

## Won a complete defense verdict in a bad faith matter for Allstate before the United States District Court for the District of Colorado.

2013

When an Allstate policyholder filed a bad faith lawsuit against Allstate relating to a house fire in 2010, the company turned to Denver-based civil litigation firm Wheeler Trigg O'Donnell to try the case. Partners Terence Ridley and Habib Nasrullah guided Allstate to a complete defense verdict.

Not only was this a great win for WTO's client, but it signaled a significant achievement under Colorado's bad faith penalty statute, CRS §§ 10-3-1115 and 1116, which, since its enactment in 2008, has been the most litigated insurance statute in Colorado. The statute has been a boon to the plaintiff's bar, as it provides for attorneys' fees and "twice the covered benefit" when an insurer is found to have unreasonably delayed or denied payment of first-party insurance benefits. This is WTO's second complete defense verdict in favor of Allstate, in the U.S. District Court for the District of Colorado, in as many months.

The case involved a policyholder whose vacant rental property in Grand Junction, Colorado, was destroyed by a blaze on the morning of March 30, 2010. Because a garage on the same property had burned just nine months earlier – and

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Allstate covered the loss, which was never repaired – the insurer had reasonable questions about the cause and origin of the second fire. Detailed investigations into the blaze by the fire department and an independent investigator showed opportunity, motive, and scientific evidence of an intentionally set fire, thereby raising well-founded concerns about whether the claim was excluded as an intentional act under the Allstate policy. Accordingly, Allstate denied the claim.

Well over a year after the denial of the claim, the plaintiff produced an initial report, from his own cause and origin expert retained in the litigation, which called into question the methodology used and conclusions made by the prior investigators. Allstate completed its investigation in response to the claimant's expert reports and gave the policyholder the benefit of still substantial doubt, paying the claim in full. The property owner, however, persisted in the litigation, presumably motivated by the substantial penalty and attorneys' fees provisions of the statute. Based on interpretations of the penalty statute by some trial courts, Allstate could have been held responsible for not only the benefits paid, but also for an additional two times the amount of the benefits paid. Moreover, under a new Colorado decision, a successful plaintiff is not only entitled to attorneys' fees but also "fees on fees." (*Stresscon Corp. v. Travelers*, Colo. Ct. App., Sept. 12, 2013).

Trial commenced on November 5, 2013, and the jury returned the defense verdict on November 12 after deliberating for approximately two hours. The jury found that Allstate had not engaged in either unreasonable denial of the claim, or unreasonable delay in the subsequent payment of the claim.

The insurer and WTO lawyers have now gained two complete defense verdicts in two months in bad faith trials. Both verdicts were returned by federal juries. Given the substantial burden the penalty statute places on insurers, these two

defense verdicts should be a welcome sign to both the insurance industry and defense counsel defending bad faith cases.