

***HIGHLIGHTS OF MAYER BROWN LLP'S
INSURANCE TORT PRACTICE***

Largely as a result of our expertise in punitive damages and class action defense, Mayer Brown LLP has had the opportunity to represent life, disability, auto, and home insurers in a wide range of cases and in forums throughout the country. We also have filed amicus briefs in numerous cases raising issues of interest to insurers, including the Supreme Court's important punitive damages decision, *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003). The following are some of the insurance cases in which Mayer Brown LLP has been involved in recent years. This list is illustrative, not exhaustive.

U.S. SUPREME COURT

1. ***State Farm Mutual Automobile Insurance Co. v. Campbell.*** In this insurance bad faith case, a Utah jury awarded the plaintiff policyholder \$145 million in punitive damages based largely on evidence of purported bad acts directed at other policyholders. The trial court ordered a remittitur to \$25 million, but the Utah Supreme Court reinstated the jury's verdict. The Supreme Court granted State Farm's petition to consider whether the punitive award, which is 145 times the compensatory damages, is unconstitutionally excessive. We submitted an amicus brief on behalf of the U.S. Chamber of Commerce arguing that it is improper to use an individual case to punish a defendant for conduct directed at individuals who are not before the court. In the course of holding the punitive award to be unconstitutionally excessive, the Court agreed with our argument.

2. ***American Insurance Association v. Garamendi.*** California's Holocaust Victim Insurance Relief Act requires every insurance company licensed to do business in the State to produce detailed information on every insurance policy issued in Europe between 1920 and 1945 by any corporate relative. The Supreme Court granted our petition for certiorari (which was supported by the Solicitor General and several foreign governments) and, by a 5-4 vote, agreed with our contention that the statute intrudes on the federal government's foreign affairs powers. Mayer Brown briefed and argued the case.

3. ***American Manufacturers Mutual Insurance Co. v. Sullivan.*** Seven large insurers retained us to seek review of a Third Circuit decision holding that (1) private workers' compensation insurers who invoke Pennsylvania's utilization review procedures are state actors subject to due process restrictions, and (2) due process requires that workers receive an opportunity to be heard before insurers

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suspend payment of medical bills to health care providers during the utilization review process. The Court granted review with respect to both issues and ruled in our clients' favor on each. Mayer Brown briefed and argued the case.

4. ***Pacific Mutual Life Ins. Co. v. Haslip.*** We filed an amicus brief in the Supreme Court on behalf of the Business Roundtable and the Product Liability Advisory Council addressing the question of the excessiveness of punitive damages under the Due Process Clause.

FEDERAL COURTS OF APPEALS AND DISTRICT COURTS

5. ***Ace v. Aetna Life Insurance Co.*** In this case, the plaintiff alleged bad faith delay in the payment of disability benefits. The jury awarded \$127,009 in compensatory damages and \$16.5 million in punitive damages. We were retained after the verdict. The district court granted judgment notwithstanding the verdict on punitive damages. The Ninth Circuit reversed this ruling, but concluding that the punitive damages were unconstitutionally excessive, remanded for determination of an appropriate remittitur. The district court then ordered a new trial unless the plaintiff accepted a remittitur to \$950,000. The plaintiff accepted the remittitur.

6. ***Ceimo v. General American Life Insurance Co.*** The plaintiff in this case is a cardiologist whose medical condition prevented her from performing invasive procedures but did not limit her ability to perform the non-invasive functions of a cardiologist. After The Paul Revere Life Insurance Company, which was administering claims for her insurer General American Life Insurance Company, denied her claim, Dr. Ceimo sued General American, Paul Revere, and Paul Revere's affiliated company Provident Life and Accident Insurance Company, alleging breach of contract and bad faith. The jury awarded her back benefits in the amount of over \$1.2 million, damages for mental distress in the amount of \$5.4 million, and punitive damages of \$79 million. We were retained to assist with the defendants' post-trial motions and any appeal. In response to the post-trial motions, the district court reduced the punitive damages to \$7 million, concluding that a ratio of approximately 1:1 is the maximum permissible given the high compensatory damages and the award of \$600,000 in attorneys' fees. Both sides appealed, and the Ninth Circuit affirmed in an unpublished disposition.

