

Making the Most of Litigation Talent

COUGHLIN DUFFY'S INSURANCE LAWYERS CROSS-CUT A RANGE OF PRACTICE AREAS

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Left to right, Coughlin Duffy's Justin Kinney, Robert Muilenburg, Julia Talarick, Robert Kelly, Suzanne Midlige, Christopher Franges, Kevin Coughlin, Sally Clements, Adam Smith, George Kelman, Paul Lisovicz, Vincent Reilly, Lorraine Armenti, James Lisovicz and Timothy Smith

A midsize firm with a heavily intensive litigation focus that comprises 90 percent of its practice, Coughlin Duffy carries on a special concentration in insurance and reinsurance matters. In fact, 32 of its 54 litigators devote at least part of their practice to representing carriers in defense and indemnity matters and coverage disputes. Equally notable is that the top litigators in the Insurance and Reinsurance Services Group also are versatile and active in litigation areas in which coverage disputes arise.

The firm was founded as a mass departure of 32 lawyers from McElroy Deutsch & Mulvaney in 2004, led by partners Timothy Duffy and Kevin Coughlin. It initially had two principle departments: one, headed by Duffy, for complex commercial litigation, including product liability and labor and employment, particularly for pharmaceutical and chemical companies; the other, headed by Coughlin, for carrier-side insurance services with an emphasis on coverage issues. Among the carrier clients that came in tow was Zurich-American Insurance Group.

Since then, the firm has expanded its practice areas but has kept its litigation ranks close, thus requiring it to make the most efficient use of professional staff. Three litigation practice groups serve as the foundation for litigators, providing the structure and oversight for case management and professional development.

Coughlin Duffy draws on its investment in technology and litigation support software to streamline the litigation process and to control costs. A document management system and litigation support software assist with the review, coding, redaction and production of the voluminous documents that form a part of nearly every complex litigation matter.

In the insurance/reinsurance practice, the firm has developed proprietary computer software to assist clients in modeling past, present and future financial exposure under a variety of litigation scenarios. It also draws on a number of client- and practice-specific databases to seek to ensure consistency of client positions and to retain outside professionals, consultants, experts, mediators and arbitrators.

Coughlin Duffy by the Numbers		
	Firm-wide	N.J. Office
Department Size	54	51
Department as percentage of firm (head-count)	89%	84%
Department as percentage of firm (revenue)	90%	81%

Major Litigators:

- Suzanne Midlige, managing partner, former leader of Insurance and Reinsurance Services Group — focuses on representation of domestic and international insurers and reinsurers in litigated and non-litigated matters, such as disputes relating to financial institutions, directors and officers, asbestos, pollution and health hazards. Midlige was one of the defecting McElroy, Deutsch partners that founded the present firm in 2004.
- Kevin Coughlin, founding partner, former managing partner — defends insurance companies and reinsurance companies in coverage litigation and arbitrations in numerous jurisdictions throughout the United States and Europe. In the commercial area he represents multinational clients in disputes arising out of commercial transactions, including non-U.S. transactions with implications within the United States. He also counsels non-U.S. companies doing business in the U.S.
- Robert Kelly, founding partner — has appeared in jurisdictions nationwide on behalf of insurers and other commercial clients. His practice includes insurance litigation and counseling, commercial litigation, environmental and toxic tort litigation, bad-faith litigation, and professional liability litigation.
- Lorraine Armenti, partner — focuses on the representation of domestic insurers in complex insurance coverage disputes in several different areas, including environmental, toxic tort, construction defect, products liability and professional liability. For two decades before joining Coughlin Duffy, Armenti concentrated her practice in the management of complex coverage litigation across the United States, establishing McElroy Deutsch's Colorado office in 1991 for that purpose and participating in one of the largest mining coverage cases litigated in that state. She joined Coughlin Duffy upon its inception in March 2004.
- Timothy Smith, partner — practices in the areas of appellate litigation, products liability, construction defect, premises liability, insurance coverage, commercial litigation and workers' compensation. His appellate practice encompasses casualty, commercial, and insurance litigation. He joined Coughlin Duffy as a partner at its inception in March 2004.

Cases of Note:

• *JPMorgan Chase & Co. v. Indian Harbor Ins. Co.*, New York Appellate Division, First Department — Firm represented insurance company client, Swiss Re International SE, before New York's highest appellate court, achieving a ruling affirming the dismissal of approximately \$95 million in claimed Bankers Professional Liability and Securities Claim coverage, \$50 million of which was issued by Swiss Re, for underlying suits filed against Bank One. JPMC sought over \$175 million in insurance coverage under primary and excess policies issued to Bank One in 2002. These underlying suits sought damages based on the insured's role as indenture trustee and otherwise for certain notes issued by affiliates of National Century Financial Enterprises, Inc., a now-defunct entity that was alleged to have run a Ponzi scheme involving securitization of medical accounts receivables. JPMC settled with the underlying plaintiffs and then sought coverage under Bank One's Bankers Professional Liability and Securities Claim policies.

