



## Robert J. Kelly, Of Counsel

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### Contact Information

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### Professional Summary

- Commercial and insurance litigator with more than 35 years of trial experience
- Former partner at Coughlin Duffy LLP, a full service law firm with offices in New York and New Jersey
- AV Rated by Martindale-Hubbell
- Named to *New York Metro Super Lawyers* in 2015 and *New Jersey Super Lawyers* in the practice area of Insurance Coverage from 2009-2014
- Graduated Yale College (B.A.); Rutgers School of Law-Camden (J.D.); New York University School of Law (LL.M.)

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### Practice Areas:

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

Bob Kelly has over thirty years of experience in complex litigation in trial and appellate courts across the country. He has extensive experience in insurance coverage, bad faith, professional liability, toxic tort, environmental, and other complex commercial litigation.

Prior to joining Reilly Pozner, Bob was a founding partner of Coughlin Duffy LLP, a litigation firm with offices in New York and New Jersey. He was selected to the New Jersey Super Lawyers list in the practice area of Insurance Coverage from 2009 to 2014. In 2015, Bob was named to the New York Metro Super Lawyers list. He is rated AV® Preeminent by Martindale-Hubbell.

Before entering private practice, Bob served as law clerk for the Hon. Lawrence A. Whipple, Chief Judge of the United States District Court for the District of New Jersey.

Matters that are representative of Bob's practice include:

- 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. Rufenacht*, 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 Pozner 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. RP 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. RP 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 RP attorneys secured a jury verdict of \$391 million (including a punitive damages award) against PNC Bank.