



Arie M. Spitz

Partner
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While Arie enjoys all aspects of litigation, he prefers being in the courtroom. He has successfully tried cases involving a diverse range of legal issues, including: legal malpractice, commercial trucking accidents, breach of contract, negligence, product liability, medical malpractice, and age and disability discrimination. He has successfully won matters before the West Virginia Supreme Court and the United States Fourth Circuit Court of Appeals involving claims such as legal malpractice, insurance coverage and bad faith, breach of fiduciary duty, workers compensation fraud, wrongful termination, and sexual discrimination. Arie is a resource to his peers on litigating cases with difficult issues, and his breadth and depth of experience give him a unique perspective on how to move complex cases to their conclusion, whether through compromise, motions practice, or trial.

Arie takes the time to analyze matters on the front end and provide his clients a thorough and detailed assessment of their case so a realistic goal can be set and a strategy can be implemented to achieve it. Clients appreciate his ability to discern which fights they can win, which arguments or matters they are likely to lose and how to minimize the damage, and that he is always ready to stand up and argue on their behalf. This practical advice has served his three primary client groups: fellow attorneys, insurance carriers, and employers.

Arie has defended lawyers from claims of malpractice, breach of fiduciary duty, breach of trust, tortious interference, and conspiracy. His broad base of experience makes him a valuable asset in malpractice cases because they almost always require an understanding of the law regarding, and a thoughtful analysis of his clients' actions in, the underlying matter. He has defended lawyers in cases that arose out of real property transactions, criminal representation, employment litigation, personal injury, trusts and estates, property damage, and deliberate intent, as well as cases that involved alleged conflicts of interest.

When it comes to insurance disputes, be they coverage matters, bad faith claims, or allegations of fraud, Arie's focus on the details and his knowledge of both case law and the regulations governing insurers' conduct lets him help carriers deal with hard questions. Given the increasingly high stakes in declaratory judgment and bad faith actions, Arie's ability to quickly assess the minutia of policy and claims documents as well as how the law applies to them pays dividends to his clients. His experience in this area includes victories before the West Virginia Supreme Court that achieved the dismissal of claims of common law bad faith and violations of West Virginia's

Unfair Trade Practices Act; the dismissal of claims of worker's compensation fraud; and prevailing in a multimillion dollar coverage dispute.

As the son-in-law of a small business owner, Arie also understands the struggles employers can face when it comes to their workforce. He has defended employers from claims of age, sex, race, disability, and workers compensation discrimination, as well as wrongful termination, under both state and federal laws and has defended and prosecuted ERISA matters on behalf of employers. Arie also has extensive experience representing employers in the health care industry and has won the dismissal of claims under the West Virginia Patient Safety Act.

Because advocacy is one of Arie's passions, he regularly teaches continuing legal education courses focused on civil litigation in general and trial tactics in particular. Arie has given lectures on the Rules of Evidence, the Rules of Civil Procedure, Civil Trials, Trial Tactics, conducting discovery with respect to Social Media and how to use it at trial, and ethics with respect to Social Media as well as ethical considerations at trial.

Arie lives in Charleston with his wife Emily and their two boys. You can typically find them out hiking or rock climbing at the New River Gorge on the weekends, or in town at Ellen's Ice Cream on just about any day of the week.

Services

- Litigation
- Appellate | Legal Issues
- Education Industry
- Insurance Industry

Education

- Dickinson School of Law at Pennsylvania State University (J.D., *cum laude*, 2008)
- University of Illinois, Urbana-Champaign (B.A., 2005)

Bar Admissions

- West Virginia

Court Admissions

- West Virginia Supreme Court of Appeals
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Court for the Southern District of West Virginia
- U.S. District Court for the Northern District of West Virginia

Distinctions

- West Virginia *Rising Stars*®

Experience

State ex rel. Universal Underwriters Ins. Co. v. Wilson
Justice Holdings, LLC v. Glade Springs Vill. Prop. Owners Ass'n
Spangler v. Washington
Knotts v. Nelson
Hutchinson v. Underwood
AC&S Inc. v. George
Jones v. Slotnick
Howell v. W. Va. Bd. of Law Exam'rs
J.A. St. & Assocs., Inc. v. Bitco Gen. Ins. Corp.
State ex rel. Gallagher Bassett Servs. v. Webster
Vaughn v. Flanigan
State ex rel. Universal Underwriters Ins. Co. v. Wilson
Coffman v. Nicholas Cty. Comm'n
Blyler v. Matkovich
State ex rel. Golden v. Kaufman
State ex rel. Ocwen Loan Servicing, LLC v. Webster
Osborne v. Carey
Lieving v. Pleasant Valley Hosp.
Shoemaker v. Tazewell Cnty. Pub. Sch.

