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Rising Star: Covington's Mark Herman

By **Hope Patti**

Law360 (June 13, 2022, 2:02 PM EDT) -- Mark Herman of Covington & Burling LLP has been instrumental in advising Merck & Co. on securing coverage for its $1.4 billion cyberattack loss, earning him a spot among the insurance law practitioners under age 40 honored by Law360 as Rising Stars.

WHY HE'S AN INSURANCE ATTORNEY:

Herman was always set on becoming an attorney, but it wasn't until he began working at Covington in 2010 that he considered pursuing insurance recovery.

"What drew me to insurance coverage was really having the luck of working at Covington," Herman said. "We have a very large and highly regarded insurance practice with a lot of giants in the field, and I was lucky to get involved with them early on."

He recalled the first big insurance case of his career — representing BP in a coverage dispute over the 2010 Deepwater Horizon oil spill — which spanned years and ignited his interest in insurance coverage litigation.

Herman said he finds insurance litigation fascinating and that it provides him with opportunities to learn something new with each case as he digs into the facts and policy language.

He enjoys his practice area so much that he encourages younger lawyers to pursue insurance law.

"I think it's a really fascinating area," Herman said. "I think it has everything — there's a lot of litigation, which is interesting, and a lot of thorny issues, which are fun to think through."

THE BIGGEST CASE OF HIS CAREER:

Herman has played a lead role in representing Merck & Co. in a coverage dispute with nearly three dozen insurers over a 2017

malware attack known as NotPetya that caused the pharmaceutical company to lose $1.4 billion.

Thirty-two insurers were named as defendants when the suit commenced in August 2018, and Herman said the most challenging aspect of the suit was the scope of litigation and case management, but he was "privileged to have a really great team of lawyers" working on the case.

"The litigation was incredibly active," he said, noting that his team took and defended more than 80 depositions, much of which were done during the beginning of the coronavirus pandemic and had to be conducted remotely.

The case is down to seven insurers because many have settled, Herman said. Most recently, a New Jersey trial court ruled in Merck's favor on the key coverage issue that is now on appeal.

ON THE FUTURE OF INSURANCE LAW:
Herman said he believes cyberattack coverage will be a growing area for insurance attorneys and anticipates even more focus on cyber risks and coverage in the years to come.

HIS PROUDEST MOMENT AS AN ATTORNEY:
Herman said he feels a sense of pride every time he successfully makes an argument before a court.

"But I'm also really proud of all the cases we can get resolved for our clients outside of court, where we're able to work really hard to persuade insurers to pay a claim without ever having to file a lawsuit," he said. "That can be very rewarding, as well, for me and our clients."

WHAT MOTIVATES HIM:
Herman is driven by a desire to do whatever he can to solve his clients' problems and help them secure the insurance coverage they have been paying for.

"Clients come to us if they're sued or suffer a loss and need their insurance, which they've been buying forever and maybe they haven't used very much in the past," he said. "What motivates me is trying to help them figure out how to access their coverage and maximize the amount they can get."

— As told to Hope Patti

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2022 Rising Stars winners after reviewing more than 1,350 submissions. Attorneys had to be under 40 as of April 30, 2022, to be eligible for this year's award. This interview has been edited and condensed.

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