

## Peabody & Arnold Insurance Coverage Litigation Attorneys Counsel in One Of “3 Key Bad Faith Rulings to Watch for 2019”

### Partners

Allen N. David

### Of Counsel

Jane A. Horne

### Related Practices

Insurance Coverage and Bad Faith Litigation

### By Peabody and Arnold on February 19, 2019

Peabody & Arnold attorneys Allen David and Jane Horne represent the defendant in *Calandro v. Sedgwick Claims Management Services, Inc.*, a case that Law 360 has identified as one of “3 Key Bad Faith Rulings to Watch for in 2019.” The Peabody & Arnold team prevailed at trial on behalf of Sedgwick and the case is now on appeal at the First Circuit. The case involved a bad faith claim against Sedgwick, a third party administrator, in connection with a nursing home wrongful death case. The plaintiff in the underlying case got a verdict of \$14 million in compensatory and punitive damages. The plaintiff collected the full amount of the judgment from the insurer, but then brought suit against Sedgwick alleging that Sedgwick had failed to make a settlement offer when liability was reasonably clear in violation of G.L. c. 176D. The plaintiff sought about \$40 million in multiple damages under G.L. c. 93A. Through trial, the case had raised a number of legal issues of first impression. For example: was Sedgwick entitled to take advantage of the “safe harbor” provision of c. 93A based on a \$2 million settlement when the underlying judgment was \$14 million; and would an award of punitive damages based on punitive damages which result in a ratio of punitive to compensatory damages of somewhere between 20:1 and 100:1 violate the due process clause of the Fourteenth Amendment? The overriding factual issue was whether an offer had been made and whether there was any bad faith. The trial judge, Chief Judge Patti Saris, decided the case on purely factual grounds, finding that liability was never reasonably clear on the wrongful death claim, meaning that no offer was ever required, and that reasonable offers had been made on the pain and suffering claim, leading to her conclusion that there was no violation of c. 93A or c. 176D. The case was argued at the First Circuit in January 2019. Because of the way the case had been presented at trial and Judge Saris’ findings, the plaintiff’s appellate argument was essentially limited to the issue of whether Judge Saris’ findings were clearly erroneous, which is a very difficult argument to make on appeal. Sedgwick argued that Judge Saris’ findings were not only not clearly erroneous, but that they were supported by substantial evidence in the record.