



Mindy G. Barfield

Partner
mindy.barfield@dinsmore.com

Lexington, KY
Tel: (859) 425-1025

Mindy practices in the area of complex commercial litigation with a focus on defending clients in contract-related and business torts litigation (breach of fiduciary duty, fraud, misrepresentation, conversion, interference with prospective advantage or contractual relationship) and in complex insurance coverage and bad faith litigation arising from the handling of claims under all variety of insurance coverages.

She represents individual and corporate clients with insurance-related disputes, as well as insurance companies and other affiliates in insurance rehabilitations and liquidations, including defending them from rehabilitator complaints of negligence, breach of fiduciary duty and statutory violations. She has also represented insurer clients in administrative matters, including challenges to market conduct studies; regulatory violations and penalties, and to insurance department policies or interpretations. She provides needed advice and counseling to her insurer clients, including providing training to adjusters and management in the field on best practices in claim handling and documentation of the claim file.

Mindy, who also advises clients on employment and other workplace matters, has been certified by the Association of Title IX Administrators as a Civil Rights Investigator – Level One.

Services

- Litigation
- Tort
- Mass Tort
- Class Action
- Employment
- Audits, Counseling & Training
- Insurance Industry

Education

- University of Kentucky College of Law (J.D., 1993)

- George Washington University (M.A., 1988)
 - International Affairs
 - Scottish Rite Fellowship
- Transylvania University (B.A., *magna cum laude*, 1985)
 - Political Science
 - English Speaking Union Scholarship to Oxford University
 - Holleian Society Inductee
 - Jefferson Davis Scholarship for top pre-law student

Bar Admissions

- Kentucky

Court Admissions

- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Western District of Kentucky

Affiliations/Memberships

- Kentucky Bar Association
 - Board of Governors (2015 - present)
 - Annual Convention chair (2011)
 - Convention Planning Committee (2004, 2010, 2011, 2015, 2018)
 - Convention CLE Committee (2008, 2010, 2018)
 - Publications Committee/Bench & Bar (2000 - 2010)
- Kentucky Supreme Court, Committee on Mass Torts and Class Action
- Fayette County Bar Association, past president (2009 - 2010)
- Fayette County Bar Foundation
 - Former chair (2016 - 2017)
 - Former Grants Committee chair
 - Founding fellow
- Central Kentucky Inns of Court, master
- Legal Aid of the Bluegrass, Board of Directors (2013 - 2018)
- Transylvania University
 - Board of Trustees (2009 - present)
 - Member of Board Executive Committee

- Chair of Board's Student Life Committee
- Member of Academic Affairs Committee
- Kentucky State University
 - Board of Regents (2010 - present)
 - Chair, Board's Financial Affairs/Audit Committee
 - Member of Academic Affairs Committee
- Gods Pantry Food Bank
 - Board of Directors (1998 - 2017)
 - Past president (2004 - 2007)
- American Heart Association, Central Kentucky Chapter, Executive Leadership team for the "Go Red for Women" annual luncheon (2014 - 2017)
- Leadership Kentucky, Class of 2002

Distinctions

- *Best Lawyers*[®]
 - "Lawyer of the Year" in Lexington for Mass Tort Litigation/Class Actions - Defendants (2018)
 - "Lawyer of the Year" in Lexington for Bet-the-Company Litigation (2020)
 - Bet-the-Company Litigation, Commercial and Mass Tort Litigation and Class Actions - Defendants
- *Benchmark Litigation*
 - Litigation Star (2016 - present)
 - National Top 250 Women in Litigation (2014 - present)
 - Labor and Employment Star (2019, 2020)
- Special Justice, Kentucky Supreme Court
- Peer Review AV Preeminent in *Martindale-Hubbell*
- *Super Lawyers*[®]
 - Kentucky *Super Lawyers*[®]
 - Top 25 Women Attorneys in Kentucky (2014 - 2015)
- Litigation Council of America
- Leading Women of Central Kentucky by *Business Lexington* (2010)
- Fayette County Bar Association's
 - Citizen Lawyer of the Year (2013)
 - Young Lawyer of the Year (1999)
- Young Lawyer of the Year by Kentucky Bar Association's (2002)

- Special Recognition Award, Pro Bono Program, for co-founding Fayette County Domestic Violence Program “in recognition of your effort to make access to justice a reality for those in need” (2010)
- Distinguished Service Award, Transylvania University (2015)
- The Consummate Counselor Award, Gods Pantry Food Bank
 - “For lending her legal advice and leadership to the organization on countless occasions.”

