

James W. Bryan

MEMBER

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Practices

Insurance Coverage and Bad Faith
Truck Accident Defense
Litigation
Business Disputes
Environmental Law
Product Liability

Industries

Insurance
Transportation

Education

- Wake Forest University, J.D., 1989
(Member of Moot Court and Law Review)
- University of North Carolina at Chapel Hill, B.A., 1981
- The Choate Rosemary Hall School, 1976

Admissions

- North Carolina

Jim Bryan has devoted his career to the zealous representation of his business litigation clients with integrity and the highest of ethical standards. Jim understands what it takes to win battles in the litigation trenches and in front of the jury. He has appeared in the federal and state courts of North Carolina including the North Carolina Business Court. His litigation practice concentrates on insurance coverage/bad faith, trucking industry defense, commercial disputes, lender liability, premises liability, environmental disputes and fiduciary trust litigation. He is a Fellow in the prestigious American College of Coverage Counsel in the practice area of insurance coverage/bad faith. He also has great familiarity with class actions, toxic and mass torts, and product liability including asbestos litigation.

As a leader in Nexsen Pruet, Jim is chair of its Insurance practice sub-group. He is one of the more senior members of the firm's Greensboro office and mentors younger attorneys and provides leadership for the office.

Jim is passionate about giving back to his profession and the community. He was President of the Greensboro Bar Association (2014-2015). He was Chair in the Guilford Inn of Court (2018-2019). He served as Chair (2017 - 2018) on the Section Council of the Insurance Law Section of the North Carolina Bar Association and ran the section's annual CLE program in 2013 and 2014. He served on the Section Council of the Environmental Section of the NCBA. He is Chair of the Amicus Brief Committee of the Trucking Industry Defense Association and served as Chair (2008 - 2018) of the First

- U.S. Supreme Court
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. District Court Eastern District of North Carolina
- U.S. District Court Middle District of North Carolina
- U.S. District Court Western District of North Carolina

Party Property Subcommittee of the Insurance Law Committee of the Defense Research Institute. Jim was program chair for the April 2013 and December 2019 Insurance Coverage conferences, the two flagship programs of DRI's Insurance Law Committee. He has also been the program chair for environmental law conferences sponsored by the Environmental Section of the NCBA.

Jim is a frequent speaker at local, state and national conferences and seminars where attorneys attend for their continuing legal education requirements. Recent topics include ethics for litigators, truck accident defense, insurance coverage, evidence, insurance bad faith defense, and civil litigation. Sponsors of the programs have been the Greensboro and North Carolina Bar Associations, DRI, National Business Institute and Property Liability Resources Bureau.

Experience

Representative Experience

INSURANCE

Insurance Coverage/Pollution Exclusion – Obtained judgment on the pleadings for commercial lines insurer in federal district court in Raleigh, NC. Primary Issues: environmental contamination at Superfund site; total and absolute pollution exclusion; primary and excess liability policies from 1980s and 2000s; Connecticut law and Canadian law. *See PCS Phosphate v. American Home*, 2016 WL 1271031 (March 29, 2016, E.D.N.C.).

Insurance Coverage/Allocation/Trigger – Defended commercial lines insurer (2013-2019) in long-running declaratory judgment action in NC state court. Primary Issues: allocation and trigger of coverage for progressive disease/toxic torts arising out of insureds products that exposed claimants to benzene from 1970s to 2000s. *See Radiator Specialty Co. v. Arrowood Indemnity Co. et al.*; Mecklenburg County, NC, Case No. 13 CVS 2271.

Insurance Coverage/Lender Liability/Jury Trial – On behalf of community bank, prosecuted coverage counterclaims and defended lender liability third party complaint in three-week jury trial in federal district court in Greensboro, NC. Obtained favorable verdict that was upheld on appeal in Fourth Circuit. Primary Issues: fire loss at manufacturing site; material misrepresentation; rescission; waiver; estoppel; commercial property policy. *See Colony v. Peterson*, 2012 WL 1867047 (May 22, 2012, M.D.N.C.); 2012 WL 4369666 (Sept. 24, 2012, M.D.N.C.), and 2014 WL 4179962 (4th Cir

2014).

