



Sheppard Mullin Celebrates Stellar Year in Insurance Litigation

Throughout 2022, Sheppard Mullin’s insurance practice group demonstrated excellence in all stages of litigation, continuing to solidify its role as trusted counsel to the nation’s leading insurers, including Liberty Mutual, GEICO, Allstate, Mercury, Travelers, Allianz, Safeco, Unum/Provident, Fireman’s Fund, and Lloyd’s. The group secured numerous victories by jury and bench trials, by summary judgment, and by motions to dismiss. Some of these triumphs resulted in published decisions that established favorable precedent for the insurance industry. And on those occasions the insurance group was called upon to handle an appeal, it also prevailed. As a result of these achievements, the Sheppard Mullin insurance practice group attorneys earned multiple accolades, garnered press coverage, and positioned themselves as thought leaders in the insurance industry.

APPELLATE WINS

[*Palma v. Mercury Insurance Company*, 2022 WL 3592722 \(Cal. Ct. App. August 23, 2022\)](#)

The California Court of Appeal, Second Appellate District, confirmed Mercury’s summary judgment victory which held that Mercury has no extra-contractual liability for not settling claims that resulted in a \$3 million excess judgment against its insured. In its opinion, the court of appeal held that negligence by an insurer or its agent was not enough to impose bad faith liability.

[*Kerrigan v. Allstate Insurance Company*, 2022 WL 14476372 \(9th Cir. October 25, 2022\)](#)

The Ninth Circuit Court of Appeals affirmed Allstate’s summary judgment victory in a case arising from an underinsured motorist claim alleging that Allstate unreasonably delayed paying the plaintiff the full policy limits. The appellate court held that Allstate did not unreasonably delay investigating the claim, that a genuine dispute of fact did indeed exist, and that Allstate did not act in bad faith.

[*Schwartz, v. Kemper Independence Insurance Company*, 2022 WL 17175063 \(9th Cir. November 23, 2022\)](#)

The Ninth Circuit Court of Appeals affirmed the trial court’s order granting summary judgment for Kemper in a coverage lawsuit addressing the policy’s “owned property” exclusion. The court held that the owned property exclusion prevented the plaintiffs from obtaining liability coverage for damage to the home while they owned it. The court rejected the plaintiffs’ argument that when a continuous occurrence begins during or runs through part of a liability policy’s lifespan, that the policy provides coverage for all subsequent liability regardless of whether the occurrence was excluded from coverage during the entire policy period.

TRIAL WINS

[*Kelpe v. Unum Group; Provident Life & Accident Insurance Company; TBG West Insurance Services LLC., Superior Court of Santa Clara*](#)

Unum obtained a unanimous defense verdict in a case brought by Nicolas Kelpe, a former partner of Ernst & Young. Kelpe sued for breach of contract, bad faith, and punitive damages arising out of the denial of his disability claim. Before trial, Kelpe rejected seven figure settlement offers and, at trial, he sought approximately \$4.5 million in compensatory damages and \$66 million in punitive. The jury rejected his allegations that the defendants failed to conduct a thorough investigation and denied his claim due to company-wide claim denial targets and goals. This victory was recognized among *Daily Journal's* Top Verdicts of 2022.

[*Clark v. GEICO Insurance Company, Kern County Superior Court, Case No. BCV-20-102262-JEB*](#)

GEICO obtained a defense judgment in a case brought by Clark alleging that GEICO acted in bad faith by failing to settle his claim against GEICO's insured. GEICO was able to establish that Clark's demand was not a "reasonable demand" within the policy and that, regardless, GEICO did not unreasonably reject Clark's demand.

PUBLISHED SUMMARY JUDGMENT WINS

[*Tellone Pro. Ctr., LLC v. Allstate Ins. Co., 562 F. Supp. 3d 757 \(C.D. Cal. 2022\)*](#)

The United States District Court for the Central District of California granted Allstate's motion for summary judgment in a complex commercial property matter. The court held that Allstate, through its use of expert testimony, established the applicability of several exclusions. Therefore, its denial of Tellone's claim was not breach of contract. And because Allstate did not breach the contract, it could not be liable for bad faith.

