

## MVP: McKool Smith's Adam Ziffer

*Law360, Los Angeles (December 13, 2017, 2:57 PM EST)* -- McKool Smith PC principal Adam Ziffer has notched wins for multiple clients this year in cases involving novel insurance issues, including securing \$50 million in class action coverage for retirement services giant TIAA, landing him a spot among Law360's 2017 Insurance MVPs.

### ***HIS BIGGEST ACCOMPLISHMENT THIS YEAR:***

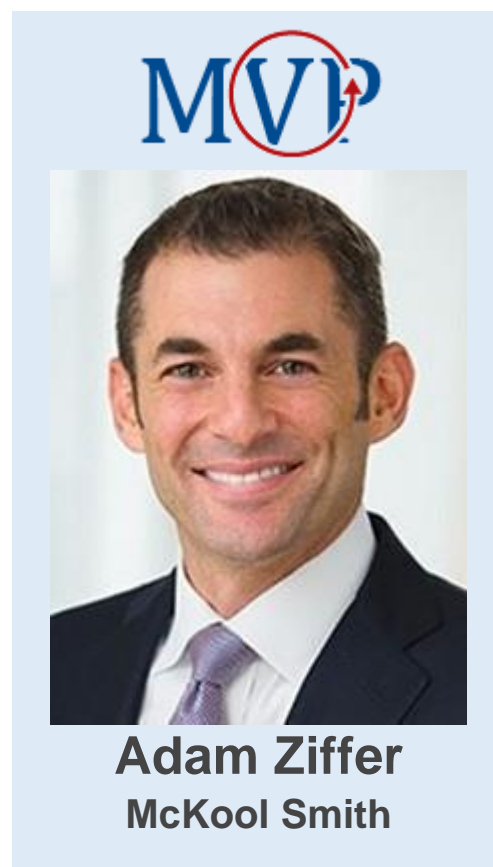
Ziffer served as lead counsel for TIAA-CREF Individual & Institutional Services LLC in its battle with several insurers for coverage of its costs to defend against, and settle, several class actions alleging the retirement services provider engaged in intentional and costly fund-transfer delays.

Ziffer and his team convinced a Delaware state judge late last year to reject five insurers' summary judgment arguments that TIAA's costs were not covered because they constituted uninsurable disgorgement. Then, he served as first-chair trial counsel in persuading a jury that TIAA didn't need to obtain permission from an excess insurer prior to settling the underlying suits, and that nearly \$10 million in defense costs incurred by the organization were reasonable.

Earlier this year, the trial court rejected the insurers' motions for post-verdict relief, and TIAA is looking at total recovery of more than \$50 million.

Ziffer said the TIAA case gave him a chance to prove his mettle at McKool Smith almost immediately after arriving at the firm with an insurance team from Kasowitz Benson Torres LLP in February 2016.

"McKool Smith has a well-deserved reputation as the premier trial firm in the country," Ziffer said. "To have this opportunity within the first year I'm here to first-chair a significant, eight-figure jury trial, and to do it partnering with other seasoned trial lawyers from the existing McKool Smith stable of renowned



practitioners, gave me the chance to show the firm that I, individually, and our group, collectively, fit right into this trial practice firm."

#### ***HIS BIGGEST CHALLENGE THIS YEAR:***

In July, Ziffer and his colleagues secured a groundbreaking win for Medidata Solutions Inc., with a New York federal judge holding that Medidata is entitled to computer fraud coverage from a Chubb Ltd. unit for a \$4.8 million loss it suffered when it was tricked into wiring the money overseas.

The computer fraud provision in Medidata's crime policy covered losses that occurred as a result of the fraudulent entry or changing of data in the policyholder's computer system. U.S. District Judge Andrew L. Carter Jr. held that, while Medidata's computers weren't directly hacked by a third party, the provision's requirements were still met because the unknown fraudster used a computer code to alter a series of email messages to make them appear as though they originated from the company's president.

While Judge Carter's decision — which is pending on appeal at the Second Circuit — has since become a beacon for policyholders in the computer fraud coverage wars, achieving victory was not easy, Ziffer said. The case posed a major challenge because Ziffer and his team had to make arguments that had never been tested in a New York district court, he said.

"A lot of cases around the country over the past couple years have created new law as to whether these crime policies provide coverage for various kinds of cyber-theft losses," Ziffer explained. "Our case was one of first impression in the jurisdiction, and many decisions came down during the course of our litigation. We were constantly working the developing authority into our posturing of our case."

#### ***WHAT MOTIVATES HIM:***

Above all, Ziffer said, he is motivated by the opportunity to help policyholders fight back against what he deemed wrongful coverage denials.

"It is somewhat unique in commercial litigation to be on the right side of the dispute in case after case after case," he said.

In addition, because insurance law intersects with virtually every industry imaginable, Ziffer said, the constant learning process is enriching.

"Each case presents the challenge of learning a new business, which keeps the work engaging and interesting," he said.

#### ***HIS ADVICE FOR INSURANCE PRACTITIONERS:***

Ziffer said it is critical for insurance lawyers to listen intently to colleagues, judges and witnesses, and to plan meticulously to map out each case from the very beginning.

"One thing we always try to do is anticipate five steps ahead," he said. "At the outset, before we even file a case, we try to determine how it is going to end. We do that through early case assessments, and

we develop a playbook to anticipate all the permutations a case might take. You can't do it perfectly, but it is good to always try to have that game plan."

When dealing with novel insurance issues, Ziffer said practitioners shouldn't shy away from making untested arguments, but they should make sure they are able to firmly back up their reasoning.

"A lot of times we are out there making arguments that haven't been made before, or arguments that deviate from how things have been done in the past," he said. "I encourage all lawyers, and young lawyers especially, to not be afraid to advance new arguments, as long as you are able to provide a reason — a solid justification for why your position is right."

— *As told to Jeff Sistrunk*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2017 MVP winners after reviewing more than 1,000 submissions.*

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