Insurance Bad Faith - Defended commercial lines insurer for seven years (2002 -2009) in bad faith litigation in NC state court involving builders risk insurance, mold infestation, alleged insurance fraud in claim submission, alleged additional insured coverage, construction project failure, Chapter 11 bankruptcy of project owner, SIU investigation, and appeal of discovery dispute over insurer's work product. Successful in resolving the matter late in discovery phase. See *Governor's Landing, LLC, Wachovia Bank et al v. Assurance Company of America et al; New Hanover County, NC, Case Nos. 03 CvS 1965 and 03 CvS 1968; Wachovia Bank v. Clean River Corporation*, 178 N.C.App. 528, 631 S. E.2d 879 (2006).

Insurance/Punitive Damages/Negligent Misrepresentation – Defended commercial lines insurer in federal district court in Charlotte, NC. Bad faith claims and punitive damages were defeated on motion for partial summary judgment. Afterwards, two-week jury trial on negligent misrepresentation claims ended in plaintiff's verdict. Primary Issues: bridge collapse; insurer's investigation of collapse allegedly caused damages to insured. See *Lee Construction v. Zurich*, Case No.: 3:10-cv-539 (W.D.N.C. 2012).

TRUCKING

Truck Accident/Traumatic Brain Injury – Successful settlement of catastrophic truck accident case in federal district court in Charlotte, NC, after 18 depositions of fact and expert witnesses in OK, FL, AL, SC and NC and after multiple dispositive motions on punitive damages and other claims. See *Brown v. Celadon Trucking Services*, 3:16 CV 00229 (W.D.N.C. 2017).

Truck/Bus Accident/Jury Trial - In stipulated liability case, able to hold down the jury's damage award to 25% of what plaintiff asked for in closing argument. Successful in motions to exclude testimony of plaintiff's vocational expert and economist expert. See *Cooper v. APAC Atlantic, Inc.*, Forsyth County, NC, Case No. 08 CvS 7550.

Truck Accident/Jury Trial - Settled double fatality truck accident case for Kodiak truck owner-operator after 7 days of jury trial in NC state court. See *Tolen v. Carolina Carbonic*, Randolph County, NC, Case No. 01 CvS 00092

Truck Accident/Wrongful Death/Bench Trial - In truck/motorcycle accident, conducted bench trial in federal district court in Raleigh, NC, and appealed adverse judgment to the Fourth Circuit. Successful settlement during appeal. See *Carroll v. Oakley Trucking Co.*, 5:17 CV 357 (E.D.N.C. 2018)

Cargo Loss/Carmack Amendment – Settled cargo loss claim for motor carrier in NC state court concerning stolen trailer of cell phones where interpretation of Carmack Amendment played significant role. See *Nations Express, Inc. v. Landstar Inway, Inc.*, Wake County, NC, Case No. 08 CvS 3952.

Trucking Regulatory Compliance/USDOT – Negotiated a settlement for trucking company with US Dept. of Transportation concerning civil penalty assessments for alleged violations of federal motor carrier safety regulations.

Motor Carrier Permit Violations/North Carolina - Obtained judgment for trucking company against State Highway Patrol for wrongful penalty assessment for alleged violation of trip permit for overweight load. Won on appeal. *Daily Express, Inc. v. Beatty*, 688 S.E.2d 791 (N.C.App. 2010).

COMMERCIAL/FIDUCIARY LITIGATION

Clinical Laboratory Litigation – Prosecuted multiple breach-of-contract actions on behalf of clinical laboratory management company against laboratory customers where CLIA regulations and intellectual property issues have been involved. See e.g., *Select Laboratory Partners v. H.S. Labs*, Guilford County, NC, Case No. 14 CvS 5605; *Select Laboratory Partners v. First Med, Inc.*, 1:15 CV 531 (M.D.N.C. 2015).

E-Cigarette/Vaping Litigation – Represented e-cig/vaping company as local counsel in federal district court in Greensboro, NC involving a discovery dispute in patent litigation based in California federal district court. See *Fontem Ventures, B.V. v. NJOY, Inc. et al*, 2:14-cv-01645 (C.D.Cal. 2014) and 1:15-mc-00022 (M.D.N.C. 2015). Also as part of representing a consumer group in its fight against the Food and Drug Administration's attempt to over-regulate e-cig/vaping products, filed an amicus curiae brief in the United States Court of Appeals for the District of Columbia Circuit. See *Nicopure Labs, LLC v. Food and Administration*, 17-5196 (DC Cir.2018).