7. ***Doe v. MEGA Life and Health Insurance Co.*** MEGA retained us to defend this first-party bad faith case in which the plaintiff seeks \$50 million in

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punitive damages. After the U.S. District Court for the District of Columbia dismissed all of the plaintiffs' tort claims, the case was settled for nuisance value.

8. ***Hunter v. American General Life and Accident Insurance Co.*** We filed an amicus brief in the United States Court of Appeals for the Fourth Circuit on behalf of the American Council of Life Insurers arguing for affirmance of the district court's refusal to certify the case, which alleged race discrimination in the premiums charged for "industrial life insurance policies," as a class action. Specifically, we argued that the individualized issues related to the timeliness of the claim of each class member made class treatment improper. The court agreed with our position.

9. ***In Re Monumental Life Insurance Co.*** We filed an amicus brief in the United States Court of Appeals for the Fifth Circuit on behalf of the American Council of Life Insurers arguing for affirmance of the district court's refusal to certify the case, which alleged race discrimination in the premiums charged for "industrial life insurance policies," as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure. We argued that the district court's decision was correct because Rule 23(b)(2) applies only to cases in which the predominant form of relief sought is injunctive, and the district court had found that as many as 82% of the putative class members were seeking exclusively monetary relief. We also argued that a contrary decision would raise due process concerns because it would permit the plaintiffs to circumvent the individualized questions inherent in the claims presented. When the Fifth Circuit reversed the district court's denial of class certification, we filed another amicus brief for the American Council of Life Insurers in support of a petition for rehearing en banc.

10. ***In Re Liberty National Insurance Cases.*** We submitted an amicus brief to the United States Court of Appeals for the Eleventh Circuit on behalf of the American Council of Life Insurers supporting a petition for a writ of mandamus or, alternatively, for permission to appeal from the district court's order certifying for class treatment under Rule 23(b)(2) of the Federal Rules of Civil Procedure claims alleging race discrimination in the premiums charged for "industrial life insurance policies." We argued that the district court's intention to conduct a bench trial on both plaintiffs' claims for equitable relief and their entirely legal claims for compensatory and punitive damages violated the defendant's Seventh Amendment right to a jury trial in a suit seeking monetary damages. Unfortunately, the court denied Liberty National's petition.

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11. ***Lagstein v. Lloyd's Underwriter at London.*** The plaintiff in this case is a successful cardiologist who, after having open-heart surgery, claimed that he was totally disabled from his practice because of the risk of further injury to his heart even though he had resumed working full time within months after his surgery (in line with the expected recovery period) and described his job as “no big deal” for him. Kiln, the principal Lloyd's syndicate on the policy, denied the claim and Lagstein sued. Pursuant to an arbitration clause in Lagstein's policy, the dispute was heard by a three-person arbitration panel. Over the strident dissent of the third arbitrator, two members of the panel awarded Lagstein \$900,000 as the future value of his policy, \$1.5 million for emotional distress, and scheduled a second arbitration hearing on the amount of punitive damages to be imposed. At that point, Kiln retained us to assist with the remainder of the case. We drafted Kiln's pre-hearing brief on punitive damages, assisted in identifying and preparing witnesses for the punitive damages hearing, and did the opening statement and closing argument at the hearing. After the hearing, the same two arbitrators who formed the original majority imposed \$4 million in punitive damages, again over the strident dissent of the third arbitrator. The U.S. District Court for the District of Nevada thereafter vacated both awards on the grounds that the arbitrators were biased, manifestly disregarded the law, and lacked jurisdiction to conduct the punitive damages hearing. Plaintiff then appealed. We collaborated with lead counsel on the motion to vacate and are lead counsel in the Ninth Circuit.

