



# Year in Review

**Prepared for:**



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# Introduction

As the world continues to transition in the aftermath of the COVID-19 pandemic, insurers are finding themselves confronting a host of new challenges, many of which have little connection to the pandemic.

Chief among those challenges is the growing negative cultural attitude toward corporations, combined with increasingly aggressive plaintiffs' attorneys, driving significant growth in massive liability verdicts and jury awards. Theories of negligence have become more expansive; litigation may be filed earlier in the life of a claim, resulting in extensive discovery, motion practice and numerous litigated issues; and runaway verdicts are more often affirmed on appeal. These developments have serious implications for carriers.

In addition, insurers and their insureds are forced to grapple with the ongoing War for Talent, the risks associated with the harrowing impacts of climate change and related sustainability concerns, and the mounting fallout from political unrest, among other far-reaching concerns.

Given the critical nature of these challenges, Wilson Elser appreciates the faith The Hartford has once again placed in us to serve as one of your go-to legal services providers. We believe that our work continues to be in keeping with your expectations and the standard of excellence we have set for ourselves.

Wilson Elser is proud to have provided a number of value-added services to The Hartford. In December 2022, David Simantob co-presented with Robin Linker, Assistant General Counsel with The Hartford, to more than 75 people in The Hartford's Law Department and home office regarding the new California Code of Civil Procedure, section 999. David and Robin gave the presentation again in January 2023 to more than 80 people, including claims handlers in the field.

Similarly, Daniel Tranen presented to The Hartford's UK brokers in summer 2022 about key issues in the life sciences industry, and provided a year in review presentation to U.S. and UK brokers in January 2023. We also continued our collaboration with The Hartford in marketing its Life Sciences policy by offering insureds a complimentary one-hour consultation on related topics.

We continue to enjoy the opportunity to maintain professional liability (accounting, real estate, insurance agents and brokers) hotlines for the benefit of The Hartford's insureds. And we are pleased to maintain a running scorecard of Biometric Privacy Act cases in Illinois; this scorecard includes coverage and underlying defense cases on the BIPA statute of note.

# Introduction *(Continued)*

We are gratified that more than 90 Hartford personnel attended several of our webinars last year, including at least one attendee at each of the following programs:

- A New Year: What's New for Employers? – January 20, 2022
- The Defense Counsel's Playbook: Creating Leverage to Combat Plaintiff's Strategies – February 17, 2022
- ADA Compliance for Websites: Risk Mitigation & Defense Strategies – March 10, 2022
- Virtual Arbitration: Best Practices for Navigating the Future – April 28, 2022
- Insurance Coverage Master Class Series – May 2022
  - Appraisal: The Wild, Wild West
  - First-Party Bad Faith: King of the Hill
  - Waiver and Estoppel Overview
  - How to Avoid Waiver and Estoppel by Properly Reserving Rights
  - Interrelated Claim/Wrongful Act Analysis: "Those who cannot learn from history are doomed to repeat it"
  - Common Misconceptions about Rescission and How to Avoid Them
  - Discussion of Tenders
  - Coverage for Biometric Privacy Claims
- How to Defend the Bet-the-Company Case – June 30, 2022
- Dissecting a Data Breach Class Action – July 14, 2022
- The Trial Lawyer's Manual: New Strategies and Tactics in the Time of COVID, Social Inflation and the Reptile – July 28, 2022
- Avoiding Post-Pandemic Employment Litigation – September 15, 2022
- Relationship Troubles: Employers and Their Benefit Insurers – September 29, 2022
- Employment & Labor Law Summit – October 2022
  - The Current State of PAGA in California
  - What California Employers Need to Know Going into 2023
  - California Wage & Hour Update
  - Northeast and Mid-Atlantic Update
  - National Strategies in Non-Compete Agreements
  - Exempt versus Non-Exempt, Overtime and Other Wage & Hour Issues in the Remote Working Context
  - Updates on Administrative Agency Action and Initiatives

