

THE AM LAW LITIGATION DAILY

Litigation Leaders: Robin Cohen of Cohen Ziffer on the Advantages of Being on the Policyholder Side of the Insurance Recovery Practice

By Ross Todd
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Welcome to another edition of our *Litigation Leaders* series, featuring the litigation practice leaders at some of the biggest and most innovative law firms in the country.

Meet **Robin Cohen**, chair of insurance recovery boutique **Cohen Ziffer Frenchman & McKenna**, who is based in New York. Cohen moved her 12-lawyer team from **McKool Smith** to launch the firm in 2021. Cohen and the firm's other name partners previously practiced together at **Dickstein Shapiro** and **Kasowitz Benson Torres**.

Lit Daily: Tell us a little about yourself—perhaps even a thing or two your partners would be surprised to learn about you.

The thing that surprises a lot of people is that the idea of forming Cohen Ziffer Frenchman & McKenna LLP was something that my founding partners and I decided on in the middle of the COVID pandemic. When so many people were going through a period of personal and professional reflection, and many people were actually pivoting to take time off and refocus, we realized it was time to move forward. After appreciating how close-knit and committed to our work we all collectively were, having practiced together for decades, during a walk on the beach together in the spring



Courtesy photo

Robin Cohen, chair of Cohen Ziffer Frenchman & McKenna.

of 2020, we realized we wanted to forge our own path. I could not have been happier since.

In terms of the things even my partners would be surprised to learn about me, it is probably that I actually take time away from my work each day to work out. I like spin classes and I also love to dance. Also, no one ever believes that I meditate!

How did you develop your niche in insurance recovery for policyholders? And what is it that keeps you interested in the work?

It was by total accident that I got involved in insurance recovery work! I joined **Anderson Kill** when I

graduated law school, admittedly, without a strong appreciation that the firm only handled insurance recovery disputes. I was mostly intrigued by the strong partnership track and I really connected with the people at the time. But it was at Anderson Kill that I met my mentor, **Randy Paar**, who was a senior partner when I started and who guided me to learn very quickly that we only represented policyholders. Thankfully, the plaintiff-side work suited me more than I could have ever expected.

In fact, in my third decade of doing insurance recovery work, not a day goes by when I think twice about my career trajectory. I love being in the plaintiff's seat to drive cases forward for policyholders. And representing large companies who are more accustomed to being defendants means we often have the resources to be more strategic and creative in our litigation, which best suits my personality and drive. I also love the exposure to all industries that insurance recovery work provides. I have such a niche specialization, but I routinely get exposure to the latest legal developments in, for example, the underlying securities, intellectual property, employment, or white-collar spaces that precede recovery efforts.

Plus, I love that a win is a real win for my clients. In other words, winning an insurance recovery dispute means my clients actually bring in substantial monetary recoveries for their companies. I love collaborative investment with my clients over that prospect. And I have also found that because bigger firms often have conflicts with carriers, this type of work has really suited my social and collaborative personality. Rather than competing with my colleagues for business, I have been able to partner with so many of my former Big Law colleagues who routinely refer me clients because of conflicts. It has been a tremendous growth opportunity for me over the years and has certainly kept me engaged in the work.

You and your name partners have moved together from Dickstein Shapiro to Kasowitz Benson Torres, and then to McKool Smith before founding

this firm. Is there anything you miss about practicing within a larger firm?

I certainly miss the people, but my founding partners and I are lucky to have retained very close personal and professional relationships with so many of the attorneys we have had the privilege of working with previously while part of the same firm. We still partner with many of them, in fact, on cases and referrals.

But without the bureaucracy and the common conflict scenarios that previously restricted our practice group's evolution, I couldn't be happier. I also really value our exposure to some of the best practices of law firm administration from our collective prior experiences with larger and well-established firms. This has made building Cohen Ziffer from the ground up exceptionally easier as we can draw on the lessons we learned while being part of a larger environment.

Back when you launched the firm you told my colleague Dan Packel you expected to eventually expand to Southern California and into other niche areas, where—like insurance recovery—most large law firms are conflicted out. Is that still the plan? Or are you focused on representing policyholders—and doing it from New York?

We are always evolving and looking for growth and expansion opportunities, but to be honest, our current coverage portfolio has grown so significantly since our doors opened that our strategic evolution has been focused initially on scaling what we know and do best.

For example, our team has nearly tripled since our launch, and the lack of conflicts most big firms face has proven to be tremendous for business and for our ability to partner with firms nationwide to handle strategic litigations and coverage cases. Plus, one thing we learned from the pandemic is that we can do the highest-caliber advocacy from anywhere. Cohen Ziffer presently represents clients across the country and internationally, from California to Illinois to Arkansas to the Netherlands. I am so proud of our dynamic

and robust team and our ability to get results across industries and geographies, drawing from the experiences our attorneys have that expand well beyond the New York market. We also have a great roster of local counsel in every jurisdiction where we need them to support our litigation efforts, and they make a valuable partnership with our reputation for being zealous advocates for policyholders everywhere.

So, in sum, we have been largely focused on representing policyholders, but I am personally committed to our strategic development and I expect the scope of our representation for many of our core clients will only continue to evolve substantively and geographically.

What do you see as hallmarks of your firm's litigators? What makes you different?

Cohen Ziffer litigators are dynamic, strategic, and invested in our clients and cases in unparalleled ways. From our paralegals to our senior associates, we are also business-minded and practical in addition to being creative thinkers, which clients tell us routinely they find to be a refreshing change from many firms that have a very academic approach to litigation. I find this allows us to be flexible and successful in navigating novel and complex issues and cases, especially those that come to us after other firms have tried to get results to no avail. We thrive on these types of challenges and always navigate them with the utmost integrity.