Received Favorable Ruling for Trucking Company at Trial

We represented an international trucking company and its driver at trial over an accident that occurred when the driver stopped his tractor-trailer on a rural road in order to make a home delivery. The tractor-trailer was stopped approximately 290 feet past a blind curve, with its flashers on. Plaintiff was driving around the curve and drove straight into the rear of the trailer, without hitting her brakes until the instant before the collision. Plaintiff alleged the driver and company were negligent because the tractor-trailer was stopped in the road and the driver did not provide sufficient advanced warning to oncoming traffic. At trial we convinced the jury that the Plaintiff was 40 percent at fault for causing the accident because she had adequate time and distance to see the tractor-trailer and either stop or safely go around it. This resulted in a very favorable verdict for our clients.

Successfully Defended a Claims Administrator

A third-party claims administrator (TPA) for Workers' Compensation claims was sued by a former employee of a company for whom the TPA administered claims. The employee alleged the TPA had fraudulently denied her workers' compensation claim and committed workers' compensation discrimination. The TPA was originally represented by other counsel, who filed and lost a motion to dismiss. We then filed a writ of prohibition with the West Virginia Supreme Court, seeking dismissal of the employee's lawsuit based upon the statute of limitations and statutory immunity provided to third-party administrators with respect to workers' compensation discrimination lawsuits. We prevailed on these arguments before the supreme court, which resulted in the dismissal of all claims against our client.

Successfully Obtained Dismissal Order

A real estate lawyer conducted the closing for the sale of a house to plaintiff. Approximately 10 years after the closing, plaintiff filed a lawsuit alleging the lawyer negligently failed to provide him with clear title to the property. The basis of plaintiff's lawsuit was the opinion of another lawyer (whom plaintiff had initially contracted to work on an unrelated matter) who opined the title work was not correct and therefore plaintiff did not have clear title to his house. Plaintiff, however, still owned his house and had never had any challenges to his title to the property. We successfully caused the dismissal of all claims against our client at the trial court level because plaintiff did have clear title to the property. Plaintiff objected to the dismissal order but did not do so in a timely manner. The trial court then denied plaintiff's objections to the dismissal order, and he appealed to the Supreme Court of Appeals of West Virginia. The West Virginia Supreme Court affirmed the trial court's decision, resulting in a full and final dismissal of all claims against our client.

Obtained Favorable Ruling in Malpractice Lawsuit

Our clients previously represented plaintiffs in a Court of Claims lawsuit against the West Virginia Department of Highways. At issue was a culvert plaintiffs alleged caused flooding on their property. The lawyers obtained an \$85,000 settlement for the plaintiffs in exchange for a release by plaintiffs of their claim and release of any future claims arising from the alleged defective culvert. Five thousand dollars of the settlement was earmarked for plaintiffs to use to hire a contractor of their choice to clean out the culvert, which they never undertook. Plaintiffs, however, alleged they were not informed the settlement included a release of future claims and sued their lawyers for malpractice. We represented the lawyers in the legal malpractice lawsuit.

In the malpractice lawsuit, plaintiffs alleged but for the release of their future claims, they would have been able to sue the Department of Highways repeatedly with respect to the culvert. At trial, via cross-examination of the plaintiffs, we proved the terms of the settlement were explained to plaintiffs prior to the settlement being consummated. We ultimately obtained judgment as a matter of law in favor of our clients at the close of the plaintiffs' case-in-chief.

Successfully Represented Insurance Company in Policy Dispute

We represented our client, an insurance company, in a dispute over the application of a \$5 million commercial umbrella policy following a fatal car accident. The case involved the owner of a car dealership, whose son was driving a dealership car that struck and killed a motorcyclist and the motorcyclist's estate. The estate and the owner of the dealership contended that the dealership's commercial umbrella insurance policy covered the owner's son because he was driving a car owned by the dealership, even though the son was not working for the dealership. After significant discovery disputes and motions practice, we sought a writ of prohibition from the West Virginia Supreme Court of Appeals based, in part, upon what was eventually found to be "outrageous conduct" by the owner of the dealership during the course of discovery. Ultimately, the West Virginia Supreme Court agreed with our position that the commercial umbrella insurance policy did not apply, and all claims against our client were dismissed.

Received Favorable Ruling for Client During Age Discrimination Trial

We represented our clients, a coal company and two of its management employees, in a case involving age and disability discrimination, hostile work environment and two other counts before a southern West Virginia jury in Logan County. Before the case went to trial, we successfully obtained dismissal for the individual defendants and, through summary judgment, whittled the multi-count complaint down to three causes of action: age and disability discrimination and a hostile work environment. At the closing of the plaintiff's case in chief, we successfully argued

for judgment as a matter of law on the disability and hostile work environment claims. By cross-examining the plaintiff with the admissions he made during his videotaped deposition, we then showed the company did not take into account the plaintiff's age when it terminated him for sleeping while underground. At the conclusion of the three day trial, we obtained a full defense verdict, with the jury finding that the company did not discriminate against the plaintiff due to his age.