Shareholder Derivative Litigation – Defended shareholder derivative/judicial dissolution action on behalf of client corporation involving allegations of breach of fiduciary duty and remedy of constructive trust and judicial dissolution. See *Hill v. H&H Furniture Manufacturers, Inc.*, Randolph County, NC, Case No. 16 CvS 1167.

Business Broker Fee Litigation – Prosecuted action on behalf of business broker to recover broker fee arising out of breach of representation agreement by acquired company. See *The Foresight Companies, LLC v. Bright Funeral Home, Inc.*, Wake County, NC, Case No. 16 CvS 1464.

Fiduciary Trust Litigation – Defended the interests of trust settlor against trust beneficiary in action seeking modification of irrevocable trust. Defeated motion for summary judgment, which led to plaintiff dismissing his case with prejudice. See *In the Matter of Trust for Zachary Alberts*, Guilford County, NC, Case No. 14 CvS 10478.

Compelling Arbitration - Successful on motion to compel arbitration on client's behalf in action in NC Business Court concerning commercial crime policy with corporate policyholder, and successfully opposed assertion by corporate insured that the insurer waived the right to arbitration after filing the first action in New York. See *Polo Ralph Lauren Corp. v. Gulf Ins. Co.*, 2001 WL 34000140, 2001 NCBC 3, N.C. Super. (Jan. 31, 2001).

TORT LITIGATION

Utility Company/Electrocution – Successful in settling electrocution case for utility company involving motor vehicle crash into utility pole causing downed power lines, after 21 depositions of fact and expert witnesses in GA, LA, and NC. See *Rios v. Duke Energy Carolinas*, Guilford County, NC, Case No. 15 CvS 7630.

Retail Store/Premises Liability – Defended retail store in multiple actions involving slip-and-fall, trip-and-fall, assault, and other premises liability claims. All cases settled favorably for client. See e.g., *Wells v. Big Lots Stores, Inc.*, Guilford County, NC, 14 CvS 4497; *Crews v. Big Lots Stores, Inc.*, 3:13 CV 258 (W.D.N.C. 2014).

Premises Liability/Jury Trial - Obtained defense verdict of no liability for municipality in trip and fall case in NC state court. See *Bunce v. City of Greensboro*, Guilford County, NC, Case No. 00 CvS 8010.

Automobile Negligence/Jury Trial - Won defense verdict of no liability for automobile operator in motor vehicle negligence case. See *Guyann v. Ingram*, Guilford County, NC, Case No. 00 CvS 1650.

ENVIRONMENTAL

Environmental/Aggrieved Landowner – Represented property owner adjacent to former Seaboard Chemical Corporation Site, EPA ID No. NCD071574164, High Point, North Carolina, and former City of High Point Riverdale Drive Landfill, in negotiations over Declaration of Perpetual Land Use Restrictions.

Environmental/Consent Decree - Negotiated consent decrees for Fortune 100 company in underground storage tank case involving soil and groundwater contamination at convenience store gas station next to elementary school. See *State of North Carolina v. Texaco Refining & Marketing, Inc.*, Randolph Co., NC, 01 CvS 163.

Environmental/UST - Defended and obtained dismissal of NC state court action for gas station owner against NC Dept. of Environment and Natural Resources (“NCDENR”) after multiple expert witness depositions revealed lack of merit for claim under NC Oil Pollution & Hazardous Substances Control Act. See *State of North Carolina v. Gas Town, Inc.*, Guilford Co., NC, 99 CvS 5039.

Environmental/Mining Permit - Successful in negotiating consent decree for manufacturer client with NCDENR's Division of Land Resources in regard to operation of mine. See *State of North Carolina v. CBM, Inc, dba Yadkin Brick Company*, Stanly County, NC, 04 CvS 1537

Environmental/Notice of Violation/Air Quality - Successful in persuading NCDENR's Division of Air Quality to agree to a substantial reduction of monetary penalty for alleged violation of air quality permit of manufacturer client.

