



## John P. O'Toole

Partner

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John O'Toole is an accomplished trial attorney who focuses his civil litigation practice on the defense of commercial casualty lawsuits brought in New Jersey state and federal courts. While his primary concentration is premises liability, John also has experience in professional liability, complex business claims (including auto lender liability), and finance-related litigation.

John's daily practice includes the defense of premises owners and commercial vehicle operators in a variety of personal injury claims. He also represents attorneys, accountants, and insurance agents and brokers in the courts and before professional tribunals.

John has participated in hundreds of general liability, professional malpractice and commercial matters at the state and federal levels through trial resulting in several reported and unreported decisions, including cases that have permanently altered New Jersey law. John focuses his defense strategy not only on the legal issues involved in each case, but also on the practical effects of complex litigation in an effort to ensure efficient, cost-effective and fair results.

Dovetailing with his experience in the professional liability area, John has served as a member of the District VA (Newark, New Jersey) Ethics Committee, on which he worked in cooperation with the public to investigate complaints against attorneys and make determinations regarding alleged ethical violations.

### Education

- Rutgers School of Law (J.D., 1989)
- Colby College (B.A., 1985)

### Services

- Complex Tort & General Casualty
- Transportation
- Professional Liability & Services
- Lawyers' Liability
- Accountants
- Insurance Agents & Brokers
- Real Estate Professionals
- Commercial Litigation
- National Trial Team

## **Bar Admissions**

- New Jersey
- New York

## **Court Admissions**

- U.S. District Court, District of New Jersey

## **Professional Affiliations**

- Essex County Bar Association

# **Representative Matters**

Secured dismissal of an insurance broker malpractice case in which a facility and the food service provider sued Wilson Elser's client insurance broker for negligence and breach of contract in failing to procure additional insured status for the facility.

Secured dismissal of an insurance broker malpractice case alleging failure to secure an additional insured position. The trial court resolved the matter in favor of the firm's client ruling that even if the broker had failed to secure the additional insurance position, such a failure was not a proximate cause of damages to the facility determined to be the sole cause of the plaintiff's injuries.

Participated in a legal malpractice matter involving an attorney who allegedly missed a statute of limitations deadline, resulting in the loss of an underlying personal injury claim. The court addressed the issue as to whether the legal malpractice claim was barred by New Jersey's entire controversy doctrine, which would have prohibited the legal malpractice claim following the dismissal of the personal injury claim, permanently altering New Jersey law on this issue.

Represented commercial lenders in a variety of matters to collect collateral and resulting damages of millions of dollars in claims involving secured and unsecured debt, including cases dealing with retail automobile and commercial trucking dealerships, rental car operators, equipment leases and sales, and capital loans.

Involved in multi-party legal malpractice claim arising from a failed 400-unit residential development in Southern New Jersey. The case involved the lender's suit for damages, the developer's counterclaims, and numerous third-party and other claims relating to the development's investors and the attorneys involved in the original transaction. The claims settled following 14 weeks of trial.

Led defense of attorney malpractice claim involving a notable television personality who claimed that the attorneys were responsible for providing bad financial advice and services, despite the claimant's fame as a well-known and respected expert on financial matters.

Represented commercial property owners throughout New Jersey in a number of personal injury claims involving millions of dollars in potential damages, which were resolved through mediation, arbitration and trial.

Defended attorneys before District Ethics Committees and the Office of Attorney Ethics.

## Client Wins

### **Hendry and O'Toole Secure Favorable Defense Settlement in High-Exposure Wrongful Death Action**

Diana M. Hendry (Of Counsel-Madison, NJ) and John P. O'Toole (Partner-Madison, NJ) secured a favorable settlement on behalf of their property owner client in a potentially high-exposure wrongful death action. The client purchased the facility with known roof problems and intended to complete full repairs. However, during the repair process, the plaintiff, an employee of the demolition subcontractor, fell through the decrepit roof to a gruesome death. The decedent's widow sued the sub-contractor employer, the roofing contractor, the building tenant, and our client. The allegations against the client included failure to disclose the roof's condition accurately and knowingly retaining an inferior contractor to conduct the necessary repairs. Despite facing an aggressive plaintiffs' firm representing the decedent and his widow, John and Diana conducted early depositions of the parties' representatives, and, before incurring significant expert costs, the client contributed only minimally to the overall settlement. Among the factors that forced the settlement was the deep dive review and discovery of the plaintiff widow's social media posts, which recounted a troubled relationship with the decedent, undermining the loss-of-services damages alleged in the plaintiff's claim.

### **Hendry and O'Toole Secure Summary Judgment for Strip Mall Owner in Premises Liability Case**

Diana M. Hendry (Of Counsel-Madison, NJ) and John P. O'Toole (Partner-Madison, NJ) won a motion for summary judgment on behalf of a landlord in a case in which the plaintiff was severely injured when an errant driver plowed through a local fast food franchise. The case involved an automobile driver who was parked in front of the franchise store and accelerated abruptly, crashing through the storefront, striking the plaintiff. There was surveillance video, which was shocking and certainly would have influenced a jury. The driver tendered his policy limits and was dismissed from the case. The plaintiff alleged the property owner was negligent; he argued that the owner should have installed bollards in front of the store. We submitted an expert report confirming that the municipal code did not require bollards and that the bollards would not necessarily have prevented the incident. The plaintiff failed to submit an expert report, and the court determined that expert testimony was necessary because the allegations were beyond the ken of the average juror. On that basis, the court dismissed the premises liability case against our client.

### **O'Toole and Pegno Obtain Summary Judgment on Cross-Claims for Defense and Indemnity**

John O'Toole (Partner-Madison, NJ) and Kristine Pegno (Associate-Madison, NJ) obtained summary judgment on cross-claims against a codefendant for defense and indemnification. In this premises liability suit, Wilson Elser represented the property owner

and management company in a case involving an alleged fall by a plaintiff on black ice on the subject premises. The matter was tendered to the client's snow removal contractor based on indemnification and additional insured provisions of the contract. When the contractor failed to respond to the tender, John and Kristine filed a motion for summary judgment on the cross-claims against the contractor for defense and indemnification.

Following oral argument, the NJ Superior Court, Law Division, Bergen County granted the motion for summary judgment and issued a 13-page decision in support of the order, adopting in large part our legal arguments. In addition to ordering the co-defendant to defend and indemnify our client, the court awarded attorneys' fees. This was a big win for the client and resulted in a beneficial written opinion that will be useful in future defense and indemnity cases.

### **O'Toole and Pegno Win Summary Judgment With Carefully Crafted Requests For Admissions**

John O'Toole (Partner-Madison, NJ) and Kristine Pegno (Associate-Madison, NJ) obtained summary judgment in the Superior Court of New Jersey – Camden County for Wilson Elser's client, a national property management company. The plaintiff alleged injuries resulting from a fall on our client's property. The complaint identified the client's apartment complex as the location of the fall. Still, the answers to interrogatories were ambiguous and suggested a site that was not a part of the subject premises. This uncertainty prompted John and Kristine to carefully craft requests for admissions, a little-used but valuable discovery tool, forcing the plaintiff to admit that the address where the injury occurred was not on our client's property. Based upon the plaintiff's admissions, John and Kristine filed a motion for summary judgment, arguing that Wilson Elser's client owed no duty of care to the plaintiff as a matter of law. The court agreed and dismissed the complaint in its entirety.