



PRACTICE GROUP CHAIRS

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PROFESSIONAL LIABILITY

We take our commitment to client service very seriously, so we know firsthand the effort that it takes for professionals (including attorneys, physicians, accountants, architects, engineers, and corporate directors and officers) to serve their clients. But we also understand that even good practices—if they lead to a bad result—can expose a professional to a claim of failing to perform up to the standards by which they should be judged.

At Goldberg Segalla, our lawyers have a wealth of experience handling all manner of professional liability claims and cases. Our seasoned attorneys have extensive trial backgrounds, and many also have specific practical experience in the fields in which they practice. For example, within our medical professional liability subgroup is an attorney who has spent more than a decade as a paramedic and paramedic instructor. Our architect and engineer subgroup includes a partner who was an aerospace engineer before he became an attorney.

As with all of our practice philosophies, our approach is intense and sophisticated, yet always pragmatic. We work together with our clients in an effort to develop the most efficient results and best possible outcomes.

ACCOUNTANTS

With financial fraud a fixture in the news, accountants are facing hostile scrutiny as never before. The traditional deference afforded to their profession has become a quaint relic of a more genteel age, not likely to be seen again. The gloves are off.

Goldberg Segalla understands this dynamic. Our professional liability practice group understands the challenges faced by auditors, tax preparers, valuation professionals, business consultants and other practitioners. Goldberg Segalla's accountants' professional liability lawyers are often engaged to protect and defend accountants – including Top 20 firms – in professional liability lawsuits.

In addition to our frequent court appearances on behalf of accountants, we routinely counsel these professionals on matters affecting their day-to-day practice. For example, we present continuing education on the *Code of Ethics*, as well as standard of care issues that are known to snare unwary practitioners. We also advise our clients on difficult matters such as conflicts of interest, disengagements and non-engagements, billing issues, requests for comfort letters, SEC disclosures, AU Section 561 disclosures, communications with successor firms, and the discovery of client fraud and its aftermath.

Accounting professionals from time to time receive third-party subpoenas in civil matters, federal and state grand jury subpoenas, administrative inquiries and other third-party communications. Goldberg Segalla understands the sensitivity of these events, and handles each such matter with discretion and diplomacy. Our clients can trust that we will take every available measure to protect and preserve their confidence, as well as their reputations.

Practice group leader Jonathan S. Ziss is sought after as a lecturer on CPA risk management and professional standards compliance. He has been involved in several hundred matters involving accountant professional liability issues. He is also a frequent columnist on these topics.

DIRECTORS AND OFFICERS

As some of the leading practitioners of insurance and reinsurance law, our attorneys represent insurers and reinsurers throughout the United States and internationally in cases involving the liability of directors and officers (D&O). Our experience extends beyond claims made against directors and officers of publicly traded companies; we also represent clients for claims involving private companies, nonprofit entities, investment trusts, and limited and general partnerships. In fact, our firm-wide multidisciplinary collective of insurance-related practice groups serves all facets of the insurance industry, including some of the largest D&O insurers and reinsurers in the business.

At Goldberg Segalla, our experienced litigators:

- Routinely assess coverage, prepare coverage opinions and investigate D&O liability claims
- Prosecute and defend coverage actions in the trial court and on appeal
- Counsel insurers on claims handling procedures and loss prevention

We are also proud of the fact that we provide our clients with updates on relevant law and policy on a regular basis. Our attorneys offer advice on many issues, including:

- Scope of entity securities and EPL coverage
- Right to select counsel and scope of defense issues
- Application of exclusionary language, including the dishonesty exclusion, insured versus insured exclusion, professional liability exclusion and prior acts exclusion
- Bankruptcy claims and their effect on D&O coverage

EPL

At Goldberg Segalla, we serve the day-to-day needs of employers of all types and sizes throughout the Northeast and the entire United States.

