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WALKER WILCOX SUCCESSFULLY DEFENDS FAVORABLE TRIAL RULING ON BAD FAITH BEFORE 9TH CIRCUIT COURT OF APPEALS

Walker Wilcox Attorneys Robert Conlon and Christopher Wadley successfully 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. *Weinstein & Riley, P.S. v. Westport Ins. Corp.*, Nos. 11-35325, 11-35341, 2012 WL 2024770 (9th Cir. June 6, 2012).

The case arose out of two underlying lawsuits involving the insured attorney. The first action, which was filed against the insured attorney in Oregon, involved the forced sale of a company that the attorney owned and controlled, and the separation of that company from the insured attorney's law firm. The second action, which was filed against the insured attorney in Washington, involved malpractice claims against the insured attorney and his firm brought by the company he formerly owned and controlled, after the insured attorney sold his interests in the company.

The insured attorney sought coverage from his legal malpractice carrier for approximately $2 million in attorney's fees incurred in the underlying lawsuits.

The carrier hired Walker Wilcox to evaluate and recommend a course of action for responding to the insured attorney's claim. Subsequently, the carrier reimbursed the insured attorney for approximately $151,000 of the $2 million in attorney's fees he claimed, but denied coverage for the remainder. The insured attorney sued the carrier, claiming coverage for the remainder of his alleged attorney's fees. The insured attorney also alleged that the carrier had denied coverage in bad faith, thus entitling him to coverage by estoppel for over $75 million in alleged loss incurred in the underlying lawsuits, treble damages, and attorney's fees in the coverage action.

Following a trial on the insured attorney's claims, the district court issued a detailed, 63-page opinion finding that the insured attorney was entitled to recover only an additional $18,000 of the approximately $2 million in attorney's fees he claimed from the underlying lawsuits. The court further found that the carrier did not breach its duty to defend or act in bad faith in denying coverage for the insured attorney's claim for additional fees incurred in the underlying lawsuits. Thus, the court concluded that the insured attorney was not entitled to coverage by estoppel for his alleged loss in the underlying lawsuits, treble damages, or attorney's fees in the coverage action. Weinstein & Riley v. Westport Ins. Corp., No. C08-1694JLR, 2011 WL 887552 (W.D. Wash. Mar. 4, 2011).

The insured attorney appealed to the Ninth Circuit, but the Ninth Circuit affirmed. Among other things, the Ninth Circuit held that the district court had applied the correct legal test in determining that the vast majority of the insured attorney's claimed expenses in the underlying lawsuits were not covered under the policy. The Ninth Circuit also agreed with the district court that the carrier did not breach its duty to defend

or act in bad faith. Finally, the Ninth Circuit also concluded that the insured attorney was not entitled to recover his attorneys' fees in the coverage action.

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