[*Hovsepyan v. GEICO General Insurance Company, ___ F.Supp.3d ___, 2022 WL 2873059 \(C.D. Cal. July 21, 2022\)*](#)

The United States District Court for the Central District of California granted GEICO's motion for summary judgment in a bad faith claim alleging unreasonable delay and "lowballing" in connection with the handling of an uninsured motorist claim. The court held that: (1) because the parties dispute was over the amount of general damages, the genuine dispute doctrine barred the plaintiff's bad faith claim, and (2) the bad faith claim was barred by the two year statute of limitations, which began to run based on the plaintiff's attorney's first accusation of bad faith.

UNPUBLISHED SUMMARY JUDGMENT WINS

[*Stivi v. GEICO Indem. Ins., 2022 WL 320058 \(C.D. Cal. January 4, 2022\)*](#)

The United States District Court for the Central District of California granted summary judgment for GEICO in connection with allegations that GEICO unreasonably handled the plaintiff's uninsured motorist case. The court held that the plaintiff, not GEICO, delayed the handling of the claim by repeatedly failing to provide the information GEICO needed to evaluate the claim. The court also held that there was a genuine dispute as to the nature and extent of the plaintiff's injuries, as well as the value of her claim.

Vargas v. Infinity Insurance Company, Los Angeles County Superior Court, Case No. 20STCV41542 (January 6, 2022)

The Los Angeles County Superior Court granted summary judgment for Infinity in connection with a claim alleging that Infinity wrongfully relied on the policy's "crime exclusion." The court held that the exclusion applied when the insured was driving under the influence of alcohol and that Infinity did not waive the exclusion by not raising it in the denial letter.

Marinelarena v. Allstate Northbrook Indemnity Company, 2022 WL 423398 (C.D. Cal. January 12, 2022)

The United States District Court for the Central District of California granted Allstate's motion for summary judgment in a bad faith claim alleging that Allstate unreasonably handled her uninsured motorist claim. The court granted the motion on two separate grounds: (1) the statute of limitations and (2) the plaintiff's failure to comply with an insurance code section that, for UM claims, requires an insured to provide their insurer, within 30 days, a sworn statement attesting that they have a cause of action against an unascertained driver.

Tucker v. Allstate Northbrook Indemnity Company, 2022 WL 1585746 (C.D. Cal. March 4, 2022)

The United States District Court for the Central District of California granted summary judgment for Allstate in connection with allegations that Allstate unreasonably handled the plaintiff's underinsured motorist claim. The court held that Allstate proved that the plaintiff made a material misrepresentation in the presentation of his claim. Therefore, Allstate had the right to void the insurance contract under the policy's fraud and concealment clause and California law.

Laing v. Wawanesa General Insurance Company, Los Angeles County Superior Court, Case No. 19STCV26385 (May 31, 2022)

The Los Angeles County Superior Court granted summary judgment for Wawanesa in a case alleging that, after paying its insured all the property damage benefits owed under his policy, Wawanesa committed bad faith by refusing to waive its subrogation claim against the at-fault driver's insurer based on the plaintiff's allegation that he had not been made whole due to alleged diminished value and loss of use damages not covered under his Wawanesa policy. In a short and to the point ruling, the court held only that the Wawanesa's motion was granted.

Doan v. Allstate Northbrook Indemnity Company, 2022 WL 4596572 (C.D. Cal. June 27, 2022)

The United States District Court for the Southern District of California granted Allstate's motion for summary judgment in a bad faith claim alleging unreasonable delay in the handling of an underinsured motorist claim. The court held that there was a genuine dispute over (1) the nature and extent of the plaintiff's injuries and (2) the amount of the plaintiff's general damages. The court also found that it was the plaintiff who caused delay by, among other reasons, failing to return signed medical authorizations requested by Allstate.

