The Sure Thing
Robin Cohen brings her blockbuster insurance recover practice to McKool Smith
By Katrina Dewey

“Hi. This is Robin Cohen you may not know me, but I’d like to talk to you about an opportunity.”

Being a direct kind of guy, he just called back.

The result? Earlier this week, McKool Smith added Robin Cohen’s world-class insurance coverage practice to its portfolio of litigation all-stars. Cohen is considered one of the elite insurance coverage lawyers in the U.S. – with billions in recoveries to her credit – and headed the practice at Kasowitz.

“I vaguely knew who she was, and we didn’t have anything like her kind of practice,” said McKool. “When I looked her up, I thought wow. This is something. And as I got to know her, there was no question in my mind she had an incredible practice, and even more important, she was our kind of person.”

“It’s a new adventure, a very different structure,” said Cohen, in an interview. While Kasowitz was very generous and supportive of our group, “my personality fits better in a more democratic and transparent vibe.”

That’s exactly what she found at McKool Smith, which McKool left Dallas’ Johnson & Gibbs to found in 1991 because of a desire to take on contingency litigation and build a new type of law firm. He and co-founder Phillip Smith Jr. succeeded wildly, riding a wave of contingency litigation – especially patent matters – to regular starring roles in the nation’s biggest verdicts each year. In the past few years, McKool has focused on building New York and diversifying the firm’s litigation portfolio.

McKool Smith’s litigation mix is roughly half, or more, contingency, according to McKool. And, he says, he has some experience with D&O coverage litigation from the ‘90s defending 200 officers and directors of collapsed financial institutions that had been sued by the Federal Deposit Insurance Corporation.

His takeaway? “I thought insurance companies made very fine defendants.”
For her part, Cohen has built an enormous practice on savvy legal skills, an entrepreneurial instinct for finding coverage and the annuity provided by the insurance industry’s ongoing commitment to deny coverage.

Cohen’s team was part of a fabled insurance coverage group at Dickstein Shapiro, including Kirk Pasich (now at Liner LLP) and Jerry Oshinsky (still at Kasowitz, with Linda Kornfeld). In 2010 Cohen led her group to Kasowitz, which appeared to offer a more stable platform than the already faltering Dickstein. While Kasowitz certainly had litigation firepower, it presented business conflicts that were not ideal for Cohen, who had the firm’s second largest book of non-contingent business in the last two years.

Her recent successes and current caseload are impressive, with each individual matter carrying the potential for industry-wide impact on coverage claims. She won a jury verdict for Warren Pumps worth hundreds of millions of dollars in asbestos liability coverage, which is on appeal; represents one of the officers of a standing committee of FIFA, the world soccer governing body, seeking coverage of defense costs for his criminal indictment; settled coverage issues for Spirit Airline for two class actions alleging violation of privacy laws; represents Verizon seeking coverage for defense costs in a billion-dollar Texas lawsuit, which they defeated in full; and helped Syracuse University win coverage for investigations into sexual abuse allegations against a former associate basketball coach.

The opportunity also presents tremendous flexibility for her clients. “It’s great because McKool does a lot of creative fee arrangements. I’m starting to represent a lot of hedge funds and private equity and they’re really open to partnering up,” she says. When a private equity firm acquires a portfolio company, they review its coverage to see if it’s sufficient for the liability. If they are hit with a large lawsuit, often a class action, they’ll bring Cohen in to see if there’s coverage and, if denied, to try to get the carrier to pay. “The last two clients this happened with, they did partial contingencies, so you get a portion of the fee and a kicker at the end, which I love, because you’re partnering with your clients.”

Insurance coverage is a practice replete with conflicts at most large firms, and Kasowitz was no exception. “My cases are large coverage cases, ones with ten, twenty, thirty carriers,”
she explained. “I can’t be hampered at all, I can’t have side deals. That was becoming more difficult.” The departure, however, is amicable, with McKool and Kasowitz exchanging phone calls the day the move was announced.

And about that cold call from Cohen?

“I do my own research,” she said. At the outset she considered several options, including one large firm whose chairman she really liked, but which represented AIG.

“After that conversation, I just focused on a few litigation boutiques.” And while she knew someone at most firms, she didn’t know many lawyers at McKool.

“I woke up at 6 a.m. and called Mike at 7 a.m.” that day. “I didn’t know if he’d call me back. I said to my husband, ‘The reason I got married is so I wouldn’t be rejected.’”

She didn’t have to wait long. McKool happened to be in New York that week, the two had dinner and “just hit it off completely.”

“She’s not bashful,” said McKool, reflecting on Cohen’s call. “She’s a special person and a special lawyer. And when she said she wanted to talk about an opportunity, that was totally accurate. And an opportunity we availed ourselves of.”

Cohen and her group met many of McKool’s partners — she estimates she met 20. “They’re trial attorneys. They represent large plaintiffs in big matters. I just felt a certain culture passed forward that I was drawn to,” she said. “So we made the leap.”

Also joining McKool as principals are Elizabeth Sherwin, Adam Ziffer, Kenneth Frenchman, Keith McKenna, Natasha Romagnoli and Burt Garson. Over time, Cohen expects that number to grow. “We started with New York, because our group is large. We thought it was best to integrate that group first.”

From McKool’s perspective, the process was equally vigorous, which is important given the size of the investment. “Sometimes you’re going to scrutinize the people as much as the practice,” she said. “But that was easy. It only took one meeting with Robin and her group before I felt completely comfortable that they were the right kind of partners and fit with the fabric of our organization.”

McKool Smith represents a number of Fortune 500 companies in its specialty litigation and intellectual property practice, but they do not represent insurers.

“As a firm whose business preponderates on the plaintiff side, you will see fewer conflicts,” he said. Importantly, he said, the Cohen crew brings an appetite for risk. “We like betting on our ability to achieve a result. And not every person goes for that kind of risk. You have to have the resilience to accept you’re not going to win every case,”

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In addition to adding a great group of people, McKool sees two distinct business advantages. First, it significantly amps the New York office in size and profitability, elevating it in the very, very competitive market of top national firms seeking elite N.Y. status.

Second, it adds another dimension to the McKool Smith litigation portfolio. While litigation overall has remained a stagnant market, McKool’s perch in it has been vibrant. “And you couldn’t ask for a more vibrant practice” than insurance coverage, McKool says.

“It’s like a company making saddle and tack in 1900. You better move into making car seats pretty quick,” he explains. “We couldn’t spell patent in 1995. But it was quite clear it was coming, so we crossed our fingers and built an infrastructure.”

The firm went on to win multi-billions in patent litigation. McKool sees insurance coverage as a similar wave, but one he considers more of a sure thing.

In part, that’s because of Cohen herself. “I have, my entire career, at least as a law firm leader, based most of my decisions on betting on people. There are winners in the world who figure a way no matter how things mutate or change and they’ll be winning. Robin’s obviously come out of that mold.”

Cohen’s kids also applauded the move. “My 14-year-old son said, ‘The firm name is so much ‘Kooler’. ”