

Insurance Group Of The Year: Pillsbury Winthrop

By **Dietrich Knauth**

Law360, New York (January 26, 2011) -- Pillsbury Winthrop Shaw Pittman LLP secured victories for clients on a wide range of coverage issues in the past year, including a landmark victory that struck down a "pollution exclusion" that has been standard in nuclear liability policies since 1990, placing the firm among Law360's Insurance Groups of 2010.

Peter Gillon, co-head of Pillsbury's insurance practice, said Pillsbury benefits from having one of the oldest insurance practices in the U.S., and also has unique expertise in several areas, including insurance insolvencies, environmental liability, directors and officers insurance, and nuclear liability coverage.

Pillsbury closed out the year by celebrating the 100th anniversary of its victory in a California Supreme Court case that led to the establishment of the "concurrent causation" rule in the state. Pillsbury helped the California Wine Association recover money for inventory lost to fires in the aftermath of the 1906 San Francisco earthquake, despite earthquake exclusions in its policies.

The California Supreme Court ruled that the insurer had to pay when a loss was caused by both covered and noncovered events, establishing the concurrent causation rule that has remained controversial in several jurisdictions — recently cropping up in litigation over Hurricane Katrina losses, when insurers covered wind damages but not flood damages — but has remained consistent in California since the 1910 ruling.

"A hundred years later, Pillsbury is still involved in some of the headline-grabbing cases of today," Gillon said. Gillon himself is involved with insurance disputes arising from the Gulf of Mexico oil spill and the April eruption of Eyjafjallajokull in Iceland.

In February, a judge in the U.S. District Court for the District of Massachusetts denied a bid for reconsideration in a coverage dispute between Whittaker Corp. and American Nuclear Insurers, the monopoly nuclear liability insurer in the United States. Whitaker had sued ANI in 2005, seeking coverage for the costs of complying with a U.S. Environmental Protection Agency order that required it to investigate and remediate radioactive contamination related to the Nuclear Metals Superfund site in Concord, Mass.

In December 2009, Pillsbury partner Rene Siemens handed the ANI its second-ever defeat in litigation by a policyholder, when the judge ruled that ANI's exclusion of pollution claims was unenforceable because ANI had never properly told its policyholders that it was altering their coverage in 1990.

The ruling in the Whittaker case was the first to invalidate the pollution exclusion included in every nuclear liability insurance policy issued in the U.S. since 1990, Siemens said.

"The decision potentially affects nuclear insurance claims around the country," Siemens said.

Nuclear insurance is a strength at the firm because of its overall knowledge of nuclear regulatory issues.

"We have one of the few nuclear regulatory practices in the country," said Robert Wallan, a partner with 24 years of experience at Pillsbury. "If you want to build a nuclear power plant, and need lawyers, we're on the shortest of lists."

Siemens joined the firm in February from Proskauer Rose LLP, and was targeted by Pillsbury for his "top-shelf experience" on insurance coverage issues, including nuclear insurance experience, Wallan said. "He's really hit the ground running."

Another big case that Siemens brought with him to Pillsbury was a suit by the survivors of Holocaust victims who had been denied life insurance coverage. In January 2010, Siemens recovered more than \$500 million in claims from European insurers, after 13 years of litigation in several forums including the U.S. Supreme Court and U.S. Courts of Appeals for the Second and Ninth Circuits.

In pursuit of the case, Siemens assisted in drafting the Holocaust Victims Insurance Relief Act, a California law that requires European insurers doing business in the U.S. to disclose the identities of Holocaust victims to whom they issued life insurance policies.

Siemens, who is currently advising clients on how to recover claims from the many settlement funds created by the European insurers, said the case was unique because the claims were more than 50 years old.

The statute of limitations in life insurance cases was normally four or five years, Siemens said, but had been extended by courts and the California law because evidence, including the existence of the policies, had been concealed from potential plaintiffs.

Assicurazioni Generali SpA, the Italian insurer that was the primary defendant in the cases, denied for decades that it had any records from World War II, when, all along, "they had an entire warehouse in Trieste, Italy, with the policies neatly arranged in binders," Siemens said.

Further complicating the case were the questions of whether or not American courts were the proper forum for the claims, and the difficulty of valuing insurance policies that were issued in European currencies that no longer exist.

In another win from the past year, Pillsbury attorneys successfully fought to force insurers to cover the defense of Apartment Investment and Management Co., a real estate rental company forced to defend itself against a civil suit from the U.S. Department of Justice.

Amco was one of several defendants in a case alleging housing discrimination in apartment rentals in Kansas City, Kan. The DOJ's underlying suit ended in a combined \$2.13 million settlement in February, which the DOJ said was the second-largest payment ever obtained in a fair housing case.

Pillsbury argued that Amco's commercial general insurance liability policies should cover discrimination-based claims alleging emotional distress and claims alleging invasion of privacy. Amco won the invasion of privacy claim in an arbitration proceeding and settled its emotional distress coverage claim in court, Gillon said.

In addition to its 2010 wins, Pillsbury has been active in providing insurance counsel to maximize coverage for major disasters, including the eruption of Eyjafjallajokull, the Deepwater Horizon oil spill, and flooding in Nashville, Tenn.

Gillon, who is active in pursuing coverage from all three of those disasters, is part of the Pillsbury team representing Moex Offshore 2007 LLC, a co-owner with BP PLC of the leasehold interest in the Macondo well. After the April explosion at the Deepwater Horizon oil rig and subsequent oil spill in the Gulf of Mexico, Moex has been hit with thousands of lawsuits and investigations, Gillon said.

Pillsbury's team of six attorneys is pursuing Moex's coverage rights under multiple insurance programs for oil spill claims of tens of billions of dollars.

Gillon also represents Continental Airlines Inc. in its claims for business coverage interruption from the volcano eruption, which temporarily halted air travel in Europe and led to millions of dollars of lost revenue for airlines. Pillsbury has been Continental's primary insurance counsel since 1994, handling dozens of matters including environmental remediation at Los Angeles International Airport and business losses from Hurricane Ike.

The May 30 flood in Nashville killed 30 people and caused estimated damages of more than \$1 billion, Pillsbury said. Gillon is representing Gibson Guitar Corp., which claims losses of \$50 million in ruined inventory and business interruption, as well as HMSHost Corp.

Methodology: In mid-November, Law360 solicited submissions from more than 300 law firms for its practice group of the year series. The more than 400 submissions received were reviewed by a committee of four editors. Winners were selected based on the number of significant wins the group had in litigation or the size, number and complexity of deals the group worked on in 2010.