Environmental/Insurance Coverage – Obtained settlement for commercial lines insurer in a ten-year coverage dispute concerning underground storage tank insurance for oil company insured at convenience store gas station.

REPORTED DECISIONS

Murphy Brown LLC v. Ace American Ins. Co. et al, 2019 WL 6878942 and 2020 WL 1431721 (N.C. Business Court, Dec. 16, 2019 and March 18, 2020)

Radiator Specialty Co v. Arrowood Indemnity Co., 253 N.C. App. 508, 800 S.E. 2d 452 (2017)

PCS Phosphate Co., Inc. v. American Home Assurance Co., 2016 WL 1271031 (March 29, 2016 E.D.N.C.)

Colony v. Peterson, 2012 WL 1867047 (May 22, 2012, M.D.N.C.); 2012 WL 4369666 (Sept. 24, 2012, M.D.N.C.), and 2014 WL 4179962 (4th Cir 2014)

Brown v. Sedgwick Claims Management Services, Inc., 1:11-cv-84 (July 7, 2011, M.D.N.C.)

Zurich American Ins. Co. v. ACE American Ins. Co., 3:10-cv-101 (December 3, 2010 and January 27, 2011, W.D.N.C.)

Daily Express, Inc. v. Bryan E. Beatty, Secretary of Crime Control & Public Safety, 688 S.E.2d, 791 N.C.App. (2010)

Wachovia Bank v. Clean River Corporation, 178 N.C.App. 528, 631 S.E.2d 879 (2006)

Estate of Mason v. Universal Underwriters Life Ins. Co., 1:06-cv-190 (September 14, 2006 and October 4, 2006, W.D.N.C.)

Miller v. Owens, 603 S.E.2d 168 (N.C.App. 2004)

Garner v. Big Lots Stores, Inc., 4:01-cv-179 (March 18, 2003, E.D.N.C.)

Ayers v. Patz, 2002 WL 1901906, N.C.App. (Aug. 20, 2002)

Polo Ralph Lauren Corp. v. Gulf Ins. Co., 2001 WL 34000140, 2001 NCBC 3, N.C. Super. (Jan. 31, 2001)

Markham v. Nationwide Ins. Co., 125 N.C.App. 433, 481 S.E.2d 349 (1997)

Hunter v. Newsom, 121 N.C.App., 564, 468 S.E.2d 802 (1996)

Fidelity National Title Ins. Co. of Tenn. v. Kidd, 99 N.C.App. 737, 394 S.E.2d 225 (1990)

Mackrell International

Recognitions

- American College of Coverage Counsel Fellow
- North Carolina *Super Lawyers*® - 2019, 2020
- Included in in North Carolina *Super Lawyers*® list in the areas of Insurance Coverage, 2017- 2018
- Martindale-Hubbell AV Peer Rated for Highest Level of Professional Excellence

Community & Professional

- Piedmont Land Conservancy, Board Member
- Greensboro Bar Association (Past President)
- 18th Judicial District of the North Carolina State Bar (Past President)
- Greensboro Bar Association Foundation (Past President)

- Guilford Inn of Court (Past Chair)
- Trucking Industry Defense Association, Chair of Amicus Brief Committee
- North Carolina Association of Defense Attorneys
- Defense Research Institute
 - Program Chair, Insurance Law Committee (2013 and 2019)
 - Chair of First Party Property Subcommittee (2008-2018)
- YMCA of Greensboro's Alex Spears Branch Board of Management (past chair)
- Leadership Greensboro (2003-2004)
- North Carolina Bar Association, Council of Insurance Law Section (Past Chair) and Council of Environmental Section (Member)
- North Carolina Representative to Mackrell International on behalf of Nexsen Pruet

Program Chair, Defense Research Institute's Insurance Coverage and Practice Symposium, New York, December 2019 and Insurance Coverage and Claims Institute Symposium, Chicago, April 2013

Speaker, "Allocation - Is That a Thing' - Navigating Disputes Over Allocation Between Covered and Uncovered Claims," American College of Coverage Counsel Annual Meeting, May 2019

Speaker, "Commercial General Liability Policies and Duty to Defend," North Carolina Bar Association's Insurance Law Section CLE, January 31, 2019

"Additional Insured Coverage and Primary/Excess Priority Disputes, Oh My," July 19, 2018