We are a forerunner in labor and employment law, with attorneys who are committed to a team approach to client service, client relations and practice management. We believe strongly in teamwork, preferring to work alongside management (hand-in-hand) to assure that its goals and philosophies are advanced.

Consider our knowledge

Our experienced litigation counsel have successfully represented employers against all types of unfair labor practice charges, claims of sexual harassment and gender discrimination, and allegations relating to age, race, gender, and disability discrimination.

We routinely handle a full range of employment and labor issues, with particular experience in the following representative practice areas:

- Administrative agency/tribunal matters
- Age Discrimination in Employment Act
- Alternative dispute resolution
- Americans with Disabilities Act
- Civil Rights § 1983 Claims
- Class action defense
- COBRA

- Collective bargaining
- Disciplinary Proceedings (Successfully represented the Erie County Water Authority in sustaining the discharge of an employee under section 75 of the Civil Service Law, despite a hearing officer's recommendation that the employee receive a reprimand. Matter of Kocur v. Erie County Water Authority, 9 A.D. 3d 910 (4th Dept. 2004))
- Discrimination Claims - Title VII
- Drug and alcohol testing
- Employee benefits
- Employment contracts
- Employment practices liability insurance
- Equal Pay Act
- ERISA
- Fair Labor Standards Act
- Family and Medical Leave Act
- Handbooks and personnel policies
- Health Insurance Plans for Employees
- Immigration
- National Labor Relations Act
- New York State Human Rights Law
- New York State Public Employment Relations Board
- New York State Labor Law
- Non-competition agreements
- Occupational Safety and Health Act
- Older Workers Benefits Protection Act
- Rehabilitation Act of 1973
- Retaliation claims (Successfully represented the Niagara Frontier Transportation Authority in the dismissal of a whistle-blower action. Mark Palmer V Niagara Frontier Transportation Authority, 56 A.D.3d 1245; 867 N.Y.S.2d 318 (4th Dept. 2008))
- Unemployment
- Viet Nam Veterans Employment and reemployment Act
- WARN Act
- Workplace violence
- Wrongful discharge

Goldberg Segalla offers exemplary service, wisdom and experience at reasonable hourly rates. Because of this, we are the first and last resource for business owners, managers and employment practices liability insurers in labor and employment law.

FIDELITY

Goldberg Segalla attorneys have extensive experience in handling claims brought under financial institution bonds, fidelity bonds and crime policies. This experience includes investigating, providing coverage advice and defending insurers in claims involving:

- Employee dishonesty
- Lending losses
- Forgery
- Loss of securities
- Safe-deposit box burglary

- Computer crime
- Mortgage fraud
- Ponzi schemes and other financial scams
- Catastrophic safe deposit box claims arising out of the World Trade Center and Hurricane Katrina events

We represent U.S. and London underwriters as coverage and monitoring counsel, in connection with these types of claims. We also represent reinsurance companies in many fidelity and surety matters, including liquidation of primary and reinsuring carriers. In fact, Goldberg Segalla serves fidelity clients throughout the nation and around the world, and our attorneys have directly handled matters in the United States, Europe, South America and England.

The complexity of the cases handled by our fidelity attorneys requires special knowledge of all aspects of financial operations, including insider trading, foreign exchange trading, securities and commodities markets, credit and lending activities, money laundering, and computer and telecommunications fraud. A team of prominent accountants, international investigators, and financial and banking professionals is available to help our attorneys examine and analyze complex matters.

At Goldberg Segalla, we are also committed to constantly enhancing and refining our knowledge of fidelity law. Our attorneys:

- Are involved with the American Bar Association's Fidelity & Surety subsection
- Have spoken to hundreds of attorneys, risk managers, insurance brokers and insurers at the Fidelity Law Association's annual conference, the American Banker's Association's Risk Management conference, and the New York State Safe Deposit Association
- Are well-versed on the subjects of risk management, handling catastrophic losses and the implication of the fidelity policies in uncertain economic times

With offices in four different jurisdictions, and more than 120 attorneys in the United States, Goldberg Segalla is adept at providing high-quality, cost-effective services to local, national and international clients.