Experience

Represent Client in Breach of Insurance Contract Matter

The firm represents a national insurance company in this case. In it, the plaintiff contends the insurer has breached the insurance contract and violated the Kentucky Motor Vehicle Reparations Act (KMVRA) by seeking an examination under oath (EUO) and delaying a decision on their no-fault claim and before paying certain claims under their Personal Injury Protection coverage of their auto policy until an EUO is taken.

The plaintiff contends that even if an EUO is authorized by a court, the insurer must still pay the PIP claim within 30 days, and if they do not, then they are obligated to pay the claim as well as statutory penalties of 18 percent prejudgment interest and attorneys fees.

Represented Client Against Allegations of Mismanaged Self-Insured Funds

In order to provide reasonable cost insurance to local Kentucky school boards, the Kentucky School Board Association (KSBA) created the Kentucky School Board Insurance Trust (KSBIT) and in particular two self-insured funds – one for workers compensation and one for property and liability claims. KSBA directly managed the funds for many years, and in later years utilized an outside entity third party administrator to handle claims. Financial examinations conducted by the Kentucky Department of Insurance from 2005 forward revealed the funds were consistently in a deficit position. Despite calls from DOI examiners, DOI did not order any assessments, and KSBA did not seek any from its members. The Kentucky League of Cities assumed management responsibilities in 2010. Despite new efficiencies and cost savings, the funds continued to be in a deficit position and KLC called for an assessment of members in 2012. Ultimately, the funds went into rehabilitation in 2013, and large assessments totaling approximately \$50 million were ordered by the Franklin Circuit Court. The firm represented the Kentucky League of Cities in litigation challenging its management of the two self-insured funds, and in particular the rates charged to members and its change of TPA. The claims against the Kentucky League of Cities were settled in late 2015. The rehabilitator’s claims against KSBA and the KSBIT Board remain pending.

Represent Insurance Company in Bad Faith & Breach of Contract After Personal Injury Claim

The firm represented a national insurance company against a personal injury plaintiff who pursued his own third party bad faith claim against the company as well as first party breach of contract and bad faith claims assigned to him by the insured. The case arose from a tragic car accident. A mine employee who left work allegedly fell asleep after working a double shift, crossed the center line and collided with the accident victim. The mine employee died in the accident, and the plaintiff victim suffered other catastrophic injuries allegedly rendering him unable to work again. He filed suit and subsequently added the mine that employed the tortfeasor as a defendant. He claimed his

injuries arose from their negligent supervision of the tortfeasor. The insurer for the mine denied the claim and did not provide a defense, relying upon a total auto exclusion in their CGL policy. Ultimately, the insured assigned its rights against the insurer to the plaintiff and filed suit directly against the insurer. The case ended in a voluntary settlement.

Represent Client in First Party Bad Faith Claim from Auto Accident

The firm represented a national insurance company in a first party bad faith claim arising from an auto accident. In evaluating his underinsured motorist (UIM) claim, the insurer rejected a spinal outpatient surgery he had done claiming it was controversial and not recommended by the mainstream medical community. A jury ultimately entered a verdict exceeding his UIM limits. The insured claimed the insurer had acted in bad faith in its handling and evaluation of the claim, utilizing protocols intended to maximize company profits at the expense of the insureds and claimants. The claim was settled prior to trial.

Represent Insurer in Third Party Bad Faith Claim

The firm represented the insurer of a foundation repair company that was hired to repair the foundation of Plaintiffs' home. The home was built on an Eastern Kentucky mountaintop, which had previously been the site of a surface mine. The deed to the property declined any warranty for the condition of the soils on the property. Subsidence began to cause cracking inside and outside the home. The Plaintiff ultimately sued the insured repair company and the insurer denied the claim based on the "subsidence" and "contract" exclusions in the policy. The court ultimately concluded there was coverage under the policy. Thereafter, the insurer defended the claim against the insured and that claim was subsequently settled. The plaintiffs thereafter filed a third party bad faith claim against the insurer. The insurer defended the claim on several grounds, including that the insured's liability for causing the damage to the home was not "reasonably clear" or "beyond dispute" and as such no bad faith claim could lie against them. The case was settled prior to trial.

