



ROBERT KELLY

Of Counsel

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Denver, Colorado

Robert Kelly has more than 40 years' experience in complex civil litigation in jurisdictions across the country. Bob's particular area of expertise is insurance coverage. Bob has represented insureds and insurers in high-stakes disputes regarding coverage under Commercial General Liability policies, Errors & Omissions policies, Directors & Officers policies, and Umbrella and Excess policies, among others.

When not working, Bob enjoys golfing or relaxing on a beach.

EDUCATION

- LL.M., New York University, School of Law
- J.D., Rutgers School of Law - Camden
- B.A., Yale College

AREAS OF PRACTICE

- Complex Civil and Commercial Litigation
- Insurance and Reinsurance Litigation
- Bad Faith Litigation
- Securities Litigation
- Environmental and Toxic Tort Litigation

REPRESENTATIVE CASES

- Prevailed in New York Supreme Court on summary judgment for Swiss Reinsurance Co. dismissing claim by JP Morgan & Co. for coverage of securities fraud settlement under \$50 million insurance policy. Successfully defended that ruling in both the Appellate Division, First Department and Court of Appeals. *JP Morgan Chase & Co. v. Indian Harbor Ins. Co., et als*, 930 N.Y.S.2d 175 (N.Y. Sup. 2011), *aff'd*, 947 N.Y.S.2d 17 (1st Dept. 2012).
- Prevailed in United States District Court, Southern District of New York on summary judgment for Zurich Insurance Co. dismissing claims by Larry Silverstein, lessor of World Trade Center 1 and 2, for coverage of losses arising out of 9/11 attacks under \$50 million insurance policy. *In Re September 11th Liab. Ins. Coverage Cases*, 458 F. Supp.2d 104 (S.D.N.Y. 2006).

- Represented Zurich Insurance Co. in declaratory judgment actions simultaneously filed by Intel Corp. in the United States District Court for the Northern District of California and by Zurich in Delaware Superior Court. At issue was Intel's claim for coverage of \$500 million in costs incurred by Intel in defending against multiple antitrust actions filed by its competitor AMD and the European Union claiming anticompetitive conduct in the sale of Intel's Pentium product. Prevailed on summary judgment in both actions, with the courts declaring that Intel was not entitled to coverage under a \$50 million Zurich policy. Successfully defended the Delaware court's ruling in the Delaware Supreme Court, after which Intel dismissed its appeal of the California court's ruling in the Ninth Circuit Court of Appeals. *American Guarantee & Liability Ins. Co. v. Intel Corp.*, 2010 WL 8590881 (Del. Super. 2010), *aff'd*, 51 A.3d 442 (Del. 2012); *Intel Corp. v. American Guarantee & Liability Ins. Co.*, 2010 U.S. Dist. LEXIS 139903 (N.D. Cal. 2010).
- Prevailed in New York Supreme Court on summary judgment for Zurich Insurance Company dismissing claims by Sony Corp. for coverage of costs associated with class actions in California state and federal court alleging that consumers were damaged by the release of personal information when hackers penetrated the Sony PlayStation network. Among the issues was whether such costs were covered under general liability policies where Sony had purchased "cyber insurance" policies that specifically covered data breach exposures. The court declared that the general liability insurance policies issued by Zurich and other insurers did not provide coverage for the data breach. This significant ruling was the first decision directly addressing insurance coverage for data breaches such as Sony's. *Zurich American Ins. Co. v. Sony Corp.*, No. 651982-2011 (N.Y. Supreme 2014).
- Represented New Jersey Manufacturers Insurance Company in defense of claim that ReMax real estate brokers were "independent contractors" and not "employees" for purposes of calculating ReMax's premium for workers compensation insurance. This claim posed a multi-million dollar exposure to workers compensation insurers because the outcome would apply to other businesses employing similar "independent" contractors. Prevailed on summary judgment in favor of NJM, the New Jersey Superior Court ruling that the brokers were "employees" for purposes of calculating the premium, and prevailed as well in the Appellate Division and New Jersey Supreme Court. *Re/Max of New Jersey v. Wausau Ins. Co.*, 162 N.J. 282 (2000).
- Represented a law firm in dispute with a departed partner over division of a contingent fee earned in a significant medical malpractice matter. Successfully obtained ruling by the New Jersey Superior Court that the departed partner was entitled only to compensation based upon hours worked prior to departure, rather than a percentage of the contingent fee, and prevailed as well on appeal. The case established new law in New Jersey governing the division of fees in such disputes, and has been cited in other jurisdictions dealing with fee allocation issues. *LaMantia v. Durst*, 234 N.J. Super. 534 (App. Div. 1989).
- Represented accounting firm in malpractice action involving claims that defendants violated federal securities laws. Successfully obtained summary judgment in favor of defendant on the grounds that the sale of 50% of the stock of the company at issue was a "sale of business" rather than the sale of a "security" under federal law. The Third Circuit Court of Appeals reversed, rejecting the "sale of business" doctrine, and the United States Supreme Court granted certiorari to resolve a dispute between circuits on the issue. The Court affirmed the Third Circuit, holding that the stock constituted a

"security" even if it effectively constituted a "sale of the business." *Gould v. Ruefenacht*, 737 F.2d 320 (3d Cir.), *aff'd*, 471 U.S. 701 (1985).

