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Insurance Group Of The Year: Covington

By **Eli Flesch**

Law360 (January 31, 2023, 2:02 PM EST) -- Covington & Burling LLP led Merck to a trial victory when a New Jersey judge said the health giant's insurer couldn't block coverage for a cyberattack with a war exclusion, just one win that places the firm among Law360's 2022 Insurance Groups of the Year.

Other significant accomplishments following the December 2021 Merck decision include a verdict favoring National Grid after the utility spent decades seeking coverage for environmental damage claims along the Gowanus Canal in New York City, and a win in Target's efforts to secure coverage for a cyberattack under a general liability policy.

Anna Engh — co-chair of Covington's insurance practice group and lead counsel to Merck in its $1.4 billion suit against various insurers, including Ace American Insurance Co. — credited the quality of her team, and especially its associates and junior partners, in helping win the case.

"One of the biggest headlines that I think is significant for me is that the insurance market headed by Lloyd's — and now with domestic insurers — are changing the war exclusion in reaction to this Merck decision," Engh said.

Notably, the policy in question was a property insurance policy. Merck maintained the policy was, at a minimum, ambiguous about whether coverage might be available for losses connected to the 2017 NotPetya cyberattack, given the uncertainty over its source. The Russian government and hackers have generally been blamed for the attack.

Engh said she expected to see less litigation over whether a war exclusion bars coverage for cyber events going forward. Insurance companies understand a traditional war exclusion isn't the mechanism for clearly excluding cyber events, she said.

Benedict M. Lenhart, co-chair of Covington's insurance practice, emphasized the firm's track record of working on notable cases.

"We get the biggest cases," Lenhart said. "When Major League Baseball had their $3 [to] $4 billion dollar COVID loss, they called us. When Merck had their largest cyber breach ever, they called Anna. The NFL had their multibillion-dollar concussion claim — they called Mitchell Dolin," he said. Dolin, a partner at Covington, previously served as insurance chair.

In the National Grid case, Covington attorneys in April returned a favorable result for the policyholder after more than 20 years of litigation, though the firm didn't represent the utility for the entirety of that time. After a trial in the New York Supreme Court, jurors said that Brooklyn Union Gas, which National Grid owns, had established coverage because the utility gave timely notice of its claim and the damage involved was mostly accidental.

Engh said the National Grid suit highlighted the diverse team's strengths at trial.

And in Target's case, a Minnesota federal judge ruled that two Chubb units must cover the retailer for losses from $138 million in bank settlements over a 2013 data breach.

That finding was a reversal from the court's prior decision that there was no coverage because Target failed to establish a direct connection between damages from the hack and its claimed loss of use of bank cards. In its March decision, the federal court said that the retail giant did indeed suffer a "loss of use" of its tangible property.

The decision came almost a year after Target told the court that it had erred as a matter of law. The retail giant argued that the judge's rationale in initially deciding the case was contrary to Minnesota law and was based on a legal theory Target's insurer never used.

Lenhart said the insurance group is the largest practice group in the nation, with over 100 lawyers representing policyholders. The firm currently has more than 350 active coverage matters and has recovered more than $20 billion on behalf of its clients, according to the firm. Its clientele includes ExxonMobil Corp., Facebook, Disney and PepsiCo, among many other industry giants.

Lenhart highlighted the recent addition of Darren S. Teshima from Orrick Herrington & Sutcliffe LLP, while noting the practice group has grown slowly but steadily over the years. There are only equity partners at Covington, and it's hard to make, Lenhart said.

He praised the group's stability, saying no partner in the insurance practice has left Covington for another firm in 20 years.

"We've had no laterals, no departures. That's just a testament to how strong the group is and how cohesive it is," Lenhart said. "That fact is, to us, just astounding, because there's so much lateral movement everywhere else."

--Additional reporting by Josh Liberatore and Daniel Tay. Editing by Daniel King.

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