Represent Client in First Party Bad Faith Claim from Auto Accident Involving Mine Worker

The firm represented a national insurance company in a first party bad faith claim by its insured. The case arose from a car accident. A mine employee, who left work, allegedly fell asleep and collided with another vehicle. The occupants of the second vehicle claimed significant injuries. These accident victims filed suit and subsequently added the mine that employed the tortfeasor as a defendant. They claimed their injuries arose from the mine's negligent supervision of the tortfeasor. The insurer for the mine initially defended the claim but later denied the claim and withdrew a defense, relying upon a total auto exclusion in their CGL policy. After the defense was withdrawn, the mining company failed to assume their own defense and, after failing to answer requests for admission, a judgment totaling \$40 million was ultimately entered against it. The insured sued the insurer, claiming there was coverage under the policy, and/or that it waived its right to deny coverage by initially defending without a written reservation of rights. It also claimed the denial was in bad faith. The state trial court ultimately ruled there was coverage under the policy, and thus the insurer was responsible to pay the \$40 million judgment entered against the insured. The trial of the bad faith claim was scheduled for a later date. The court's coverage decision was appealed, and during the appeal a global settlement was reached on all claims.

Represent Medical Malpractice Insurer in Mass Tort Matter

The firm represented a medical malpractice insurer in seeking a declaratory judgment that the relevant policies covering certain individual cardiac physicians did not cover intentional acts and that any verdict amount assigned to any of the intentional torts alleged in the complaint were outside the coverage of the policy.

Represent Medical Malpractice Insurer in Bad Faith Claim

In this case, the plaintiff's estate claimed the medical malpractice carrier had acted in bad faith in handling and settling an underlying malpractice claim against the insured doctor. The plaintiff claimed that doctor ran a "pill mill" and improperly prescribed several narcotic medicines to the decedent who eventually overdosed. During this same time period the defendant doctor was cited by the state medical licensing board and thereafter restricted from prescribing medicines. The defendant doctor defended by claiming that he provided the decedent proper warning and that if taken as prescribed no overdose would have occurred. He retained two experts who were prepared to testify that the doctor complied with the standard of care and/or that his conduct did not cause the overdose. The case ultimately settled for less than the policy limits a little more than a year after it was commenced. The bad faith case followed, with the decedent's estate claiming that the insurer had acted in bad faith by unduly delaying a claim where liability was reasonably clear and making offers less than the true claim value. After initial written discovery was exchanged, the insurer moved for summary judgment on the bad faith claim on several grounds, including that the doctor had not consented to settlement until the day of settlement and because the doctor's liability for causing the overdose was not beyond dispute and absent such clear liability, an insurer was entitled to make no offer and proceed to trial without exposing itself to bad faith liability. The court ultimately concluded no additional discovery was needed to address these issues and entered summary judgment. The plaintiff filed a motion to vacate the order under Rule 59 and this, too, was denied. The case is currently pending before the Kentucky Court of Appeals.

Big Sandy Company, L.P. v. Sidney Coal Company and Cliffs Mining

Our firm represented Big Sandy, the owner of land in Eastern Kentucky, for breach of contract and other tort claims seeking proper payment of delinquent coal royalties and seeking to terminate a long term lease for failure to pay these royalties. In a split decision, an arbitration panel ruled that, while the lease could not be terminated, Sidney Coal Company had breached the lease and ordered Sidney to pay overdue royalties to Big Sandy.

Secretary of Labor, Mine Safety and Health Administration (MSHA) v. Mid-America Mining

The U.S. issued a Section 105(c) citation to this Arkansas mining company, claiming that it fired its general manager after he has made formal complaints about the safety of the mine and its practices. This matter was settled on favorable terms to the client.

Anonymous Plaintiffs v. Large National Coal Company

Our firm represented a large national coal company in its claims for breach of contract, fraud, misrepresentation and tortious interference with contract involving multiple coal contracts and assignments of contract for coal for a power company's North Carolina generating station. A settlement was ultimately reached.

Christine Skidmore v. Affordable Denture Laboratories

The plaintiff claimed she was the subject of sexual harassment and a hostile work environment created by the lewd comments, dirty jokes and sexual overtures from her supervisor; that her complaints were ignored; and that she was thereafter constructively discharged. This case was settled on favorable terms to the client.

Cook Pallet, Inc. v. Meritor Heavy Vehicle Systems, LLC

Our firm won a defense verdict at trial for Meritor in an action for collection of \$300,000 in unpaid monies on a vendor contract, and obtained a \$30,000 verdict for Meritor on its counterclaim for conversion stemming from prior overpayments to the vendor.

Defended Jewish Hospital against allegations of wrongful discharge

We represented Jewish Hospital when a former certified respiratory therapist, also performing echo cardiograms, alleged that her termination was retaliation for her reporting of a change in her work schedule that she alleged would cause her to perform services that jeopardized her state certification. Summary judgment was obtained on the wrongful discharge public policy claim and later upheld in the Kentucky Court of Appeals for our client. Following the ruling by the Kentucky Court of Appeals, the plaintiff filed for discretionary review with the Kentucky Supreme Court, but was denied. *Russell v. Jewish Hospital*, 2004 Ky. App. Unpublished LEXIS 890 (Ky. App. 2004)

Defining the EPA's Water Quality Standards and Permitting Authority

We represented the Kentucky Coal Association (KCA) when the Environmental Protection Agency attempted to implement a final guidance that enabled blockage of Clean Water Act permits for coal mining operations.

