

## Insurance Group Of The Year: Steptoe & Johnson LLP

By Jeff Sistrunk

*Law360 (February 5, 2020, 3:53 PM EST)* -- Steptoe & Johnson LLP's insurance and reinsurance group notched several litigation victories for large insurers last year, including helping an AIG unit defeat a ruling requiring it to pay \$25 million in coverage for an auto parts maker's losses after a factory shutdown, landing the firm among Law360's 2019 Insurance Groups of the Year.

The practice group, with more than 50 attorneys across offices in the U.S., U.K., Belgium and China, often represents insurance carriers in coverage disputes involving complex questions of policy interpretation. Over the past year, the group's lawyers have achieved a number of victories for insurers in high-stakes cases.

In one matter, a Steptoe team composed of Roger E. Warin, Michael A. Vatis and Mark F. Horning convinced a Sixth Circuit panel to upend a trial judge's ruling that AIG unit Insurance Co. of the State of Pennsylvania, or ICSOP, must pay \$25 million to cover auto parts manufacturer Federal-Mogul LLC's financial losses from the flood-related shutdown of a factory in Thailand in 2011.

In July, the appeals panel held that a Michigan federal judge wrongly found that a flood sublimit in the ICSOP policy only applies to property damage and not "time element," or economic, losses. The \$30 million sublimit, which the insurer previously paid in full to cover damage to Federal-Mogul's facility, caps coverage for claims stemming from floods occurring in "high hazard zones," the panel said.

On remand, Federal-Mogul can reassert its argument that the Thailand factory is not located in a high hazard flood zone.

The decision marked Steptoe's second appellate win for ICSOP in the case. In 2015, a team from the firm convinced the Sixth Circuit that the flood sublimit only applies to properties located in zones that are deemed to be at high risk for flood by government regulators.

Frank Winston and Harry Lee, the co-chairs of the firm's insurance and reinsurance group, said the rulings in the ICSOP case demonstrate the group's adaptability and appellate acumen. ICSOP didn't retain Steptoe until the first appeal, Winston noted.



"Our clients recognize that our appellate specialists have the ability to distill these highly technical issues," Winston said. "It is not unusual for us to parachute into a case to try it with only a month or two prior to trial, or to salvage a case on appeal. We are known in the industry for our ability to quickly adapt."

Later last summer, a Steptoe team of John F. O'Connor, Warin and Brett Grindrod, along with Ellen Lewis Van Meir of Thompson Coe Cousins & Irons LLP, persuaded a Texas federal judge that AIG Specialty Insurance Co. doesn't have to cover \$12 million in legal expenses that Waste Management Inc. racked up defending criminal charges over environmental contamination from a Hawaii landfill.

In granting summary judgment to AIG, U.S. District Judge Andrew S. Hanen found in his August order that Waste Management can't recoup legal expenses from defending and investigating claims related to flooding in Hawaii in 2010 and 2011 that caused medical waste from a Waste Management landfill to flow onto beaches and into the Pacific Ocean.

Judge Hanen had ruled in March that AIG Specialty had no duty to defend in the proceeding, but Waste Management was still seeking coverage for the fees.

Waste Management argued that the costs racked up in the investigation of contamination must be treated as covered "clean-up costs" and not as defense costs. While deeming that argument a "creative twist," Judge Hanen ruled that it fails "for several independent reasons," including the fact that Waste Management never previously alleged that legal invoices counted as clean-up costs.

Lee credited O'Connor with steering the team's strategy to counter Waste Management's novel argument.

"John is a spectacular writer and lawyer, and he was able to steadily go through the case and make sure the courts saw that criminal defense expenses aren't part of the civil loss," Lee said. "If those expenses were covered, it would change underwriting for these policies, which ultimately would not be good for carriers or policyholders."

--Editing by Nicole Bleier.