

Insurance Group Of The Year: Covington

By Hope Patti

Law360 (January 24, 2025, 4:03 PM EST) -- From cementing Merck's win in a \$1.4 billion cyber coverage dispute to securing insurance coverage for Tyco in sprawling multidistrict litigation over forever chemicals, Covington & Burling LLP's work in precedent-setting cases has earned it a spot among the 2024 Law360 Insurance Groups of the Year.

With more than 100 attorneys, Covington is the largest policyholder-side practice in the nation, Anna P. Engh, co-chair of the insurance recovery group, told Law360. While litigation is a large part of the insurance recovery group's work, Engh said attorneys also focus on resolving disputes through negotiation and mediation, and advising clients on their insurance policies.

Having secured more than \$30 billion in insurance recoveries over the course of 40 years, partners in the insurance recovery group attribute much of its success to a collaborative working environment that allows it to harness the knowledge and experience of the entire firm in order to achieve favorable results for clients.

"Covington prioritizes collaboration between lawyers in all ways. It's built into the DNA of the firm and that is true of the coverage practice as well," said Gretchen Hoff Varner, managing partner of the firm's San Francisco office.

Because insurance attorneys must have a "rich understanding of how the law works in a lot of different areas," Hoff Varner said, being able to join forces with attorneys from different practice groups is immensely helpful when it comes to insurance coverage litigation.

"There's always somebody who knows the answer to a question," she said. "I think that all of that expertise on coverage and on the law really benefits our clients and, frankly, makes it more fun to do the work that we do."

Covington's reputation for being on the forefront of cutting-edge insurance issues and developing coverage law is also an advantage, Engh said.

For example, the principles Covington developed in the asbestos coverage area have proved helpful in more recent coverage fights over exposure to per- and polyfluoroalkyl substances, and have also given the firm an "enormous store of credibility with insurers," Engh said.



Though PFAS claims are novel in many respects, Alexis N. Dyschkant, a partner in the firm's Washington, D.C., office who has worked on a number of PFAS-related matters, said courts, mediators and insurers listen when Covington models a potential outcome or makes a prediction about how something might be resolved.

Dyschkant was part of the Covington team that secured victories last year for firefighting foam-maker Tyco Fire Products LP in the company's suit seeking coverage for a South Carolina MDL accusing it of contaminating water with aqueous film-forming foam products that contain PFAS. Tyco ultimately settled with a number of its insurers, including TIG Insurance Co. and units of American International Group Inc., Liberty Mutual Insurance Co. and Allianz.

PFAS is an issue that is going to continue to grow and evolve, said Dyschkant, adding that the firm is litigating PFAS-related coverage issues in several states and has a "real opportunity to make law in this area."

In another novel dispute, the firm prevented insurers for one of the world's largest aircraft lessors from escaping coverage for aircraft seized by the Russian government following the country's invasion of Ukraine in 2022. In August 2024, a California state court held that "physical loss or damage" as used in the policy includes the governmental seizure of the aircraft owned by BBAM US LP, ECAF I 41991 DAC and Horizon II Aviation 3 Ltd. under state law.

With the case being part of a larger global dispute valued at over \$15 billion, Engh said it is sure to have an impact on similar cases in the United States and Europe.

"I think that one of the sort of bigger, significant impacts of that case is that it really reflects an increased interest in the war exclusion, and Covington, again, is sort of at the forefront of this issue that is now being litigated more frequently," Hoff Varner added.

Covington served as lead counsel for Merck & Co. Inc. in litigating and resolving a \$1.4 billion cyber coverage dispute with 33 property insurers relating to the multinational pharmaceutical company's losses from the 2017 NotPetya cyberattack.

In May 2023, a New Jersey state appeals court affirmed a lower court's finding that the "hostile/warlike action" exclusion in Merck's policies doesn't apply to its claims stemming from the attack. The case was settled in January 2024, prior to oral arguments before the New Jersey Supreme Court, meaning the appellate court's ruling on the application of the war exclusion stands as precedent.

The war exclusion historically has not been litigated very frequently, and certainly not in the context of a company's losses after a cyber event, said Dyschkant.

"To say we were pleased with the result, I think, would be an understatement. To get the ruling that we got on summary judgment and then upheld on appeal was real validation to a hardworking team that had moved a big case along very quickly," she added.

--Editing by Kristen Becker.