

MVPs: Cohen Ziffer's Robin Cohen And Kenneth Frenchman

By Daphne Zhang

Law360 (September 17, 2021, 4:22 PM EDT) -- Robin Cohen and Kenneth Frenchman of Cohen Ziffer Frenchman & McKenna notched a win for New Jersey Transit when the New Jersey High Court found that hurricane water damage was not capped by its \$400 million policy's \$100 million flood sublimit coverage, earning them a spot among Law360's 2021 Insurance MVPs.

THEIR BIGGEST ACCOMPLISHMENT THIS YEAR:

Cohen and Frenchman represented New Jersey Transit in a \$400 million dispute over whether the agency's Hurricane Sandy claim was subject to a \$100 million sublimit for flood losses. The team initiated the lawsuit against Underwriters at Lloyd's of London, seeking a ruling that the sublimit did not apply to its water damage claim.

In 2017, the team secured a summary judgment ruling from the trial court, which held that the hurricane damage is not capped by the flood sublimit. Two years later, after the carriers appealed, a New Jersey appellate court ruled that the damage entitled NJ Transit to full coverage.

In January 2021, the New Jersey Supreme Court said the \$100 million flood sublimit didn't apply because damage from the storm could be attributed to a "named windstorm," entitling the transit agency to the full \$400 million in coverage.

"There was no dispute that the damage to New Jersey transit facilities was all water damage. And there was a flood sublimit," Frenchman explained. He said the real challenge was to convince the court that even though it was water damage that colloquially would be considered a flood, it is actually defined and covered as windstorm losses in the policy.

"We argued that this policy included water damage from the named windstorm. And the court agreed with us," he said.

"Some of the precedents in other jurisdictions were not very favorable. But the team did a great job every step of the way," said Frenchman. "The implications were very significant, not only in terms of the \$400 million worth

2021



**Robin Cohen &
Kenneth Frenchman**
Cohen Ziffer

of coverage NJ Transit got in this particular case, but this New Jersey Supreme Court precedent is also really great for other policyholders as our clients continue to face these risks."

OTHER NOTABLE CASES THEY'VE WORKED ON:

Cohen and Frenchman's team also represented asbestos claimants who allegedly became ill due to exposure to asbestos-contaminated valves manufactured by Jenkins Bros. Because Jenkins Bros. was dissolved, its liability insurer, Liberty Mutual, was the named party in the underlying litigation and its settlement negotiation.

The carrier cited the pro-rata allocation doctrine and said it was only responsible for a part of the claim settlements because some asbestos exposure did not happen within the policy period. Liberty insured Jenkins Bros. under seven policies from 1974 to 1981, court documents showed.

Cohen and Frenchman argued on behalf of the claimants, saying the doctrine is only triggered in issues between insurers and policyholders, while the claimants were not Liberty Mutual's policyholders. The New York Supreme Court sided with the claimants, finding that the doctrine of pro rata allocation was inapplicable, and Liberty Mutual was responsible for all claim settlements.

"This was a case where there was no law, and we frankly argued it to the Supreme Court and the Supreme Court agreed with us," Frenchman said. "So it is something that I'm very proud of because with a case of first impression you have to be creative and come up with arguments that can win the day."

WHAT MOTIVATES THEM:

"I think both Ken and I are very competitive, and we like to win. One of the things that motivate us is winning," Cohen said.

Cohen said she has loved fighting for coverage on behalf of policyholders who have suffered significant business losses during the pandemic.

In March, Cohen's team convinced a New York federal judge that a contamination exclusion in a \$750 million Factory Mutual policy is ambiguous and does not bar real estate development giant Thor Equities' COVID-19-related losses. The judge said Thor's argument that the exclusion only applies to decontamination costs instead of contamination-induced losses is reasonable.

Cohen said other cases she finds rewarding "are ones where the small businesses have been essentially wiped out and they are really relying on you to right the ship and get them coverage."

Frenchman echoed that opinion. "Our clients pay a lot of money to the insurance company for premiums to protect them when things go wrong. A lot of times what we see is these insurance carriers are doing everything they possibly can to avoid paying the claim," he said. "So coming in with the white hat and trying to really help our client get out of the mess they're in is very rewarding, particularly when we're successful."

THEIR ADVICE FOR JUNIOR ATTORNEYS:

Cohen said the firm values junior attorneys who work hard and want to be on their feet in court.

"We are a high-performance firm. We look for dynamic, interesting, and very confident people. They're usually pretty driven and tenacious in their approach," she said.

She said junior attorneys have been pretty aggressive about reaching out to express interest in joining the firm, which was launched in January with 12 attorneys and has since more than doubled in size, with 26 lawyers as of this summer.

— *As told to Daphne Zhang. Editing by Kelly Duncan.*

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 2021 MVP winners after reviewing nearly 900 submissions.

All Content © 2003-2021, Portfolio Media, Inc.