



Kevin P. Farrell

Partner

kevin.farrell@wilsonelser.com

Washington, DC – 202.626.7694

Kevin Farrell focuses his practice on commercial litigation, appearing before state and federal courts and their appellate courts. With extensive experience defending clients against a wide variety of serious charges under the most complicated circumstances, Kevin provides innovative and strategic counsel to help them make informed decisions and achieve specific business goals. Kevin's principled and pragmatic approach to commercial litigation makes him adept at finding innovative solutions to his clients' problems through zealous advocacy in disputed litigations and delicate negotiations among firmly entrenched parties.

Kevin represents health care industry clients in business litigations and matters concerning regulatory compliance and government investigations. He works with financial institutions, senior living facility operators and other clients to prepare and implement comprehensive defense strategies in response to state and nationwide class actions and mass actions. Kevin represents clients in the defense of product liability, construction, legal malpractice, insurance coverage and other commercial litigations; he also has represented private and public entities in regulatory investigations and litigations arising out of high-profile aviation and railroad accidents. In addition, Kevin has successfully defended government contractors from claims brought by employees and their dependents for injuries sustained while performing work overseas.

Health Care

Kevin represents health care clients in commercial litigations and in matters before state and federal regulatory and prosecuting agencies. He represents health plans and pharmacy benefit managers in payment disputes under state and federal False Claims Act statutes, including ERISA, and in a variety of disputes with providers and other entities, including reimbursement and contract disputes. Kevin represents medical provider networks in managed care litigations and provider selection, payment and removal disputes. He advises health care clients concerning telemedicine, quality assurance,

Services

- Class Action
- Commercial Litigation
- Complex Tort & General Casualty
- Health Care Law
- Insurance & Reinsurance Coverage
- Product Liability, Prevention & Government Compliance
- Railroad
- Transportation
- Toxic Tort

licensing, billing software and general risk management issues; and helps health care companies develop, revise and implement internal policies and procedures to minimize litigation exposure.

Professional Liability & Services

Kevin represents clients that provide risk management solutions for the workers' compensation, auto, health and disability management industries, and has litigated complex disputes related to disability management and cost containment services and the administration of workers' compensation claims. Kevin also represents lawyers and other professionals, and has litigated several significant construction disputes.

Government Contractors

Kevin has successfully defended a municipal housing authority and federal government contractors in state and federal courts, including matters involving their release agreements and compensation plans. He obtained dismissal of major tort actions involving injury and death in Iran and Afghanistan, and his practice has included matters interpreted under the laws of Dubai, Afghanistan and Iraq.

Kevin's most notable case in this arena involves a decision in federal court in the District of Columbia establishing that the Defense Base Act provides the exclusive process and forum for death and injury claims for employees working overseas on United States government contracts. Of equal significance is a decision of the Delaware Supreme Court establishing the binding effect of pre-injury release agreements that apply to the parent corporations and affiliates of contractors.

Class Action Defense

Kevin is skilled at handling class action defense litigations in state and federal court. He leverages Wilson Elser's network of attorneys to provide a coordinated multi-front defense while containing costs. Kevin strives to simplify complicated cases by bringing motions either for federal multidistrict consolidation or for state and federal coordination, and in many cases obtained early dismissals of named plaintiffs and defeated motions for class certification. Representative cases involve consumer protection statutes, debt collection laws, product liability, fraud, and other statutory and common law claims.

Product Liability

Kevin has built a strong reputation for defending against product liability claims, and advising clients on issues related to recalls of products, in a variety of industries. He is backed by Wilson Elser's practice team, among the largest and most diversified in the United States. While Kevin prepares for trial, he coordinates resolution strategies with clients and uses alternative dispute resolution options, including arbitration and mediation, when appropriate.

Insurance & Reinsurance Coverage

Kevin seeks cost-effective solutions to insurance and reinsurance coverage cases through early assessment and negotiations, alternative dispute resolution and other means. When necessary, he is prepared to take matters to an arbitration hearing or to trial if these serve his clients' interests. For cases involving bad faith, he provides a particularly aggressive defense and has a high success rate.

Railroads

Kevin is one of the highly experienced Wilson Elser trial attorneys who also helps railroad clients anticipate and prevent situations that could result in lawsuits or administrative actions. When accidents occur, these attorneys don hard hats, safety vests and go-bags as members of the firm's 24/7 railroad go-teams, ensuring that potentially exculpatory on-scene evidence is preserved. Kevin is experienced in assisting companies and public authorities with National Transportation Safety Board investigations of transportation calamities.

Education

- Syracuse University College of Law (J.D., 1995)
- Villanova University (B.S., 1992)

Bar Admissions

- District of Columbia
- Maryland
- New York

Court Admissions

- U.S. District Court, District of Columbia
- U.S. District Court, District of Maryland

Representative Matters

Represented nation's premier owner and operator of senior living facilities in putative class action under state statutory claims.

Represented client, a North American distributor of plumbing and heating products, in products liability action involving manufacturing, design, installation and use of product; and standards and execution of national recall of related products.

Obtained summary judgment on behalf of a Maryland-based company that operates, franchises and licenses hotels and timeshare properties throughout the world. The Opinion includes the application of foreign law based on the opinions of an Alternate Justice of the Supreme Court of Panama. The case reinforces that the defendant hotel company is not responsible for all claims arising from all operations completed under, or which customers or guests inaccurately associate with, the hotel's brand.

Obtained summary judgment based on federal pre-emption for client in consolidated lawsuit arising out of a train derailment and associated chemical spill and fire.

