



Thomas M. Spitaletto

Partner

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Tommy Spitaletto combines his extensive litigation experience with proven coverage analysis capabilities to provide legal assistance to clients throughout Texas, the United States, and London.

Tommy handles high-stakes bad faith and breach of contract litigation, and advises primary and excess insurers on policy interpretation, claims handling, and claim resolution. His practice regularly involves first- and third-party policies, including director and officer and other professional liability insurance, employment practices liability, commercial liability, property, homeowners, auto, cargo, and other types of policies. Tommy is regularly asked to speak to clients and industry groups at in-person and online events.

Tommy has successfully represented clients in complex and contentious disputes involving insurance coverage, liability, damages, and allegations of bad faith in state and federal courts across the country, including litigating to jury verdict, as well as presenting persuasive oral arguments in cases adjudicated before state and federal appellate courts. Tommy currently serves as cochair of the firm's Directors & Officers and Errors & Omissions subgroups of the Insurance Coverage Practice.

Whether providing strategic insurance coverage advice or litigating a case to conclusion, Tommy focuses on making the client's job easier – handling matters efficiently, thoroughly preparing with detailed knowledge of the facts and the law, and working toward practical, bottom-line results.

Education

- University of Texas School of Law (J.D., 1995)
 - The Review of Litigation

Services

- Analysis & Opinions
- Contractual/Extra-Contractual Liability Litigation
- Insurance & Reinsurance Coverage
- Directors & Officers
- Directors & Officers Liability
- Insurance & Reinsurance Defense
- Employment Practices Liability
- General Liability
- Monitoring/Supervisory Counsel
- Product Liability, Prevention & Government Compliance
- Policy Drafting
- Third-Party Liability

- Baylor University (B.A., 1992)
 - cum laude

Bar Admissions

- Texas

Court Admissions

- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Eastern District of Oklahoma
- U.S. District Court, Western District of Oklahoma
- U.S. District Court, Northern District of Texas
- U.S. District Court, Eastern District of Texas
- U.S. District Court, Western District of Texas
- U.S. District Court, Southern District of Texas

Professional Affiliations

- American Bar Association
- State Bar of Texas, Litigation Section
- Dallas Bar Association, Tort and Insurance Practice Section
- American Inns of Court, Garland Walker Chapter
- Houston Bar Association, Administration of Justice Committee
- Houston Bar Association, Legal Line Committee
- North Texas Association of Insurance Counsel, President 2008
- Professional Liability Underwriting Society (PLUS)
- Claims and Litigation Management Alliance (CLM), Member, Claims College Faculty

Awards & Honors

- AV® Preeminent™ Rated by Martindale-Hubbell
- NAACP Award for Legal Excellence, 1998

Client Wins

Das, Myers and Spitaletto Obtain Dismissal of Texas Data Breach Class Action

Anjali Das (Partner-Chicago, IL), Brian Myers (Of Counsel-Washington, DC) and Tommy Spitaletto (Partner-Dallas, TX) obtained dismissal of a data breach class action filed against a mental health care provider in the Western District of Texas. The lawsuit arose

out of a cyber-attack that involved personal information that included sensitive information such as health information and Social Security numbers. In support of our client's motion to dismiss, Wilson Elser argued that the plaintiff lacked Article III standing to sue because she failed to allege any injury-in-fact in the form of identity theft fraud, or misappropriation as a result of the breach. Instead, the plaintiff alleged that her harm consisted of (1) lost time and out-of-pocket expenses spent dealing with the data breach; (2) diminished value of her personal, health and financial information; (3) anxiety; (4) violation of privacy rights; (5) loss of the benefit of the bargain made with our client and overpayment for services intended to include data security; and (6) increased risk of future fraud and identity theft. The District Court agreed with Wilson Elser's position that the plaintiff lacked standing to bring suit and dismissed the case on the basis that the plaintiff failed to allege any actual injury in the form of identity theft, financial fraud or misuse of personal information that could be traced to the cyber incident.

