



## Edward M. O'Brien

Partner

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Edward O'Brien focuses his practice on nursing home litigation, insurance defense, arbitration, business consulting, risk management, appellate advocacy and general civil defense. Eddie is the co-founder and managing editor of the *Kentucky Appellate Survey*, a publication that summarizes, analyzes and contextualizes all holdings from Kentucky's appellate courts. Eddie is also Associate Editor of TYL Magazine, which is the principal publication of the ABA's Young Lawyers Division and distributed to 130,000 attorneys nationwide.

Eddie's professional experience includes work as a law clerk for a mid-size Louisville civil defense firm, a summer clerkship with the Louisville-Jefferson County Public Defender Corp., and a research assistantship with Professor Cedric Merlin Powell. Eddie also served as a research assistant for the law school's Office of Professional Development, where he co-founded the Professional Development Fellow program, and the Office of Academic Success, where he co-coordinated the Structured Study Group Program for first-year students.

During law school, Eddie was active in numerous student organizations, including two years as a member of the Moot Court Board, serving as a writing skills mentor for the Central High School Partnership, and mentoring first-year law students as a Brandeis Academic Fellow. During his tenure as editor in chief of the University of Louisville *Law Review*, the publication earned national recognition for best practices and innovation from the National Conference of Law Reviews. Additionally, the editorial board successfully attracted the National Conference of Law Reviews to Louisville for its annual conference in 2015, which brought hundreds of attendees and thousands of dollars in economic impact to the community. Eddie served on the steering committee for this project.

Eddie has been active in his community as a Big Brother and member of the Honorable Order of Kentucky Colonels, an independent, nonprofit charitable organization formally

### Services

- Appellate
- Commercial Contracts & Agreements
- Complex Tort & General Casualty
- Construction
- Insurance & Reinsurance Defense
- Medical Malpractice & Health Care
- Transportation

founded in 1932.

## **Education**

- University of Louisville, Brandeis School of Law (J.D., 2013)
  - cum laude; University of Louisville Law Review, Editor-in-Chief
- Sam Houston State University (B.S., 2010)

## **Bar Admissions**

- Kentucky
- Indiana

## **Court Admissions**

- Supreme Court of Kentucky
- U.S. Court of Appeals, Sixth Circuit
- U.S. District Court, Eastern District of Kentucky
- U.S. District Court, Western District of Kentucky

## **Professional Affiliations**

- American Inn of Court, Fellow
- American Bar Association
- Kentucky Bar Association
- Louisville Bar Association
- Louis D. Brandeis American Inn of Court
- Kentucky Defense Counsel, Young Lawyer Section Committee; Publications Committee
- Defense Research Institute (DRI)

## **Awards & Honors**

- Selected for inclusion in *The Best Lawyers in America® Ones to Watch™*, 2024-2025
- Selected for inclusion in *Rising Stars for Kentucky Super Lawyers*, 2021-2023
- Selected for inclusion in *The Best Lawyers in America®*: Ones to Watch in the areas of Appellate Practice; Construction Law and Insurance Law, 2021-2023
- Pirtle Washer Oral Advocacy Competition, Quarter Finalist
- Omicron Delta Kappa Outstanding Graduating Senior Award
- Stites & Harbison Leadership Award
- Leon P. Lewis Public Service Fellowship

# Client Wins

## **O'Brien and Bokeno's Amicus Brief Bolsters Another Landmark Kentucky Supreme Court Decision on Interpretation of Insurance Policies**

Edward M. O'Brien (Partner-Louisville, KY) and Andrew-John R. Bokeno (Associate-Louisville, KY) were once again enlisted by the Kentucky Defense Counsel, Inc., Kentucky's largest association of civil defense attorneys, to file an amicus brief on its behalf in a case pending before the Kentucky Supreme Court. The brief advocated that the trial court and Court of Appeals correctly held that, in the context of malicious prosecution claims, an occurrence-based law enforcement liability policy is not triggered by harm arising from pre-policy conduct that merely continues into the policy period. Relying on fundamental tenets of Kentucky contract law and interpretation, which constitute the prevailing view in most other jurisdictions, the brief argued that no "occurrence" – and thus no coverage obligation – exists in the policy language where a claimant alleges malicious prosecution before the policy period began, even if incarceration continued during the policy term. The Kentucky Supreme Court affirmed the lower courts' rulings, holding that a malicious prosecution occurs at the time the underlying charges are filed for purposes of determining a qualifying "occurrence" under a law enforcement liability policy. Adopting many of the arguments advanced in Eddie and AJ's briefing, the Supreme Court's decision reinforces the importance of adhering to fundamental principles of contract law and resolves a significant issue that has divided multiple state and federal courts.