In fact, we even have kind of a silly mantra internally about our team playing chess when our adversaries are playing checkers, which I feel embodies our philosophy well and informs everything from case development to hiring. From the outset, our team is steps ahead of our adversaries, and yet we are still playful. Cohen Ziffer attorneys are naturally collaborative and passionate, and we pride ourselves on diversity and authenticity. When our attorneys are able to be themselves, they thrive—in depositions, negotiations, argument and trials.

One of the final hallmarks of our team is the trust we are able to instill not only among ourselves, but

with clients, judges, and even with our adversaries, no matter how contentious a dispute may be or how much is at stake. We absolutely love what we do and pride ourselves on getting results.

What were two or three of the firm's biggest in-court wins in the past year, and can you cite tactics that exemplify your firm's approach to success?

We have had a few remarkable wins in the past year. First, in February of this year, Cohen Ziffer achieved a rare reversal of a pro-insurer jury verdict, the first jury verdict that Superior Court Judge Mary M. Johnston has reversed in her nearly 20 years on the bench, involving a high-profile insurance coverage dispute between AIG Specialty Insurance Company and Conduent State Healthcare. For background, in June 2019 Judge Johnston held that policyholder Conduent was entitled to defense coverage from insurer AIG after Conduent received a notice from the Texas Attorney General's office that it was under investigation for potential wrongdoing. In February 2022, a Delaware jury found that Conduent allegedly tried to defraud AIG into covering part of its Medicaid fraud-related settlement. However, with the decision, Judge Johnston reversed the jury's verdict, something that she noted "should only be done under circumstances in which justice otherwise would be denied." Judge Johnston also issued a directed verdict to Conduent on AIG's defense and cooperation defenses, resolving disputed legal issues under New York law.

This extremely rare decision reversing a jury verdict in a case involving allegations of fraud reaffirmed core evidentiary principles, and resolved important and disputed legal issues involving the limits of an insurer's consent and cooperation rights under New York law. In her decision, Judge Johnston pointed to several instances where counsel for AIG referred the jury to materials that "had been unequivocally deemed inadmissible," "contrary to several explicit written and bench rulings of the court" which "may very well have confused the jury and tainted the jury's verdicts." The decision is

thus an important warning to litigators who employ a win-at-all-costs approach and play fast and loose with the rules. And in short, in terms of the tactics that exemplified this win—it is the Cohen Ziffer integrity I mentioned above.

Another one of our wins is directly attributable to our strategic thinking. Most of our clients will tell you we love to litigate in Delaware, including because of the sophistication of CCLD judges. However, we represent Walmart Inc. in complex coverage litigation seeking billions of dollars in coverage from Walmart's commercial general liability (CGL) insurers for defense and indemnity costs in thousands of lawsuits arising out of Walmart's dispensing and distribution of opioids. Earlier this year, we won a forum battle with Walmart's CGL carriers, who had filed two competing suits in Delaware Superior Court seeking to keep Walmart's case out of Arkansas. After extensive briefing and multiple hearings, we secured for Walmart its more favorable Arkansas forum and a stay of the insurers' pending and competing suits in Delaware. We also obtained dismissal of an insurer's petition in Delaware Chancery Court to compel Walmart to arbitrate in favor of the pending Arkansas action.

Finally, just this month, on Aug. 10, 2023, we won a significant partial summary judgment motion for Viacom Inc. (n/k/a Paramount Global), which resolved that insurers could not avoid coverage for a \$122.5 million settlement of litigation stemming from the Viacom-CBS merger by relying on a common directors & officers liability insurance policy exclusion known as the "Bump-Up" clause. Notwithstanding mixed caselaw across the country and a series of insurer wins (including in Delaware) that the exclusion barred coverage for claims arising from various types of corporate transactions alleging inadequate consideration, Cohen Ziffer successfully got the Delaware Superior Court to recognize ambiguity in the exclusion due to contrasting policy language

that distinguished between merger and acquisition transactions, which allowed the court to resolve such ambiguity in Paramount's favor, and hold the exclusion could not apply as a matter of law to the merger transaction at issue, regardless of what the underlying complaint alleged respecting an unfair merger exchange ratio. Our team's intellectual savvy in advocating for a reasoned interplay between complex corporate and insurance law, mixed with exceptional oral advocacy and brief writing, helped secure this tremendous result for Paramount.

What does the firm's coming trial docket look like?

Ever-growing. The two biggest cases coming up include a confidential arbitration concerning coverage under a fidelity bond insurance program arising from unlawful transfers of customer funds and a resulting bankruptcy. The arbitration hearing is set for October of this year.

We also are gearing up for a spring trial in the case of *ETC Northeast Pipeline, LLC v. Associated Electric & Gas Servs. Ltd., et al.* in Delaware Superior Court. We represent Energy Transfer Partners, one of the largest and most diversified midstream energy companies in the United States, in connection with its attempt to recover business income losses arising out of the 2018 damage to the Revolution Pipeline in western Pennsylvania. In September 2018, following a heavy rainstorm, a landslide occurred at the pipeline in Center Township in Beaver County which caused a section of the pipeline to become separated. Once separated, gas escaped and ignited, causing a fire and damaging the pipeline. The pipeline remained out of service until March 2021, resulting in a business income loss of approximately \$434 million. After bringing suit in October 2021 to recover from a dozen insurance companies who refused to pay, we marched through fact discovery and are finally on the doorsteps of trial.