

Insurance MVP: Latham & Watkins' Brook Roberts

By Bibeka Shrestha



Brook Roberts
Latham & Watkins LLP

Law360, New York (December 10, 2012, 9:24 PM ET) -- Latham & Watkins LLP's Brook Roberts walloped an attempt by insurers to drastically restrict coverage for Fluor Corp.'s long-tail asbestos claims in a case of first impression that fellow California policyholder attorneys are already citing, landing him a spot among Law360's 2012 Insurance MVPs.

Roberts, a partner in Latham's San Diego office and co-chair of the firm's insurance coverage practice, clinched more than \$50 million in insurance coverage for Fluor's asbestos liabilities by persuading a California trial court to rule that a coverage limit for completed operations claims didn't apply.

Tackling a novel issue in California, the court held that the completed operations policy limit does not kick in when a person is exposed to asbestos on the job and the injury continues after the job is over — rebuffing a Fourth Circuit rule that Fluor's carriers tried to establish in California.

"If it were adopted, it would in many cases dramatically limit insurance coverage for long-tail asbestos claims," Roberts said. "[The] opinion lays out a very straightforward, common-sense approach to an otherwise complicated issues, that I think is going to gain traction and become the rule in California."

But that might not be the only major coverage ruling for California policyholders to come out of the Fluor case. Roberts is now pressing the California Supreme Court to revisit its 2003 decision in *Henkel Corp. v. Hartford Accident & Indemnity*, which boosted insurers' rights to enforce anti-assignment clauses.

Insurers often hold up these clauses — which require companies to get their insurer's permission before

transferring their rights under a policy to a successor — to avoid covering long-tail asbestos, environmental or product liability claims that can be triggered under policies that are transferred.

According to Roberts, the Henkel court had not considered an 1872 statute that allows policyholders to freely assign their coverage rights after a loss has already occurred.

"That is a majority rule in the U.S.," Roberts said. "The parties in Henkel did not bring the court's attention to a governing statute that's directly on point."

After a state appeals court refused to take up the question, Roberts got the California Supreme Court to unanimously grant a writ petition in November 2011, forcing the lower appeals court to hear the case on its merits.

The state appeals court has since ruled on the case and refused to disregard Henkel, and California's high court is now mulling whether to weigh in, Roberts said.

Other than his work for Fluor, Roberts has also gained recognition in recent years for his representation of Montrose Chemical Corp., another of Latham's major insurance clients.

Roberts helped establish that Century Indemnity Co. violated its duty to provide independent counsel to defend Montrose against toxic tort cases in Texas and therefore, gave up rights that carriers normally would have while overseeing the defense and fees paid to independent counsel. An appeals court has since affirmed the entirety of that trial court ruling.

In a separate case, Roberts secured a series of rulings defeating Century's claim that it no longer had to defend Montrose against a Comprehensive Environmental Response, Compensation, and Liability Act suit.

Roberts joined Latham & Watkins in 2001, after wrapping up a clerkship with Ninth Circuit Judge Barry Silverman.

Attorneys who supervised Roberts as a young associate regularly gave him high marks for legal analysis and drafting, but they were particularly impressed with his drive, according to Andrew Lundberg, who co-chairs the firm's insurance coverage litigation practice.

Supervisors' evaluations of Roberts often included observations that he was "fearless," "won't accept losing as an option," and was "acting like a partner" from an early age, Lundberg said.

"It was apparent very early on that Brook was mature beyond his tender years as a lawyer," Lundberg said. "Brook is still operating at a level above his now less-tender years, and has established himself as a key player not just at Latham but on the national coverage scene."

David Mulliken, a retired Latham insurance partner who mentored Roberts, said his courtroom judgment and instincts were extraordinary.

"From the time I became a serious mentor to Brook as a mid-level/senior associate, I regarded him as one of the two or three most naturally talented trial lawyers I had ever worked with," Mulliken said. "Skills that typically require decades to perfect, if ever, he possessed as a relatively young lawyer."

Roberts said he was drawn to insurance law while attending law school, an interest that deepened as he handled coverage cases before the Ninth Circuit. The decision to represent policyholders rather than insurers is one that keeps him interested in the practice area.

"The thing that I enjoy most about insurance work is that even though I'm part of a large law firm and my clients are large Fortune 500 companies, I'm the plaintiff in these cases," Roberts said. "I never wake up thinking I'm on the wrong side of things."

--Editing by Andrew Park.

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