HEALTH CARE PROFESSIONALS

Goldberg Segalla attorneys have a long and successful history of defending physicians, hospitals, nurses, physician's assistants and other health care professionals. In fact, a number of our seasoned litigators have medical backgrounds, including a former registered nurse and a former paramedic. They put that experience to use in the courtroom.

Our trial-tested litigators have defended claims of obstetrical malpractice, improper surgical technique, neurologic misdiagnosis, psychiatric treatment and a variety of hospital in-patient claims. They have tried to verdict scores of medical malpractice cases. These years of experience have helped us develop an extremely valuable database of expert witnesses to call upon and of experts commonly retained by plaintiff's attorneys. This database is essential in developing effective cross-examination of opposing expert witnesses based upon testimony they have given in other cases.

Our attorneys are deeply involved with the constant refinement of their trial technique and

knowledge of current medical science with service on the Steering Committee of the Defense Research Institute's Health & Medical Liability Committee, which has over 2000 members nationally. They have spoken at its national annual conference to hundreds of trial attorneys and health industry professionals on the subject of advanced trial technique in the defense of medical malpractice cases.

The cases we have handled have made new law upon which future cases will be decided. We tried the case of [Kambat v. St. Francis Hospital](#), the leading case citation in New York's Pattern Jury Instructions on the subject of *res ipsa loquitor*, a legal concept applied when an unintended medical outcome can ostensibly have no explanation other than professional error. Although the first jury unanimously found in favor of our client, on appeal to New York's highest court the case was remanded for a second trial to be conducted with the *res ipsa loquitor* jury instruction, which essentially tells a jury to find for the plaintiff if the medical outcome could only be explained by medical error. On retrial, a second jury also unanimously found for our client. The case was considered significant enough to receive front page treatment in the *New York Law Journal*, New York's leading law publication, and to be addressed in tort law textbooks used in law school curricula. In another case which received national media attention, we defended a hospital at which a nurse had euthanized extremely ill elderly patients and was convicted and imprisoned. The hospital's liability for these actions turned upon its supervision and knowledge of the activities of the nurse, and we directed the in-house investigation which was essential to establishing defenses to the multiple wrongful death claims.

Our lawyers work with the leading medical expert witnesses in the United States while developing defenses for our clients. For example, in a recent case we retained a leading neurologist who had previously been retained by the State of Florida as its independent medical expert in the widely publicized Terri Schiavo 'right to die' life support case. The central issue in our case, in which we represented a major medical center, turned upon this expert's testimony and represented a potential multi-million dollar swing in the jury verdict, depending upon whether the patient could receive an award for conscious pain and suffering. The use of this expert was critical in demonstrating the absence of cognition. These issues are representative of the complexity of the cases our health care clients entrust to us.

We anticipate the manner in which the development of widespread use of electronic patient records, HIPAA law and health insurer subrogation claims may impact our clients and counsel them so they are prepared for the effects of these changes in the health care industry. We volunteer to teach medical students at medico-legal seminars to advance their knowledge of their legal obligations, for the benefit of their patients and their practices. In short, we are active in every important aspect of the advancement of current medico-legal thinking and our attorneys bring that to bear for the benefit of every client we have the privilege to represent.

INSURANCE AGENTS AND BROKERS

Goldberg Segalla attorneys have successfully represented insurance agents and brokers in hundreds of errors and omissions claims and lawsuits on a regional and national basis. Our experience includes the representation of insurance agents and brokers in errors and omissions claims arising out of both first-party and third-party claims in connection with placements in the excess and surplus lines market, as well as personal lines, commercial lines, professional liability, umbrella excess, and workers' compensation coverage.

