



## Thomas Tutone

Associate

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Thomas (T.J.) Tutone handles a wide array of matters, ranging from aviation defense and commercial litigation matters to general insurance defense on behalf of insurers and their insureds. T.J.'s experience includes general aviation claims; aviation claims controlled by the Montreal Convention; construction litigation; product liability claims; transportation claims, including commercial vehicle collisions; and professional liability matters.

In his time at Wilson Elser, T.J. has gained significant litigation and courtroom experience in state and federal courts in the Commonwealth of Virginia at the trial and appellate levels.

Prior to joining Wilson Elser, T.J. gained valuable courtroom experience in multiple state's attorney's offices in Maryland and served as a Law Clerk at Wilson Elser.

### Insurance Defense

Thomas navigates complex issues including agency law principles and vicarious liability. When defending medical malpractice claims, Thomas has successfully assisted in dental and hospital malpractice lawsuits.

### Education

- Catholic University of America Columbus School of Law (J.D., 2022)
  - cum laude
- Catholic University of America (B.A., 2016)

### Bar Admissions

- Virginia

### Services

- Commercial Litigation
- Insurance & Reinsurance Defense

## **Court Admissions**

- Supreme Court of Virginia
- U.S. District Court, Eastern District of Virginia

## **Professional Affiliations**

- Virginia Bar Association

# **Client Wins**

### **Grace, Melvani, and Tutone Obtain Dismissal With Prejudice in Aviation Wrongful Death Case**

Kathryn Grace (Partner-Charlotte, NC), Nicole Melvani (Partner-McLean, VA), and Thomas Tutone (Associate-McLean, VA) obtained dismissal with prejudice of an aviation matter on behalf of Wilson Elser's client, a student pilot. The case arose out of an airplane crash that resulted in the death of the certified flight instructor, as well as injuries to the client and a teenage passenger. The certified flight instructor's estate filed a wrongful death claim against our client, who was participating in his first day of flight instruction through a university aviation program on the day of the accident. The amended complaint alleged that the student pilot was nervous and unprepared, and caused a stall during takeoff. Kathryn and Nicole successfully argued against this. In particular, the amended complaint failed to state a claim for relief because it did not allege that the client breached any duty owed under Federal Aviation Regulations. Importantly, and in support of an argument for dismissal with prejudice, they also argued the certified flight instructor was the pilot in command and bore ultimate responsibility for the operation of the aircraft at the time of the accident, and for ensuring the student was adequately prepared for the training flight. While this was a tragic accident, the certified flight instructor's estate could not sustain a claim for negligence against her student for failure to state a claim and any amendment would be futile. The Court agreed and dismissed the action against our student pilot client in its entirety, with prejudice.

### **Tutone Secures Affirmance in Lead-Based Paint Negligence Case**

Thomas (T.J.) Tutone (Associate-McLean, VA) won affirmance from the Fourth Circuit of a complaint in the United States District Court for the Eastern District of Virginia, Richmond Division. The plaintiff alleged that our client violated section 1018 of Title X, also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), causing alleged injuries. The plaintiff alleged she did not receive a "Lead-Based Disclosure" pamphlet despite the fact that the unit was constructed prior to 1978. Appellant went on to allege that Appellee's "failure to provide lead-based disclosures to the plaintiff during the tenancy period constitutes a violation." As a result, the plaintiff alleged that she was exposed to "potential lead-based paint hazards ... which have resulted in her having adverse health effects." In response, T.J. filed a Motion to Dismiss alleging that the plaintiff failed to state a claim for a knowing violation, which was granted without leave to amend. The plaintiff subsequently filed a Motion for Reconsideration, which T.J. opposed, and was denied. However, given that the plaintiff was pro se, the court granted her leave to file an amended complaint. Despite the Judge's ruling, the plaintiff chose to proceed with an

appeal to the Fourth Circuit. We filed a brief in opposition, which argued that the district court's decision should be affirmed given the complaint failed to present facts that are sufficient to establish the mens rea requirement of the Act. Specifically, the complaint explicitly alleged that our client acted negligently, not knowingly. The Fourth Circuit agreed, affirmed the lower court's decision, and upheld the dismissal of the plaintiff's complaint.