Our request was simple: Tell us a story. We asked our readers to nominate litigators who prevailed during 2012 before a bench or jury trial. It helped if they had overcome tough odds and high financial stakes or a principle or precedent was at risk. We hereby share the five tales we liked the best.

This Trial Team Overcame a Personal Tragedy

Just weeks before trial opened, lead litigator and mentor Randy Paar died in an accident.

ROBIN COHEN

TRIAL TIPS

1. First and foremost, a great litigator has the ability to take complex and sometimes arcane insurance terms and simplify them for a judge, jury or client.

2. Second, he or she has the ability to exude confidence, answers questions posed by the court directly and is passionate about the positions he or she is espousing.

3. Third, he or she is three to five steps ahead of the adversaries from a strategic point of view. Being able to anticipate and prepare for the various maneuvers of the insurance industry is critical.
BY LISA HOLTON

For more than four decades, asbestos litigation has kept skilled lawyers on their toes. That’s been true for Kasowitz Benson Torres & Friedman’s Robin Cohen for the past 25 years.

But a case decided in November in favor of client Warren Pumps Inc. presented more than the usual professional challenges. She had to step in at the last minute after her law partner and friend Randy Paar died suddenly from a fall in June 2012, four months before trial.

“She was the heart of our team and suddenly she was gone,” Cohen said. “I had been at the 800-foot level in the case, but she was in the weeds, doing the day-to-day work. The first week, it was impossible for me to do anything, but afterwards I literally worked around the clock during the three to four months around the trial, because I’m all about preparation and I needed to get closer to the case.”

Cohen went up against more than a dozen excess insurers who threw lawyers and experts at her team, challenging the client’s claims from all angles.

“It’s important to understand what’s happening in my industry,” Cohen said. Berkshire Hathaway Inc. has been buying insurers’ asbestos liabilities and taking control of their defense with significant legal and expert firepower. “What’s happening is that they are starting to test [legal] positions we feel are unreasonable when their ability to pay was clearly covered under these policies,” said Cohen, head of Kasowitz’s insurance-recovery group.

She and her 40-member team work mainly for Fortune 500 corporations on asbestos, products liability, toxic tort, environmental, directors-and-officers, first-party, employee dishonesty and employment-coverage matters. “When you cut to the core, the insurers want to wipe out liabilities and make coverage illusory.”

Cohen’s November victory for Massachusetts-based Warren Pumps in Delaware Superior Court—after five hours of jury deliberation—followed two key rulings Cohen won in 2008 and 2009. These allowed the company to allocate its claims among its insurance policies using an all-sums methodology—meaning that Warren could choose which insurance policies it wanted to pay “all sums” associated with a particular claim.

The jury decided several significant points, including that the insurers were required to pay defense costs under the triggered policy. The jury also concluded that, under New York law, coverage for asbestos suits is triggered when parties suffering asbestos-related illnesses including mesothelioma show they first suffered cellular or molecular damage from inhaling the substance.

Those findings “will have an impact on other cases,” Cohen said. “It’s important.”

Paar, an experienced litigator and the daughter of former Tonight Show host Jack Paar, fell from a train platform in New York’s Grand Central Terminal and hit her head on a rail. She never regained consciousness. “We worked closely for 25 years. We were friends,” Cohen said. “She was one of the best law advocates. I learned from the best.”

Kasowitz Benson Atlanta partner and asbestos liability specialist Michael Hutchins joined the team after Paar’s death “and he was just superb and a great complement to my style,” she said, referencing her intensity in the courtroom. Also on the case were Keith McKenna of Kasowitz Benson, Steven Roman of Dickstein Shapiro and John James of Potter Anderson & Corroon.

Cohen, a former managing partner of Dickstein Shapiro’s New York office, had planned a career in litigation and insurance presented itself as a specialty early on. Initially, she thought she’d represent insurance companies, but quickly found she preferred representing policyholders. The work she found “very good for my personality. I love being the plaintiff, pushing litigation forward while the defendant likes to delay,” she said.

Working for top-tier clients as policyholders is great, she said, “because I can litigate with the resources of a defendant. The individual plaintiff or policyholder unfortunately doesn’t have those resources.”

The best insurance plaintiffs’ teams can blast through any obfuscations the insurers might throw up, according to Cohen.

“A good insurance litigator needs to know that the insurance industry is trying to make it as confusing as possible to represent clients,” she said. “They want to muck it up as much as possible. You need to know how to communicate clearly and simply to a jury—you need to have very good graphics with very few words. I’m more analytical than visual, but any time someone hands me a slide, I usually take it out and read the words.”

Also important is to involve a “noninsurance person” from the client company in the case—someone engaged in its actual business dealings. During the Warren Pumps case, this person attended every day of the trial. “They were very good at spotting when we were getting too technical, and they could see moments when we weren’t reaching the jury. You need that.”

Opposing attorneys praised Cohen’s perseverance. “I have worked on a number of cases with Robin over the years,” said James Ruggeri, a litigation partner at Shipman & Goodwin. “Robin is known as a tough litigator. She is very good on her feet.”

He added, however, that “one of Robin’s unique strengths in my view is her ability to switch from litigator to negotiator and back to litigator, as needed. Robin negotiates hard and creatively works toward resolutions that benefit her clients. In my view, Robin is one of the best on the policyholder side of the bar.”

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