## **Williams, O'Brien, and Lalonde Secure Appellate Affirmance for Construction Company Client**

Ryan Williams (Partner-Denver), Edward O'Brien (Partner-Louisville), and Gabrielle Lalonde (Associate-Denver) secured an appellate victory in the Colorado Court of Appeals for Wilson Elser's client, Jim Black Construction. The court affirmed the trial court's judgment in favor of the client in its lien foreclosure and breach of contract action against a property owner for whom it provided services. The panel rejected the property owner's challenges to the validity and amount of the mechanic's lien and upheld the trial court's findings that the lien was not knowingly excessive. The court also affirmed the contract judgment, concluding that the parties' proposal and work authorization are to be construed together and that the record supported the scope of work and the charges awarded. This decision allows Jim Black Construction to proceed toward foreclosure and enforcement upon issuance of the mandate, absent any further review.

## **O'Brien, Dwyer, and Bokeno Obtain Total Order of Dismissal in Multi-Plaintiff, Multi-Claim, Multimillion-Dollar Lawsuit**

Edward M. O'Brien (Partner-Louisville, KY), John H. Dwyer (Of Counsel-Louisville, KY), and AJ Bokeno (Associate-Louisville, KY) secured a significant victory in the U.S. District Court for the Southern District of Indiana for the firm's client, the owner of a manufactured home community, obtaining an Order of Dismissal against all claims brought by more than 30 plaintiffs seeking over \$15 million in damages. The plaintiffs, tenants in the client's community, brought individual and class action claims against the client, alleging multiple theories of liability related to payments under lease agreements and the physical property

on which the community sat. The plaintiffs' allegations included breach of lease, statutory violations, negligence, and fraud. Eddie, John, and AJ responded with an extensively briefed motion to dismiss under Rule 12(b)(6), arguing that none of the claims met the required legal standards under Indiana law and Seventh Circuit precedent. The court agreed, dismissing all of the plaintiffs' claims against the client with prejudice, while adopting a majority of the legal arguments and theories advanced by the defense. The Louisville team's securing a total dismissal of the matter, disposing of more than thirty plaintiffs' multiple claims, delivered a complete defense win for the firm's client.

#### **O'Brien, Belzer & Bokeno Succeed in Affirmance of Summary Judgment in Multi-Claim Litigation in Ohio Court of Appeals**

Edward O'Brien (Partner-Louisville, KY), Geoffrey Belzer (Partner-Chicago, IL), and Andrew-John Bokeno (Associate-Louisville, KY) recently succeeded in securing an affirmance of summary judgment in the Ohio Court of Appeals in a multi-claim civil lawsuit brought against the firm's client, a manufactured home community. Plaintiffs, who were tenants in the client's community, brought a civil action in Cuyahoga County Court of Common Pleas alleging the community failed to render cosmetic repairs to the plaintiff's home, breached certain state statutes, and misrepresented certain aspects of the community and manufactured homes to the plaintiffs. The complaint set forth multiple legal theories of liability, including breach of contract, fraud and misrepresentation, breach of R.C. 5321.04, and violations of the Ohio Consumer Sales Practices Act. After the trial court granted our motion for summary judgment on all the above theories, the plaintiffs appealed the decision to the Ohio Court of Appeals' Eighth Appellate District, which affirmed the trial court's order granting summary judgment on each and every claim asserted against the client, finding no genuine dispute of material fact and entitling the community to judgment as a matter of law. As such, the Court of Appeals disposed of all of the plaintiffs' causes of action against the firm's client.

