Our award-winning Insurance Recovery Litigation practice represents corporate policyholders in maximizing their insurance coverage, drawing on more than 30 years of experience to effectively lead clients through high-stakes coverage and liability disputes against their insurance providers. Collectively, our lawyers have obtained more than $8 billion in insurance-related recoveries for clients across a broad range of industries, including manufacturing, chemical, entertainment, pharmaceutical, financial, education, and healthcare.

Because insurance is a valuable corporate asset, we develop creative solutions to protect our clients' interests and maximize their recoveries for losses and liabilities. Our trial-ready approach communicates to both our clients and opposing counsel that we are fully committed to securing a favorable resolution on our clients' behalf, whether through settlement, motion, alternative dispute resolution, or—if necessary—at trial. Most importantly, we partner with our clients to develop effective strategies that take into consideration the broader business, legal, and public relations implications of each matter we handle.

McKool Smith has been awarded 2017 "Insurance Litigation Department of The Year" by The New York Law Journal and recognized as a 2016 and 2017 "Insurance Practice Group of the Year" by Law360. We are also top-ranked (Band 1) in New York by Chambers USA, which notes that our practice "handles the most complex and high-profile coverage cases and class actions" and is "well known for regularly securing key verdicts at trial and appellate level for major corporate clients facing significant liability exposure" (2016).

Team Accolades:

Robin Cohen:

- Ranked by Chambers USA both national (Band 1) and in New York (Band 1) as a leading lawyer in the area of Insurance: Dispute Resolution: Policyholder (2016). The 2016 edition notes that Robin is "acclaimed as a highly successful and experienced insurance trial lawyer who undertakes complex and extremely significant matters in areas including toxic torts, product liability and asbestos claims." Sources say: "She's no-nonsense, gets right to the point, and is incredibly smart and savvy." She is also described as "an outstanding trial attorney who is highly skilled at securing large scale recovery and settlements on behalf of her clients."

- Awarded "Professional Excellence Award for Distinguished Leadership" by The New York Law Journal, 2017

Related Practices

Commercial Litigation
Recognition: Insurance Recovery

- Recognized as "Litigator of The Week" by AmLaw Litigation Daily following a significant insurance recovery victory for Verizon, 2017
- Awarded "Insurance Litigator of the Year" by Benchmark Litigation, 2016
- Recognized by The Legal 500 as a leading lawyer in the United States for Insurance: Advice to Policyholders, 2016
- Named an Insurance MVP by Law360, 2013-2017
- Recognized as one of the “Top 250 Women in Litigation” by Benchmark Litigation, 2015-2017.
- Awarded “Best in Insurance and Reinsurance” by the America’s Women in Business Law Awards, 2017 and 2014
- Listed among the Lawdragon 500 Leading Lawyers in America, 2013-2017
- Recognized as one of the “50 Most Influential Women Lawyers” in America by The National Law Journal

Kenneth H. Frenchman:
- Ranked by Chambers USA as a leading lawyer in New York (Band 3) for Insurance: Dispute Resolution: Policyholder. The 2016 edition notes that he is a “a very solid insurance recovery lawyer” who is “very smart and very capable.”
- Recognized by The Legal 500 as a recommended lawyer in the United States for Insurance: Advice to Policyholders. The 2016 edition notes that he “does a fantastic job.”

Keith McKenna:
- Ranked by Chambers USA as a leading lawyer in New York (Band 3) for Insurance: Dispute Resolution: Policyholder. The 2016 edition notes that he is “incredibly effective” and credits him as a “great and convincing writer.
- Recommended by The Legal 500 as a recommended lawyer in the United States for Insurance: Advice to Policyholders, 2015

Adam Ziffer:
- Recognized by The Legal 500 as a recommended lawyer in the United States for Insurance: Advice to Policyholders, 2015-2016
- Named a “Rising Star” by Law360, 2010
Insurance Recovery (cont’d)

Elizabeth A. Sherwin:

- Recognized as a NY Metro Super Lawyer, 2006-2015
- Ranked a “Local Litigation Star” by Benchmark Litigation, 2015
- Recognized as one of the “Top 250 Women in Litigation” by Benchmark Litigation, 2017

Representative Matters

- **Apex Parks Group.** Representation of Apex Parks Group in securing a $10 million verdict against Protective Life Insurance Company. The verdict was announced on September 21, 2018 after a 7-day jury trial in State Court in Alabama. Jurors awarded Apex $10 million in damages finding that Protective Life unjustifiably breached its contract with Apex when it refused to pay death benefits owed under a key man insurance policy issued on the life of Apex’s Chief Executive Officer after his untimely death.

