

Insurance Group Of The Year: Perkins Coie

By **Bibeka Shrestha**

Law360, New York (January 30, 2014, 5:59 PM ET) -- Perkins Coie LLP insurance attorneys have enjoyed resounding success in recovering insurance proceeds to cover some of the Tennessee Valley Authority's \$1 billion in losses during one of the worst environmental disasters in U.S. history, making it one of Law360's Insurance Practice Groups of the Year.

Perkins Coie has made a name for itself in insurance law through its representation of utilities and mining companies in high-stakes coverage fights and its pursuit of insurance funds in big-name bankruptcy proceedings, including those of Residential Capital LLC and General Motors.

The firm has about 40 lawyers who are wholly focused on insurance matters and many others who spend at least half of their time on insurance, according to Don Friedman, chairman of Perkins Coie's insurance coverage litigation practice. Perkins Coie coverage attorneys are scattered throughout the country, though major hubs for the insurance team include the firm's offices in Washington, D.C., Madison, Wis., and Los Angeles.

"We're one of the very few major full-service law firms with an insurance practice dedicated exclusively to representing policyholders," Friedman said. "We can draw on deep expertise in any given substantive area by drawing upon partners who practice in that area. ... That does set us apart from firms which are exclusively coverage shops."

The insurance team at Perkins Coie had remained relatively small until the firm made a strategic decision about five years ago to ramp up its insurance expertise and reel in well-regarded attorneys from nationally recognized firms, Friedman said.

In one of the several high-profile insurance cases on the firm's plate, Perkins attorneys are representing the Tennessee Valley Authority as it pursues insurance coverage for more than \$1 billion in losses from the Kingston ash spill, which is considered the largest fly ash spill in U.S. history.

Any insurance proceeds that are recovered will lessen the impact of rate increases that the TVA has planned for a 15-year period to fund the massive cleanup.

In August, Perkins Coie attorneys helped the TVA walk away with \$42 million from Bermuda-based Arch Reinsurance Ltd. under a \$50 million policy to cover some of its losses. Arch had claimed in the arbitration that coverage was not owed because the TVA did not disclose important information when it applied for coverage but the insurer later decided to settle.

“It's unique because there's no restrictions at all in disclosing the terms of the settlement,” said Selena Linde, a partner in the firm's insurance practice. “That allows other policyholders to really take a look behind the curtain as to what's really going on with the Bermuda arbitrations.”

By the end of 2013, Perkins persuaded an arbitration panel in London to hand another \$150 million — with \$11 million interest — to the TVA, following a four-week trial that resulted in a 75-page decision in the TVA's favor.

According to a securities filing by the TVA, the insurer ended up paying the complete policy limits of \$150 million, which comes on top of the \$92 million in proceeds the authority had already recovered from other insurers.

Also in 2013, insurance attorneys at Perkins Coie defeated a summary judgment motion in a closely watched bad faith case against Resolute Management Inc., which acquired some liabilities of Certain Underwriters at Lloyd's, London. Resolute, a subsidiary of Berkshire Hathaway Inc., is battling allegations that it wrongly denies and delays payment of asbestos claims so that Berkshire can invest and profit from the premiums collected from policyholders.

In the case, which is before a South Dakota state court, NorthWestern Energy is demanding insurance coverage for more than \$100 million in environmental liabilities at various sites.

Perkins Coie attorneys were able to score partial summary judgment on its request for coverage, an order that made vanish 25 of the Lloyd's defenses and forced the insurer to show that it was prejudiced by late notice of NorthWestern's claim.

NorthWestern added the bad faith count to the suit, which the court refused to toss in October, after reviewing documents that Resolute unsuccessfully tried to shield through the attorney-client privilege.

“Getting those [kinds of] documents is something that policyholders have been trying to do for years,” Linde said. “Finally, courts are really turning and coming down on the policyholders side.”

Insurance attorneys at Perkins Coie also keep busy representing the trust in General Motor's bankruptcy proceedings in Delaware against more than 25 insurers over historical asbestos and environmental liabilities.

They are now handling discovery in the litigation after a judge held that summary judgment motions on the number of occurrences and allocation were premature and allowed extrinsic evidence to be introduced.

Linde said that court's decision to allow discovery may have an unintended effect for insurers down the line when they argue often that extrinsic evidence have no place in coverage disputes.

“It could end up liberalizing the rules in Delaware,” Linde said. “It could really hurt them in future cases and assist policyholders.”

Attorneys at Perkins Coie also represent debtors on all coverage issues in Residential Capital LLC's Chapter 11 case, coverage under more than 175 directors and officers and errors and omissions liability policies that must be analyzed.

Work by the Perkins Coie insurance group helped pave the way to an \$2.1 billion settlement with Ally Financial Inc. as well as a \$400 million settlement with one of ResCap's largest creditors.

Friedman said he has a special interest in using alternative fee arrangements more often so that attorneys can focus on the endgame: maximizing insurance recoveries for their clients.

“We're really lucky to be in the position that we're in and be plaintiffs' attorneys, where our job is to bring money into our businesses,” Linde said.

--Editing by Christine Chun.

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