

MVP: Reed Smith's John Schryber

Law360, Los Angeles (December 19, 2017, 3:10 PM EST) -- This past summer, Reed Smith LLP partner John W. Schryber convinced a Maryland federal court that Travelers must pay \$87 million to private equity firm American Capital Ltd. and one of its portfolio companies to cover the costs of underlying suits over tainted blood thinner, landing him a spot among Law360's 2017 Insurance MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

In August, Schryber secured an \$87 million award in a case that established new law aiding private equity firms in insurance disputes involving their portfolio companies.

Following a four-week bench trial, U.S. District Judge Deborah K. Chasanow ruled that Travelers Property Casualty Co. breached its duty to defend when it refused to pay legal fees for Schryber's clients, American Capital and its majority-owned portfolio company Scientific Protein Laboratories LLC, which produced components of the blood thinner heparin. The underlying suits alleged American Capital, SPL and others were responsible for making tainted batches of heparin, which purportedly led to dozens of deaths and hundreds of serious injuries worldwide.

The primary and excess commercial general liability policies issued by Travelers only named American Capital as an insured, but Judge Chasanow said the policies also covered SPL, thanks to language that extended coverage to all companies the insured holds a "majority interest" in.

Judge Chasanow's order was the first federal ruling to clarify that the "majority interest" language — "widely-used" by various insurers, according to the opinion — extends coverage held by a private equity firm to its portfolio companies. The question was the focus of the four-week trial, but the district judge cited no other federal decisions addressing it.



Travelers had argued the term required absolute ownership or a controlling interest, but Judge Chasanow said any equity stake above 50 percent, regardless of a private equity firm's voting rights in the company, was enough to qualify.

"It is significant in the private equity industry because the district court held that a [private equity] firm could use its own liability insurance to cover the valuable portfolio company that was not named in the policy," explained Schryber. "That ability to do so by a PE firm may spell the difference between a portfolio company surviving or not, because often a portfolio company may not have enough insurance on its own to survive a catastrophe."

Judge Chasanow also rejected Travelers' bid to rescind American Capital's policy based on an alleged misrepresentation on the policy application, which the private equity firm itself had never seen or authorized. According to Schryber, that finding is illustrative of how insurance companies often overreach with rescission claims.

HIS BIGGEST CHALLENGE THIS YEAR:

In order to prevail on a request for rescission, an insurer must show that it sued for rescission promptly after becoming aware of facts that would support cancelling the policy.

"That means that all of the correspondence before the lawsuit that goes to your state of mind is relevant," Schryber said. "For a policyholder to defend itself against a rescission claim, it needs to know what a claims handler told the insurance company. If the claims handling is done by the lawyers, you can only find that out by finding out what the lawyers told the insurance company."

To combat Travelers' rescission claim, Schryber was faced with the challenge of obtaining the insurer's communications with its lawyers. With persistence, he ultimately persevered prior to trial, convincing the court to grant access to all of Travelers' internal and outside attorney communications.

"Getting those documents was tough; the insurance company fought hard," Schryber said.

More generally speaking, Schryber and his team had to tread uphill to make a compelling, coherent case at trial out of a dauntingly complex record that included more than 1 million pages in documents.

"You can't carry your burden at trial if the judge doesn't understand your case," he said. "One person can't do that, so everyone on my team had to know how to make their case simple. They all did that, which led to our success."

WHY HE'S AN INSURANCE LAWYER:

Schryber said he was never one of those kids who grew up wanting to be a lawyer. He hit upon the idea in his twenties while working on a radio show focusing on contemporary music and politics.

"My music heroes were those who rallied against the perversion of power; I've always had a problem with bullies," Schryber said. "Lawyering is a way of redressing that."

According to Schryber, the mentality of taking on bullies has inspired his work representing policyholders in coverage disputes against major insurance companies.

"Even the most sophisticated policyholder is no match for the insurance companies that write these policies and have these armies of great lawyers," he said. "Policyholders assume that insurers, like other contracting parties, will perform. Sometimes, though, that is not the case."

HIS ADVICE FOR INSURANCE LAWYERS:

To win insurance coverage cases, Schryber said, it is critical for a lawyer to "know cold" the industry in which his or her client operates, as well as every aspect of the client's position.

"That is often overlooked by insurance lawyers, who will focus on reading the policies and the relevant case law," he said. "Those things are important too, but invariably it comes down to knowing your client's business."

For instance, when tackling a coverage dispute involving a private equity firm and its portfolio companies, an attorney must understand the interplay between all the firms' insurance policies, as well as any indemnity agreements among the parties, according to Schryber.

"If you're going to be doing this, you can't do it light," he said. "You have to be willing to get your hands dirty, get into the weeds and learn your client's business, and then turn around and make your case before the trier of fact by making all the complexities you have absorbed simple."

— *As told to Jeff Sistrunk*

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