12. ***Leavey v. UnumProvident Corp.*** The plaintiff in this case is a dentist who is addicted to pain killers. Provident Life and Accident Insurance Company (a subsidiary of UnumProvident) paid his disability claim for several years but, in the third year of the claim, learned that he had dropped all of his physicians and entered a methadone clinic against their advice. After Leavey underwent two independent medical examinations (“IMEs”), Provident sent him a letter providing a six-month advance of benefits, treatment recommendations, and an offer to pay for additional treatment that the IMEs concluded could enable him to return to work. At the end of the six-month advance period, Provident resumed monthly benefit payments without Leavey ever missing a payment. He nonetheless proceeded with a bad-faith claim and was awarded over \$800,000 in future benefits, \$4 million in emotional distress damages, and \$15 million in punitive damages. We were retained to assist with post-trial motions and the appeal. In response to our post-trial motions, the district court ordered a remittitur of the emotional distress damages to \$1.2 million and reduced the punitive damages to \$3 million. Both sides appealed to the Ninth Circuit, which affirmed in all respects.

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13. ***McKendry v. General American Life Insurance Co.*** In this case, General American terminated the long-term disability benefits of a real estate professional who was suffering from Chronic Fatigue Syndrome on the ground that he was not disabled from working full-time. A federal jury in Phoenix concluded that the termination of benefits was in bad faith, awarding \$350,000 in compensatory damages (including \$200,000 for emotional distress) and \$10.2 million in punitive damages against General American. The jury also imposed \$6.8 million in punitive damages against Paul Revere Life Insurance Company, which had served as claims handling agent for General American and actually made the decision to terminate the claim. We were retained to assist with post-trial motions and handle any appeal to the Ninth Circuit. The district court ordered a new trial, concluding that various items of evidence should not have been admitted and that the compensatory and punitive damages were so grossly excessive as to indicate the existence of passion and prejudice. The parties settled before the re-trial.

14. ***Merrick v. UnumProvident Corp.*** The plaintiff is a venture capitalist who, after being forced out of his firm for a record of poor investments, claimed that he was totally disabled by cognitive deficits and fatigue associated with chronic fatigue syndrome ("CFS"). Paul Revere Life Insurance Company (a subsidiary of UnumProvident) paid benefits for over a year while investigating Merrick's claim. Although Paul Revere never challenged Merrick's diagnosis of CFS, it eventually denied his claim because all of the objective testing performed on him by his own doctors and several IME physicians indicated that he was functioning normally. Merrick sued and the jury awarded him \$1.15 million in past-due benefits, \$500,000 for emotional distress, and \$10 million in punitive damages. We appealed to the Ninth Circuit, which ordered a new trial on punitive damages because of the district court's error in refusing to instruct the jury that it could not punish Paul Revere for the impact of its conduct on non-parties. In the re-trial, the jury awarded \$60 million in punitive damages, which the trial judge reduced to just over \$50 million. We were responsible for briefing the appeal, which settled shortly before the date set for oral argument.

15. ***Milton Hambrice, Inc. v. State Farm Fire and Casualty Co.*** We were retained to handle the appeal to the Eighth Circuit in this malicious prosecution case in which Hambrice received \$312,000 in compensatory damages and \$7.5 million in punitive damages. The case arose after a restaurant insured by State Farm was damaged by an electrical fire. After paying the claim, State Farm sought contribution from the contractor who had been renovating the restaurant.

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When State Farm later learned that the restaurant's employees had been aware of the dangerous condition that caused the fire and had not corrected it, State Farm voluntarily dismissed its claim against the contractor, who then turned around and sued State Farm for malicious prosecution. The Eighth Circuit, finding insufficient evidence to support two key elements of the claim, reversed the entire judgment and remanded with instructions to enter judgment in favor of State Farm.

16. ***Movsesian v. Victoria Versicherung AG.*** This case concerns the validity of a California law that extends the statute of limitations by more than 80 years for claims growing out of life insurance policies issued to victims of the "Armenian Genocide" in the Ottoman Empire. The statute is a companion to several other California laws that extended the statute of limitations or created new causes of action for victims of the Nazi Holocaust, World War II-era slave labor regimes, or other events occurring overseas many decades ago, most of which have been held to violate the exclusive federal power over the conduct of foreign affairs. In this case, the district court held the state law enforceable. But on our appeal, the Ninth Circuit reversed and held the law invalid as inconsistent with the federal Executive Branch's policy, expressed by multiple administrations, rejecting formal recognition of an "Armenian Genocide" as inconsistent with U.S. foreign policy interests. The court rejected the contrary argument that the law was a run-of-the-mill state insurance regulation, explaining that California had created a special rule as a means of means of expressing dissatisfaction with U.S. foreign policy. The Ninth Circuit's holding relied heavily on the Supreme Court's decision in *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003), which also was argued by Mayer Brown.