- **WoodSpring.** Representation of WoodSpring Hotels LLC in its pursuit of coverage under a primary D&O policy for defense and indemnity amounts arising out of a lawsuit brought by a competitor alleging that WoodSpring and its former employee obtained and distributed the competitor’s confidential electronically stored information in order to lure customers away from a competitor. In May 2018, WoodSpring’s motion for summary judgment was granted requiring AIG to pay WoodSpring’s defense costs.

- **QBE Americas (QBE).** Representation of QBE in securing a major victory before New York’s Appellate Division, First Department, that revived the company’s breach of contract claims for the failure of its professional liability insurers to pay defense and settlement costs in connection with more than 50 underlying actions rising out of QBE’s former lender-placed insurance (LPI) business. On September 20, 2018, the Court agreed with our attorneys that the Supreme Court “construed the Fee Arrangement Exclusion too broadly” in granting QBE’s insurance company professional liability insurers’ summary judgment that the exclusion applied to bar QBE’s claims for coverage. The Court also acknowledged that QBE is entitled to recover its defense costs under New York law if the underlying actions allege facts “that potentially fall within the scope of coverage,” and directed the lower Court to consider all arguments raised by the Parties on summary judgment on remand.

- **Cushman & Wakefield.** Representation of Cushman & Wakefield, the world’s largest privately held real estate services firm, in securing a summary judgment ruling from the U.S. District Court for the Northern District of Illinois which allows the company to access $48 million in coverage from four insurers to cover defense costs and settlement payments in connection with four lawsuits concerning underlying appraisal-related claims. The court also rejected the insurers’ counterclaims for recoupment of over $33 million already paid to Cushman by the carriers.

- **New Jersey Transit Corporation.** Representation of New Jersey Transit Corporation in securing a decisive victory in New Jersey state court allowing the company to access up to $400 million in insurance coverage from a group of excess insurance carriers to make much-needed repairs to its property following the devastating impact of Superstorm Sandy. The court rejected the insurers’ attempts to enforce a $100 million “flood” sublimit in the policies finding that Superstorm Sandy met the policies’ definitions of “named windstorm,” for which there is no sublimit.

- **Verizon Communications Inc., Verizon Financial Services LLC and GTE Corporation (collectively, “Verizon”).** Representation of Verizon in securing a victory before the Delaware Superior Court, which ruled that the company’s insurers must provide coverage for tens of millions of dollars in legal fees and costs incurred in successfully defending against a $14
billion lawsuit filed against Verizon in connection with the spin-off of its directories businesses, which later filed for bankruptcy. The court granted summary judgment to Verizon, finding that the policy’s “Securities Claim” provision could be read to encompass a lawsuit alleging a violation of any statute or rule, including a common law rule, that must be followed to properly engage in a securities transaction, and that the lawsuit against Verizon contained such allegations.

- **Warren Pumps LLC.** Representation of Warren Pumps LLC in a case seeking coverage from more than a dozen insurance companies for thousands of asbestos-related claims. The firm’s lawyers have secured several high-profile courtroom victories for Warren, including a decisive jury verdict worth hundreds of millions of dollars, as well as landmark decisions from the New York Court of Appeals on the allocation of long-tail claims and the Delaware Supreme Court on critical issues, including assignment of policy rights and the trigger of coverage, which have allowed Warren to access more than $500 million dollars in asbestos insurance coverage limits.

- **Eduadro Li.** Representation of Eduardo Li, a former official of the Federation Internationale de Football Association (“FIFA”) in securing a preliminary injunction ordering immediate insurance company payments to fund Mr. Li’s defense in a high-profile criminal action. The court also denied the insurers’ motion to dismiss based on jurisdictional grounds and a Swiss forum selection clause in the insurance policy, finding that such clauses were unenforceable against an official who did not specifically agree to forego the protections of a U.S. court.

- **Teachers Insurance and Annuity Association of America (“TIAA”), College Retirement Equities Fund (“CREF”), and other related entities (collectively, “TIAA-CREF”).** Representation of TIAA-CREF in an insurance coverage lawsuit filed in Delaware Superior Court in May 2014 against certain of TIAA-CREF’s primary and excess professional liability insurers seeking reimbursement of more than $60 million for the costs of defending and settling three class action lawsuits alleging claims relating to delays in processing account holders’ transfer requests in certain investment accounts. Obtained a landmark decision from President Judge Jan Jurden granting summary judgment to TIAA-CREF on October 20, 2016 (which was further reaffirmed on November 16, 2016, when the court denied the insurers certification of an interlocutory appeal), finding that a civil settlement of a lawsuit involving claims for disgorgement was an insurable loss under New York law, and secured a jury verdict on December 12, 2016, following a six-day trial, finding that one insurer waived its consent to settle defense and that TIAA-CREF was entitled to recover 100% of its defense costs as reasonable and necessary.

