

WALKER WILCOX WINS MOTION TO DISMISS IN ACTION AGAINST INSURANCE BROKER

On April 24, 2019, Walker Wilcox obtained a dismissal of claims brought against its client, Arthur J. Gallagher Risk Management Services, Inc. ("AJG"), in *City of South Sioux City v. Philadelphia Insurance*, pending in the U.S. District Court for the District of Nebraska. Philadelphia Insurance filed a third-party action against AJG arising out of a declaratory judgment action brought by an insured. Philadelphia argued that AJG failed to provide relevant documents to Philadelphia during the underwriting process and this failure resulted in the coverage dispute with the insured. Philadelphia brought claims for negligence, misrepresentation or concealment, indemnification (common law), contribution, indemnification (contractual) and breach of contract.

Walker Wilcox filed a motion to dismiss AJG on two principal arguments: (1) Philadelphia failed to identify any contractual provision AJG allegedly violated; and (2) AJG did not owe a duty to Philadelphia necessary to support the tort claims asserted. With respect to the first argument, AJG argued that Philadelphia's third-party claims against it failed to identify any contractual provision violated during the underwriting and negotiations of the insurance policy issued to the insured. Nothing in the contract Philadelphia referenced supported its arguments that specific documents had to be produced during the underwriting process. The court agreed with these arguments and dismissed the contract causes of action.

With respect to the second argument, Walker Wilcox asserted that the tort causes of action asserted against AJG failed because an insurance broker does not owe duties to an insurer during the negotiation of an insurance policy. The court agreed with these arguments as well and found that AJG did not owe any duties to Philadelphia that supported the alleged tort claims.

AJG was represented by Walker Wilcox partners Joyce Noyes and Christopher Shannon.