Represented defendant in lawsuits arising out of metropolitan area rail crash in which nine people died and scores were injured. Prepared motion that resulted in dismissal of

numerous causes of action based on the doctrine of sovereign immunity, and several other successful dispositive and discovery motions.

Obtained dismissal of government contractor client in \$2 billion putative class action brought by civilian government contractor employees who suffered injuries in Afghanistan and Iraq. U.S. District Court concluded that the Defense Base Act preempts plaintiffs' claims against the numerous contractor defendants and their insurance carriers.

Obtained a decision from the Delaware Supreme Court upholding the validity of a limitation of liability provision of a foreign service agreement used by government contractor supporting the Department of State's Civilian Police mission in Afghanistan. The Court's opinion expanded the enforceability of pre-incident releases under Delaware law and made findings based on the application of foreign law. Prepared winning dispositive motion based on similar arguments in defense of separate civil case arising out of the Civilian Police mission in Iraq.

Obtained summary judgment based on exclusive remedy provisions of the Defense Base Act in wrongful death case arising from contractor work performed in support of the United States Department of State drug eradication efforts in South America.

Represented financing subsidiary of automobile company in consumer class actions. Prepared motion to dismiss that secured dismissal of cases, and appellate briefs and related motions for the Fourth Circuit.

Successfully resolved a significant coverage dispute concerning a financial institution fidelity bond issued to a government-sponsored enterprise; and resolved insurance and re-insurance coverage disputes relating to the Stringfellow Superfund site, government contractors in Iraq, Department of Treasury's Office of Foreign Assets Control sanctions, the False Claims Act, the Electronic Funds Transfer Act and long-tail asbestos claims.

Defended numerous clients in employment discrimination and professional liability cases, including legal malpractice case arising out of a Title VII action against the U.S. Department of Energy.

Client Wins

Hanrahan, Farrell & Creps Secure Summary Judgment on Plaintiff's Breach of Contract Claim

Washington, D.C., partners Catherine Hanrahan and Kevin Farrell and associate Madeline Creps won summary judgment in favor of the District of Columbia Housing Authority (DCHA). The plaintiff community association claimed that DCHA and other entities failed to pay assessments owed pursuant to the Declaration and Bylaws that govern the development. After successfully barring the equitable claims filed against DCHA in a motion to dismiss, a motion for summary judgment was filed on the one remaining breach of contract count. DCHA argued that the claim failed as a matter of law because the Declaration unambiguously waived DCHA's liability for assessments. In opposition, the plaintiff argued there were contradictory clauses in the Declaration that a jury must

reconcile. The Superior Court of the District of Columbia determined that DCHA was entitled to judgment in its favor as a matter of law, finding that there was no ambiguity in the language of the Declaration and opining that while DCHA is the legal owner in fee simple of the Community and Daycare Lot at issue, the Declaration's definition of "owner" as it is used throughout the Declaration plainly excludes DCHA. The court concluded that because the plain language of the agreement unambiguously waives DCHA's responsibility for paying assessments, the plaintiff's breach of contract claim fails as a matter of law, and granted our Motion for Summary Judgment. This is a significant win for DCHA because the legal issues resolved in this matter potentially impact its obligations in many other affordable housing development projects.

D.C. Class Action Team Prevails on Motion for Reconsideration: Court Concedes It Committed Clear Error in Certifying a Class Action

Washington, D.C. partners David Ross and Kevin P. Farrell and associate Daniel Coffman secured a rare acknowledgement from the District of Columbia Superior Court, which conceded it committed a clear error in previously certifying a class in a case related to vehicle repossession practices. The court had found that proposed class members suffered similar injuries based on an alleged practice of overcharging for repossession and vehicle storage and other actions taken after a customer's default. Wilson Elser filed a motion contending that the court did not address issues presented in its Opposition to Class Certification. The court agreed, finding that a class cannot be certified for several reasons: (1) plaintiff lacks standing because her claims are based entirely on past conduct; (2) plaintiff cannot serve as class representative or a member of a class because her claims are time-barred; (3) arbitration and class waiver clauses in the plaintiff's and proposed class member's contracts preclude class certification; and (4) the court's *sua sponte* reliance on a municipal regulation was misplaced.

Farrell and Coffman Secure Dismissal of All Claims Against Military Defense Contractor

Kevin Farrell (Partner-Washington, DC) and Daniel Coffman (Associate-Washington, DC) prevailed on a motion to dismiss on behalf of a United States military defense contractor after a plaintiff attempted to add the contractor to a suit regarding the loss of plaintiff's security clearance. The motion to dismiss demonstrated that the tortious interference and other claims against Wilson Elser's client were barred by the statute of limitations. The plaintiff argued that several exceptions applied, including that his claims were timely because the D.C. Superior Court's COVID-19 orders tolled the statute of limitations. While noting that the relevant orders were not a model of clarity, the U.S. District Court for the District of Columbia agreed with Dan and Kevin's concise analysis of the D.C. Superior Court's COVID-19 orders, and found that the claims were time-barred. The court further determined that (1) the continuous tort doctrine does not apply to the plaintiff's claims, (2) the Federal Rules of Civil Procedure's joinder rules have no bearing on whether the plaintiff's claims are timely, and (3) under Federal Rule of Civil Procedure 15 the plaintiff's claims did not "relate back" to his first complaint because his failure to timely add the contractor as a defendant was not the type of mistake Rule 15 was meant to remedy. All claims against Wilson Elser's client were dismissed with prejudice.