- **Pella Corporation.** Representation of Pella Corporation and various of its subsidiaries against numerous insurance companies in several Iowa federal court actions in which Pella is seeking insurance coverage for underlying lawsuits pending against Pella, including more than 20 class action lawsuits, which allege that certain Pella windows and doors were defective and, as a result, leaked and caused water damage. On November 1, 2016, McKool Smith’s lawyers obtained a summary judgment ruling holding that various of the pending lawsuits against Pella alleged a covered “occurrence,” defined as an “accident,” despite insurers’ contention that “foreseeable” damage caused by an insured's defective work cannot give rise to an “occurrence” under applicable Iowa law. Because the existence of an “occurrence” was a threshold issue that Pella must establish in order to obtain insurance coverage, this ruling is significant to Pella’s pursuit of insurance coverage. In January 2018, an Iowa federal court has ruled that Liberty Mutual Insurance Co. must foot the bill for McKool Smith client Pella Corp.’s defense as the window maker fights dozens of product liability claims, a decision that ends one phase of the companies' contentious dispute and potentially unlocks millions in coverage for Pella.

- **Givaudan Fragrances Corporation.** Representation of Givaudan Fragrances Corporation in securing a landmark victory for corporate policyholders with far-reaching implications in protecting a corporate insured’s right to reorganize its business as it sees fit, without fear of risking the forfeiture of its historic insurance coverage. The unanimous New Jersey Supreme Court decision upheld an earlier appellate court ruling that affirmed Givaudan’s right to seek more than $500 million in insurance
Insurance Recovery (cont’d)

coverage for governmental and private claims related to environmental damage to the Passaic River and Newark Bay.

Prior to joining McKool Smith:

- **IMO Industries.** Representation of IMO Industries in a landmark appellate decision affirming its policyholder rights to coverage for tens of thousands of underlying asbestos claims under its $1.8 billion-dollar insurance coverage program. In an extensive 114-page opinion, the New Jersey Appellate Division affirmed trial court rulings in favor of the policyholder after a four-day bench trial as well as rulings in the policyholder’s favor in nearly a dozen substantive motions decided by the trial court.

- **MBIA.** Secured a judgment in favor of MBIA just four months after the filing of the complaint in the Southern District of New York, in which the judge declared that the London market must pay MBIA's tens of millions of dollars in costs related to the defending suits arising from the restructuring of its core business operations.

- **Visa Inc.** Obtained summary adjudication on behalf of Visa Inc. regarding critical coverage issues of first impression in California, followed by a highly favorable settlement for losses arising from a class action alleging violation of consent-to-record provisions of California’s Invasion of Privacy Act and other similar state statutes. In January 2012, the firm’s lawyers, led by Robin Cohen, obtained summary adjudication for Visa against its primary Professional Liability, Technology, and Multimedia insurer on one of the carrier’s major defenses, successfully arguing that fixed, minimum statutory damages available under the act and similar statutes are not excluded under the policies. In March 2012, the California Supreme Court denied the carrier’s petition for interlocutory review of the decision, after which the case settled in August 2012.

- **Cushman & Wakefield.** Secured a dismissal on behalf of Cushman & Wakefield involving breach of contract and negligent misrepresentation claims brought by a property owner, Orient Overseas Associates, alleging failure to provide sufficient coverage limits for recovery costs incurred as a result of Superstorm Sandy.

- **Southern National Gas Company.** Representation of Southern National Gas Company in a successful appeal in a pollution coverage case where the Alabama Supreme Court upheld verdicts in two separate trials, relating to coverage issues of first impression involving environmental damage caused by pipeline operation. The decision secured coverage worth millions of dollars from Underwriters at Lloyd's London.

- **Hilco Trading LLC.** Representation of Hilco Trading LLC in a successful appeal on behalf of the company’s subsidiaries where an Illinois appeals court granted Hilco summary judgment, ruling that Liberty Surplus Insurance Corp. had a duty under professional liability policies to defend Hilco’s respective subsidiaries against claims that they inflated appraisals. Reversing the lower court’s decision, the appeals court accepted the firm’s argument on behalf of Hilco Appraisal Services LLC and Hilco Enterprise Valuation Services LLC’s that the underlying suits involved professional services provided to a “third party,” as required by Liberty and excess insurer Ace unit Illinois Union Insurance Co.’s policies. The dispute was over defense coverage for lawsuits in which Patriot Group LLC and Bayerische Hypo-und Vereinsbank AG’s New York branch accused Hilco Appraisal and Valuation of preparing erroneous appraisals that Patriot and HVB allegedly relied on when providing loans worth millions of dollars to Hilco Financial LLC.

