

MVP: Cohen Ziffer's Keith McKenna

By Elizabeth Daley

Law360 (November 6, 2024, 12:02 PM EST) -- Keith McKenna of Cohen Ziffer Frenchman & McKenna won Walmart Inc. defense coverage for underlying opioid lawsuits and helped New York State policyholders enshrine their rights to payback for frivolous insurer suits — earning him a spot among the 2024 Law360 Insurance MVPs.

His biggest accomplishment:

While McKenna has worked on many complex cases, he is particularly proud of his work in Arkansas state court in Walmart Inc. v. Ace American Insurance Company et al. In that case, the retailer and pharmacy operator he represents sought coverage for thousands of lawsuits alleging it negligently failed to detect and report suspicious physician orders of opioids and was thus partly responsible for thousands of opioid-related injuries and deaths across the country.

In addition to drugs, Walmart sells many things, including guns, McKenna pointed out. As a result, its policy had an exclusion for government lawsuits, including public nuisance suits arising from the sale of firearms.

McKenna said he leveraged that exclusion to show there wasn't a similar provision when it came to pharmaceuticals. Because there was no specific exclusion for government public nuisance suits related to pharmaceuticals, he argued, there should be coverage for the suits against the retailer.

"The policies did contemplate covering governmental lawsuits and public nuisance claims like those at issue in the opioid litigation," he said, "because there would be no need to exclude a specific subset of government lawsuits relating only to 'firearms' from the policies' coverage if, as insurers were arguing, their policies' insuring agreements could not be read to cover 'any' government lawsuits."

McKenna eventually succeeded in showing that the suits against Walmart were covered, as they sought damages because of bodily injuries and alleged potential occurrences under the policies, court records show. The decision rejected insurers' reliance on contrary rulings by Delaware and Ohio courts.



Opining on multiple issues of first impression, an Arkansas judge said in 2023 that Walmart insurers were required to provide defense coverage for underlying opioid litigation, though the court battle is ongoing, McKenna said.

Other notable cases:

Another case McKenna enjoyed working on was Utica Mutual Insurance Co. et al. v. Crystal Curtain Wall System Corp. et al. before the New York Supreme Court. In that case, he represented Crystal in seeking repayment after its insurers sued the company — trying to wrongly avoid coverage for underlying litigation and the case was dismissed, McKenna said.

Though the insurers sued Crystal, costing the window company money, they argued they needn't pay those legal fees because they were upholding their duty to defend the company in an underlying property damage case, McKenna explained.

McKenna and his team set out to prove New York state law was on their side.

"We showed how the New York Court of Appeals is consistent with our position and inconsistent with their position," McKenna said, noting that the carrier was forced to pay for costing his client extra money. It "was a big deal because now carriers — if they lose — they have to pay attorneys fees back," McKenna said.

What motivates him:

McKenna told Law360 he enjoys challenging cases. He said that clients who approach his firm usually have coverage issues that have been difficult to navigate.

"It's usually not easy stuff," he explained.

His team of about 30 attorneys is scrappy, collaborative and strategic, McKenna said, explaining that they sit down together to discuss cases from every angle, relishing the thrill of facing the legal heavyweights who often represent insurance companies.

"Our firm is just us, and we are going against the biggest in the industry and doing battle often against 30 law firms on the other side," he said. "They can outgun you, but they can't outthink you."

A bonus, McKenna said, is that "not too many people like insurance companies, so it's fun to make them pay."

Why he's an insurance attorney:

McKenna said he decided to join up with his current partners after working on a case with them while he was at Sullivan & Cromwell LLP. They seemed like they were having a great time together, he said.

McKenna recalled: "They were like, 'Who is this guy that knows all this stuff?' And we really liked each other and just said, 'Hey, why don't we work together?'"

McKenna said that he enjoys the challenges and diversity of cases that insurance law presents, and charting a course in that field with great colleagues makes the work even more enjoyable.

"You know, we're just on big stuff, and we've gotten a great reputation because we win," he said. "It's been a lot of hard work, and it's been a lot of creativity, and I think that's what honestly makes us so unique."

His proudest moment:

Though McKenna has had many courtroom victories, he said he is most proud of the job he has done as a father to his two sons — noting that some of his paternal advice has been gleaned from his work as an attorney, supervising associates.

"As I tell my kids, 'A good associate does what I ask, a great associate understands the things that need to be done and understands the tasks,'" McKenna said.

Though it has been difficult at times to watch his children struggle to figure out life, he is proud of what they have been able to accomplish on their own, and impressed with himself for not intervening too much.

One son, Ryan, is a senior at Washington and Lee University, McKenna said, recalling how Ryan went about trying to get an internship.

"He just kept at it, and I didn't get involved. And then, he ended up getting an internship at Blackrock," McKenna said, marveling that his son was able to win the position over many other candidates and saying "he was so proud of himself."

"Lawyering is my job, but at the end of the day, my most important job is them ... at the end of the day, when I die, I am not going to be thinking about my Walmart case. I am going to be thinking about my kids."

--As told to Elizabeth Daley.

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 2024 MVP winners after reviewing nearly 900 submissions.