

## LEGAL

# Staking a claim

*Kean Miller represents policyholders against insurers—a rare move for a corporate law firm.*

BY HAL COHEN

There's nothing odd about a couple lawyers representing policyholders against insurance companies. Plaintiffs' attorneys are a dime a dozen in Baton Rouge.

But there is something unusual about Mark Mese and Todd Rossi going after insurers. That's because Mese and Rossi both work for Kean Miller, which works heavily in the energy and petrochemical industries and is one of the largest corporate law firms in Baton Rouge.

"We represent policyholders, which basically makes us plaintiffs' lawyers," Mese laughs. "We're the only plaintiffs' lawyers out of 110 at Kean Miller."

Mese and Rossi have both been with Kean Miller for 10-plus years, but each also has about a decade of experience defending insurance companies at other Baton Rouge firms. Kean Miller formally set up its Insurance Coverage Group—Mese and Rossi, for the most part—in 2002. They represent clients ranging from national engineering firms down to local dry cleaners.

Kean Miller had never done all that much business on the insurers' side, because for them it made better business sense to side with policyholders.

"You have a choice of representing the oil and gas industry or representing insurers," says Mese. "Kean Miller didn't want to take a chance on losing big business clients that they had long-term relationships with."

Mese estimates that by 2002, the firm had fewer than 10 insurance clients because it had already weeded out potential conflicts with its oil-and-gas clients. The remaining insurers were mainly in areas such as malpractice and homebuilding.

Mese and Rossi's clients are typically being sued by a third party—nearby residents, for example, filing a class-action against a chemical plant after an explosion—whose insurers refuse to cover the damages or pay for the defense.

Consistently taking the policyholders' side against insurers is unusual for a big firm.

"It's real hard to maintain a practice for policyholders," says Timothy Burns, chairman of the American Bar Association's Insurance Coverage Litigation Committee and a partner in Chicago's Jenner & Block, one of the few big policyholder practices in the country.

"Most law firms of any size will have

a few partners who want to represent insurance companies," he says.

That's because insurance companies are good for business. For corporate transactions and representation against re-insurers, "they pay very high rates," says Breazeale Sachse's Doug Williams. "And they provide a very high volume of litigation work."

Insurance companies feature prominently on the client rosters of most corporate firms in Baton Rouge—Breazeale Sachse as well as Jones Walker, Taylor Porter, McGlinchey Stafford, Adams and Reese, and Phelps Dunbar.

Corporate law firms that represent insurers also represent business clients, of course. When those businesses clients get into suits against insurers who are not represented by someone else at the law firm, the attorneys will gladly act as the plaintiffs' counsel.

The problem is when the law firm represents both clients. When suits arise between clients (or when both are named as co-defendants), the lawyers must choose which one to represent. Doing both would be a conflict of interest.

Williams says Breazeale Sachse's fallback position "is to recuse ourselves on both sides. Ethically, we have to do that." But the firm's preference is to have the sides agree to a waiver of conflict, which essentially allows the firm to pick a side.

"Big clients understand that these things happen, and they don't want to lose their relationship" with the law firm, he says.

When the conflict is waived, Williams says, the specifics of the situation determine whether Breazeale Sachse will represent the policyholder or the insurer. But the ABA's Burns says that in general, large law firms choose to represent the insurer.

So for a business to take action



**PLAINTIFFS' LAWYERS:** Kean Miller's Mark Mese (left) and Todd Rossi side with corporate clients and small businesses against insurers.

against its insurance company in such a situation, it must turn to one of the few big firms that specialize in representing corporate plaintiffs against insurers. Such firms are concentrated in New York, San Francisco, Chicago and Washington, D.C.

Although many big law firms have long prized the lucrative work they do for insurers, Williams says there is a downside.

"When it comes to litigation and defense of coverage issues, the insurance companies pay lower rates." They can do this, he says, "because of the volume they provide."

"These are by nature very cost-conscious, penny-saving companies," Burns notes. "Especially on the claims side, performance is measured in keeping costs down."

Burns believes that insurers have been forced to become even more penny-pinching by the lackluster economy and the downturn in the stock market since the late 1990s. Big insurance companies make a large portion of their profits by simply investing premiums.

Shedding insurance clients might

make abstract sense for many law firms, but few can realistically do so because insurers are such a large part of the practice. Kean Miller got lucky—it represented relatively few insurance companies to start with.

Mese and Rossi see plenty of growth potential for their group. Unsophisticated small businesses, they say, often assume they have no claim simply because the insurance companies tell them so. Pollution exemptions are the classic example in Louisiana.

The state Supreme Court in 2000 ruled on the issue in a case stemming from a 1998 incident in which a Chalmette refinery was found to have contaminated St. Bernard Parish's water. Mobil Oil's insurer denied the claim based on a pollution exclusion.

The court ordered the insurer to pay because its exclusion was too broad to be valid.

"Just because an insurer put exceptions in a policy doesn't mean they can enforce them," Rossi says.

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