- **Syracuse University.** Representation of Syracuse University in a successful appeal when the New York Appellate Division, 4th Department, unanimously affirmed the trial court’s summary judgment ruling, which awarded Syracuse its costs that it had incurred in responding to a number of state and federal grand jury subpoenas investigating the facts and circumstances relating to allegations of sexual abuse made against the university’s former associate basketball coach in December 2012.
Insurance Recovery (cont'd)

• **Convergys Corp.** Representation of Convergys Corp. in securing summary judgment of a coverage dispute in which the District Court for the Southern District of Ohio ordered the policyholder’s umbrella insurance company to immediately pay the policyholder’s costs of defending two privacy class actions.

• **MBIA Inc.** Representation of MBIA Inc. in obtaining full coverage in a Second Circuit appeal in its action to recover tens of millions of dollars from its directors and officers insurers for losses associated with federal and state regulators’ investigations and related derivative actions. The firm obtained a landmark ruling from the U.S. District Court for the Southern District of New York, awarding MBIA coverage for costs incurred by MBIA’s special litigation committee in responding to two shareholder derivative actions as well as coverage for costs incurred in responding to the regulatory investigations. The District Court, however, denied MBIA coverage for certain costs that were part of MBIA’s settlement with federal regulators. On appeal, the Second Circuit affirmed the District Court’s ruling in favor of MBIA and reversed that portion of the District Court’s ruling in favor of the insurers, resulting in a full recovery for MBIA.

• **Louisiana Pacific f/k/a ABT Building Products Co.** Secured multimillion-dollar settlements and a jury verdict on claims for coverage and insurer bad faith against the sole non-settling defendant, on behalf of Louisiana Pacific f/k/a ABT Building Products Co., one of the largest manufacturers of building materials, in its action to recover from its general liability insurers for losses arising from lawsuits concerning allegedly defective hardboard siding. With respect to the only “holdout” carrier, National Union Fire Insurance Company of Pittsburgh, Pennsylvania, a team led by Robin Cohen filed suit in the United States District Court for the District of North Carolina, which was later tried to a jury resulting in a verdict for breach of contract, bad faith, and punitive damages worth tens of millions of dollars. The team also recovered all of ABTco’s attorneys’ fees and pre-judgment interest. The jury verdict and court award were affirmed in their entirety by the Fourth Circuit Court of Appeals.

• **Appleton Papers Inc.** Representation of Appleton Papers Inc. in defeating insurers’ claims for declaratory judgment that they were not required to insure for environmental liabilities arising from contamination of the Fox River in Wisconsin, one of the largest CERCLA sites in the country with clean-up costs that could exceed $600 million. At trial, the jury returned a unanimous verdict in favor of API. The court of appeals has since affirmed the jury verdict in its entirety.

• **Tyson Foods Inc.** Negotiating extremely favorable settlements on the eve of trial on behalf of Tyson Foods Inc. in its coverage litigation arising from losses suffered as a result of Hurricane Katrina, which focused on the scope of the contingent business interruption insurance provided under the policies at issue. The settlement covered almost the entire loss.

• **The Port Authority of New York & New Jersey.** Representation of The Port Authority of New York & New Jersey in securing an early settlement in connection with the pursuit of insurance coverage arising from liabilities resulting from the 1993 terrorist bombing of the World Trade Center, after defeating the insurers’ efforts to send the case to arbitration, which allowed the client to conduct needed discovery to replace documentation lost in the 9/11 attacks. While discovery was in the early stages, the Port Authority agreed to a beneficial confidential settlement agreement that confirmed that the insurer would meet its coverage obligation.

• **Philips Electronics North America Corporation.** Representation of Philips Electronics North America Corporation in recovering hundreds of millions of dollars in asbestos coverage proceeds and its subsidiary, THAN. In coverage actions brought in Illinois, the firm’s lawyers obtained a series of summary judgment rulings requiring the primary carriers to provide a complete defense against the underlying asbestos actions, resulting in significant settlements.

• **Philips Lighting Company.** Obtained summary judgment requiring insurers to provide a complete defense to Philips Lighting Company in connection with 4,000 underlying toxic tort claims, after which all aspects of the coverage claim were fully and very favorably resolved.
Insurance Recovery (cont'd)

- **Adelphia Recovery Trust.** Representation of Adelphia Recovery Trust in obtaining a 2012 agreement that increased by $20 million the available insurance in connection with claims against Buchanan Ingersoll arising from the circumstances leading to Adelphia’s bankruptcy in 2002. We argued that more than one limit of liability was available to address the trust's claims, and obtained an agreement under which the insurer paid an additional $20 million solely to the trust.

- **Givaudan Flavors Corporation.** Representation of Givaudan Flavors Corporation in achieving a multimillion-dollar settlement in litigation seeking insurance coverage for losses relating to hundreds of underlying lawsuits alleging injuries from diacetyl in butter-flavored popcorn. That settlement came within a few months of the involvement by the firm's lawyers and actually exceeded the insurer's policy limits.