

Insurance MVP: Anderson Kill's William Passannante

By Allison Grande

Law360, New York (December 04, 2013, 7:15 PM ET) -- Anderson Kill PC's William G. Passannante convinced courts to focus on the actual purpose of complex insurance policies to help secure coverage for policyholders such as Alfa Laval Inc. and HLTH Corp. during the past year, earning him a place among Law360's Insurance MVPs.

As co-chair of the firm's insurance recovery group, which solely represents policyholders, Passannante is regularly faced with disputes that require him and his colleagues to counter arguments by insurers that they are not required to provide policyholders the coverage they thought they were getting when they signed up for plans.

When faced with these situations, a key to success is the ability to ground the insurer's contention in the policy's history and what it is actually meant to cover, a skill Passannante has repeatedly used to his advantage during his career.

"Bill understands and well articulates to courts and juries that the purpose of insurance is to insure," Anderson Kill managing shareholder Robert Horkovich, who has worked with Passannante for more than two decades, told Law360. "He makes it easy to understand because he presents cases in a straightforward and truthful way, and courts and juries can see the honesty and integrity in his claims."

This helps him reach his goal of helping the court come to a "decision that makes sense," Passannante said.

"Explaining to judges and juries where the policies started and where they are now helps them understand what the policies are supposed to do, instead of having them interpret five words in a vacuum," Passannante said. "When you understand the purpose behind the insurance, sometimes it's easier to understand what all the words in the insurance policy mean."

Passannante capitalized on this approach several times over the past year, including in a high-stakes dispute over Swedish engineering equipment manufacturer Alfa Laval's insurance coverage for liabilities related to 1,300 asbestos suits extending over decades.

The company's primary insurer, Travelers Casualty and Surety Co., had argued it had a duty to defend the underlying asbestos claims only on a pro rata "time on the risk" basis shared among Travelers and Alfa Laval's other insurers.

But a New York appeals court rejected the insurer's contention in November 2012, ruling that Travelers should provide a complete defense and may seek contribution later. In July, a state Supreme Court judge penned a decision confirming that Travelers' defense obligations applied to all underlying asbestos actions against Alfa Laval.

Passannante characterized the dispute as a "classic case of an insurance company trying not to provide defense coverage when it is supposed to." Stripping the dispute down to the underlying purpose of the policy helped him obtain a ruling that reaffirmed a policyholder's right to obtain a complete defense from its primary insurer without having to get involved in the allocation of costs among insurance companies, he said.

"Taking a step back and approaching what looked like a complicated contract lawsuit from the perspective of one of the first principles of insurance, which is that a policyholder is entitled to a complete defense, really helped cut through the nonsense," Passannante said.

He also seized on the basic purpose of directors and officers liability insurance to help defeat an attempt by American International Group Inc. subsidiary New Hampshire Insurance Co. to recoup defense costs on behalf of executives at HLTH Corp. who had been cleared of charges related to a purported criminal scheme to defraud investors.

The long-running case culminated in an Aug. 13 Delaware Superior Court ruling, which dismissed the insurer's bid to recoup defense costs expended in the successful defense.

"In the case, it was important to focus on why directors or officers purchase D&O policies," Passannante said. "Some judges see insurance disputes thousands of times, some see them rarely, so particularly for judges that are new to the area, giving them the context of what this insurance is supposed to do helps the court interpret the insurance policy in the way that it was expected to be interpreted."

Passannante has also successfully implemented this approach for municipalities such as the city of Peekskill, N.Y, which was facing claims from its insurers that they did not have to pay the entirety of a \$5.4 million settlement the city had agreed to pay Jeffrey Deskovic, who was wrongfully convicted of murder.

The insurers had contended that the city was covered only for the single year in which the conviction occurred, but the insurers in September agreed to pay the entire settlement, minus the city's insurance deductibles, after Passannante successfully countered that coverage was in force for each of the 16 years Deskovic had been imprisoned.

The successful outcomes that Passannante — who worked as a mathematical economist before obtaining his law degree from Fordham University — has achieved for policyholders hardly come as a surprise to Horkovich, who has long been impressed by his colleague's dedication to his clients and craft.

Horkovich recalled an environmental liability case earlier in their careers, in which a court ordered them to turn around a quick response over the July 4 holiday and to file their appeal over Thanksgiving. They ultimately received a landmark ruling from the appellate court in their client's favor, which held that companies can recover cleanup costs for work that they initiate voluntarily without the government's intervention.

"The case proved to me that Bill is totally dedicated to his clients and is willing to act selflessly without

personal regard to make sure that the best interests of his clients are advanced,” Horkovich said.

--Editing by Kat Laskowski.

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