and presented them at oral argument, after which the Court of Appeals dismissed the appeal. Following dismissal of the appeal, the claimant filed a motion to modify the dismissal order to include language vacating the district court decision. Robert responded with a brief in opposition and the Court denied the claimant's motion. As a result, the trial court judgment of rescission stands in favor of Robert's client.
- On April 15, 2010, the Michigan Court of Appeals reversed a summary judgment entered against Robert's client, Westport Insurance Corporation, and remanded with instructions to enter summary judgment in Westport's favor. Robert took over this case after his client had lost summary judgment, along with his partner Robert Arnold. The principal issue on appeal was whether Michigan law requires an insurer to show prejudice in order to deny coverage for a lawsuit that the insured admitted it did not tell the insurer about "as soon as practical" as it was required to do under its simple claims-made policy. In ruling for Westport, the Court of Appeals held that, unlike late notice under an occurrence-based policy (where only

"unreasonable," i.e., prejudicial, late notice voids coverage), late notice under a simple claims-made policy voids coverage without regard to "reasonableness" and thus no additional showing of prejudice is required. The Court reversed and judgment was entered in favor of Robert's client. *Westport Ins. Corp. v. Al Bourdeau Ins. Servs.*, No. 287920 (Mich. Ct. App. April 15, 2010).

- In 2009, Robert Conlon along with his partner Joyce Noyes, argued before the New York Court of Appeals (New York's highest level state court) on behalf of his client, the primary professional liability carrier for a large law firm. The New York Court of Appeals decided that an insurer was not obligated to provide coverage to a law firm where the firm knew it could be held liable for fraudulent activities of a client but did not disclose this information prior to the inception of the policy. The Court ruled that two of its insurers can invoke "prior knowledge" exclusion in the policies in place during the year the notice of claim was provided. *Executive Risk Indem. Inc. v. Pepper Hamilton, LLP.* , 919 N.E.2d 172 (N.Y. Oct. 2009).
- In April 2009, Robert Conlon and Christopher Wadley won an appeal on behalf of WWM's client, a professional liability insurance carrier, in the Washington State Court of Appeals. Robert's client appealed from a trial court ruling that a $1 million settlement entered into between the insured and a third-party claimant, without the carrier's authorization, was reasonable. As a consequence of the trial court's ruling, their client would have been bound by the settlement amount in any subsequent coverage litigation with the insured and the claimant. In a published opinion, however, the appellate court reversed the trial court's ruling, finding that the trial court had abused its discretion by failing to consider, among other things, the actual merits of the claimant's case against the insured when it ruled that the settlement was reasonable. *Green v. City of Wenatchee*, 148 Wash. App. 351, 199 P.3d. 1029 (2009).
- In March 2009, Robert Conlon and Christopher Wadley won summary judgment on behalf of their client, a professional liability insurance carrier, in the United States District Court for the District of New Jersey. Robert's client filed a declaratory judgment against a law firm and attorney, whom the client insured under a legal malpractice liability policy. The client sought a declaration that its insureds were not entitled to coverage for an underlying legal malpractice claim filed against them because the insured had reason to foresee the claim prior to purchasing the policy. The insured, on the other hand, argued that they could not have reasonable foreseen the claim when they purchased coverage. In ruling on the parties' cross-motions for summary judgment, Judge Noel L. Hillman sided with WWM's client, finding that the insured could have reasonably foreseen the malpractice claim, as a matter of law. Therefore, Judge Hillman held that the insured was not entitled to coverage under the policy. *Westport Insurance Corporation v. Jacobs & Barbone, P.A., et al.* , No. 1:08-cv-00801 (D.N.J. March 31, 2009).
- In 2008, Robert successfully obtained summary judgment on behalf of his client, a chemical manufacturer, that was accused of distributing products that purportedly infringed certain patents. Judge Moran of the Northern District of Illinois granted summary judgment based on the invalidity as to the subject patent. *Baldwin Graphics Sys., Inc. v. Siebert, Inc.* , No. 03C7718, 2008 WL 4083145 (N.D. Ill. August 27, 2008). This decision followed a successful motion for summary judgment on different grounds which were affirmed in part and reversed in part by the Federal Circuit Court of Appeals earlier in 2007 (No. 07-1262).