The EPA issued final guidance in July 2011 which directed its field offices to object to state-issued permits in certain ecoregions in Appalachia (particularly Eastern Kentucky and West Virginia) unless they contained a "reasonable potential analysis" prior to permit issuance (even if the mine was new and therefore no site-specific data upon which to base an RPA was available) and/or numerical conductivity limits, which allowed EPA to block permits for virtually all new or expanded surface coal mines in Eastern Kentucky or West Virginia. We represented the KCA in arguing that the EPA had exceeded its authority in issuing the final guidance because it went beyond their oversight as outlined in the Clean Water Act and the Surface Mining Control and Reclamation Act. We also alleged that the EPA's final guidance infringed upon the states' authority to enact and monitor their own water quality standards.

Our case was transferred to the U.S. District Court in Washington, D.C., where the KCA became a co-plaintiff along with the National Mining Association, the Commonwealth of Kentucky, the state of West Virginia, and the city of Pikeville (Ky.). Working in coordination with other plaintiff counsel, we prepared extensive briefs, including researching and addressing Kentucky-specific requirements related to water conductivity standards. We also participated in oral arguments during a hearing, demonstrating that the power to set water quality standards is delegated to the states and that the EPA did not follow the formal rulemaking process to attempt to implement a federal standard.

After hearing oral arguments, the judge ruled that EPA's reliance upon the final guidance to object to and thereby block the issuance of individual Clean Water Act permits for new or expanded surface coal mines in Eastern Kentucky and West Virginia was unjustified and unlawful. Unfortunately, EPA continues to refuse to issue the permits at issue in direct contravention of the court's order. The case is now on appeal before the U.S. Circuit Court of the District of Columbia.

Learn more about this case in the article: [Judge Sides With Coal Industry Against EPA](#)

Douglas Industries, Inc. and JAIR United, Inc. v. Lear Siegler Services, Inc.

Our firm defended Lear against claims that it had failed to pay \$2.5 million owed to the plaintiffs for repairs they allegedly completed and parts they allegedly supplied on Lear's behalf to the Kingdom of Saudi Arabia and the Royal Saudi Air Force for F-5 aircraft and J-785 engines under certain U.S. defense contracts. A favorable settlement was reached prior to trial.

Gary Parks v. Large National Insurance Company

The plaintiff, a former insurance agent, claimed that the large national insurance company defamed him in order to divert business to a new agent. This case was settled on favorable terms to the client.

Geneva Hager v. Large National Insurance Company

Our firm defended a large national insurance company on claims that it violated the Kentucky Unfair Claims Settlement Practices Act in implementing claim handling processes for casualty claims involving soft tissue injuries arising from minor impact automobile accidents which the plaintiff contended were improper. Class certification was denied, and thereafter the insurance company won a defense verdict in a highly publicized trial of the bad faith claim of the individual plaintiff who had sought \$1.45 billion in damages.

Host Communications, Inc. v. Sprint Communications, Inc.

Our firm represented Host Communications, Inc. in a declaratory judgment action as to whether Host was responsible to pay Sprint for certain telephone services supplied Host for various sites and facilities during the NCAA Tournament pursuant to the terms of Sprint's NCAA Corporate Partner Agreement, or whether the filed rate doctrine permitted Sprint to charge Host a rate higher than agreed upon by the parties. A favorable settlement was reached.

Jaguar Cars, Inc. v. Blackhorse Motors

Our firm represented Jaguar in a significant claim for breach of contract, RICO and fraud claims arising from a Jaguar dealer's conduct in submitting invalid warranty claims to the manufacturer. A favorable settlement was reached prior to trial.

Jaguar Cars, Inc. v. Kentucky Motor Vehicles Commission

Our firm represented Jaguar in a claim alleging that the Commission was biased in favor of dealers and against manufacturers which prevented Jaguar from receiving a due process hearing before the Commission on its application to terminate the franchise of a Jaguar dealer. Jaguar prevailed, and this decision was affirmed on appeal in a published decision (*Jaguar v. Cottrell*, 1999 WL 34749489), with Jaguar also subsequently receiving an award of attorneys fees.

Jeff Mason v. Southern States Cooperative, Inc.

Our firm defended Southern States in a putative statewide class action of customers of agricultural goods on credit for violation of Kentucky's usury statute, ultimately obtaining a dismissal of all claims.