Spitaletto and Team Obtain Unanimous Dallas County Defense Verdict and Recovery on Counterclaim in Arson Case

Tommy Spitaletto (Partner-Dallas, TX) defended a large insurance client in Dallas County District Court in a four-day trial against plaintiffs seeking renter's insurance coverage, alleging more than \$600,000 in damages. Despite the test result of another insurer's fire investigator that did not show an accelerant, Tommy's team developed evidence during the lawsuit that supported fraud by the insured and arson – notoriously difficult to prove based on circumstantial evidence. A cell phone expert also testified that the plaintiff could not have been located where he claimed, because plaintiff's cell phone accessed a cell tower within three miles of the loss location within minutes of the fire starting. The jury unanimously rejected the plaintiffs' breach of the policy claim, as well as statutory "bad faith" claims of deceptive trade practices and unfair claims settlement practices. The jury awarded \$39,000 on our client's counterclaims as repayment of the amount advanced to the plaintiffs during the claim investigation prior to obtaining the evidence of arson.

Spitaletto Secures Fifth Circuit Affirmance of Coverage Win

Tommy Spitaletto (Partner-Dallas, TX) successfully argued the summary judgment motion in the District Court and the Fifth Circuit oral argument on appeal by plaintiff (an appellant-judgment creditor), who sued our carrier-client over a \$1.6 million judgment against its insured, which resulted from an underlying personal injury lawsuit. The carrier had denied coverage because the insured failed to request a defense. The plaintiff argued that the policy does not expressly require an insured to "request" a defense, that our client had knowledge of the underlying lawsuit because it was defending another defendant in the same case, and that its insured had in fact forwarded a copy of the Petition. The appellant challenged the District Court's summary judgment dismissal of his claims as a third-party beneficiary/judgment creditor. Relying on the Texas Supreme Court's *Crocker* opinion and others, the Fifth Circuit affirmed summary judgment, finding that the insured must not only forward suit papers but also request a defense, which in this case did not occur. The court also rejected another argument by the appellant that prejudice was required.

Spitaletto and Team Succeed on Motion to Dismiss London Client

Tommy Spitaletto (Partner-Dallas, TX) represented an English company that provided testing services for nutritional supplements in the United States. The client was sued by a plaintiff who had filed at least 10 cases and appeals in different state and federal courts,

together with Major League Baseball, most of the MLB teams, various testing laboratories and others. In his 100-page complaint, the plaintiff claimed to have created a nutritional supplement containing an insulin-growth factor, and sued our client regarding advertising for testing of banned substances – asserting fraud, violations of the Lanham Act for false advertising, RICO violations, unjust enrichment and mental anguish. After extensive briefing with a joint defense group, the court dismissed all of the plaintiff’s claims with prejudice. Based on multiple prior lawsuits against other defendants, the court also deemed the plaintiff a “vexatious” litigant, and enjoined him from filing any new pleadings or cases in the Southern District of Texas unless he obtains advance permission from the Chief Judge.

Spitaletto Secures Eleventh Circuit Affirmance and Turns the Tide on Insured versus Insured Authority Nationwide

Tommy Spitaletto (Partner-Dallas, TX) argued a motion for summary judgment in the Southern District of Florida and a subsequent Eleventh Circuit appeal, securing dismissal of a coverage action by an insured under a \$10 million D&O policy in a federal court case based on the “Insured versus Insured” exclusion. The insured argued that the exclusion did not apply to the causes of action asserted by the uninsured plaintiff, and that coverage should exist for at least those causes of action. The court, however, held that the exclusion defeated coverage for the entire underlying lawsuit, as Tommy argued, despite the presence of both insured and uninsured plaintiffs. The court distinguished and did not follow a Seventh Circuit opinion by Judge Posner, but followed the only other published opinion in the country at the time addressing this novel issue, turning the weight of authority nationwide back in favor of insurers.

Spitaletto Secures Appellate Victory in Insurance Coverage Case Before Nebraska Supreme Court

Tommy Spitaletto (Partner-Dallas, TX) argued a motion for summary judgment in Douglas County District Court, Nebraska, and a subsequent appeal to the Nebraska Supreme Court. The case involved a coverage dispute over a credit union’s lawsuit against its former directors for mismanagement and self-dealing. The district court initially granted declaratory judgment for the insured, but vacated that ruling after argument and granted summary judgment in favor of the insurer on multiple coverage defenses (e.g., claim not first made during the policy period because it related back to an earlier claim; regulatory claims exclusion; waiver or estoppel did not apply). The Nebraska Supreme Court affirmed the ruling after oral argument on appeal in the face of relatively undeveloped state caselaw at the time.

Publications

Q2 2025

Coverage Matters

Q2 2025

New Federal Case Addresses Related Claims Under Executive Protection Policy

Wilson Elser’s Coverage Matters

