

Insurance MVP: Latham & Watkins' John Wilson

By **Steven Trader**

Law360, New York (November 12, 2015, 5:05 PM ET) -- By convincing the California Supreme Court to apply an obscure late-1800s state insurance statute to allow policyholders to freely assign their coverage rights after a loss, Latham & Watkins LLP partner John M. Wilson not only landed a massive win for Fluor Corp., he secured a place among Law360's Insurance MVPs.

In 2003, in a landmark ruling in *Henkel Corp. v. Hartford*, the state's high court all but secured an insurer's right to enforce anti-assignment policy provisions and created a barrier to transferring insurance rights to a successor during mergers, acquisitions and restructurings.

As a result, Wilson faced an uphill battle trying to convince the court that Hartford Accident and Indemnity Co. still owed asbestos coverage to Fluor Corp. because the relevant losses occurred at least 15 years before the company had reorganized itself and the reorganization shouldn't affect previous coverage, thus it should be able to assign its insurance rights without Hartford's permission.

So Wilson and his partners got creative, digging up the rarely cited Section 520 of the state's insurance code that has been on the books since 1872, which voids a policy's anti-assignment provision as soon as a loss happens and allows a policyholder to freely transfer its coverage rights to another entity.

The high court had not considered Section 520 when it decided *Henkel*, but concluded unanimously in August that the statute applies to third-party liability insurance, overruling its previous landmark decision.

"It was the kind of issue where ... this is what you go to law school for," Wilson said. "There is a statute out there that just got missed. It wasn't necessarily the fault of any particular parties or court, but it had been glossed over, and this really does provide the answer to our question. And if only we can get people to look at it, we think they're going to agree."

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John Wilson
Latham & Watkins

The ruling is likely to have a sweeping effect on the state's insurance landscape in its protection of a policyholder's right to transfer coverage during corporate restructurings, eliminating what Wilson called a "trap door" that otherwise might force policyholders to forfeit coverage, unbeknownst to them, because of routine corporate transactions that have nothing to do with the insurance coverage of their historic liabilities.

Wilson credits a very collaborative relationship with his insurance litigation partner Brook Roberts, saying the pair spent hours pushing each other, arguing back and forth trying to develop a theory why Section 520 hadn't previously been brought to the Supreme Court's attention, and why it mattered in their case.

In addition to Fluor's win at the high court level, Wilson secured more than \$50 million in coverage for the company by obtaining declaratory judgments in a "completed operations" dispute and in the insurer's attempt to allocate its payments to policies that might trigger "retrospective premium" obligations.

Beyond the Fluor case, Wilson and his Latham team, on behalf of Montrose Chemical Corp., are set to tee up in November a dispute involving dozens of the company's excess policy insurers, regarding well over \$100 million worth of liability coverage for environmental contamination surrounding the company's former DDT manufacturing plant in southern California.

Wilson said the dispute, and ultimately its resolution, will focus on the hot-button insurance question of horizontal versus vertical exhaustion, in which Montrose's carriers contend that in order for the company to access any excess policy coverage, it first has to exhaust its coverage from every underlying insurer in every policy year for every year that Montrose had coverage.

"By way of example, let's say Montrose had coverage for 30 years, and it's got \$180 million of liability," Wilson said. "Under the carriers' theory, Montrose has to get \$6 million of coverage from each of those 30 years, and can't go above that layer to get coverage from any other carrier. We disagree with that."

When Wilson graduated from Stanford Law School in 2003, and joined Latham at its San Diego office a year later, he didn't necessarily have a particular practice in mind, but early on was asked to step into a policyholder's arbitration. He has been an insurance litigator ever since. In his spare time, he helps raise money for melanoma awareness, after losing his wife to the disease last October.

"Over the past year in particular, the ability to turn back to this and feel some pride in the work that we're doing, to feel like we're vindicating the rights of, in some cases, the folks that can't push back against the insurers, it does give me a good reason to get up out of bed in the morning," Wilson said.

--Additional reporting by Jeff Sistrunk. Editing by Emily Kokoll.