

Q&A WITH PILLSBURY'S PETER GILLON

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Peter Gillon has achieved national recognition for his experience in representing major corporate policyholders, from airlines to energy companies, in their dealings with insurance companies, both in claims disputes, and in transactions, such as insurance placement or structuring liability transfers.

Gillon's areas of concentration include insurance coverage litigation involving all major lines, including executive liability (D&O, fiduciary, fidelity, EPLI), disaster-related property and business interruption losses, and pollution liability; negotiation of insurance coverage, including environmental risk transfer; advising companies on coverage needs, terms and conditions; and environmental risk management in real estate transactions and bankruptcy.

Q: What is the most challenging case you have worked on and what made it challenging?

A: The most challenging case I've handled over the past 30 years of practice was the insurance coverage claim arising from remediation of contamination at scores of airports by one of the global airlines. We had negotiated a great settlement of the claim with Underwriters at Lloyds London, but the deal was contingent upon the airline's agreement to indemnify the insurer against potential future claims by third parties, such as airports, that were listed as additional insureds under the historic policies. However, because the airline was operating in bankruptcy, providing an indemnity to Lloyd's was a nonstarter; that would turn the third parties' prepetition bankruptcy claims, payable in cents on the dollar into post-petition claims, payable in full. An airport would need only file a claim against Lloyd's and, by virtue of being indemnified by the debtor gain a leg up on other creditors.

We were in a stalemate for months until one day an idea hit me for how to untie the Gordian Knot: we would sell the policies back to the insurers in an asset sale under Section 363 of the Bankruptcy Code. Section 363 is typically used to allow a debtor to

sell assets free and clear of all liens, claims, etc., subject to certain requirements. The bankruptcy judge liked the idea, and, after the airline satisfied the court's orders providing for "adequate protection" to third parties, the court approved the settlement. The final order included an injunction against the filing of any future claims against Lloyd's under the airline's policies. The insurers paid and the funds were used to help finance dozens of airport cleanups.

Q: What aspects of law in your practice area are in need of reform and why?

A: I cannot count how many times a client has come to us having been furnished with bad advice by their brokers, and even by claims advisers or other "experts." The client is told that a particular claim is not covered, that the claim is subject to certain sublimits or deductibles, or that it is excluded under an incorrect reading of the policy. Although these clients are always the most pleasantly surprised to learn that their claims or losses may be covered, and the engagements are therefore highly satisfying for us as coverage counsel, the fact remains that too many nonlawyer experts are treading improperly in the realm of legal advice.

We have found that the very best of these advisers do recommend that their clients seek the advice of experienced counsel, but the problem persists, with some consultants advertising that they have lawyers on staff so there is no need for counsel. The real victims are the policyholders who fail to at least consult with experienced coverage counsel before reaching a conclusion as to their rights and remedies. This is an area in which not so much reform but stricter enforcement of existing laws on the practice of law is needed.

Q: What is an important issue or case relevant to your practice area and why?

A: In my view, the case most important to a lawyer's career is the one he or she is handling right now. Even ignoring that rule, I would say that the coverage disputes arising from Superstorm Sandy are among the most important and challenging I have faced, testing the contours of

countless clauses in commercial property policies. In mid-January, Pillsbury convened a meeting of the lead claims advisers and advocates at the major brokers and consulting firms for a deep dive into the major coverage issues arising from Superstorm Sandy. A report summarizing the discussion is due out shortly. The important takeaway from that session and subsequent discussions is that the sheer number and variety of disputed issues is astonishing, even for a group of experts battle worn from Hurricane Katrina, 9/11, and a host of other disasters.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Gene Anderson—the recently deceased dean of insurance coverage, for his wisdom, imagination and dedication to advancing insurance coverage as a real practice specialty.

Q: What is a mistake you made early in your career and what did you learn from it?

A: One mistake I made early in my practice as a coverage lawyer was not taking on more cases on at least a partial contingency fee basis. I have found such engagements to be among the most satisfying to client and counsel alike.

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