Joan Fain v. Host Communications

The plaintiff claimed she received negative performance reviews and was demoted because of her gender (as management at this national sports marketing company were male former athletes) and as a result of a disability. She also claimed she was the subject of retaliation when she complained about this discrimination, including threats and physical assault from a supervisor. This case was settled on favorable terms to the client.

Kentucky Employers Mutual Insurance Co. v. Coleman

Obtained a writ of prohibition from the Kentucky Supreme Court who in a published opinion directed the trial court to dismiss a bad faith action against a workers compensation insurance carrier and ruled that all such claims are subject to the exclusive remedy provision of the workers compensation statute. (*Kentucky Employers Mutual Insurance Company v. Coleman*, 236 S.W.3d 9 (Ky. 2007).

Large National Coal Company v. Power Producer

Our firm represented the Plaintiff in this lawsuit, a large national coal company, for bad faith breach of a long term requirements contract which resulted in significant reductions in the tonnages of coal purchased from our client. A favorable settlement was reached while the case was pending in arbitration.

Linda Brown v. Large National Insurance Company

Our firm defended a large national insurance company in a disability discrimination and wrongful discharge lawsuit where the plaintiff alleged she was fired because of a disability and/or in retaliation for complaints about company claim handling practices. A summary judgment was entered and a subsequent appeal was dismissed by the Kentucky Court of Appeals.

Naugle v. Large National Insurance Company

The firm represented Defendant a large national insurance company before the U.S. Court of Appeals for the Sixth Circuit. The issue was whether dismissal of claims under the Kentucky Unfair Claims Settlement Practices Act was proper where the insurer was not obligated to initiate settlement discussions and where the insurer did not attempt to settle for an unreasonable amount. The case was dismissed and the summary judgment of the lower court was affirmed.

Rita Waldrige v. Feather, Inc.

Defended a claim of sexual harassment, retaliation, and constructive discharge against a restaurant franchisee arising from the act of a supervisor. This claim was settled on favorable terms after the verdict in *Sue Spencer v. Feather, Inc.*

Solutia Inc. v. FMC Corporation

We advised the client with respect to all aspects of the case, which was originally filed in State Court in St. Louis, then dismissed and re-filed in the US Bankruptcy Court in NY following the client's Chapter 11 filing. The U.S. District Court withdrew the reference and assumed jurisdiction of the claims. We litigated these claims for a fraction of the cost that would have been incurred by New York counsel, and achieved a very favorable settlement for the client. The settlement was approved by the Bankruptcy Court without objection from any constituency in the bankruptcy. Following approval of the settlement by the Bankruptcy Court, all claims were dismissed.

Sue Spencer v. Feather, Inc.

Our firm won a defense verdict at a jury trial on behalf of our client, Feather, Inc., who had been sued by the plaintiff on Title VII claims for same sex harassment and retaliation.

Terry Robbins v. The Hope Center

The plaintiff lodged a complaint against his employer, a non-profit offering programs for the homeless, with the National Labor Relations board, claiming that its Executive Director made threats to employees to discourage them from organizing. He also filed a civil action claiming that he has been retaliated against in response to his NLRB complaint. Both matters were settled on favorable terms to the client.

The Estate of Sarah Howard v. Large National Insurance Company

Our firm defended a large national insurance company on claims that it unfairly violated Family and Medical Leave (FMLA) and otherwise disciplined Howard in retaliation for complaints about her workload as a P&C adjuster, about her supervisor and the Market Claim Manager and/or because she had a disability in violation of the ADA. This case was settled on favorable terms to the client.

Theresa Russell v. Jewish Hospital

The plaintiff claimed she was constructively discharged by the hospital for refusing to perform ecocardiographs which she claimed were intrusive procedures which would constitute a violation of her license as a respiratory therapist, and thus against Kentucky public policy. The client received a summary judgement from the trial court, which was upheld on appeal after oral argument.

Traveler Coal LLC, Barry Kevin Hall, et al. v. Prospect Capital Corporation, North Fork Collieries LLC and Community Trust Bank, et al.

Represented Plaintiffs in litigation in New York and Kentucky courts over enforcing indemnity and other contractual agreements to assume commercial bank note for coal operations. Have been successful to date on behalf of the Plaintiffs in pursuing claims in Kentucky and in defending arguments to compel arbitration and/or to dismiss the case because of a New York forum selection clause.

Publications

July 14, 2017

Title IX: College and University Risk Management

May 2, 2017

Closing Doors: The Battle for Declaratory Relief in Federal Court

American Bar Association

August 2, 2012

Judge Sides With Coal Industry Against EPA