# Introduction *(Continued)*

- Practical Implications of Travelers v. ICS for Cyber Insurance Brokers, Carriers and Policyholders: Emerging Trends and Predictions – December 7, 2022
- COVID-19-Related Medical Liability and Legal Immunity: An Update – December 12, 2022
- Protecting Confidential Information & Preserving the Attorney-Client Privilege in Litigation December 15, 2022

Enclosed herein is an account of some of the meaningful highlights from our relationship in 2022. This document includes key statistics that summarize our work with The Hartford in the past year, including top practices and top jurisdictions (page X); descriptions of notable cases Wilson Elser attorneys recently resolved on behalf of The Hartford and its insureds (pages X-Y); updated contact information for the leaders of the firm's Hartford Service Team (page X); and a current firmwide office list and map (page X). We hope you find this material informative and useful.

For more than 35 years, Wilson Elser has worked with The Hartford's family of companies – across a wide array of jurisdictions and business lines – to mitigate risk and protect your interests, and we are appreciative of another exemplary year.

Thank you for your interest. We look forward to a mutually successful 2023!

# 2022 by the Numbers

## Top Growth Areas

Professional Liability



General Liability



Commercial Services



## Top Practices

Insurance Coverage



General Liability



Professional Liability



Commercial Services



Commercial Litigation



## Top States/Regions

New York Metro



Chicago



Southern California Metro



San Francisco



Houston





# 2022 by the Numbers *(Continued)*

## Recent Case Results

Case Name	Lead Attorney(s)	Description
<i>Bond Brothers, Inc. v. Navigators Specialty Insurance Company</i>	<b>William Bogaert</b>	Obtained summary judgment in a case where the plaintiff, a general contractor, alleged that Navigators had a duty to defend it in a bodily injury suit under the terms of the additional insured endorsement to the CGL policy issued to one of plaintiff's subcontractors. We successfully argued that plaintiff failed to establish that a duty to defend was owed.
<i>Cornett v. Aaron Thomas, et al.</i>	<b>James Burd</b> <b>Douglas Kemper</b>	Obtained award in an amount significantly below the estimated recovery in a suit against the insured client resulting from a motor vehicle accident. It was likely that a verdict would have awarded the plaintiff substantial damages.
<i>Hodges v. Mid-American Elevator, et al.</i>	<b>Daniel Coffman</b>	Settled this matter involving a personal injury arising out of a crane accident in which our client was brought in as a third-party defendant on contribution and indemnification theories. The case was bifurcated such that a jury trial on the underlying action would be followed by a bench trial on the third-party claim. The case was settled substantially below our estimates just before the jury trial.
<i>Decca Multi-Family Builders, Inc. v. 3137 Willow Creek Road, LLC, et al.</i>	<b>Colt Dodrill</b>	Reached a settlement well below the amount demanded of our client against claims of breach of contract, wrongful termination and bad faith by the prior general contractor against the developer. The developer counterclaimed and filed third-party claims against all subcontractors, including our client. The suit involved a multiplicity of parties, counsel and experts.
<i>Fountain v. FD Retail Properties, LLC, d/b/a Family Dollar Stores, et al.</i>	<b>Andrew Heck</b> <b>Elyse Tormey</b>	Negotiated a global settlement of \$125,000, with our client's contribution limited to \$50,000 in a trip and fall in the parking lot serving our client's business. The plaintiff complained of sharp pain in her back, neck and left knee. Based on the plaintiff's deposition, her testimony likely would have been undermined under cross-examination at trial. However, the hole in the parking lot had yet to be repaired, clearly presenting a tripping hazard and jeopardizing our defense.
<i>Loera, et al. v. Mixer Systems, Inc., et al.</i>	<b>Daniel Hurwitz</b>	Negotiated a successful settlement on behalf of the insured in this matter involving an industrial accident in which plaintiff's arm became caught in concreting-mixing machinery manufactured by our client. Subsequent remedial measures, which are admissible to prove defect in California, would have prevented the injury. The settlement was a fraction of the more than \$8 million initial demand.

