

Cohen Ziffer Chair On Leaving BigLaw To Start A Boutique

By Emily Lever

Law360 (March 22, 2021, 10:30 AM EDT) -- Robin Cohen led McKool Smith LLP's insurance recovery group before spinning that practice off into a standalone firm, Cohen Ziffer Frenchman & McKenna LLP, of which she is the chair.

The new firm, a 21-lawyer litigation boutique focused on representing policyholders, is based in New York. The clients from McKool Smith stuck with the team as it spun off, including Verizon Communications Inc., which the firm in February helped win \$95 million in coverage for its settlement in a bankruptcy suit.

Here, Cohen talks to Law360 Pulse about what it was like to start a new firm amid a pandemic and an "energizing" new wave of women leaving BigLaw to start boutiques. This interview has been edited for length and clarity.



Robin Cohen

How did you decide to start Cohen Ziffer Frenchman & McKenna?

The four of us, the founders, have been together over 20 years. We all started at [Dickstein Shapiro LLP] together, and then we moved over to McKool Smith.

We realized during COVID that we really wanted to start our own firm, and we probably should have done it five to 10 years earlier. And what we realized through the COVID experience is that you don't need the big infrastructure of a large firm.

We not only litigate similarly, but we've grown a culture in Dickstein's New York office together. It's daunting when you're starting your own firm. But we realized most of the clients hire the person or the team and not the firm, so when we left, our clients came with us, and the transition has been smooth. The women GCs and the women heads of litigation that I've been representing for a while are really energized and very enthusiastic, especially because it's going to be a woman chair and we've got a lot of women partners.

What was the effect of COVID-19 on your business?

COVID made me realize that you don't need huge infrastructure, but it also expanded our business base

on a level that we had even more comfort that we could go out on our own and be able to do extremely well.

Since COVID hit, literally, I've been working around the clock from 6 a.m. to 10 p.m.

Everyone was experiencing some sort of business loss as a result of COVID, from restaurant owners to Fortune 20 companies. So it really expanded our business space extensively, not only by doing new work for existing clients, but we were getting a lot of calls from new clients, including 40 minor league baseball teams.

What are the major COVID-19-related legal issues you're seeing?

The big issue is that in order to trigger a policy, the policyholder has to show evidence of physical loss or damage. The carriers were saying that means the virus has to cause some sort of structural damage and viruses don't cause structural damage, they make the place uninhabitable. Also, a lot of the policies had some sort of contamination or virus exclusion. So the real question is, what is the scope of that exclusion? And does it apply here?

COVID is probably the best example of why liability is very significant for the insurance industry as a whole. They're denying these claims outright for all companies regardless of policy language. There are policyholders that don't have virus exclusions at all, but they're just uniformly rejecting these claims, because they are concerned of the precedential effect if they pay or they settle the claims. I think this strategy should be a lot more nuanced than it is, and I think it will backfire on the carrier industry.

Tell me about the case you handled for NJ Transit [which obtained flood coverage for the transit agency in the wake of Hurricane Sandy]. What made that case different? And are you gearing up for more extreme weather cases as climate change gets worse?

We're definitely keeping an eye on [extreme weather-related cases]. The case was purely a policy interpretation question, which is whether the flood limit applied or not. With climate change, you're going to see more and more of these cases, and you're even seeing it in the COVID space: The carriers are trying to argue that limits apply, even though they shouldn't apply, and they're doing it to try to minimize their exposure. This translates to the COVID situation, and it certainly will translate into the litigation that's likely to happen in Texas and all kinds of disasters; disasters lead to insurance disputes, because the insurers don't want to pay up.

Two of your biggest cases, Warren Pumps and IMO industries, were related to asbestos liability, which generates a lot of litigation for your practice area. Is asbestos going to continue to be an important bone of contention in insurance disputes?

Everyone said asbestos would be gone five years ago, 10 years ago, and yet I still have a number of asbestos cases. But COVID is the new asbestos. It's the same sort of thing where a lot of companies that were being found liable for asbestos exposure were seeking coverage from their carriers, and the carriers were uniformly rejecting these claims, which they shouldn't have.

The other area that I'm very heavily involved in are [directors and officers] securities cases; there is a growth area across the board because the carriers used to pay those claims. As the plaintiffs bar becomes more creative and brings claims worth hundreds of millions of dollars, the carriers, because it's costing them more money, are starting to pay less.

The Delaware Supreme Court just came out with a very big D&O decision on the Dole case [RSUI Indem. Co. v. Murdock, et al.]; one question was whether fraud can be insurable. The court found it can be. A lot of other things came out from that decision, and there's a lot of D&O coverage litigation that is going to play out in the next couple years. It's going to be very interesting.

How are you approaching diversity and inclusion at your firm, not only in terms of women's advancement but also that of people from diverse backgrounds?

In terms of gender diversity, we have more women applying than men; women laterals call almost every other day about coming and joining us. So the question is how fast we want to grow. We have started to hire minority associates, who are terrific, but I am starting to work with a consultant to help in that regard because I think it's really important, especially for trials. You get a better result when you have a diverse team. Because I truly believe that diverse ideas, and the ability for people to bring different stuff to the table based upon their background really makes a difference, and a diverse team is more relatable to a jury or even a judge. I think it affects your success rate.

Is a litigation shop a more hospitable place for women to succeed than Big Law?

I think so, I do, especially if you have women who are leading the charge; they are more sensitized to issues like women's compensation and women getting the same sort of assignments as men. A lot of that subconscious bias goes by the wayside when you're in a litigation shop run by a woman.

Would you compare this to the era when lawyers who were shut out of white-shoe firms in the 1960s started their own firms, many of which went on to become heavyweights today?

I totally agree. In the future, I think you're going to see more women leave major law firms and start their own litigation shops, I think that the COVID experience will energize women to do that. Robbie Kaplan left [Paul Weiss Rifkind Wharton & Garrison LLP] and other women have called me who are contemplating moves like that. I think you're going to see a burst of it, in the next six months to a year, and it will be energizing. I think we are in a new wave.

--Editing by Alyssa Miller.