17. ***Ostrof v. State Farm Mutual Automobile Insurance Co.*** Maryland law requires automobile insurers to offer their insureds personal injury protection ("PIP") coverage, under which the insurer must pay, up to the limits of an insured's policy, the reasonable and necessary medical expenses incurred as a result of a motor vehicle accident. In this case, the plaintiffs, on behalf of a putative class, alleged that State Farm had breached its insurance contracts with certain of its Maryland insureds by denying in whole or in part their claims for medical expenses and lost wages. The district court refused to certify the case for class treatment, finding that the plaintiffs had not satisfied either the "commonality" and "typicality" requirements of Federal Rule of Civil Procedure 23(a) or the "predominance" and "superiority" requirements of Rule 23(b)(3). The court agreed with our argument that State Farm's liability to each putative class member turned on inherently individualized issues, such as whether the medical

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treatment received by the insured was necessary and related to a covered accident, and whether the charges for those treatments were reasonable. Plaintiffs did not appeal the denial of class certification.

18. ***Phelps v. UnumProvident Corp.*** The plaintiff in this case was a dentist who suffers from osteoarthritis in his hand. The condition makes it difficult for him to use a “pinch grip.” As a result, he is unable to perform many, but not all, of the important duties of his occupation. UnumProvident paid him total-disability benefits for two years, after which it terminated his claim on the ground that he was capable of performing several of the same duties that he had performed before he became disabled. Phelps sued for breach of contract and bad faith. The district court granted Phelps summary judgment on the breach-of-contract claim, and granted UnumProvident summary judgment on the bad-faith claim. Phelps appealed the latter ruling. The Sixth Circuit affirmed, rejecting Phelps’ contention that there necessarily is an issue of fact on bad faith whenever liability for breach of contract is so clear as to warrant summary judgment for the insured. We provided UnumProvident’s trial counsel with assistance on the brief and then argued the case.

19. ***Tedesco v. Paul Revere Life Insurance Co.*** The jury in this case imposed \$36.7 million in punitive damages against Paul Revere as punishment for its delay in paying the plaintiff’s disability claim. We were retained to assist with post-trial motions and any appeal. During the pendency of the post-trial motions, the case settled for substantially less than the judgment.

20. ***Thorn v. Jefferson-Pilot Life Ins. Co.*** We submitted an amicus brief to the United States Court of Appeals for the Fourth Circuit on behalf of the American Council of Life Insurers arguing for affirmance of the district court’s refusal to certify the case, which alleged race discrimination in the premiums charged for “industrial life insurance policies,” as a class action. Specifically we argued that the individualized issues related to the timeliness of the claim of each class member made class treatment improper. The court agreed with our position.

STATE COURTS

- **ALABAMA**

21. ***State Farm Fire and Casualty Co. v. Owen.*** We were retained to assist with the preparation of motions in limine and development of the defense

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strategy in this Alabama case alleging fraud in the sale of a personal articles floater. The plaintiff claims that, although State Farm disclosed that it would pay only the replacement cost, not the appraised value, of her ring in the event it was lost or stolen, it failed to disclose that its replacement cost could be lower than the appraised value. The jury awarded the plaintiff \$1,339 in compensatory damages and \$130,000 in punitive damages. We drafted State Farm's opening and reply briefs in the Alabama Supreme Court arguing, among other things, that State Farm had no duty to disclose, that imposition of punitive damages violated due process, and that the punitive damages are unconstitutionally excessive. The Alabama Supreme Court reversed, accepting our argument that State Farm had no duty to disclose.

22. ***Union Security Life Insurance Co. v. Crocker.*** We were retained to seek U.S. Supreme Court review in this case, in which the Alabama Supreme Court upheld a \$2 million punitive exaction against an insurance company whose agent allegedly failed to inform the plaintiff and her husband that, if the insured died of an undisclosed pre-existing condition, coverage might be denied. The Supreme Court granted certiorari and remanded the case for further consideration in light of *BMW*. On remand, the Alabama Supreme Court reduced the punitive damages to \$1 million.