#### **O'Brien and Bokeno Succeed in Enforcing Forum Selection Clause in Multi-Million Dollar Commercial Litigation Case in Indiana Supreme Court**

Edward M. O'Brien (Partner-Louisville, KY) and Andrew-John Bokeno (Associate-Louisville, KY) succeeded in enforcing a forum selection clause in the Indiana Supreme Court in Indianapolis in a multimillion-dollar commercial litigation case brought against Wilson Elser's client, a security company. A large poultry company sued our client, alleging that the security company's negligence led to a chemical accident at a poultry processing plant, causing millions of dollars in damages. The client moved to compel enforcement of a forum selection clause contained in the parties' contract, which the trial court granted. However, a divided panel of the Indiana Court of Appeals reversed the trial court, finding that enforcing the forum selection clause would unduly prejudice the plaintiff. The Indiana Supreme Court granted a review of the case. It reversed the Court of Appeals' decision, finding that the forum selection clause was valid and enforceable. Specifically, the Indiana Supreme Court rejected the plaintiff's argument that forum selection clauses cannot be enforced where some of the defendants in a case are parties to the clause but others are not, which was an issue of first impression for the court.

#### **O'Brien Obtains Summary Judgment Substantially Limiting Insurer's Exposure in Bar Brawl Assault and Battery Case**

Edward M. O'Brien (Partner-Louisville, KY) obtained summary judgment in the U.S.

District Court for the Southern District of Indiana in favor of Wilson Elser's client, an insurer. This case stems from a brawl at an insured's bar establishment. The plaintiff, a bar patron, alleges that a bar employee inflicted serious physical injury upon him while attempting to break up an altercation. The patron sued the bar to recover the establishment's insurance policy general commercial liability limit of \$1 million. The firm's insurer client maintained that coverage for injuries caused by an assault and battery is limited to \$25,000 per person under the policy. Eddie filed a declaratory judgment action, and despite the patron's assertion that the policy language was ambiguous and that the general \$1 million limit should apply, the court agreed with Eddie's argument. It granted summary judgment in favor of Wilson Elser's client, thereby limiting the insurer's possible exposure to \$25,000 instead of the \$1 million general limit.

### **O'Brien Secures Court of Appeals Affirmance of Summary Judgment Ruling in Transportation Insurance Coverage Dispute**

Edward M. O'Brien (Partner-Indianapolis, IN) prevailed at the Indiana Court of Appeals in an insurance coverage dispute arising from a serious collision between two tractor-trailers. Eddie defended the firm's insurer client against claims for breach of contract and bad-faith denial of coverage, successfully persuading the trial court that the loss was not covered because the tractor-trailer driver did not meet the insurance policy's driver qualification requirements. In affirming, the Court of Appeals rejected the plaintiff's arguments that the loss was covered by the policy and that the policy terms were ambiguous. The Court of Appeals ordered its opinion published, meaning it is binding appellate precedent in Indiana.

### **O'Brien and Bokeno Obtain Summary Judgment in Multimillion-Dollar Title IX Gender Discrimination Case**

Edward M. O'Brien (Partner-Indianapolis, IN) and Andrew-John Bokeno (Associate-Louisville, KY) obtained summary judgment in a federal court case arising from a public university's adjudication of a sexual assault allegation made by a female student against a male student. The firm's client is a Title IX consulting company that served as the third-party tribunal that heard evidence, found that the male student more likely than not committed the alleged acts, and recommended he be suspended for three semesters. The male student sued the university and the firm's client, alleging that they discriminated against him on the basis of sex in violation of Title IX. The plaintiff also asserted claims for intentional infliction of emotional distress. Following extensive litigation, the Southern District of Indiana granted summary judgment in favor of the firm's client. The plaintiff had demanded \$3 million from the defendants to settle the case prior to the ruling.

### **O'Brien and Burd Prevail for Defrauded Client Securing \$3.3 Million Judgment Affirmed on Appeal**

Louisville, Kentucky partners Edward O'Brien and James Burd prevailed in a bench trial in the United States District Court, Western District of Kentucky, for Wilson Elser's client, an investor who was a victim of fraud. Eddie and Jim served as local counsel in this complex case arising from the fraudulent schemes to evade creditors perpetrated by a convicted con man and those working alongside him. These individuals were involved in a natural gas drilling operation in West Virginia. Our client fell victim to the fraud scheme, investing most of his life's savings in oil and gas wells owned by the defendants and receiving returns representing a fraction of his original investment. Following a bench trial, the court

awarded the client \$1.65 million in compensatory damages and \$1.65 million in punitive damages, with post-judgment interest of 5.35 percent. On appeal to the U.S. Court of Appeals for the Sixth Circuit, the judgment was affirmed in all respects, and efforts to collect on the judgment are underway.

