

## Insurance Investigations & Enforcement

At the intersection of government and insurance, there exist significant government regulation and consumer protection challenges. With substantial experience in leading the defense, we represent clients targeted with civil and administrative enforcement actions brought by federal, state, local, and industry regulators. From responding to civil investigative demands to defending our clients in court, our comprehensive representation includes:

- **State and Federal Litigation** – Defending clients against complaints involving antitrust and fair trade, insurance regulatory, deceptive trade, advertising, and lending practices. We also prosecute challenges to agency and governmental entity actions against our clients that exceed the constitutional or statutory authority of the agency or governmental entity.
- **Civil Investigative Demands** – Responding for clients under a variety of situations, including when our client or its employees are the subject of the investigation or may have information that the government believes relevant to its investigation.
- **Multistate State Attorneys General** – Working with multiple Attorneys General offices when our clients would benefit from a global resolution of market conduct complaints. As a result, our clients avoid private litigation in multiple venues.
- **Open Records Requests** – Defending against open records requests seeking confidential bid and trade secrets information.
- **Texas State Regulatory Agency Representation** – Maintaining and nurturing productive relationships with administrators, staff and key personnel to the advantage of our business clients when they encounter regulatory challenges. This allows us to prevent the escalation of matters as well as to expedite an efficient and meaningful resolution. Our agency work has included interaction with:
  - **Texas Department of Insurance (TDI)** Representing insurers, agents, and insurance-related entities in enforcement actions, licensing, ratemaking, receiverships and rulemaking.
  - **Texas Comptroller of Public Accounts** Representing non-insurers, insurers, and insurance-related entities in disputes over assessment of the state premium tax, retaliatory tax is franchise tax and sales tax.

### Examples of Client Representation:

- Defense of title insurance underwriter in an enforcement action by Texas Department of Insurance, in which it was determined there was no double charging for lien release services.
- Obtained a permanent injunction against threatened agency action by the Texas Department of Insurance to disclose confidential trade secrets of a major homeowners insurer under the Texas Public Information Act.
- Defense of a title insurance agency in an enforcement action brought by the Texas Department of Insurance alleging rebating activities by the agency.
- Overturned an ex parte cease and desist order issued by the Texas Department of Insurance against a collection of general agents who helped manage "Non-resident automobile insurance" programs providing coverage to Mexican residents driving vehicles licensed in Mexico and traveling in the US.
- By administrative hearing, secured for carrier over \$1 million dollar refund of retaliatory tax paid under protest, wherein the carrier argued that the change in the Texas Comptroller's method of calculating the retaliatory premium tax by rule was applied retroactive and, therefore, without authority.
- Representation of title companies in Texas Attorney General investigation of alleged restraint of trade arising out of data restrictions by title plant.
- Prosecution of rule challenge against Texas Department of Insurance for promulgating a rule that contravened specific statutory language and imposed additional restrictions on client; suit resolved after Texas Department of Insurance amended the rule to permit client's conduct.
- Represented the principal of a multistate field marketing organization in an enforcement action in which the Texas Department of Insurance was seeking license revocation and a significant monetary penalty. The case involved interpretation of deceptive trade practices and insurance fraud statutes, in the context of the novel and unsettled jurisdictional issues presented by technological advances in the insurance marketing world. The Winstead team was able to secure a favorable settlement for the client.

- Successfully litigated against Texas Windstorm Insurance Association's interpretation of statutory application resulting in substantial unauthorized assessments against client insurer. All assessments were subsequently reversed to zero.
- Assisted multiple clients with Texas Surplus Lines Association allegations concerning late filings and proposed fines. Have successfully reduced significant proposed fines to zero or near zero.