

Partner David Smith and Senior Counsel Randy Bryant obtain Summary Judgment on Hired Auto Coverage

By January 31, 2018

Partner **David Russell Smith** and Senior Counsel **Randy Bryant** won a summary judgment before the Georgia Southern District Federal Court finding no coverage for an insurance company which had issued an auto liability policy to a logger. They convinced a federal district court judge that the hired auto coverage in the client's standard business auto policy did not cover a trucker hauling logs cut by the client's named insured. When the logger's truck was destroyed in a fire, it entered into an oral contract with the trucker to haul the logger's logs. The logger also convinced the trucker to hire the logger's employee to drive the truck. While driving the trucker's truck to the logger's worksite, the driver failed to stop at a railroad crossing, causing a train wreck that severely injured two engineers on the train. The engineers sued the driver, the trucker, and the logger. They then made a time-limited, policy-limit demand on the insurer, contending that the trucker and driver were covered under the client's policy and the value of their claims exceeded the insurer's coverage limits.

Although the policy included non-owned auto coverage and hired auto coverage, the court ruled that the driver was not a permissive user of an auto hired by the logger. The driver was a former employee of the logger and may have still been under his control, but the trucker had not turned over control of his truck to the logger. Regardless of who controlled the driver and regardless of the fact that the policy included non-owned auto coverage, the logger did not control the truck; therefore, neither the driver nor the trucker was insured under the policy.

Mr. Smith and **Mr. Bryant** also won a summary judgment that the trucker's insurer was the logger's primary liability carrier, so it had to reimburse our client for the costs to defend the logger.

BITCO General Insurance Company v. Kelluem, et. al., 2017 WL 6541515 (S.D. Ga. 2017)