"Trade Creditor Lacks Standing to Sue Judgment Debtor's Insurer for Deceptive Trade Practices," April 3, 2018

Speaker/Co-author of manuscript, "Back to the Drawing Board: Resurgence of Vapor Intrusion, Radon and Other Pollution Exclusion Issues," American Bar Association's insurance coverage litigation conference, Phoenix, 2018

Speaker/Author of manuscript, "Blurred Lines – Post Litigation Conduct as Evidence of Bad Faith," Defense Research Institute's Insurance Law Committee conference on insurance bad faith and extra-contractual liability, Boston, 2017

Late Notice Under Claims-Made Policy Torpedoes Claim
February 13, 2018

Opioid Litigation Over Insurance Coverage – Coming to a Jurisdiction Near You
November 16, 2017

Equitable Estoppel Halts Insurer's Success In Bad Faith Claim
July 10, 2017

Can Insurers Take Their Time?

September 12, 2017

Speaker/author of manuscript, "Top Five Nuisance Insurance Coverage Issues," Defense Research Institute's Insurance Law Committee conference; Chicago, April 2016

Speaker/author of manuscript, "Lessons Learned in a Four-Year Coverage Battle: *Colony Insurance v. Peterson*," North Carolina Bar Association's Insurance Law Section annual meeting//CLE, April 2015, as well as Program Chair of the same conference.

Author, "Message from the President," Greensboro Bar Association monthly newsletter:

→ January, February, March, April, 2015

→ September, October, November, December, 2014

Author, "Case Law Developments," Insurance Law Section of the North Carolina Bar Association newsletter, March 2014.

Author, "Case Law Developments," Insurance Law Section of the North Carolina Bar Association newsletter, December 2015.

Author, "Fourth Circuit's Decision in Cargo Loss Case Should Be Wake-Up Call for Motor Carriers as to Limitation of Liability," Trucking Industry Defense Association, quarterly e-newsletter, February 2014.

Co-author, North Carolina chapter of DRI's *50-State Compendium of Reservation of Rights*, December 2013.

Speaker/Author of manuscript, "Targeting Insurance: Coverage Issues In Firearms and Self-Defense Claims," Defense Research Institute's Insurance Law Committee conference, December 2013 and at the national claims conference of the Property Liability Resource Bureau, March 2015.

Co-author, "First Party Property Insurance Law in North Carolina," inaugural issue of the e-newsletter Insurance Law of the Insurance Law Section of the North Carolina Bar Association, November 27, 2013.

Speaker, "2012 North Carolina Insurance Law Update", North Carolina Bar Association's annual CLE review, Grandover Resort in Greensboro, October 11, 2013

Author, "Waiver of Right of Appraisal in Property Insurance Claims," Defense Research Institute's Covered Events Newsletter, July 2013

Program Chair, Defense Research Institute's Insurance Coverage and Claims Institute Conference, Chicago, April 2013

Speaker/Author of manuscript - "Ethical Considerations During Litigation," Annual Meeting of the Environmental Law Section of North Carolina Bar Association, Wilmington, NC, April 2013

Speaker/Author of manuscript - "When Lenders Come Knocking - How to Assess a Lender's Claim Under Personal Lines Policies," Defense Research Institute's Insurance Coverage and Claims Institute Conference, Chicago, April 2012

Speaker/Author of manuscript - "Protecting the Insurer's Internal Communications From Discovery in Bad Faith Actions," Defense Research Institute's Bad Faith Conference, Washington D.C., June 2011

Webinar Speaker - "Right to Independent Counsel: Emerging Issues - Resolving Policyholder and Insurer Disputes Over Selection of Counsel," Strafford Publications, July 2011

Speaker/Author of manuscript - "Certificates of Insurance: Avoiding Bad Faith," Property Liability Resource Bureau, Sacramento, California, Nov. 2011

Co-author, "Bad Faith in Absence of Breach of Contract?" featured in *For the Defense* magazine, a publication of the Defense Research Institute.

Speaker, "Observations from the Trenches of Truck Wreck Litigation", N.C. Trucking Association webinar, May 3, 2011.