- Reinsurance Arbitration – Robert and other attorneys from WWM represented reinsurers in a week-long arbitration in New York on behalf of the London Market involving a casualty clash reinsurance treaty and surety bond fraud.
- World Trade Center Disaster: Robert represented the security company that conducted the pre-board screening for one of the four flights hijacked by terrorists on 9/11. Litigation involving the loss of life, personal injury and property damage in the billions of dollars continues in federal court in New York.
- Successfully represented a chemical company in connection with a hazardous materials violation levied by the FAA for the alleged wrongful air-shipment of chemicals with low flash points.
- Obtained a complete defense award on behalf of Underwriters at Lloyd's, London and other London-based insurance companies in an arbitration involving excess of loss crime coverage to a school district in New Mexico for an underlying multimillion dollar embezzlement crime.
- Successfully defended a law firm named in several class actions in New York and Illinois which allege violations of the Fair Debt Collection Practice Act.
- Robert Conlon tried a six week bench trial before Special Master Rutter, appointed by the New Jersey trial court in an environmental coverage matter involving two toxic waste disposal sites involving more than $60 million in cleanup costs. The Special Master ruled entirely in favor of Robert's clients based on multiple coverage based defenses under New Jersey Law.
- Obtained complete defense verdict as lead trial counsel in six-week bench trial involving a breach of contract action in Illinois, in which several million dollars in punitive damages were sought against Robert's clients.
- Lead trial counsel in high-profile litigation pending in Illinois federal court involving the coverage aspects of a well-publicized civil rights action against a local governmental body.
- Secured a defense verdict in a jury trial (upheld on appeal) of claims by a Pennsylvania chemical company for environmental damages exceeding $150 million.
- Robert obtained a $1 million case evaluation award for his clients, London Market Insurers, in a coverholder malpractice case pending before a Michigan State Court.

PUBLICATIONS

- Author, "Illinois Product Liability Practice Handbook," IICLE, 2015.

ACCOLADES

AV Preeminent® 5.0 out of 5 Peer Review Rating™ by Martindale-Hubbell®

AFFILIATIONS

Professional and Community Organizations

- AIDA Reinsurance and Insurance Arbitration Society (ARIAS-US)
- American Bar Association
- Aviation Insurance Association

- Chicago Bar Association
- Defense Research Institute
- Illinois State Bar Association

Charitable Organizations:

- Communities In Schools of Chicago – Board of Directors

NEWS

- Walker Wilcox Obtains Summary Judgment For Clients in Bad Faith Failure to Settle Lawsuit
- Walker Wilcox Successfully Represents Insurer in Bad-Faith Action Alleging Failure to Settle
- Walker Wilcox Wins Summary Judgment Based on Prior Knowledge Exclusion
- Related Claims First Made Prior to D&O Policy Period Precludes Coverage, Florida District Court Holds
- Illinois Four Corners Rule Inapplicable in Declaratory Judgment Actions, Seventh Circuit Confirms
- Walker Wilcox Wins Appeal in Washington
- WWM Wins Appeal in the United States Court of Appeals for the Third Circuit
- WWM Secures Significant Number of Occurrences Ruling from the Illinois Appellate Court in Wrigleyville Porch Collapse Coverage Litigation
- WWM Obtains Summary Judgment for Client Insurer: No Duty to Defend or Indemnify Legal Malpractice Claims
- Walker Wilcox Successfully Defends Favorable Trial Ruling on Bad Faith Before 9th Circuit Court of Appeals
- WWM Wins Summary Judgment in the United States District Court for the District of New Jersey
- WWM Wins Summary Judgment in the United States District Court for the Middle District of Florida