# 2022 by the Numbers *(Continued)*

Case Name	Lead Attorney(s)	Description
<i>Clark v. Sentinel Insurance Company, Ltd., dba The Hartford</i>	<b>Douglas Kemper</b>	Prevailed in a motion for summary judgment in a claim related to water damage in the plaintiff's home, and Sentinel adjusted and paid the claim. However, upon removing part of her siding, the plaintiff discovered extensive rot damage. Sentinel paid an additional amount pursuant to the applicable endorsement. The plaintiff argued that the limited rot coverage provided by the endorsement was inapplicable and that she was entitled to full payment based on an estimate she obtained, which did not seek to differentiate between water damage and rot damage.
<i>Raoufinia, et al. v. Dinah Abioro</i>	<b>Matthew Lee</b>	Obtained a motion to quash for lack of personal jurisdiction on behalf of the insured dentist. The plaintiff alleged that the dentist defamed him in statements made in a closed Facebook group. The dentist lived and worked in Maryland, while plaintiff was located in Virginia. The plaintiff asserted long-arm jurisdiction against the dentist and argued she had caused tortious injury by an act or omission in Virginia. We argued that since the dentist posted her remarks in her Maryland residence, and there was no evidence of where the server for her internet link was located, the plaintiff had not presented prima facie evidence that the dentist committed an act or omission in Virginia.
<i>Sentinel Insurance Company, Ltd. v. VLM Foods, Inc., et al.</i>	<b>Peter Moore</b> <b>Richard Brahan</b>	Secured a \$6.1 million judgment for Sentinel in a declaratory judgment action brought on behalf of The Hartford as assignee of its insured restaurant (TSC). To recover costs incurred by The Hartford defending a 2016 outbreak of viral infection linked to frozen strawberries sold by TSC, The Hartford brought suit for contractual indemnification against the company that supplied the strawberries and the up-stream wholesaler that imported them. The court granted summary judgment in favor of The Hartford for \$3.5 million, the full amount sought. After nearly an additional year of litigation, the court rejected the defendants' arguments that the fees incurred in prosecuting the suit were excessive, and awarded The Hartford an additional \$2.6 million in interest, fees and costs. This was the entire amount claimed by The Hartford.
<i>Haynes Properties, LLC, et al. v. Navigators</i>	<b>Edward O'Brien</b> <b>James Burd</b>	Obtained a favorable decision in Kentucky state court denying coverage for claims asserted by shareholders and a corporate dissolution committee against directors and officers of a tobacco cooperative. The claims alleged corporate mismanagement and malfeasance against various directors and officers. The court agreed with our position that an insured vs. insured exclusion set forth in the insurance policy barred the claims, and also dismissed the plaintiffs' extra-contractual bad faith claims against Navigators.