(Lead attorneys, Robert Kelly, Sally Clements and Maida Perez)

• *Marolda Farms v. Maryland Casualty Insurance Co.*, Superior Court of New Jersey, Appellate Division — Firm successfully represented Maryland Casualty, Zurich American and Continental Insurance Companies against an effort to void previously entered settlement agreements, affirming dismissal of the complaint. The appeals court agreed with Coughlin Duffy that the plaintiffs had failed to establish that the Superior Court of New Jersey had jurisdiction to void settlement agreements entered between defendant insurers and their insureds that were formally incorporated into a consent decree approved by a federal district judge. The settlement agreements at issue provided a site release to the defendant insurers for any claims under policies issued to its insureds relating to certain environmental contamination.

(Lead Attorneys, Suzanne Midlige and Michael Hrinewski)

• *Admiral Ins. Co. v. Joy Contractors, Inc.*, New York Court of Appeals — The firm achieved a significant victory for an insurance company client regarding additional insured issues, in particular the case of the recession's impact on additional insureds. Admiral Insurance Company instituted a declaratory judgment action seeking among other things, rescission and other equitable relief based on material misrepresentations made by Admiral's named insured in applying for the insurance. Admiral also sought a declaration that it owed no coverage for claims arising out of a crane accident based on a Residential Construction Activities Exclusion contained in the Admiral policy. The New

York Supreme Court ruled that a question of fact existed precluding summary judgment as to the application of the Residential Construction Activities Exclusion and dismissed Admiral's claims for rescission and related relief as against putative additional insureds on the ground that such claims were not valid as against those parties where they made no misrepresentation.

The Court of Appeals reinstated Admiral's claims for rescission and relief related to the misrepresentations. And, on an issue of first impression, the court held the rescission claim properly could be pursued against innocent additional insureds because a rescinded policy does not exist and so could not be deemed to exist for any additional insureds.

(Lead attorneys, Justin Kinney and Michael Chuyen)

• *Arrowood Indemnity Company v. Metallo Gasket Company*, U.S. District Court for the District of New Jersey — In a series of rulings, the firm successfully moved for reimbursement from Arrowood's insured, Metallo Gasket Company, with respect to underlying asbestos bodily injury claims for which Arrowood had been paying 100 percent of the defense and indemnity on behalf of Metallo for over 30 years. After obtaining initial rulings that *Owens-Illinois* governed the parties' rights and obligations, the Court held that Arrowood was entitled to reimbursement from Metallo for any amounts paid by it in excess of its *Owens-Illinois* share for the period of Feb. 7, 2009, through Feb. 16, 2012. (Although Arrowood's declaratory judgment action sought reimbursement for all past costs, its motion focused only on the period of Feb. 7, 2009 through February 16, 2012.) In its Sept. 10, 2012, ruling, in which the firm sought entry of final judgment on its reimbursement claim in the amount of approximately \$800,000, Judge Thompson rejected Metallo's last-ditch attempts to argue estoppel and waiver in its efforts to avoid payment to Arrowood. Rather the court found that the only issue remaining between the parties was the amount owed to Arrowood for its reimbursement claim. Ordering limited discovery on the issue of the proposed allocation, the court administratively terminated the motion pending that discovery.

(Lead attorneys, Lorraine M. Armenti and Maida Perez)

• *Tudor Ins. Co. v. First Advantage Litigation Consulting*, U.S. District Court for the Southern District of New York — Firm obtained summary judgment for Zurich American with respect to a lawsuit seeking coverage for an underlying defamation claim. Judge Katherine Forrest found there to be no coverage for defamation claims asserted against First Advantage. Zurich had issued commercial general liability coverage, including personal and advertising injury coverage. The policy contained an exclusion for injury arising out of material first published before the inception date of the Zurich policy. First Advantage had been held liable for defamation following a jury trial at which the jury found liability based upon defamatory statements first published before the Zurich policy inception. Judge Forrest held that the prior publication exclusion in the Zurich policy excluded indemnity coverage for the jury verdict against First Advantage, and further held that Zurich has no further defense obligation with respect to the underlying action which is currently on appeal. This victory protected the client from a significant potential exposure.

(Lead Attorneys, Kevin Coughlin and Robert Kelly) •