

Insurance Group Of The Year: Covington

By **Allison Grande**

Law360, New York (January 21, 2011) -- Covington & Burling LLP's insurance group has spent the past year securing favorable verdicts and more than 100 settlements in litigation, arbitration and negotiations for corporate policyholders such as Sprint Nextel Corp., Chiquita Brands International Inc. and NCR Corp., earning the firm a place among Law360's Insurance Groups of 2010.

These successes have led to substantial recoveries for Covington clients in both the U.S. and abroad on a wide variety of claims, including mass tort liabilities, environmental losses, and directors and officers exposures.

Ben Lenhart, the vice chairman of the 100-member practice group, which has attorneys in Washington, New York, San Francisco and London, partially attributes the group's ability to achieve favorable recoveries for its clients to its consistency over the past three decades.

"Most of the core group of partners that do full-time insurance work for our group have been here for more than 20 years," Lenhart said. "That kind of stability and steadiness allows us to have meaningful long-term relationships with our clients."

The group's chair, Mitchell Dolin, added that clients were drawn to the practice group because of the reputation it had been able to establish during its 30-year existence.

"We have a 30-year track record of success, and I believe that our experience and responsiveness to clients are part of the reason we have been able to be successful," Dolin said.

In 2010, the group used this breadth and depth of experience to guide clients through the successful resolution of trial activities across the U.S.

Two of these trial victories came for Narragansett Electric Co., which is facing liability for the cleanup of several former manufactured gas plant sites and third-party disposal sites in Rhode Island and Massachusetts.

In October, a jury in Massachusetts court found that NEC was entitled to coverage under excess policies issued by Century Indemnity Co. for the cost of removing hazardous waste that had been deposited at the site in the 1920s and 1930s.

On the heels of that victory, another jury in the same court found in November that NEC had established the material terms, policy periods and limits of missing policies purchased by NEC's predecessor, which were subscribed by various Lloyd's underwriters and London market companies and were in effect during the 1940s.

The group also secured a favorable trial outcome for its client Chiquita in a coverage dispute that was part of a growing number of high-profile claims filed in the U.S. against multinational corporations under the Alien Tort Claims Act.

In September 2009, an Ohio court found in a summary judgment ruling that Chiquita was entitled to defense of underlying tort claims brought by plaintiffs whose relatives were allegedly killed in Colombia by left-wing guerilla groups or right-wing paramilitary groups to which Chiquita had allegedly made payments to stave off threats that these groups would kill Chiquita employees.

Following this victory, the case proceeded to trial in Cincinnati over National Union Fire Insurance Co. of Pittsburgh, Pa.'s extensive challenges to the reasonableness of Chiquita's substantial defense costs.

In October, the court rejected all but one of National Union's challenges to the fairness of defense costs, which included issues regarding hourly rates, the number of hours devoted to preparing key motions, the amount of time spent in meetings, the number of lawyers attending meetings, and work done by paralegals and associates that was disputed on the grounds that it should have been performed without charge by clerical staff.

Specifically, the court shot down National Union's argument that it only needed to pay local rates as opposed to national rates for a law firm to defend complex underlying litigation, and it established an important precedent that such claims trigger the insurer's duty to defend under general liability policies notwithstanding allegations in the underlying actions of intentional conduct, according to Covington.

Following this resolution, the parties moved on to a phase 2 trial over the number of occurrences at issue, which is expected to conclude in early 2011.

The practice group has also garnered multiple successes leading up to trial, including an appeals court victory for NCR that effectively halted an insurer's ability to suddenly deploy an arbitration clause hidden in insurance side agreements to derail coverage litigation.

NCR filed suit against more than 25 primary and excess insurers in Wisconsin state court in 2005 as part of the company's bid for coverage of long-running environmental proceedings arising from PCB contamination in a 39-mile stretch of the Lower Fox River and Green Bay with an estimated cleanup cost of \$1 billion.