- **ALASKA**

23. ***Bellott v. State Farm Life Insurance Companies.*** State Farm terminated Bellott's agency after he repeatedly rejected State Farm's demands that he stop selling investment products from his agency. Bellott sued and received an award of \$2.7 million in compensatory damages and \$150 million in punitive damages. State Farm retained us to assist with post-trial motions. The case settled for \$7.5 million after briefing of the post-trial motions.

24. ***Fisher v. Aetna Life Insurance Co.*** After the jury returned a verdict awarding about \$300,000 in actual damages and \$8.5 million in an insurance bad faith case involving the denial of long-term disability benefits, we were retained to work with trial counsel briefing the appeal. Among other issues, we addressed the punitive damages award by compiling and analyzing every punitive damage award to come before the Alaska Supreme Court in the past thirty years to support the argument that the punitive award was grossly out of line under federal constitutional principles as well as under state law. We argued the appeal before

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the Alaska Supreme Court in January 2000. The case subsequently settled for substantially less than the judgment.

- **ARIZONA**

25. *Diamond v. General American Life Insurance Co.* We were retained to assist with post-trial motions and to handle the appeal in this case, in which an Arizona jury awarded \$1 million in compensatory damages and \$58 million in punitive damages. Although the specific dispute between the plaintiff and General American related to General American's interpretation of a five-year limitation on disability benefits, the plaintiff was able to inflame the jury with evidence that General American had identified 58 policyholders with large potential claims and attempted to buy out their policies at a substantial discount. The trial court reduced the punitive damages to \$18 million. After the case was fully briefed in the Court of Appeals, the plaintiff accepted a settlement for considerably less than the judgment. The actual amount is confidential.

- **CALIFORNIA**

26. *Chapman v. UnumProvident Corp.* The plaintiff in this case, an ophthalmologist who stopped performing surgery because of anxiety about hurting his patients, alleged that UnumProvident denied his claim for total-disability benefits in bad faith. The jury agreed, awarding him approximately \$1.5 million in past and future benefits, \$125,000 in compensatory damages for emotional distress, and \$30 million in punitive damages. We were retained to assist with post-trial motions and the appeal. In response to our post-trial motions, the trial court ordered remittiturs of the three awards to \$1.1 million, \$15,000, and \$5 million respectively. We assisted with motions in limine and jury instructions and briefed and argued the post-trial motions. Both sides appealed, but the case settled before oral argument.

27. *Hill v. State Farm Mutual Automobile Insurance Co.* The plaintiffs in this case claimed that State Farm Mutual Automobile Insurance Co. breached its insurance policies and the covenant of good faith and fair dealing by maintaining a surplus that exceeded the amount needed to meet its insurance obligations. We were retained by the American Council of Life Insurers to draft an amicus curiae brief in support of State Farm. The California Court of Appeals vacated the trial court's decision, holding first that the internal affairs doctrine required that liability for not declaring dividends be based on the law of the company's place of

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incorporation; and second, that if the board of director's dividend decisions were made in compliance with the business judgment rule, its claims were barred because the business judgment rule applies to contract claims and to the covenant of good faith and fair dealing.

28. ***Leeper-Johnson v. The Prudential Insurance Co. of America.*** The plaintiff in this case had a disability policy with Prudential. She claims to be totally disabled by fibromyalgia. Prudential paid her for several years but terminated her claim after concluding that she was not unable to perform the duties of her occupation. Plaintiff sued, alleging breach of contract and bad faith. The jury awarded her \$1,215,000 in compensatory damages and \$14 million in punitive damages. We were retained to brief and argue the post-trial motions and any appeal. The trial court denied our post-trial motions except for granting a new trial on punitive damages unless plaintiff accepted a remittitur of the punitive damages to \$4 million. The plaintiff rejected the remittitur. We appealed the denial of the balance of our motions. The Court of Appeal eliminated \$315,000 in damages as unsupported by the evidence and remanded for a redetermination of attorneys' fees. It otherwise affirmed. The case settled before the re-trial.