Our attorneys have experience in the highly specialized law, strategies, and techniques required to achieve prompt, outstanding, cost-effective results in the defense of insurance agents and brokers. Goldberg Segalla brings a full-service insurance coverage dimension to our E&O practice. Our industry-acclaimed Global Insurance Services Practice is available to quickly and accurately identify any and all other potential sources of coverage for the underlying claim. Where appropriate, we aggressively pursue those coverages to help ensure the likelihood that the insurance agents' and brokers' errors and omissions policies and their deductibles will not be impeded. Moreover, when an E&O lawsuit is brought due to an underlying liability claim, such as a labor law claim in the construction industry, Goldberg Segalla attorneys in other practice segments are available to lend their experience to resolve the underlying liability claim in alignment with the interests of the insurance agents and brokers and their E&O insurers.

Goldberg Segalla attorneys have worked with many insurance agencies and brokerages to help them prepare innovative and cutting-edge defenses of errors and omissions claims and lawsuits. Thus, our attorneys have developed a wealth of understanding of the business operations of insurance agencies and brokerages from which we can draw upon to help prevail on behalf of our clients.

We don't just defend E&O claims — we actively assist our clients in trying to prevent them. It is our mission to provide insurance agents and brokers and their E&O insurers with cutting-edge, practical errors and omissions loss control advice and to help them implement those techniques. In the event of an errors and omissions claim or lawsuit, Goldberg Segalla attorneys work closely with the agents and brokers as well as claims representatives and claims counsel to swiftly develop and implement a winning strategy while keeping down both indemnity and defense dollars. Our "roll up your sleeves" approach includes meeting personally with agency principals and personnel. There our attorneys memorialize recollections of the insurance transactions and identify and secure the relevant documentary and computerized evidence, as well as key agency practices and procedures in order to craft a superior defense. From our first meeting with the agency to the time that we conclude the E&O claim or lawsuit, we are highly cognizant and sensitive to the fact that agents and brokers are often caught in the middle between the relationships that they have with their customers and the involved insurers. We understand those relationships and the contractual agency agreements that may govern them.

We also recognize that oftentimes the insurance agency's or brokerage's reputation is on the line. We adhere to our firm-wide philosophy of creating and maintaining strong client relationships while promptly achieving superior bottom-line results which represent a truly uncommon value to our clients.

Not only are we deeply committed to continuously improving our knowledge and experience of the prevailing law, we are determined to shape it so that it is as favorable to insurance agents and brokers as possible. In addition, we are committed to updating our knowledge of the business issues that face insurance agents and brokers, including changes in the insurance industry and industry technologies. These changes affect insurance agencies' and brokerages' errors and omissions exposures and call for updated loss control techniques. In sum, Goldberg

Segalla is deeply committed to act as strong and trusted advocates for insurance agents and brokers and their errors and omissions insurers.

Goldberg Segalla attorneys have demonstrated that commitment to insurance agents and brokers. We are members of the Defense Research Institute's National Professional Liability Insurance Subcommittee for Insurance Agents and Brokers' Errors and Omissions claims and lawsuits. Our attorneys are recognized in the insurance industry as accomplished speakers and presenters on the topic of insurance agents' errors and omissions claims and have conducted numerous errors and omissions loss control seminars for insurance agents and brokers across New York State, as well as on a national basis, including for the CPCU Society.

For example, our E&O team includes Michael T. Glascott and Colleen M. Murphy, recognized authorities on this area of law who have spent their legal careers handling complex errors and omissions lawsuits and claims against insurance agents and brokers as well as insurance coverage and umbrella excess litigation and opinions. Ms. Murphy has provided errors and omissions loss control seminars for insurance agents and brokers, including under the auspices of the New York State Insurance Department. She has authored numerous errors and omissions reports that have been distributed statewide to New York insurance agents and brokers, and she contributed to a chapter on the Fair Credit Reporting Act for an errors and omissions primer. Mr. Glascott authored numerous insurance coverage reports dealing with issues that directly impact insurance agents and brokers.