# 2022 by the Numbers *(Continued)*

Case Name	Lead Attorney(s)	Description
<i>Jace Boston, LLC v. Navigators</i>  18753.00452	<b>David Simantob</b>	Successfully established that the cause of action was not an enumerated offense under the policy and our motion for dismissal was granted in a case in which the plaintiff sought coverage under a general commercial liability policy in connection with a suit brought against it for "slander of title."
<i>Clayson v. Orgill Singer &amp; Associates, Inc., et al.</i>	<b>David Simantob</b> <b>Shannon Santos</b>	Obtained summary judgment in favor of The Hartford in a claim by a supervising physician of a medical clinic alleging The Hartford failed to provide her with a defense in an underlying lawsuit filed by employees of the clinic. The physician could not prove the essential element of damages as she had received a pro bono defense in the underlying action and had received a full release without having paid anything out of pocket. The court agreed.
<i>Marocco v. Hartford Insurance Company of the Southeast</i>	<b>David Simantob</b> <b>Shannon Santos</b>	Secured summary judgment in The Hartford's favor on a question of first impression in Florida as to whether a claim for "slander of title" triggers coverage for "personal and advertising injury." The Hartford's insured was sued in Florida for purportedly filing false liens against the claimant's properties for work that was completed without authorization. The claimant obtained a judgment in excess of \$500,000 against the insured for lost wages caused by the impact of the liens. The claimant filed a coverage action against The Hartford in Florida to seek recovery of the judgment, attorneys' fees, pre-judgment and post-judgment interest, totaling \$2+ million. The insured was not a party to the coverage action, and the duty to defend was not at issue. The court granted summary judgment and denied the claimant's cross-motion.
<i>Texas A&amp;M University 12th Man Foundation v. Hartford Lloyds Insurance Company</i>	<b>David Simantob</b> <b>Janet Tolbert</b>	Obtained summary judgment for client sued by their insured, the Texas A&M 12th Man Foundation. The plaintiffs in the underlying lawsuit alleged they were promised "best available" seats and parking spots at football games, but were relegated to inferior seats and parking spots. In attempting to prove insurance coverage, the Foundation argued the plaintiffs alleged "wrongful eviction" from the seats and parking spots.
<i>Moreno v. Sentinel Insurance Company, Ltd.</i>	<b>Thomas Spitaletto</b>	Obtained affirmance on appeal for Sentinel when a judgment creditor attempted to recoup a \$1.6 million judgment against Sentinel's insured, which resulted from an underlying personal injury lawsuit. Sentinel had denied coverage for the underlying lawsuit because the insured failed to request a defense. The appellate court found that the insured must not only forward suit papers but must request a defense, which in this case did not occur. The court also rejected appellant's argument that prejudice was required.

# 2022 by the Numbers *(Continued)*

Case Name	Lead Attorney(s)	Description
<i>Twin City Fire Insurance Company v. LG Development Group et al.</i>	<b>James Stankowski</b> <b>Michael O'Malley</b>	Filed a declaratory judgment complaint, after which Twin City's insureds agreed to settle for less than the projected cost of litigating this coverage case under a D&O policy. We contended coverage was not afforded because, among other things, the professional services exclusion barred coverage, the claims were interrelated to a claim that arose prior to the first policy and therefore was not made and reported within Twin City's policies, the insureds breached the notice conditions, and the improper gains, fraudulent acts, and breach of contract exclusions barred coverage.
<i>Twin City Fire Insurance Company v. BOF Corporation</i>	<b>James Stankowski</b> <b>Michael O'Malley</b>	Filed a declaratory judgment complaint, after which Twin City's insureds agreed to settle for less than the projected cost of litigating this coverage case. In the underlying case, we denied coverage, contending the insured was aware of the claim prior to the inception of Twin City's policy because plaintiff refused to cash the check for her shares and therefore the claim was not made and reported within the policy period. We also denied based on, among other things, the conduct occurring before the prior or pending date, the improper gains exclusion, and the fraudulent acts exclusion.
<i>Mueller v. EDTL Handball, LLC</i>	<b>Scott Stopnik</b>	Obtained jury vote in a product liability case in which the plaintiff sustained an eye injury while wearing a brand of lens-less eye shields. Our client provided logistical support to the defunct manufacturer of the eye shields. The jury found that the product did not satisfy the consumer expectation test for strict liability, and that neither our client nor co-defendant package designer had failed to warn about any otherwise non-obvious hazards that may have been present with the product. Consequently, it voted to deny plaintiff any award.
<i>Pedota v. Brooklyn C&amp;D, LLC</i>	<b>Scott Stopnik</b> <b>Ben Silver</b>	Secured a settlement for approximately one quarter of plaintiff's initial settlement demand on behalf of our client. The plaintiff alleged various injuries as a result of a slip and fall on a snow-covered piece of wood outside of our client's facility, while a snow storm was in progress. Plaintiff was out of work since the accident and made an initial settlement demand of \$2.25 million. We argued that plaintiff was unable to establish the requisite notice of the alleged dangerous condition, during a storm in progress; that the subject area was outside the premises such that our client owed the plaintiff no duty; and that the value of the entire economic loss claim was completely offset by plaintiff's Social Security Disability and pension benefits. Plaintiff's counsel relented and agreed to accept a \$475,000 settlement, less than 25 percent of his initial demand.