29. ***Petrulis v. The Prudential Insurance Co. of America.*** In this case, which is currently pending before the California Court of Appeal, Prudential has appealed a California state trial court decision that applied a provision of the California Probate Code to the insurer's invocation of a suicide exclusion clause, and effectively awarded the plaintiff treble damages as a result. We were retained by the American Council of Life Insurers to draft an amicus curiae brief in support of Prudential. Our brief argued that the trial court's novel application of section 859 of the Probate Code exposes all insurers providing life insurance in California to double or even triple liability in any case in which they deny benefits pursuant to the terms of a contract for life insurance. It further argued that the trial court's use of the Probate Code was inconsistent with any previous application of the statute and dramatically expanded the scope of double recovery beyond anything ever intended by the legislature. The court did not need to reach the Probate Code issue because it agreed with Prudential that the suicide exclusion was fully applicable.

- **FLORIDA**

30. ***Lutz v. Protective Life Insurance Co.*** The plaintiff in this case filed a putative state-wide class action alleging, among other things, that Protective failed to comply with the provision of the Florida Insurance Code that exempts out-of-

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state insurers from most of the Code's substantive requirements and that the exemption provision was "incorporated" into the class's insurance policies. We were retained by the American Council of Life Insurers to draft an amicus curiae brief in support of Protective. Although the Florida District Court of Appeals held that the exemption provision could provide the basis for a breach-of-contract claim, it affirmed the trial court's determination that the plaintiff had failed to explain how Protective had violated those provisions such that a breach of contract had occurred or damages had resulted.

31. ***Klempner v. Northwestern Mutual Life Insurance Co.*** The plaintiffs in this case brought a class action on behalf of physicians who did not receive dividends from their disability policies. Although the class premiums did not nearly cover their collective insurance costs, the plaintiffs claimed that Northwestern Mutual Life Insurance Co. breached its insurance policies when it did not pay dividends to the physician class. We were retained by the American Counsel of Life Insurers to draft an amicus curiae brief in support of Northwestern Mutual. The Florida District Court of Appeals reversed, holding that after the Wisconsin Office of the Commissioner of Insurance had already found the distribution to be proper, the Florida state courts should not determine whether Northwestern Mutual should distribute dividends to physicians.

- **IDAHO**

32. ***Robinson v. State Farm Mutual Automobile Insurance Co.*** The plaintiff in this case alleges that she suffered a back injury when one of the wheels came off her car, causing her to bring the car to a rapid stop. She sued State Farm for bad faith when State Farm declined to pay her medical bills after concluding that her back injury was not caused by the incident. The jury imposed a \$9.5 million punitive award. The Idaho Supreme Court initially affirmed, but subsequently granted rehearing, vacated the judgment, and ordered a new trial, concluding that the trial court had committed two significant instructional errors. The case then settled. We assisted with the appellate briefing and the rehearing petition. The case was argued by Idaho counsel, who also argued the case on rehearing.

- **ILLINOIS**

33. ***Bemis v. State Farm Fire & Cas. Co.*** Over a ten-year period, a plaintiffs' firm filed a series of similar consumer class actions against State Farm

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in Madison County. Each time, we persuaded the Illinois Supreme Court to transfer the Madison County case to Cook County, to be consolidated with a similar, previously filed putative class action. Illinois law, however, gives each party a statutory right (akin to a peremptory challenge) to remove one judge assigned to a case. After the Supreme Court began transferring the Madison County cases to Cook County, the plaintiffs twice used the “new” transferred case as a pretext to remove a judge who previously had decided issues against them in Cook County. The Illinois Appellate Court granted Mayer Brown’s petition for a permissive interlocutory appeal, but held that the plaintiffs had an absolute statutory right to remove a judge. The Illinois Supreme Court granted leave to appeal, vacated the Appellate Court’s decision, and ordered the case to proceed in Cook County before the same judge who has been handling the cases since 2006.

34. ***Siler v. State Farm Mutual Automobile Insurance Co.*** The plaintiff policyholders in this case filed a putative nationwide class action in Madison County challenging State Farm’s reliance on allegedly biased physical exams and utilization reviews when adjusting claims for medical expenses arising from automobile accidents. We filed a comprehensive brief demonstrating the myriad individualized factual issues as well as the intractable choice-of-law problems presented by plaintiffs’ motion for class certification and also participated in the hearing before the circuit court, which proceeded to deny class certification. The Illinois Supreme Court then granted our motion to transfer the case to a court in Chicago, which subsequently dismissed most of plaintiffs’ claims. Plaintiffs attempted to voluntarily dismiss their remaining claims without prejudice, but the court sustained our objection, prompting plaintiffs to accept dismissal with prejudice.