Author, "Debunking Lost Future Earnings Damages", *The Transportation Lawyer*, February 2011

Author, "*Property Insurance Policies: The Covered Causes of Loss and Excluded Perils*", *Exploring Property Insurance and Construction Law Issues*, Defense Research Institute, June 2010.

Jim Bryan and Dennis Lynch co-authored an article entitled "Rolling Out CSA 2010 - The New Motor Carrier Safety Compliance" for *The DefenseLine*. *The DefenseLine* is the quarterly publication of the South Carolina Defense Trial Attorneys' Association.

On May 19, 2010, Jim Bryan filed an amicus curiae brief in a case pending before the North Carolina Supreme Court on behalf of the Trucking Industry Defense Association. On October 8, the State Supreme Court adopted the position argued in the brief and reversed the court of appeals decision. [Read the opinion here.](#)

Co-Author, *Duty to Settle Third Party Claims*, Property Loss Research Bureau/Liability Insurance Research Bureau, National Claims Convention, San Antonio, March 2010

"*The Nuts and Bolts of Declaratory Judgement Actions*", presented at the North Carolina Bar Association's Insurance Law Update CLE, Grandover Resort, Greensboro, North Carolina, November 6, 2009

"*Right to Independent Counsel?*", *Coverage Magazine*, Insurance Coverage Litigation Committee of American Bar Association's Section of Litigation, Vol. 19, No. 3, May/June 2009

"*Umbrella Policies: The Duty to Drop Down*", Property Loss Research Bureau/Liability Loss Research Bureau, National Claims Convention, Seattle, March 2009

Co-Author, *Who's Responsible for Financial Responsibility?*, Defense Research Institute's Trucking Law Committee, In-Transit, August 2007. The article features a recent NC Court of Appeals decision which held that a liability policy for a commercial vehicle automatically provides minimum of \$750,000 of coverage, despite the owner requesting and

paying for lesser coverage.

Co-Author, Amicus Curiae brief in the Supreme Court of North Carolina on behalf of the Trucking Industry Defense Association, *North Carolina Farm Bureau Mutual Insurance Company, Inc., v. Terry Davis Armwood, Jr.; Et al.*, April 2007

Co-Author, Amicus Curiae brief on behalf of the Trucking Industry Defense Association in the case, *Lamson & Sessions Co. v. ATS Logistics Services, Inc.*, November 2006

Co-Author, North Carolina Chapter in the Defense Research Institute's *Insurance Bad Faith: A Compendium of State Law (2006)*

Contracts and Insurance Protections for Motor Carriers, National Tank Truck Carriers Association, Board of Directors Meeting, August 2004

Co-Author, North Carolina Chapter in the American Law Firm Association's *A Fifty-State Reference of Significant Case and Statutory Law Related to Life, Accident and Health Insurance Claims and Litigation (2003 Edition)*

Author, *Just Exactly Where is That Petroleum Contamination Coming From?*, Environmental News, North Carolina Bar Association, 2003

Author, *Hold Harmless, Indemnity, Subrogation and Additional Insured Insurance in Transportation Contracts*, Annual Meeting, National Tank Truck Carriers Association, April, 2003

Author, *Brownfields Agreements: A Prospective Developer's Road to Success*, Environmental News, Vol. 13, No. 2, March, 2002

Auto Exclusion in General Liability Insurance Policies, Defense Research Institute's For the Defense, Vol. 43, No. 12, December, 2001

Author, *The Saga Over MTBE Continues, Takes New Turn*, Defense Research Institute's Environmental News, Vol. 13, No. 1, December, 2001

Author, *A Lesson in Avoiding Liability on the Internet*, BizLife Magazine, March, 2001

A Practical Guide to Federal Court Rules and Procedures in North Carolina, National Business Institute, June, 2000

Insurance Coverage Laws in North Carolina, National Business Institute, June, 1996

Damages Recoverable in Commercial Cases and Their Proof, Commercial Litigation in North Carolina Handbook, Law Practice Handbooks, 1995

Insights

04.03.2020

TIDA's Amicus Brief Committee - Are you a Friend of the Court?

02.12.2019

Insurer Defeats Business Interruption Claim on Property Insurance Policy and Accompanying Bad Faith Claim in Federal Court in North Carolina

TIPS: a Torts, Insurance and Products Blog