

Insurance Group Of The Year: Latham & Watkins

By **Jeremy Heallen**

Law360, Houston (January 25, 2013, 6:23 PM ET) -- Lawyers with Latham & Watkins LLP's insurance group scored big in 2012, recovering hundreds of millions for clients and advancing novel legal arguments that could eliminate a long-standing defense used in California by insurers to avoid payouts, earning the firm a spot on Law360's Insurance Practice Groups of the Year.

With more than 40 lawyers spread throughout the U.S. and EU, Latham's insurance group draws on a diverse pool of talent and experience to surgically negotiate and when necessary, forcefully litigate on behalf clients like Rockwell Automation Inc., which has been hit with thousands of asbestos exposure suits seeking damages in excess of \$100 million.

G. Andrew Lundberg, who co-chairs Latham's global insurance litigation practice, said successfully taking on insurers is like "a chess game won in the fewest moves possible." Finding the insurer's Achilles' heel is a bit like attacking the Death Star, which moves "ponderously but with great mass," according to Lundberg.

"We're looking for that one little port to drop the torpedo in," he said.

Latham's methodical approach worked for Rockwell in August, when lawyers were able to short circuit an effort by Lloyd's of London underwriters and other insurers that wanted to wage a "Vietnam-like, multiyear campaign" to determine whether or not the company received valid assignments of insurance rights from Boeing Co. during a series of merger and spinoff transactions between 1988 and 1997.

"We were going to have to pull people 20 years out of retirement for depositions and sift through millions of documents," Lundberg said. "Our torpedo down the Death Star portal was to tell the judge, 'We don't need to produce all these documents or go through all these depositions because the parties agree today that the rights were assigned the way we say they were.'"

By arguing to the court that the insurers were strangers to the assignments with no right to challenge them, Latham avoided what would have been an arduous discovery process. The court agreed with Latham, ruling that because Rockwell and Boeing agreed on the scope and meaning of the assignments, the insurers could not invalidate them simply because they did not participate in the transactions.

The firm faced a steeper challenge in assisting Fluor Corp. to seek coverage for some \$75 million in asbestos claims. Unlike the Rockwell litigation, during which Latham attorneys successfully advocated for the application of Pennsylvania law, Fluor's dispute with Hartford Accident & Indemnity Co. confronted California's harsher treatment of insurance assignments.

Earlier in 2012, Latham attorney Brook Roberts had already convinced the court that "completed operations" policy limits do not kick in when a person is exposed to asbestos on the job and the injury continues after the job is over — rebuffing a Fourth Circuit rule that Fluor's carriers tried to establish in California.

Now the firm is challenging the California Supreme Court's 2003 decision in *Henkel Corp. v. Hartford Accident & Indemnity* — which holds that insurance policy anti-assignment clauses are enforceable, avoiding coverage for long-tail asbestos, environmental or product liability claims.

Having just tangled with choice of law issues in the Rockwell case, Lundberg told Roberts about an overlooked California law from 1872 he discovered that conflicts with the high court's holding in *Henkel*.

"People thought it was a crackpot idea," Lundberg said of the argument "nobody made before based on a statute people forgot about."

Although the trial judge and intermediate appellate court refused to overrule *Henkel*, the California Supreme Court has decided to weigh in, having granted Fluor's case for review last December.

"The California Supreme Court is essentially saying, 'We should have looked at that,'" Lundberg said.

But despite Latham's record of success in the courtroom, Lundberg said the firm strives to avoid litigation.

"The fact of the matter is that most clients don't want to hear that you're focused on going to trial with the insurance company," he said. "They want to know how to get money flowing."

Latham partner Peter Rosen agreed. "Following a disaster involving a big financial loss, the client has immediate expenses and it needs money," Rosen said. "They're not interested in litigating a coverage dispute. We are the frontline responder to get insurance companies to start the cash flow."

By building a team of negotiators that can outpace the insurance companies, Rosen said the firm is often able to resolve seemingly daunting cases before trial, such as when it secured a victory for the state of Hawaii, which had suffered business interruption losses after the Federal Aviation Administration grounded all air traffic following the 9/11 attacks.

As a result of a settlement with one of the state's two insurers and Latham's successful litigation last September against the second, Hawaii has recovered more insurance payouts for its 9/11 losses than any other governmental entity.

Latham is using a similar approach in its ongoing representation of Western Digital Corp., which suffered substantial losses to its Thailand-based hard drive manufacturing and assembly facilities in 2011 as a result of historic flooding of the region. The firm says the case involves property damage and business interruption claims worth several hundred million against more than two dozen insurers.

"It doesn't make any sense to start saber-rattling," Rosen said. "We look at how to best move the issues forward to get money flowing and our client's business restarted."

And in the white collar arena, Latham attorneys advised several public company clients in 2012 on directors and officers liability coverage issues arising from criminal and civil investigations by the SEC and other government agencies.

In several of those cases, Latham insurance lawyers successfully recovered millions of dollars in legal expenses incurred in responding to criminal and civil investigations and related shareholder class actions.

Latham declined to provide specifics on those cases. But Lundberg said that many of the insurance group's wins in "bet-the-company" lawsuits go unheralded by design.

"One of the things that makes those victories the best for clients is that they are not on the front page of the newspaper," he said.

--Editing by Katherine Rautenberg.

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