

Rising Star: Cohen Ziffer's Orrie Levy

By **Ganesh Setty**

Law360 (July 31, 2024, 4:55 PM EDT) -- Orrie A. Levy of Cohen Ziffer Frenchman & McKenna beat insurers' attempts to avoid defending Walmart in opioid lawsuits and secured a rare ruling setting aside a Delaware jury's verdict favoring an AIG unit in an insurance coverage trial, earning him a spot among insurance law attorneys under age 40 honored by Law360 as Rising Stars.

Why he's an insurance recovery attorney:

Levy said he "fell into" insurance law while working at another firm litigating insurance, securities and white collar matters, and ended up loving insurance the most, taking on more and more of those cases thereafter.

"It's very analytical. It's sort of like a chess game," he said. "You need to figure out the available coverage, really understand the ins and outs of the insurance contract, understand the needs of your client and why your client purchased insurance. And, understand the ins and outs of the claim for which coverage is being sought."

Such factors in turn create "so many intricacies and variables and opportunities for argument," he added.

Levy said he also particularly enjoys representing policyholders, who he said "very frequently feel like they're getting the short end of the stick on coverage that they purchased."

"Clients don't call me and say, 'Hey, can you invent coverage for this claim?'" Levy said. "They call me and say, 'I have a claim I believe should be covered, and the insurance company isn't covering it. Can you help me?'"

"And frequently, I think they're right, and I find helping them very satisfying," he added.



Orrie Levy
Cohen Ziffer

Age: 38
Home base: New York City
Position: Partner
Law school: Yeshiva University's Benjamin N. Cardozo School of Law
First job after law school: Assistant district attorney for the Bronx District Attorney's Office

But perhaps the aspect he loves most about being an insurance recovery attorney, Levy said, is working with his colleagues at Cohen Ziffer.

"I very much believe that the people that I work with at Cohen Ziffer are some of the savviest, analytical and experienced insurance lawyers in the country," he said. "They continue to challenge me just as I challenge them, and I think it yields a superb product and a great work environment."

The biggest case he has worked on:

Levy said he was "particularly proud" of beating summary judgment motions from insurers seeking to avoid defending Walmart in underlying opioid litigation.

In August 2023, an Arkansas state judge ruled that Walmart's insurers must defend the retailer in several underlying opioid lawsuits, finding that coverage "for liability arising out of the sale or distribution of drugs would be meaningless if foreseeable adverse consequences of ingesting such drugs were not covered."

Because the underlying bellwether suits asserted Walmart had acted negligently when distributing opioids, the judge found there was "certainly a 'possibility' that Walmart could be held liable in the representative suits for alleged harms that it did not 'expect' or 'intend.'"

"The ruling in Arkansas was a point of pride because it was the culmination of a team effort that highlighted the unique capabilities of [Cohen Ziffer] to achieve results for our clients in a complex area of law where courts have been split," Levy said.

In 2022, for example, the Delaware Supreme Court ruled that insurers for Rite Aid had no duty to defend the pharmacy chain in underlying opioid litigation, while the Ohio Supreme Court similarly ruled insurers had no coverage obligations to a drug wholesaler in such lawsuits.

"We pride ourselves at being the best at what we do, and the proof is in the pudding," Levy said.

Another notable case:

Levy pointed to his work representing health services company Conduent State Healthcare LLC in a Delaware coverage dispute with AIG and other insurers over underlying claims of Medicaid fraud.

Following Conduent's \$236 million settlement of Medicaid fraud claims brought by the Texas attorney general, the company's insurers then accused Conduent of defrauding them into providing coverage for the settlement, an issue that went to trial.

Although the court had already ruled the insurers had a duty to defend Conduent against the underlying claims, AIG "inaccurately and improperly argued [at trial] that AIG never had any coverage obligation to Conduent," Judge Mary M. Johnston said in her February 2023 opinion setting aside the verdict. And contrary to "several" rulings, "AIG's counsel repeatedly referred to the jury a press release that had been unequivocally deemed inadmissible," the judge added.

"In almost 20 years on this bench, I have never set aside a jury verdict," Judge Johnston said, but the circumstances of the trial warranted such a decision, she found.

Levy, who specifically took the lead in post-trial briefing, said the case was a "remarkable career achievement."

"I very much think it was the right result, but it's also very unusual," he said.

The future of the practice:

"As with many other areas of law, I'm curious to see how artificial intelligence transforms the profession, if it does at all. I think that it could have a real impact on the insurance practice as well," Levy said. And from an insurance-specific perspective, AI could have "lots of implications" for underwriting policies and process claims, he added.

However, Levy said, it's too early to tell the extent that AI will impact the legal profession as a whole.

"It really is a fascinating area, because it's one of these things that ... could really not have that big of an impact, or it could completely change life as we know it," he said.

More broadly, he said, climate change and other technological advancements will further impact insurance law.

"All of these things have impacts on insurance coverage, and the nature of claims that policyholders make and need coverage for," Levy said. "So I do think we're at an interesting time of change in our society that could have lots of different insurance implications."

--As told to Ganesh Setty. Editing by Lakshna Mehta.

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2024 Rising Stars winners after reviewing nearly 1,200 submissions. Attorneys had to be under 40 as of April 30, 2024, to be eligible for this year's award. This interview has been edited and condensed.