Our attorneys have obtained numerous summary judgment decisions dismissing lawsuits before trial in favor of insurance agents and brokers, including under the prevailing law set forth in the seminal New York Court of Appeals case of *Murphy v. Kuhn*, 90 N.Y.2d 266 (1997) limiting the duty of an insurance agent. Representative decisions include *L.C.E.L. Collectibles v. American Insurance Co.*, 228 A.D.2d 196 (1st Dept. 1996), in which Ms. Murphy obtained summary judgment by convincing the Appellate Division, First Department to hold for the first time in New York State that an insurance agent had no duty to recommend flood insurance or to inspect the location of plaintiff's property to determine whether it was near a flood plain or swamp. *L.C.E.L. Collectibles* has been extensively cited and was relied upon by the Pennsylvania Superior Court in the seminal decision of *Wisniski v. Brown and Brown Ins. Co. of PA*, 206 PA Supr.216 (PA. Super. Ct. 2006) that held that the relationship between an insurance agent and a customer is ordinarily an arm's-length transaction, and thus, the agent had no duty to inspect the property or recommend flood coverage. Ms. Murphy has presented on presented on the impact of that decision at an Insurance Agents Errors and Omissions Loss Control seminar at the invitation of the CPCU Society in Philadelphia.

Goldberg Segalla's attorneys are experienced in representing insurance agents and brokers before the New York State Insurance Department with respect to consumer complaints and regulatory matters. For example, in *Lee v. State of New York Insurance Department*, 222 AD.2d 1050 (4th Dept.1995), Ms. Murphy successfully stopped the New York State Insurance Department from acting outside the scope of its investigational authority and prevented it from ordering the insurance agent to appear before it and to submit to questioning in the presence of a disgruntled agency customer with respect to a consumer complaint.

Goldberg Segalla is also available to represent insurance agents and brokers individually,

including with respect to errors and omissions loss control and prevention seminars and audits, and to assist the insurance agents and brokers in obtaining insurance coverage for claims on behalf of the customers against the insurance agency or brokerage.

LAWYERS

It is the case within the case.

Goldberg Segalla attorneys have decades of experience successfully representing attorneys in thousands of first party and third party claims and lawsuits. Our trial-tested litigators have defended claims of negligence, breach of fiduciary duty, breach of contract, negligent and intentional infliction of emotional distress, fraud, violations of unfair trade practices, theft, slander, negligent and intentional misrepresentation, vexatious litigation, violations of the Fair Debt Practices Act, and more. Goldberg Segalla understands the special concerns and issues involved in the defense of attorneys and law firms. Our attorneys spend the time with our attorney clients to ensure that they have a thorough understanding of the legal process, the claims, the defenses and the defense plan.

Legal malpractice claims require early and thorough investigation to identify issues as well as to locate, safeguard and preserve information relating to the claim. Goldberg Segalla attorneys have extensive experience in highly specialized areas of the law, strategies and techniques required to achieve prompt understanding of the claims and defenses and to achieve a plan of prompt and economic resolution when appropriate. Goldberg Segalla works closely with the attorneys, keeping them informed every step of the way. Together we formulate a defense plan and budget that will resolve the claim with the least economic and emotional expense. Alternative dispute resolution is encouraged, when appropriate.

Goldberg Segalla has defended claims involving, among other allegations, the expiration of the statute of limitations in the underlying matter, errors in connection with real estate transactions, errors in connection with commercial transactions, errors in connection with marital dissolutions, errors in connection with the prosecution or defense of litigation, errors in connection with elder law, errors in connection with the administration of probate matters, and errors in connection with the defense of criminal cases.