# 2022 by the Numbers *(Continued)*

Case Name	Lead Attorney(s)	Description
<i>Twin City Fire Insurance Company v. Alcast Company, et al.</i>	<b>James Thurston</b>	Obtained a ruling that our client was entitled to allocate defense costs based on the plaintiff's relative legal exposure, rejecting the "reasonably related" rule. Defendant had been sued in bankruptcy and sought coverage of its defense costs under a policy issued by our client.
<i>ICS General Contracting v. The Hartford</i>	<b>Daniel Tranen</b> <b>John Suermann Jr.</b>	Negotiated a voluntary dismissal for The Hartford by showing that The Hartford had opened a claim, it had paid the claim in full to the insureds and was not holding any policy proceeds. Therefore, we argued that The Hartford was not a proper party to the causes of action lodged, quantum meruit and unjust enrichment. After producing an affidavit to opposing counsel confirming same, plaintiff voluntarily dismissed The Hartford from the case. This dismissal was obtained at the beginning stages of the case, which allowed The Hartford to forego filing a responsive pleading and avoid costly formal written discovery.
<i>Wegner v. Tetra Pak, Inc., et al.</i>	<b>Linda Wills</b>	Obtained a ruling that the decedent's life insurance benefits were limited to the Guaranteed Issue Amount and not the supplemental benefits amount claimed by the plaintiff since the decedent failed to provide our client with the required Evidence of Insurability. This case involved a claim for payment of life insurance benefits under an insurance policy governed by ERISA. In addition to establishing that the plaintiff failed to prove entitlement to benefits under the ERISA plan, we demonstrated that our client met its fiduciary duty in properly processing the plaintiff's claim of benefits after initially receiving erroneous information from the plan sponsor.
<i>Martinez v. Paramount Country Club, LLC</i>	<b>Nancy Wright</b> <b>Marielle Moore</b>	Demonstrated that plaintiff was employed in a bona fide executive capacity and was thus not entitled to any of the relief he sought in a suit alleging minimum wage, spread of hours and overtime violations.

In addition to the above-described case results, Wilson Elser successfully and efficiently resolved multiple copyright infringement disputes for low-dollar values and with minimal legal spend.

# Your Service Team Leads

Wilson Elser is pleased to maintain a Service Team dedicated to The Hartford. Please contact one of our Service Team Leads with any of your legal service needs and we will respond promptly.



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# Wilson Elser Offices

## 43 Offices Nationwide

### **Alabama**

Birmingham

### **Arizona**

Phoenix

### **California**

Los Angeles  
Orange County  
San Diego  
San Francisco

### **Colorado**

Denver

### **Connecticut**

Hartford  
Stamford

### **Florida**

Miami  
Orlando  
Sarasota  
West Palm Beach

### **Georgia**

Atlanta

### **Illinois**

Chicago

### **Indiana**

Indianapolis  
Merrillville

### **Kentucky**

Louisville

### **Louisiana**

New Orleans

### **Maryland**

Baltimore

### **Massachusetts**

Boston

### **Michigan**

Detroit

### **Mississippi**

Jackson

### **Missouri**

St. Louis

### **Nevada**

Las Vegas

### **New Jersey**

Madison

### **New York**

Albany  
Long Island  
New York  
White Plains

### **North Carolina**

Charlotte  
Raleigh

### **Oregon**

Portland

### **Pennsylvania**

Philadelphia

### **Tennessee**

Nashville

### **Texas**

Austin  
Dallas  
Houston  
Tyler

### **Virginia**

McLean

### **Washington**

Seattle

### **Washington, DC**

Washington

### **Wisconsin**

Milwaukee