Obtained Writ of Prohibition from the West Virginia Supreme Court Dismissing Insurance Bad Faith Claims for Lack of Subject Matter Jurisdiction

We represented an insurance carrier accused of acting in bad faith in violation of West Virginia common law and the West Virginia Unfair Trade Practices Act in connection with the defense of an ongoing personal injury lawsuit and related declaratory judgment action concerning the scope of insurance coverage applicable to the personal injury lawsuit. The insurance carrier had offered what it considered the limits of the applicable coverage in order to settle the personal injury lawsuit, but this was insufficient to resolve the matter and the underlying plaintiff initiated a declaratory judgment action to seek an expansion of the amount of applicable coverage. Because the insureds wanted as much coverage afforded to them as possible for the personal injury lawsuit they asserted bad faith claims against the insurance carrier for taking the position it had offered its limits. The West Virginia Supreme Court found the insureds' bad faith claims were not ripe because the question of what coverage applied to the personal injury lawsuit had not been resolved. The West Virginia Supreme Court further noted there is basis for a bad faith cause of action when an insurance carrier retains independent counsel to defend an insured and separate counsel to prosecute a declaratory judgment action concerning the scope of coverage afforded to the insured.

Dismissal of Malpractice Claims Against an Attorney

We represented an attorney accused of intentionally inadequately defending his client, the plaintiff, due to the attorney's relationship with the opposing counsel and because of the plaintiff's race. We successfully obtained dismissal of all claims, with the court finding that the plaintiff's complaint was frivolous and failed to state a claim.

Obtained Writ of Prohibition from the West Virginia Supreme Court that caused the dismissal of a potential class action

We obtained a Writ of Prohibition from the West Virginia Supreme Court ordering the plaintiff to submit to arbitration based upon an arbitration agreement contained in the plaintiff's mortgage. This resulted in dismissal of the plaintiff's claims, which were brought as a putative class action under the West Virginia Consumer Credit and Protection Act.

Obtained Writ of Prohibition from the West Virginia Supreme Court dismissing all claims

We represented an insurance agent accused of starting a sexual relationship with the plaintiff's ex-wife in order to convince her to purchase an annuity. The plaintiff alleged claims of negligence, breach of fiduciary duty and other torts. The West Virginia Supreme Court found that all of the plaintiff's claims were based upon the fact that our client allegedly had an affair with the plaintiff's ex-wife, and so were in reality all claims for alienation of affections. This resulted in the dismissal of all claims against our client.

Dismissal of ERISA Breach of Fiduciary Duty Claims

We represented an employer accused of failing to properly process an employee's benefits enrollment form, which resulted in the employee's spouse not receiving life insurance coverage. The employee alleged that our client negligently failed to procure the insurance coverage and breached its fiduciary duties under ERISA by

failing to procure the coverage. We successfully argued that the employee's state law claims were preempted by ERISA and that she had failed to allege a cognizable breach of fiduciary duty claim under ERISA, which resulted in dismissal of all claims.

Obtained Dismissal of a West Virginia Patient Safety Act Claim

A former hospital administrator's claim of retaliation in violation of the West Virginia Patient Safety Act was dismissed because we proved that the former employee was not subject to the Act's protection because she was an administrator.

Obtained Order Enforcing an Arbitration Award

We successfully defeated a plaintiff's challenge to an arbitration award in our client's favor.

Successfully Defended Appeal of the Dismissal of Breach of Fiduciary Duty and Conversion Claims

We obtained dismissal of breach of fiduciary duty and conversion claims against our client, a bank, based upon the statute of limitations. The plaintiff, an attorney, had deposited client funds into an account under his name. These funds were seized by the state of West Virginia as a result of the lawyer owing back taxes. The lawyer sued the bank, alleging that it should not have permitted the state to seize the funds because they were client funds, despite being in an account in his name. We argued that the lawyer knew for more than five years of the seizure of the funds before he filed suit and that the claims should be dismissed under the statute of limitations. After we prevailed at the Circuit Court, the lawyer appealed to the West Virginia Supreme Court, which upheld the dismissal.

Summary Judgment on an ERISA Claim for Benefits

Our client contended that the widow of its deceased employee was entitled to life insurance benefits under the client's employee benefits plan. The insurance company that sponsored the plan denied coverage for the benefits. Our client fought on behalf of the widow of its deceased employee to establish coverage for the benefits by arguing that that insurance company had abused its discretion in denying the benefits. We ultimately prevailed and were granted summary judgment against the insurance company.

Summary Judgment on Employment Discrimination Claims

We successfully demonstrated to the judge that a hospital administrator's allegations of harassment by a male nurse and failure by the hospital to properly respond to her report of harassment could not be tied to a gender motivated bias. This summary judgment award was subsequently upheld on appeal.

Carr-Lambert v. Grant County Bd. of Educ., 2011 U.S. Dist. LEXIS 89456 (N.D. W. Va. Aug. 11, 2011)

We defended the president of the Grant County Board of Education in a third-party complaint that alleged harassment, intimidation, malicious actions and bad faith. The plaintiff, a member of the board, alleged that our client intimidated and retaliated against her for voting not to renew the employment contract of the current superintendent, and claimed damage to her mental health and reputation. The U.S. District Court for the Northern District of West Virginia found that the acts of our client were within the scope of his employment as president of the board, and were not of a malicious purpose or made in bad faith. Summary judgment was granted for our client.