

## Insurance Group Of The Year: Cohen Ziffer

By **Ben Zigterman**

*Law360 (January 24, 2022, 2:03 PM EST)* -- With a \$400 million victory for the New Jersey Transit Corp. before the state's Supreme Court less than a month after launching the firm, Cohen Ziffer Frenchman & McKenna has earned a spot among Law360's 2021 Insurance Practice Groups of the Year.

The firm has also landed some of the few policyholder successes in COVID-19 coverage suits, as well wins for companies such as Verizon, Pfizer and insurance broker Willis Towers Watson.

"I think we win more than anyone, and I think this year was a particularly good year for clients," chair Robin Cohen told Law360.

In the New Jersey Transit suit, Cohen and managing partner Kenneth Frenchman represented the transit agency in a \$400 million dispute over whether the agency's Hurricane Sandy claim was subject to a \$100 million sublimit for flood losses.

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, and 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.

Cohen and partner Adam Ziffer credited the firm's successes to its experience, trial prowess and ability to be selective, whether in choosing what cases to take or what arguments to make.

Cohen, Ziffer, Frenchman and partner Keith McKenna launched the firm in January 2021 from McKool Smith PC's insurance recovery practice.

"We decided during COVID, you know what, we can do this by ourselves. We should launch our own litigation boutique," Cohen said. "We just felt it was the right time, and we probably should have done it a lot earlier."

Cohen, Ziffer and Frenchman have each been named as MVPs by Law360, and in September, Cohen and Frenchman were again recognized.



"The founders of the firm, the four of us, have been together for over 20 years. We've probably tried more cases than any other insurance recovery practice that I know," Cohen said. "Also, we attract attorneys that tend to think outside the box and are not afraid to take risks."

The firm is based in New York City and has grown by 12 attorneys to 26 since it launched just over a year ago, Cohen said.

Starting their firm during a global pandemic mostly hasn't been a problem, Cohen and Ziffer said, though they've had to adapt to Zoom court.

"It's much harder to control a room when you're on Zoom," Cohen said.

But in November, its client Willis Towers Watson settled with its insurers after a Virginia federal judge ruled in the insurance broker's favor, finding that a so-called bump-up exclusion doesn't apply to two settlements reached in underlying suits claiming that Towers Watson's shareholders were underpaid during its merger with Willis.

Under a bump-up exclusion, if there is a claim that the price paid for the acquisition of a company is inadequate, the amount of the settlement that increases that price will not be covered by the policies.

Cohen said the judge's decision came after lively, nearly three-hour-long oral arguments.

"It was one of my favorite arguments," she said. "We ended up winning that one on the issue that we thought was our best issue."

Picking and choosing the best arguments has been a key to Cohen Ziffer's success, Ziffer said.

"We are not afraid to be selective," he said. "We want to maintain our credibility, our strongest arguments, without diminishing the credibility and the impact of those arguments by throwing in the kitchen sink, which we see in our practice a lot."

He pointed to the survival of Thor Equities' COVID-19 coverage suit against Factory Mutual Insurance Co. after a New York federal judge found in April that a contamination exclusion was too ambiguous, allowing the suit to move forward.

"We filed an early motion but just on the contamination exclusion without biting off the bigger issue of physical loss or damage," Ziffer said. "We were very selective upfront to push the case forward and gain momentum."

While policyholders' COVID-19 coverage suits haven't fared well, particularly in federal court, Cohen compared the suits to asbestos litigation and argued that it's still early in the game.

"It was started in the context of some really not very well-pled complaints," Cohen said of many of the policyholder suits that have been dismissed so far. "But I think that these cases are going to go on for a long time. And I do think that if I were to predict, the state supreme courts are going to look at this very differently than some of the appellate courts in the federal court."

Cohen Ziffer also prides itself on being selective in what cases it takes on, a quality it says is key in COVID-19 cases.

"We really vet the cases carefully," Cohen said. "We look at the exclusions in the policies, and unlike, you know, some of our competitors, we really don't take on cases that we don't affirmatively believe we can win."

So far, Cohen Ziffer has found some success in suits in Illinois and Pennsylvania from New York developer and contractor JDS, whose cases were allowed to continue.

JDS "was one that we looked at really carefully," Cohen said.

The Illinois state judge found that the presence of COVID-19 was enough to allege "physical loss or damage" to property, and the Pennsylvania state judge allowed JDS to continue with its claims for delay-in-completion coverage.

"Some of our cases that defeated a motion to dismiss will probably be some of the first cases that go to trial, like JGB in Nevada and JDS in Pennsylvania," Cohen said, also referencing a COVID-19 coverage suit from the owner of Las Vegas' Grand Bazaar open-air mall that survived a motion to dismiss. "We're going to get a fair shot of really trying these cases and litigating the physical loss, physical damage issue."

As the trials approach, Cohen and Ziffer said the firm is particularly well positioned.

"We are one of the few insurance recovery firms that is really a trial firm," Cohen said. "We use our trial prowess to actually maximize pretty significant settlements for clients."

"We are a trial-hungry firm," Ziffer added. "Everybody's juices get flowing when a trial comes up."

--Additional reporting by Sarah Jarvis, Mike Curley, Jeff Sistrunk, Ryan Boysen, Bill Wichert, Jeff Montgomery, Daniel Tay, Daphne Zhang and Shawn Rice. Editing by Rich Mills.