- Represented Red Bank Board of Education in suit filed in United States District Court for the District of New Jersey by teacher claiming that tenure charges based upon her public statements at a Board meeting constituted a violation of her First and Fourteenth Amendment rights. Prevailed in the District Court on a Motion to Dismiss, the District Court ruling that it would abstain in favor of the pending state tenure proceedings. Holding that abstention doctrine applies to both pending state administrative as well as judicial proceedings, the Third Circuit Court of Appeals held that abstention was proper and remanded the case to the District Court to retain jurisdiction pending completion of the tenure proceedings. *Williams v. Red Bank Bd. of Ed.*, 502 F. Supp. 1366 (D.N.J. 1980), *vacated and remanded*, 662 F.2d 1008 (3d Cir. 1981).
- Represented U.S. Fire Insurance Co. in Southern District of New York action filed by Treadwell Corp. seeking coverage of asbestos liabilities. Treadwell, which faced millions of dollars of exposure for asbestos injuries occurring over decades, sought coverage for all such liabilities from its insurers. Rejecting Treadwell's claim, the court accepted U.S. Fire's argument that responsibility for liabilities be prorated over the entire period of injury, with Treadwell responsible for its pro rata share attributable to years in which it did not purchase insurance coverage. Judge (later Attorney General) Michael Mukasey's well-reasoned opinion broke new ground at the time. *United States Fid. & Guar. Ins. Co. v. Treadwell Corp.*, 58 F. Supp.2d 77 (S.D.N.Y. 1999).
- Represented U.S. Fire Insurance Co. in multiparty action filed by Schlumberger Industries in United States District Court for the District of South Carolina seeking coverage for millions of dollars in costs to remediate PCB contamination at sites in South Carolina. Prevailed on summary judgment, the District court holding that the policies did not cover the remediation costs. On appeal, the Fourth Circuit Court of Appeals vacated and remanded on jurisdictional grounds. *Schlumberger Indus. v. National Surety Corp.*, 36 F.3d 1274 (4th Cir. 1994).
- Represented International Insurance Co. in adversary proceeding brought by Celotex Corp. in United States Bankruptcy Court for the Middle District of Florida seeking coverage for asbestos-in-buildings claims from numerous insurers. Secured partial summary judgment, the court ruling that there was no coverage for asbestos-related building claims involving intentional conduct, and no coverage for punitive damages. *Celotex Corp. v. AIU Ins. Co.*, 152 B.R. 652 (M.D. Fl. 1993).
- In 2009, Reilly began representing multiple plaintiffs in highly complex litigation against several bank trustees and numerous other defendants, leading to significant recoveries through settlements and a jury verdict of \$391 million against PNC Bank. The litigation arose out of a multi-state fraud scheme involving National Prearranged Services, Inc. (a Missouri-based preneed funeral contracts seller) and its two related insurance companies domiciled in Texas. Reilly was retained by 35 state life and health insurance guaranty associations, NOLHGA, and the Texas Special Deputy Receiver to seek recoveries from over 40 defendants, including multiple bank trustees, an accounting firm, and the former officers and directors of NPS and the insurance companies. Plaintiffs' claims included negligence and breach of fiduciary duty against the bank trustees for allowing the preneed trust funds to be looted, accounting malpractice, and RICO (Racketeer Influenced and Corrupt Organizations Act) claims against the former officers and directors. Reilly negotiated settlements with most defendants before trial,

resulting in large recoveries for the clients. A five-week trial was held in federal court in Missouri in early 2015, where Reilly attorneys secured a jury verdict of \$391 million (including a punitive damages).

AWARDS AND HONORS

- New York Super Lawyers®, 2015
- New Jersey Super Lawyers® in Insurance Coverage, 2007, 2009-2014
- AV® Preeminent™ Peer Review Rated (the highest rating available), by Martindale-Hubbell

ARTICLES AND PRESENTATIONS

- \$390 Million Verdict Against PNC Bank Announced in Pre-Arranged Funeral Services Case
- Reilly Partner Dan Reilly Referenced in TribLive Article Titled "Jury Orders PNC to Pay \$491M in Collapse of Prepaid Funeral Company"
- Reilly Partner Dan Reilly Quoted in The Examiner Article Titled "\$491 Awarded in Funeral Home Fraud" Reilly Case Discussed in St. Louis Business Journal Article Titled "PNC to Appeal \$350.5 Million Order for Trustee Role in Prepaid Funeral Scam"
- Reilly Trial Covered in The Columbus Dispatch Article Titled "PNC Must Pay \$391 Million in Lawsuit Over Prepaid Funerals"
- Reilly Trial Verdict Discussed in ABC News Article Titled "Jury Awards \$491M in Damages in Prearranged Funeral Case"
- Reilly Case Covered in ABA Journal Article Titled "Federal Jury Awards \$491M in Trial Over Prepaid Funeral Scheme"
- Reilly Case Discussed in Kansas City Business Journal Article Titled "Jury Awards \$490M in St. Louis Funeral Scam Case"
- Reilly Case Subject of St. Louis Business Journal Article Titled "\$490 Million Judgment in Prearranged Funeral Civil Case"
- Reilly Case Covered in Reuters Article Titled "U.S. Jury Orders PNC Bank to Pay \$391 Mln in Funeral Scam Case"
- Reilly Partner Dan Reilly Interviewed in Denver Business Journal Article Titled "Denver Law Firm \$491 Million Judgment in St. Louis Civil Case"
- Reilly Case Discussed in Missouri Lawyers Weekly Article Titled "Jury Awards \$490 Million Over NPS Scheme"
- Reilly Partner Dan Reilly Quoted in St. Louis Post-Dispatch Article Titled "Jury Awards \$491 Million for Fraud by Prepaid Funeral Company in Clayton"

PROFESSIONAL AND COMMUNITY ACTIVITIES

- Member, American Bar Association
- Member, New Jersey State Bar Association
- Member, New York State Bar Association
- Member, New York City Bar Association

ADMISSIONS

- State of New Jersey
- State of New York
- State of Colorado

- U.S. District Court for the District of New Jersey
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Tenth Circuit
- United States Supreme Court