In May, the U.S. Court of the Appeals for the Second Circuit shot down primary insurer National Union's bid to compel arbitration in New York federal court based on the arbitration clause in a side agreement, agreeing with the lower court's finding that the insurer had waived any arbitration rights through its extensive participation in the Wisconsin litigation.

The group also won a significant summary judgment victory in November for Sprint in Houston Casualty Co.'s bid to recover \$15 million it paid to the company under an excess D&O policy to help fund a securities class action settlement.

As one of three insurers that helped fund the \$57.5 million settlement Sprint reached with a class of shareholders claiming the telecom undervalued certain holdings in connection with a 2004 stock conversion, Houston Casualty provided an excess layer of coverage worth \$15 million, but reserved its right to seek repayment of the money, which the insurer did by filing suit in the Eastern District of Virginia in 2009.

But in November, the court nixed the suit by granting summary judgment to Sprint, finding that the policy's definition of "loss" did not bar coverage as Houston Casualty contended, and rejected the insurer's argument that public policy rendered Sprint's claim uninsurable.

The ruling further concluded that Houston Casualty lacked the right to seek repayment because the policy included a provision for recouping defense costs but not for the repayment of any funds advanced toward a settlement.

Besides its trial court victories, the practice group has also found success in securing settlements for its clients, with the group reaching over 100 insurance settlements in 2010, according to the firm.

While the terms of these wide-ranging settlements — some of which were reached while the case was in litigation or arbitration, while others were achieved entirely at the negotiating table without any litigation — for the most part remain confidential, Lenhart said that the agreements ranged in size from less than \$1 million to more than \$100 million.

These settlements include more than \$150 million that Covington has to date helped NCR recover in its litigation over the Lower Fox River contamination coverage dispute with more than two dozen insurers.

Leading up to the scheduled August trial in this case, Covington successfully opposed numerous last-ditch efforts by several defendants to reopen discovery and overturn the court's prior summary judgment rejecting their defense that NCR has purportedly "expected or intended" environmental harm, which paved the way for resolutions with all but one excess insurer.

On Nov. 30, the court awarded NCR a full-limits judgment against the last non-settled insurer, Transport Insurance Co., and on Jan. 20, the court denied Transport's motion to stay the judgment pending appeal.

The firm also helped Norfolk Southern, one of America's leading railroads, in March reach a confidential settlement in a London arbitration concerning a more than \$100 million coverage dispute in connection with litigation arising out of a 2005 train derailment in Graniteville, S.C.

With litigation and other proceedings from Texas to Massachusetts to London, Dolin stressed that one of the keys to the group's success was its ability to work together as a cohesive unit.

"The thoughtful and hard work of a lot of folks at all levels of seniority contribute to the success of this practice," he said. "It's a strong group with a very deep bench."

Lenhart added that it was very typical for senior members of the group — 25 of its more than 100 lawyers are partners, according to the firm — to work with more junior members in the practice area to nurture their talents.

"We spend a great deal of time teaching, mentoring and bringing associates up to speed in order to produce people in-house that can be the next generation of lawyers in our group," he said.

And with both the means and desire to continue to generate partners with the ability to craft favorable outcomes for their clients, the long-standing practice group — which represented Exxon Corp. in connection with the Valdez spill in the early 1990s and in 2010 began representing BP PLC in two insurance coverage actions in the Southern District of Texas over approximately \$1 billion in insurance proceeds related to the Deepwater Horizon oil spill — shows no signs of slowing down in the coming years.

"As in previous years, our focus moving forward is to continue our steady growth and to keep working to secure great results for our clients," Lenhart said.

Methodology: In mid-November Law360 solicited submissions from more than 300 law firms for its practice group of the year series. The more than 400 submissions received were reviewed by a committee of four editors. Winners were selected based on the number of significant wins the group had in litigation or the size, number and complexity of deals the group worked on in 2010.

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