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Insurance Group Of The Year: Carlton Fields

By **Alexa Scherzinger**

Law360 (February 12, 2024, 2:12 PM EST) -- After a year of achieving precedential wins defending the travel insurance industry in COVID-19-related class actions and other complex litigation, Carlton Fields has secured its first Law360 Practice Group of the Year award.

Representing a number of major insurers, Carlton Fields scored wins across multiple district courts as well as at the appellate level, setting precedent in cases involving travel insurance premium refunds and business interruption coverage during the height of the pandemic.

Now, firm executives say the number of COVID-19 class actions being filed is dwindling, with recent rulings setting the bar for future coverage decisions.

In a first-of-its-kind ruling at the federal appellate level, Carlton Fields notched a win in March when the Third Circuit affirmed the dismissal of a nationwide class action in *Francis Rivard v. Trip Mate Inc.*, where the plaintiffs had claimed that anyone with an insured trip canceled due to the pandemic should receive a partial refund.

The firm represented Crum & Forster subsidiary U.S. Fire Insurance Co. in that case, and other travel insurers, including Berkshire Hathaway Specialty Insurance Co., in similar class actions across the country. Carlton Fields shareholders Markham Leventhal and Michael Wolgin were primarily responsible for the travel insurance class actions.

As lead counsel for Homeland Insurance Co. of New York, Ace American Insurance Co. and Westchester Surplus Lines Insurance Co., Carlton Fields also achieved a series of pivotal COVID-19 business interruption coverage wins for insurers, including a May Fifth Circuit ruling in *Hotel Management of New Orleans LLC v. General Star Indemnity Co.* in which the court dismissed coverage claims from New Orleans hotels.

Carlton Fields also secured a win in *IMC Property Management and Maintenance Inc. v. Westchester Surplus Lines Insurance Co.* in July, persuading a Florida state court to recognize that business interruption coverage requires direct physical loss or damage even without specific policy wording like "direct physical."

Steve Brodie, co-chair of the firm's property and casualty insurance practice and its insurance industry



group, was primarily responsible for those class actions. He said the cases Carlton Fields has won are precedent-setting and very few new ones are being filed on the COVID-19 front.

"I think everyone thought after COVID-19 it was going to be a huge opportunity for some creative plaintiffs' lawyers," Brodie said. "They thought they'd be able to tap into the idea that COVID-19 caused property damage and therefore also triggered business interruption claims. Other than specific policies that wrote in for that type of cover, they've lost, so it's clearly not what people thought it was at first."

Brodie said the firm was active in the first large COVID-19 class action examining whether the virus caused direct physical loss or damage, and it hasn't lost a coronavirus-related property and casualty case yet.

The firm has also been involved in some of the largest insurance antitrust cases in the country, Brodie said — including *Atlantic Specialty Insurance Co. v. Blue Cross Blue Shield of Kansas*. In that case, 23 Blue Cross entities sought coverage under their directors and officers and errors and omissions policies after being sued by providers and subscribers.

As lead counsel for *Allied World Specialty Insurance Co.*, Carlton Fields obtained judgment in its client's favor, saving it \$15 million. In March, the court found the directors and officers liability policy issued did not cover claims regarding the underlying antitrust dispute.

"It's fair to say right now that if there is a significant exposure potentially impacting the industry, we're involved in it, whether it be COVID-19, institutional sex abuse claims involving an archdiocese or Boy Scouts or universities, aviation losses arising from the Russia-Ukraine war, opioids, concussions, other mass torts and things like that," said Rob DiUbaldo, co-chair of Carlton Fields' property and casualty insurance practice and the reinsurance division.

Carlton Fields represents some of the largest insurers in the world, including the majority of the top 25 life and annuity companies, in class actions and complex commercial litigation. Of the firm's 330 attorneys, nearly a third are dedicated to the insurance practice.

"We've grown from an initial practice of a few people in 2000 to where we are now, probably over 100, and represent most of the major P&C and life and annuity companies," Brodie said.

Ann Black, co-chair of Carlton Fields' life and annuity group, said the firm overall does focus on the insurance industry as a whole. In large class actions, the firm's team includes both class action litigation lawyers and regulatory lawyers just so all the bases are covered.

"We probably have the deepest bench in terms of regulatory for the life insurance industry," Black said. "There's just such a breadth of individuals in our regulatory [area] in terms of subject-matter expertise."

That collaboration, Brodie, Black and DiUbaldo agreed, is the secret to the firm's success. Having antitrust, healthcare and insurance coverage expertise gives the team a more well-rounded approach, leading to precedential wins and growth on the horizon, they said.

--Editing by Karin Roberts.