



# Professional Negligence Defense



Our clients call on us for representation in professional negligence claims in state and federal courts in the Southeast. Because a professional's reputation is his or her most valuable asset, Parker Poe is at the forefront in finding creative ways to avoid litigation and publicity where possible through alternatives such as arbitration and mediation. These alternatives often result in early resolution and significant cost savings. We also understand that an allegation of professional negligence requires a vigorous defense, and our knowledge enables us to defend professionals aggressively.

We have extensive experience in defending professionals against malpractice claims across a wide range of fields that include:

- Accounting
- Architecture
- Engineering
- Insurance
- Financial services
- Health care
- Legal services
- Surveying

Clients consistently rely on our attorneys for advice on issues of risk management and review of professional liability insurance programs. By providing comprehensive services to our professional clients, Parker Poe attorneys have been successful in defending professional negligence litigation by minimizing clients' losses and costs through early intervention and favorable settlements and, where appropriate, through trial.

## REPRESENTATIVE EXPERIENCE

- Representation of physicians and other health care providers for more than 30 years in medical cases arising from adverse drug reactions, complications of surgery, defective medical devices, complications from labor and delivery and assessment/diagnosis of disease.
- More than 30 years of experience in defending attorney malpractice claims.
- Defense of corporate officers, directors and accountants in securities fraud class actions, shareholder derivative suits and corporate governance disputes.



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- Representation of clients within the financial services industry in claims of breach of fiduciary duty and alleged violations of applicable standards and regulations, including suitability, selling away, churning and failure to supervise.
- Defense of accounting firms in claims that audits were not conducted in accordance with Generally Accepted Auditing Standards (GAAS) and in claims that faulty audits or improper accounting advice resulted in alleged economic losses.
- Representation of architects and engineers in design and construction disputes of all types and sizes, including residential, commercial, industrial, heavy/highway and municipal and governmental contracting. We defend engineers of all disciplines and architects in design deficiency claims as well as construction administration/observation claims.

## Sample of Representative Cases

### Accounting

- *Harrold v. Dowd et al.*, 149 N.C. App. 777 (N.C. App.) – North Carolina Court of Appeals upheld dismissal of malpractice and fraud claims against accountants.
- *Ladd v. Ernst & Young*. US Dist LEXIS 8253 (M.D.N.C.); U.S. Dist. LEXIS 6585 (M.D.N.C.); WL 1093901, 41 Fed R Serv 3d 1633 (M.D.N.C.) – Securities and malpractice case involving acquisition.
- *Carousel Capital Partners, L.P v. Chappell et al.* 5:98-CV-934 (E.D.N.C) – Professional malpractice claim filed in federal court, which was ultimately resolved in arbitration.

### Architecture & Engineering

- *Min v. Ralph Whitehead Associates, Inc., et al.* 4:02 CV 126 H(3) (E.D.N.C.) – Plaintiff brought personal injury action against our client, an engineering firm that designed a highway, and the general contractors responsible for construction of the highway alleging design and construction deficiencies. Through an aggressive defense and thorough understanding of the issues, we were able to obtain a voluntary dismissal with prejudice of all claims against our client.
- *Ellis-Don Construction Inc. v. Pease Associates, Inc.* 5:04-CV-250-H(2) (E.D.N.C.) – General contractor for construction of Central Prison in Raleigh, North Carolina, filed suit against our client, the project architect, alleging that it failed to properly administer the contract by failing to keep other prime contractors on schedule and failing to grant extensions of time to the general contractor. A separate lawsuit was filed against the state in a separate forum. Efficiently and favorably negotiated on behalf of our client a global settlement and release of all claims and all parties.



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- *Grace Mills, et al. v. Bennie C. Baker, et al.*, 03-CVS-1539 (Lenoir County Superior Court) – Representation and defense of a planning, engineering and architectural firm that provided consulting services to a midsize municipality to revitalize and rehabilitate several older neighborhoods under a Community Development Block Grant. Reached extremely favorable settlement for our client early in the case.

### Corporate Directors & Officers

- *In re Speedway Motorsports, Inc. Derivative Litigation*, No. 546 (Del. Sup. Ct.) – Plaintiff brought derivative claims of bad faith and breach of fiduciary duties arising out of the sale of an industrial park adjacent to the Las Vegas Motor Speedway. The Chancery Court held that the defendant directors' decisions were protected by the business judgment rule and granted summary judgment in favor of our clients. The Chancery Court's ruling was upheld by the Delaware Supreme Court.
- *In re FAC Realty Securities Litigation*, 990 F. Supp. 416 (E.D.N.C.) – Plaintiff filed this 10b-5 securities class action in federal court against our individual client and other defendants. The trial court granted motions to dismiss for failure to state a claim, and plaintiff did not appeal.
- *Whitacre Partners v. BioSignia, Inc., et al.*, 358 N.C. 1 (N.C. Sup. Ct.) – Plaintiff sued our client asserting that it had improperly failed to acknowledge plaintiff's ownership of stock. The North Carolina Supreme Court recognized, for the first time, the doctrine of judicial estoppel in North Carolina and remanded the case. On remand, the trial court again granted our motion for summary judgment.

### Financial Services

- *Cox v. Capital Investment Brokerage, Inc.* (NASD Arbitration No. 03-05235) – Claimant alleged negligence by the broker-dealer and its registered representative for recommending unsuitable investments, recommending the claimant trade on margin and failure to supervise. The matter was settled favorably for our client.