

Insurance Group of the Year: Reed Smith

By **Cara Salvatore**

Law360, New York (January 24, 2018, 6:42 PM EST) -- Reed Smith LLP's insurance recovery practice had a splashy year, with a huge bad faith finding in Pennsylvania and a significant ruling expanding coverage for private equity firms, landing it among Law360's Practice Groups of the Year.

Last February, a Pennsylvania state judge awarded a unit of safety equipment maker MSA Safety Inc. \$30 million in punitive damages for bad faith as part of a long-running insurance coverage dispute with North River Insurance Co.

That's in addition to the \$10.9 million MSA LLC, formerly known as Mine Safety Appliances Co., won from a jury a few months earlier; the judge later added \$2 million more in fees to the judgment, which is now on appeal. MSA, which has its headquarters outside of Pittsburgh, said it was the largest award ever issued in Pennsylvania for a case of this kind.



Reed Smith's Brian Himmel, the co-lead partner on the case, said it stood out because of its uniqueness.

"There really frankly hasn't been a large bad faith award in Pennsylvania" before, Himmel said. "The [bad faith] statute's obviously been on the books for 20-some years, but it was unusual to even get a judgement of bad faith in Pennsylvania. It was rare to get any ... substantial award of money out of a bad faith ruling."

He continued, "And here you have a court that looked at this, looked at the conduct, the amount at issue, the capacity of North River from a financial standpoint, and said that a \$30 million punitive award is what's appropriate here to punish the behavior and serve a deterrent effect."

North River undertook a conscious and concerted effort to delay or avoid paying MSA, according to Himmel. The court battle dates to 2010, when North River sued MSA seeking a declaratory judgment that it was not obligated to cover asbestos product liability claims under three personal injury policies together dating from 1980 to 1983. MSA then brought counterclaims for breach of contract and bad faith.

The win — now on appeal — was a major feather in the cap of a practice that has carved out quite a name for itself. It's uncommon to see an insurance recovery practice in BigLaw, practice group head

David Halbreich said.

"We command market rates; we get asked to respond to significant RFPs; we get calls from clients who are referred to us from other clients — which, to me, is always the best," Halbreich said. "And, you know, because of some of the significant victories that we've had, it's always been considered a premier practice."

Now that a large part of the financial crisis cases are done, he said the practice is keeping its radar up for the next big area of policyholder litigation. Climate change could very well be it.

"Maybe in three years' time, maybe in five years' time, but I think climate change is going to throw off a tremendous amount of work. ... It wasn't until recently that any of those [underlying] cases got a foothold, and now we're seeing those claims sticking a little bit," Halbreich said.

Halbreich himself worked on a big case for the practice last year when Fifth Third Bank was suing its bond insurers for coverage over an underlying \$100 million claim having to do with employee malfeasance in a large lending program to securitize loans backing large life insurance policies.

The case involved "some really bad people that basically pulled the wool over the bank's eyes," Halbreich said. The insurers who were supposed to cover the financial institution bonds balked at the prospect of covering the losses, according to Reed Smith, so the confidential settlement negotiated by the firm in June was considered a big win for the roughly 80-lawyer practice.

And in August, Reed Smith helped obtain an important ruling for private equity firm American Capital Ltd. and one of its portfolio companies that Travelers Property Casualty Co. must pay \$87 million to cover the costs of underlying suits over tainted blood thinner. The ruling was considered a significant expansion of coverage for private equity firms.

Following a four-week bench trial, U.S. District Judge Deborah Chasanow ruled that Travelers breached its duty to defend when it refused to pay legal fees for American Capital and its majority-owned portfolio company Scientific Protein Laboratories LLC, which produced components of the blood thinner heparin, in underlying litigation. She threw out bad faith counterclaims.

Judge Chasanow's order made the novel clarification that "majority interest" ownership language — "widely used" by various insurers, according to the opinion — extends coverage held by a private equity firm to its portfolio companies. It was an issue of first impression, according to Reed Smith.

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.

--Editing by Catherine Sum.