Insurance (Large Firm): King & Spalding

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BY MARY WELCH  
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AS A RULE, traditional big law firms tend not to brag, often deferring to their clients to speak about courtroom wins. But sometimes bragging is necessary, as when King & Spalding, in speaking about its national and global insurance disputes practice, called it a “blockbuster year.”

The firm’s notable work led the Daily Report to give King & Spalding a Litigation Department of the Year award for insurance litigation among large firms.

The firm’s insurance work included:
• Representing First Horizon in a $55 million insurance coverage dispute that settled two weeks short of trial, with the firm obtaining a very favorable court order on a partial dispositive motion.
• Obtaining a key discovery order for Columbian Chemicals that found defendant insurers had waived all objections and privileges. The win came in a case in which Columbian seeks more than $90 million from commercial liability insurers for losses from several underlying mass toxic tort cases.
• Being retained by SunTrust Banks with respect to insurance coverage for all of the insureds’ sub-prime, credit crisis, auction rate securities and lending practices claims as a result of the 2008 credit crisis. This litigation may be one of the largest insurance recovery suits stemming from the credit crisis. SunTrust is seeking more than $500 million from 16 international and domestic insurers.
• Representing First Horizon and First Tennessee Bank in seeking $75 million in insurance coverage under banker’s professional liability coverage. The case stems from the banks’ $212.5 million settlement as a result of a Department of Justice investigation pertaining to alleged False Claims Act liability for the bank’s origination of FHA-insured residential mortgage loans.

“It was a good year,” says Anthony Tatum, a partner in the business litigation practice. “The firm represented two financial institutions in a cross-office and cross-practice group, which is a strategic area of focus for us. These were all difficult cases but we don’t shoot and aim later. Behind these cases was a lot of consultations to get things resolved short of litigation. However, we have a reputation of doing well before juries, which is also a competitive advantage.”

adds Partner Meghan Magruder, “We don’t need these cases to escalate. We need to make sure that the insurance brokers can go out and get insurance the next time at reasonable rates for our clients. Another thing that helps us is that we have no conflicts. We only represent policyholders and not insurance companies and that is not the case with some other firms.”

In one of its landmark cases, the firm represented Memphis-based First Horizon National Corp. in a lawsuit against Lloyd’s of London and other excess insurers in Tennessee
federal court. The case arose from the bank’s settlement of an underlying lawsuit brought against First Horizon by Sentinel, a cash management fund that went belly up in 2007.

First Horizon incurred $70 million in losses in the underlying lawsuit — $33.3 million to defend it and $36.7 million to settle it. First Horizon had a $15 million insurance retention and demanded that its banker’s errors and omissions insurers pay the remaining $55 million of the defense and settlement costs. When the insurers refused to pay the $55 million, First Horizon brought the insurance recovery lawsuit.

First Horizon’s broker-dealer had originated and sold collateralized debt obligation (CDOs) — also known as PreTSLs — to Sentinel. Sentinel has sued First Horizon seeking hundreds of millions of dollars for alleged “unsuitability” of the PreTSL for Sentinel’s investment portfolio. The bank’s insurance companies denied coverage and asserted that several exclusions barred covered, including an “insolvency exclusion.”

“The insurers, both pre- and post-lawsuit filing, continued to assert the insolvency exclusion to deny the claim, even though there was a complete absence of any basis in the policy language or case law to take that position,” says Tatum.

“There was so much at stake, not just for our client but for others in similar situations,” Tatum says. “The bank values our relationship and views on how to handle insurance claims. In the past three years, we have worked with them on three significant insurance recovery matters.”

The firm also represents SunTrust Banks for insurance recovery for more than 200 underlying matters resulting from the 2008 economic downturn. These claims include underwriter and securities class actions, ERISA lawsuits, wrongful foreclosure suits, lender liability suits, auction rates, securities suits and other regulatory investigations with the Federal Reserve bank and other federal agencies.

In the summer of 2014, SunTrust filed suit against 15 domestic and international insurers and amended the claim a few months later, seeking more than $500 million in losses under four policy periods and towers of insurance.

The suit is one of the largest insurance recovery suits coming out of the 2008 credit crisis, says Tatum. SunTrust has filed a motion for partial judgment on the pleadings for a key coverage issue relating to the number of insurance towers available to the bank for its more than $2 billion in underlying losses.

“The interrelatedness exclusion has been asserted by some insurers since the 2008 financial crisis,” he says. “These insurers improperly seek to limit a policyholder’s recovery to only one policy year of insurance even though the policyholder received claims and lawsuits over numerous years and paid significant premiums for multiple years of insurance.”

Although these are important litigation cases, the pair says that their litigation is “episodic” with the occasion hurricane or other natural disaster popping up. But an increasingly important aspect of their practice is in cyber insurance. They help and counsel clients on getting cyber insurance and assist them in recovering insurance when there is a breach. “It’s a niche, but it’s so critical to our clients,” says Magruder.

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