Homeland Ins. Co. of NY v. Health Care Service Corporation, 2022 WL 2828752 (N.D. Illinois July 19, 2022)

The United States District Court for the Northern District of Illinois granted summary judgment in one of two tracks in a multi-billion dollar multi-district litigation challenging the Blue Cross Blue Shield system. Relying on a "related claim" exclusion in the policy, the court held that the present lawsuit was related to an earlier litigation against the Blues alleging RICO violations. Therefore, Homeland had no duty to provide coverage under the policy. This was the second time that Homeland was able to show that the "related claim" exclusion applied, the first coming a year before in a lawsuit filed in Pennsylvania.

Morales v. Allstate Northbrook Indemnity Company, 2022 WL 3684583 (C.D. Cal. August 25, 2022)

The United States District Court for the Central District of California granted summary judgment for Allstate in connection with allegations that Allstate unreasonably handled the plaintiff's underinsured motorist claim. The court held that Allstate established the existence of a genuine dispute over the value of the plaintiff's claim. The court also held that, to the extent there was any delay in handling the claim, the delay amounted to negligence, which isn't bad faith in California.

Infanzon v. Allstate Insurance Company, 2022 WL 17885681 (C.D. Cal. September 7, 2022)

The United States District Court for the Central District of California granted Allstate's motion for summary judgment in a bad faith claim alleging that Allstate unreasonably handled his uninsured motorist claim. The court rejected each and every one of the plaintiff's arguments and found that Allstate's conduct in handling the plaintiff's claim was reasonable as a matter of law.

Mercado v. Allstate Northbrook Indemnity Company, Los Angeles County Superior Court, Case No. 20CHCV00305 (September 21, 2022)

The Los Angeles County Superior Court granted summary judgment for Allstate in a case alleging that Allstate and its agents negligently underinsured her townhome. The court held that Allstate did not have a duty to advise her that she should procure additional or different coverage for her unit and rejected the plaintiff's arguments that Allstate misrepresented the scope of coverage being offered, that she requested any specific type of coverage, and that the Allstate agents held themselves out as experts so as to trigger a heightened duty to advise her regarding the sufficiency of her selected insurance coverage.

Gharibian v. Wawanesa General Insurance Company, Los Angeles County Superior Court, Case No. 20STCV43967 (October 14, 2022)

The Los Angeles County Superior Court granted summary judgment for Wawanesa in a case alleging that Wawanesa unreasonably handled their property damage claim caused by wildfires. The court held a homeowner does not suffer a covered loss for wildfire debris if the structure itself is not physically damaged and normal cleaning can remove the wildfire debris.

DEMURRERS/MOTIONS TO DISMISS/OTHER

Mendez v. Interinsurance Exchange of the Automobile Club, Los Angeles County Superior Court, Case No. 20STCV24752 (January 1, 2022)

The Los Angeles County Superior Court granted Auto Club's anti-SLAPP motion after plaintiff sued the Auto Club and its insured alleging that the Auto Club committed fraud and bad faith by entering into a settlement agreement before all potential costs were incurred. The court held that Auto Club's representations made during the pre-litigation settlement negotiations were protected speech.

Alashahab v. Alliance United Insurance Company, Orange County Superior Court, Case No. 30-2021-00186148-CU-BC-CXC (February 24, 2022)

The Orange County Superior Court granted Alliance's demurrer to plaintiff's state-wide class action complaint challenging the enforceability of the policy's requirement for affording automatic coverage for newly-acquired vehicles. In an issue of first impression, the court held that the notice provision was valid and enforceable and, unlike third-party liability coverage, collision coverage is an optional coverage, which allows insurance companies to impose limitations and conditions that would be invalid if included under other policy coverages.

Jackson v. GEICO, San Diego County Superior Court, Case No. 37-2022-00008373-CU-IC-CTL
(November 18, 2022)

The San Diego County Superior Court granted GEICO's demurrer to plaintiff's complaint for breach of contract and fraud against GEICO and numerous GEICO employees, including its CEO. Although the court sustained the demurrer with leave to amend, the plaintiff never timely filed an amended complaint. GEICO filed an *ex parte* application under Code of Civil Procedure section 581(f)(2) and California Rule of Court 3.1320(h), which the court granted; the plaintiff's complaint was dismissed with prejudice.