35. ***Snead v. State Farm Mutual Automobile Insurance Co.*** We were retained to defend a putative nationwide class action challenging the legality of utilization reviews as a claims adjustment tool. We successfully moved to strike the class allegations from the complaint and twice succeeded in having most of the complaint dismissed for failure to state a claim. A motion to dismiss amended claims and class allegations is now pending.

- **MARYLAND**

36. ***Cotton v. State Farm Mutual Automobile Insurance Co.*** Maryland law requires automobile insurers to offer their insureds personal injury protection (“PIP”) coverage, under which the insurer must pay, up to the limits of an

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insured's policy, the reasonable and necessary medical expenses incurred as a result of a motor vehicle accident. In this case, the plaintiffs, on behalf of a putative class, alleged that State Farm had breached its insurance contracts with certain of its Maryland insureds by underpaying their medical expenses through the use of a computerized system known as "Medicode," which assists insurers in determining the "reasonable" charge for necessary medical services. Relying on *Ostrof v. State Farm Mutual Automobile Insurance Co.*, discussed above, the trial court refused to certify the case for class treatment, agreeing with our argument that State Farm's liability to each putative class member turned on inherently individualized issues. The court also dismissed plaintiffs' claim for disgorgement of premiums, accepting our argument that this was not a valid remedy for the plaintiffs' alleged injuries. The case thereafter settled on very favorable terms.

37. ***Creveling v. Government Employees Insurance Co.*** This case also involves Maryland's mandatory PIP coverage. In this case, the plaintiffs alleged that our client State Farm Mutual Automobile Insurance Co. had breached its insurance contracts with certain of its Maryland insureds by denying PIP claims to the extent that the medical expenses had been paid by a party other than the insured (*e.g.*, by an HMO), and sought to have the suit certified as a class action. The Maryland Court of Appeals affirmed the trial court's refusal to certify the case for class treatment, agreeing with our argument that State Farm's liability to each putative class member turned on inherently individualized issues. Accordingly, the court held that the case failed to satisfy the "commonality" requirement of Maryland's class action rule. This was one of a series of cases in which Mayer Brown defeated class certification of medpay-type claims.

- **MISSISSIPPI**

38. ***Prudential Insurance Co. of America v. Stewart.*** In this insurance bad-faith case, a Mississippi jury awarded the plaintiff \$35 million in punitive damages based on Prudential's denial of a claim under a \$1 million life insurance policy. Prudential's own investigation of the claim concluded that a contract was never formed, and the plaintiff's evidence to the contrary was based entirely on self-interested hearsay testimony. We were retained by the American Council of Life Insurers to draft an amicus curiae brief in support of Prudential addressing the excessiveness of the punitive award under the Due Process Clause and state law. The appeal is pending before the Mississippi Supreme Court.

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39. ***Titan Indemnity Co. v. Hood.*** In this case, arising out of the decision by St. Paul Fire and Marine Insurance Company to terminate its “representative agreement” with an insurance marketer, St. Paul and two of its subsidiaries were held liable for approximately \$2.8 million in compensatory damages and \$80 million in punitive damages. We were retained to assist with briefing the case in the Mississippi Supreme Court. After briefing and argument (which was delivered by our Mississippi co-counsel), the Mississippi Supreme Court reversed the judgment, agreeing with our position that the provision in the agreement specifying that any litigation would be pursued in Bexar County, Texas, was fully enforceable.