### **O'Brien and Bokeno Prevail in Kentucky Case Previously Dismissed on Summary Judgment in Indiana**

Edward M. O'Brien (Partner-Louisville, KY) and Andrew-John Bokeno (Associate-Louisville, KY) recently succeeded in securing dismissal of claims brought in Kentucky state court after the same claims had been dismissed on summary judgment in Indiana. The plaintiffs sued our client, a roofing system manufacturer, in Jefferson Circuit Court, Kentucky, arguing that the roofing system manufactured by our client was defective and caused damage to their commercial building. Eddie and AJ moved to dismiss the case on various grounds, including that the same claims had previously been litigated in Indiana, which resulted in summary judgment in favor of our client. The court agreed, holding that the claims brought by the plaintiffs "were the same as those brought by their proxy" in Indiana and "those claims were fully adjudicated on the merits" in the Indiana litigation. Accordingly, the court concluded that the claims were barred. The plaintiffs did not appeal the trial court's ruling, ending more than a decade of litigation across two states. The plaintiffs demanded \$750,000 to resolve the case prior to dismissal.

### **O'Brien Succeeds in Rare Overturning of State Court Remand for Insurance Company Client**

Edward O'Brien (Partner-Louisville) successfully obtained a rare reversal of a remand to state court in the United States District Court for the Eastern District of Kentucky for Wilson Elser's client, an insurance company. The plaintiff sued our insurer client in state court following the insurer's denial of his claim for long-term disability benefits but failed to effectuate service for more than ten months. After the plaintiff properly served the insurance company at the correct address, the client removed the case to federal court. In response, the plaintiff filed a motion to remand the case to state court, arguing that the removal was untimely and that the client was properly served at the outset of the litigation. Initially, the district court sided with the plaintiff and granted the motion to remand. Eddie moved for reconsideration, and the court granted Wilson Elser's request, reversing its prior decision and acknowledging that the previous ruling "rested on a material factual error." As a result, the case remained in federal court. Reversals of orders remanding cases to state court are exceedingly uncommon.

### **O'Brien and Bokeno Obtain Summary Judgment in Commercial Roofing Case Heavily Litigated for 10 Years**

Edward M. O'Brien (Partner-Louisville, KY) and Andrew-John Bokeno (Associate-Louisville, KY) recently wrapped up a commercial roofing case heavily litigated for 10 years. The plaintiff, a used car dealership, sued our roofing system manufacturer client, alleging that a new roofing system installed on a building formerly occupied by the plaintiff failed, causing substantial property damage. The plaintiff had demanded \$750,000 in damages. Ten days before a scheduled jury trial, the trial court granted Eddie and AJ's motion for summary judgment, finding that the plaintiff was not the real party in interest because it did not own the building at issue and the plaintiff had failed to show that it suffered any compensable damages. The trial court's decision was unanimously affirmed

by the Indiana Court of Appeals. Thereafter, the Indiana Supreme Court unanimously denied the plaintiff's petition to review the case, effectively affirming the trial court's judgment.

**O'Brien and Dutton Show Indiana Law Does Not Permit Third-Party Bad Faith Actions Against Insurance Carriers**

Edward M. O'Brien (Partner-Louisville, KY/Indianapolis, IN) and Cyrus G. Dutton IV (Associate-Louisville, KY) represented an insurer in a case in which plaintiff was involved in a motor vehicle accident and asserted a claim against an automobile liability insurer, our client, for "unfair claims violations and bad faith" – a third-party bad faith claim.

Specifically, the plaintiff alleged that our client "failed and refused to comply with Indiana's Unfair Claims Settlement Practices Act". Edward and Cyrus moved to dismiss for failure to state a claim for which relief can be granted as Indiana law does not recognize or permit third-party bad faith actions against insurance carriers. Cyrus argued the motion before Clark County Superior Court, and the motion was granted.