Leutmixay v. GEICO Advantage Ins. Co., Siskiyou County Superior Court, Case No. CVCV 22-29
(November 17, 2022)

The Siskiyou County Superior Court granted GEICO's motion for judgment on the pleadings in an insurance coverage dispute arising from the plaintiff's settlement with GEICO. The Court held that GEICO didn't breach the settlement agreement by waiting until after the plaintiff's Medi-Cal lien was resolved before issuing the settlement check.

Miletak v. Kemper Corporation, San Diego County Superior Court, Case No. 22CV400815 (October 7, 2022)

The plaintiff sued Kemper for allegedly wrongfully reporting damages to plaintiff's car to Carfax and failing to pay damages for diminution of value. After learning that the plaintiff had a history of filing numerous lawsuits, Kemper filed a motion to have the plaintiff declared a vexatious litigant. Instead of facing the prospect of being declared a vexatious litigant and being foreclosed from filing future frivolous litigations, the plaintiff voluntarily dismissed his lawsuit with prejudice.

Uyanik v. Wawanesa, 22 WL 16625828 (N.D. Cal. September 26, 2022)

The United States District Court for the Northern District of California granted Wawanesa's motion to dismiss plaintiff's first amended complaint alleging that Wawanesa failed to pay for diminution of value damages to plaintiffs' automobiles. The court held that the plaintiffs failed to adequately plead any of the causes of action in their complaint, including: (1) fraud, (2) violation of the Consumer Legal Remedies Act, (3) violation of California's Unfair Competition Law, and (4) violation of the federal RICO statute, because all of the causes of action were based on the erroneous contentions that the policies provided coverage for diminution of value and/or that the policies weren't insurance policies at all because they only agreed to provide coverage for repair costs rather than all potential losses.

For More Information, Please Contact:



Peter Klee

Partner | San Diego
619.338.6624
pklee@sheppardmullin.com



John Brooks

Partner | San Diego
619.338.6537
jbrooks@sheppardmullin.com



Frank Falzetta

Partner | Los Angeles
213.617.4194
ffalzetta@sheppardmullin.com

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Speaking Engagements

Sheppard Mullin’s insurance team attorneys are demonstrated thought leaders in the industry, speaking in conferences and panels on relevant insurance issues during 2022.

“Recent Developments In Bad Faith Failure To Settle Law,” APCI Western Regional General Counsel Conference, Las Vegas, July 2022

“Exotic Car Investigations – Detecting False Claims/Uncovered Losses,” International Association of Special Investigation Units, Southern Chapter, Ontario, California, October 2022

Nationally Recognized Leaders



Frank Falzetta named a 2022 “Litigation Star”



John Brooks, Randy Crispen, Andre Cronthall, Jeffrey Crowe, Charles Danaher, Marc Feldman, Peter Klee and Barclay Nicholson ranked among the “Best Lawyers” in the area of Insurance Law in 2022.



Firm named a 2022 “Litigation Powerhouse” in Commercial Litigation. Frank Falzetta named as 2022 “Client Service All-Star MVP”



Firm and Peter Klee recognized in the area of Insurance: Insurers – California



Theona Zhordania’s trial victory on behalf of Unum Group and Provident Life & Accident Insurance Company recognized among Daily Journal’s “Top Verdicts” of 2022



John Brooks and Peter Klee named to Lawdragon’s 2022 “Leading Litigators in America”

New Clients

As a result of continued dedication to providing superior service to several of the nation’s top insurers, Sheppard Mullin added the following companies to its existing robust portfolio of clients:



CNA Insurance



TOKIOMARINE AMERICA

Tokio Marine Insurance Company



Cherokee Insurance Company

Thought Leadership Blog

www.insurancelawblog.com



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