Many of the cases defended by Goldberg Segalla have been of interest to the media. For example, within the last few years *The Connecticut Law Tribune* and *The Hartford Courant* have reported on the case brought by the former president of the Connecticut Resources Recovery Authority against three prominent plaintiff's law firms in the State of Connecticut. This litigation stems from the "illegal loan transaction" entered into by the CRRRA and Enron Corporation. Other Goldberg Segalla cases that have been reported by the media involve the more personal aspects of lawyering and its effects on the attorneys.

Our attorneys are deeply committed to the constant refinement of their trial technique and knowledge of the ever changing national theories surrounding legal malpractice claims. Our attorneys are involved with service on the Steering Committee of the Defense Research Institute's Professional Malpractice Committee, which has approximately 1000 members nationally. They have spoken at DRI's Annual National Conferences to hundreds of trial attorneys and legal malpractice professionals on the subjects of risk management and

emerging legal theories. They are also frequent contributors of written articles and case notes in DRI's *For The Defense* and the Professional Liability Committee's quarterly newsletter.

Goldberg Segalla attorneys work to get at the heart of the matter quickly and when appropriate seek the necessary judicial and extra-judicial remedies for the best resolution possible.

MISCELLANEOUS PROFESSIONAL LIABILITY

Miscellaneous Professional Liability is poised to equal, if not soon exceed, the traditional professional lines in terms of insurance policies written and, naturally, claims. Goldberg Segalla understands Miscellaneous Professional Liability. Whether defending TPAs, adjusters, nurses, property managers, or any other miscellaneous professional, our experience defending the traditional professions underpins our work on the new MPL frontier. We also understand how the law fits — and, in many important ways, does not yet fit — this expansive and expanding category.

More than traditional professional liability claims, Miscellaneous Professional Liability claims typically combine standard of care (negligence) theory with contract claims and defenses. Also, unlike traditional claims, these claims often involve liquidated or otherwise easily reckoned damages. This is a key to many Miscellaneous Professional Liability claims. We have found that these characteristics allow for very early assessment and evaluation, frequently leading to early resolution.

NURSING HOME DEFENSE

Nursing homes are facing continually increasing regulatory scrutiny at both the state and federal levels, which has triggered increased civil liability exposure for nursing homes and similar facilities. At Goldberg Segalla, we understand the special concerns and issues involved in defending long-term care and nursing facilities.

Our defense of nursing home claims—which can be at the request of the facility or the insurer—may encompass:

- Skilled nursing facilities
- Assisted living facilities
- Retirement facilities
- Rehabilitation centers
- Home health care agencies

We know that nursing home defense cases require early and thorough investigation in order to identify issues, as well as locate, safeguard and preserve information relating to the claim. We have experience in dealing with claims brought under state public health laws, and are familiar with the statutes and regulations pertaining to nursing homes.

Goldberg Segalla defends claims involving:

- Abuse and neglect
- Dehydration
- Malnutrition
- Decubitus ulcers
- Injuries

- Wrongful death
- Elopement
- Deterioration of chronic illness
- Inadequate supervision and staffing
- Improper use of restraints
- Slips and falls
- Medication errors
- Potential misconduct
- Patients' bill of rights violations
- Other allegations

The attorneys at Goldberg Segalla pride themselves on providing clients with vigorous defense while also offering proactive solutions to legal problems. While we approach the defense of all nursing home claims with the view that the case will go to trial, we also continuously evaluate each claim for early resolution strategies and alternative dispute resolution possibilities. Our team consists of experienced and dedicated litigators who provide thorough and prompt communication, combined with the knowledge and skills required to successfully defend these specialized cases.

STOCK BROKERS

Goldberg Segalla attorneys have represented broker-dealers and registered representatives in the defense of numerous securities-related claims. These allegations have included:

- Unsuitable investment recommendations
- Improper sales practices
- Negligent supervision
- Blue sky violations
- Churning
- Breach of fiduciary duty
- Breach of contract

Our experience includes representing clients in arbitrations before the National Association of Securities Dealers, now known as the Financial Industry Regulatory Authority (FINRA).