40. ***Hicks v. MIC Life Insurance Company and General Motors Acceptance Corporation.*** In this case, a Mississippi state court jury awarded \$30 million in punitive damages against GMAC and \$6 million against its indirect subsidiary MIC Life Insurance Company for failing to refund \$600 in unearned premiums on a credit life insurance policy. We were retained to draft the post-trial motions and appellate briefs for both GMAC and MIC Life. After receiving the post-trial motions, the trial court reduced the punitive damages against GMAC to \$5 million and those against MIC Life to \$1 million. On appeal, the Mississippi Court of Appeals held that the trial court had committed five different trial errors. The Court of Appeals accordingly awarded GMAC a new trial as to all issues and awarded MIC Life a new trial as to all issues except for liability for the refund. On petitions for review by all three parties, the Mississippi Supreme Court affirmed the new trial for GMAC, but held that the trial errors did not prejudice MIC and therefore reinstated the \$1 million punitive award against that company. We then filed a petition for rehearing. The court granted rehearing, found the \$1 million punitive award against MIC to be unconstitutionally excessive, and also held that the trial errors were prejudicial to both GMAC and MIC.

- **NEVADA**

41. ***Bartgis v. North American Life & Casualty Co. (Allianz).*** We were retained for post-verdict briefing and appeal to the Nevada Supreme Court in this fraud and bad faith case involving a \$7.5 million punitive exaction against Allianz for allegedly failing to disclose, and for enforcing, certain limitations on hospitalization coverage put in place when the insurance company took over the policy from an unrelated insurer that had dropped the coverage as unprofitable. The Nevada Supreme Court affirmed the finding of liability, but cut the punitive

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damages in half under state law, declining to consider our federal due process challenge.

- **NEW MEXICO**

42. *Azar v. The Prudential Insurance Co. of America.* We submitted an amicus brief to the New Mexico Court of Appeals on behalf of the American Council of Life Insurers arguing for reversal of the trial court's judgment that the defendant failed adequately to disclose its modal premiums. The court of appeals held that factual questions precluded summary judgment on the duty issue and remanded the case.

43. *Berry v. Federal Kemper Life Assurance Co.* We submitted an amicus brief to the New Mexico Court of Appeals on behalf of the American Council of Life Insurers arguing that the court should permit an appeal from the trial court's decision to certify a nationwide class of plaintiffs alleging that the defendant failed adequately to disclose its modal premiums. Specifically, we argued that the trial court failed to recognize the inherently individualized nature of the plaintiffs' claims, making them impossible to adjudicate on a class-wide basis, and erroneously ruled that it could resolve these claims — only 0.5% of which involved New Mexico residents — exclusively through the application of New Mexico law. The court of appeals allowed the appeal and affirmed the certification of the breach-of-contract claims, but reversed the certification of the claims alleging that the defendant breached the alleged duty of good faith.

- **OKLAHOMA**

44. *Campbell v. State Farm Mutual Automobile Insurance Co.* We helped draft and edit the appellate briefs in this Oklahoma case involving a \$20 million punitive exaction arising out of the alleged bad-faith delay in paying an underinsured motorist claim. The Oklahoma Court of Appeals reversed and ordered a new trial on the basis of improper expert testimony. After the Oklahoma Supreme Court granted certiorari, the parties settled the case for considerably below the original judgment.

- **PENNSYLVANIA**

45. *Toy v. Metropolitan Life Insurance Co.* The plaintiff in this case sued MetLife for misrepresentation and under the state consumer protection law, alleging that MetLife's agent represented that she was purchasing a "retirement

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plan” and that she continued to rely on that representation even after receiving a document conspicuously designated as a “Whole Life Policy.” The Court of Common Pleas dismissed the case on the ground that the plaintiff could not establish justifiable reliance, but the Superior Court reversed. We were then retained by the American Council of Life Insurers to draft an amicus curiae brief in support of MetLife in the Pennsylvania Supreme Court. In a 3-2 decision, the Supreme Court affirmed, holding that the defendants were not entitled to summary judgment on the issue of justifiable reliance.

- **SOUTH CAROLINA**

46. *Connell v. Equitable Life Assurance Society of the United States.* This was an insurance bad-faith case against The Paul Revere Life Insurance Company arising out of its denial of a “speciality occupation” claim brought by an insured who claims that his heart condition prevents him from performing his occupation as a trial lawyer. The plaintiff sought both compensatory and punitive damages. We assisted Paul Revere in briefing various issues arising out of a default judgment entered by the trial court for failure to answer the complaint within the time specified by the rules. After the parties agreed to lift the default, the case settled.