An ALM Publication

THE AMERICAN LAWYER | THE AM LAW LITIGATION DAILY

Litigator of the Week: When Insurers Refused to Pay Verizon's $48M Legal Bill, This Lawyer Hit Back

By Greg Land
March 23, 2017

McKool Smith insurance recovery practice head Robin Cohen won big in Delaware, forcing insurers to pay Verizon's massive legal bill to several elite firms that successfully defended the company after a failed spin-off.

Balky cellphone connection aside, Robin Cohen sounds remarkably chipper phoning in from her vacation spot near the island of St. Maarten.

It's not just the gorgeous Caribbean weather, although that's a far cry from the nastiness she left behind in New York.

Nor is it entirely due to her recent victory in Delaware Superior Court, where Judge William Carpenter Jr. last week unsealed a summary judgment ruling handing her client, Verizon Communications, a huge win. He determined that a group of insurers owes Verizon $48 million—reimbursement for attorney fees that Verizon spent successfully fending off a $14 billion lawsuit related to a failed corporate spin-off.

Cohen, the head of McKool Smith's insurance recovery practice, eagerly explained that the victory—coming in the wake of several major rulings in Delaware, New Jersey and New York's highest appellate courts—marks an exhilarating trend that began when she and her crack crew of 15 insurance litigators jumped to the firm from Kasowitz Benson Torres & Friedman early last year.

"We've had several big trial wins since we came over," she said. "When we got here, I had four separate supreme court arguments, all of which dealt with standard provisions utilized by the insurance industry. These are all big issues for the insurance industry."

"We won them all," said Cohen, whose group now numbers about 25 to 30 lawyers.

Having spent her career representing policyholders in disputes with insurers, Cohen said she sees a pattern emerging as companies re-tool their businesses and insurers attempt to deny coverage.

Robin Cohen, partner at McKool Smith in New York City.
Rohanna Mertens

"Corporate America is always trying to restructure itself to make itself more profitable," she said. "As a result of those restructuring, those companies find themselves being sued."

She points to a February ruling in which the New Jersey Supreme Court affirmed an appellate holding that her client—a fragrance manufacturer that "basically split into two companies"— was still covered by the insurance policies it had purchased.

"Those courts found that, just because a company restructures, it doesn't lose its coverage," she said. She noted that

the company, Givaudan Fragrances, had already paid its premiums when its insurer denied coverage.

"It's funny that they never offered to pay [the premiums] back," Cohen said.

The Verizon ruling is particularly significant, she said, because it involves standardized forms used throughout the insurance industry, and makes clear that policies purchased to protect a company from securities claims may not be artificially narrowed by carriers so that their insureds have little protection from suit.

The case involved Verizon's 2006 spinoff of its directories division into a new company, Idearc Inc. Verizon had purchased several insurance policies to limit its exposure to litigation, and—following Idearc's failure in 2009—several lawsuits were filed, including one filed by the company's bankruptcy trustee, U.S. Bank National Corp.

The suit, filed in Texas' Northern District, contained numerous claims and sought more than $14 billion in damages from Verizon and affiliated entities. Several of the claims were dismissed as the litigation proceeded, and following a bench trial in 2012 judgment was entered for Verizon and affirmed by the Fifth Circuit Court of Appeals.

The defense team included more than a dozen lawyers from assorted firms including Weil, Gotshal & Manges and Wilmer Cutler Pickering Hale and Dorr, but Cohen said Washington D.C.'s Kellogg Huber Hansen Todd Evans & Figel did the bulk of Verizon's legal lifting.

Verizon didn't have to pay any judgment or settlement, but was left with tens of millions of dollars in legal bills.

Verizon's insurers, led by primary carrier and AIG affiliate Illinois National Insurance Co., refused to provide coverage for its expenses, asserting that the policies' definition of "securities claim" only covered claims alleging a violation of any "regulation, rule or statute regarding securities."

The insurance companies argued that the policies only ensured against claims alleging violations of laws or regulations specifically geared to securities, and that claims such as breach of fiduciary duty or common law claims were not covered.

Judge Carpenter disagreed, writing that nothing in the policies "purports to exclude common law rules or to limit coverage to only those claims alleging violations of enumerated state or federal securities statutes and regulations."

In fact, he wrote, prior policies issued by AIG and the defendant companies "appear inconsistent with the construction it advances here," and "undercuts defendants' contention that securities claim was intended to cover only alleged violations of statutes or laws specifically and exclusively enacted to govern securities."

The insurers' position "didn't take into account that a plaintiff's underlying claims can be very creative," said Cohen. "That's why what the judge held is very important going forward: It doesn't matter what counts they charge, but what the actual underlying facts they allege [are], and whether they arise from a securities claim."

Cohen noted that Verizon had moved for pre-discovery summary judgment earlier in the case but that the insurers had objected. It was only after more discovery that they learned that the insurers had changed their forms to reflect a broader reading of the terms in 2000.

"The carriers were the ones who won discovery, and all of the discovery was helpful to our clients," she said.

"I have to give credit to my team, who were phenomenal," said Cohen of colleagues Keith McKenna, Michelle Migdon and Jillian Raines.

Cohen says her insurance group at McKool Smith is busier than she's ever been before, with a practice that's mostly Fortune 500 companies, hedge funds, equity groups and the occasional high-profile individual, such as former FIFA official Eduardo Li, who sought her help in obtaining an injunction ordering his insurer to defend a criminal action.

"Representing policyholders fits my personality," she said. "I love being a plaintiffs' attorney, but having the resources to be sure a policyholder gets what he's entitled to."

"Most of our group has been together a very long time, most of us are trial lawyers, and McKool Smith is a real trial firm," she said. "When we go into a case, they know not only are we prepared to go to trial, we like to go to trial."

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