

Brooks Pierce Obtains Dismissal for The University of South Alabama in Federal Court

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Brooks Pierce partners Kearns Davis and D.J. O'Brien recently obtained dismissal of a civil action brought against client The University of South Alabama by an electronic-data storage company in the U.S. District Court for the Middle District of North Carolina. The company sought nearly \$1 million for alleged breaches of a contract for the storage of medical records on behalf of the university's medical center. The court granted the university's motion to dismiss, agreeing that the lawsuit was barred by sovereign immunity under the 11th Amendment to the U.S. Constitution.

The plaintiff in the case, *Starpoint, Inc. v. University of South Alabama*, argued that the university waived its sovereign immunity when it signed the contract for storage services. However, the Court ruled that the state of Alabama, as well as its officers or agencies, could not waive sovereign immunity if it would affect the state financially. As a state-funded school, the University of South Alabama is considered an agency of the state and thus could not waive immunity.

The case has been appealed to the U.S. Court of Appeals for the 4th Circuit.

O'Brien advises and represents businesses, institutions, and individuals in litigation, employment law and regulatory enforcement actions. He has deep experience in all levels of federal and state appellate and trial courts in North Carolina, including the North Carolina Business Court.

Davis represents clients in federal trial and appellate courts across the country and has tried jury cases at all levels of U.S. and North Carolina trial courts. A former federal prosecutor, he served as president of the North Carolina Bar Association in 2016-17.

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Kearns Davis

D.J. O'Brien III

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