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Shifting Allegiance

No longer insurers' advocates, McKennon Law Group attorneys stand up for policyholders.



From left, Joe S. McMillen, David S. Rankin, Robert J. McKennon, Stephanie L. Talavera and Scott E. Calvert of McKennon Law Group PC

Insurance policyholders throughout the country call McKennon Law Group PC for counsel in complex conflicts with their insurers.

The five-attorney outfit in Newport Beach has secured many favorable results for its clients through settlements, trials and alternative dispute resolution.

“Our specialty is bad faith insurance litigation and [Employee Retirement Income Security Act] litigation involving insurance and pension issues, focused mostly on disability insurance, health insurance and life insurance claims,” said Robert J. McKennon, the firm’s founding and name partner.

Complex legal issues with insurers don’t intimidate McKennon Law Group. In fact, three of the firm’s lawyers, including its founding partner, used to advocate for the insurers. McKennon defended insurance companies for nearly 25 years as an attorney and partner at Barger & Wolen LLP. He changed sides in 2010 and created McKennon Law Group two years later.

“My heart was always sort of with claimants and policyholders because I saw a lot of claimants and policyholders when I was on the defense side getting poor representation by plaintiffs lawyers,” McKennon said.

“Secondly, I was hired by a few insurance companies in difficult bad faith cases while I was on the defense side and they asked me to get involved in mock trials as a plaintiff’s attorney in bad faith disability insurance cases, he added. “In every mock trial that I did, I ended up winning substantial damages and it whet my appetite to start to work on the plaintiff’s side doing policyholder litigation.”

Challenges arose when McKennon decided to represent plaintiffs instead of insurance companies. For starters, he was known as a lawyer who represented insurance companies.

“One of my biggest challenges was getting my name out there to prospective insureds who I would now represent and also to lawyers letting them know I was now representing policyholders against insurance companies in primarily life, health and disability matters,” McKennon said. “The way I did that was communicating with a number of lawyers that I knew in Orange County especially, letting them know that I was now suing insurance companies.”

Marketing strategies also helped McKennon overcome the challenges.

“I developed a very strong and vibrant website and insurance litigation blog,” he said. “I started doing a lot of blogging and my lawyers do a lot of writing and blogging.”

The firm started with three lawyers, including associate Scott E. Calvert, who McKennon hired at Barger & Wolen.

“He hired me for my first job out of law school,” Calvert said. “Talking to him and seeing the fulfillment he got in working for policyholders made me think that that might be something I would want to do too.”

More business started coming in and the firm added more lawyers — Joseph S. McMillen, David S. Rankin and Stephanie L. Talavera.

In a federal court case, McKennon Law Group represented a former lawyer who sought long-term disability benefits under his employer’s welfare benefit plan based on a “mental breakdown,” according to court documents.

The plan was funded by an insurance policy which set forth the eligibility requirements for receipt of benefits. The insurer denied the benefit claim after concluding that McKennon Law Group’s client was not totally disabled during the entire period set forth in the eligibility requirements, court documents say.

“The insurer felt that he was able to work, and after we won the case at trial, they found some records that he actually represented himself in his own divorce proceeding and in a post-trial proceeding. They tried to use that against him saying he wasn’t disabled,” McKennon said. “We were able to convince the court to disregard that evidence.”

The insurer appealed the judgment to the 9th U.S. Circuit Court of Appeals, which upheld the lower court’s decision and awarded attorney fees.

In another case, McKennon Law Group represented a plaintiff who sued his health insurer, claiming his daughter was covered under an ERISA-governed health plan issued by a large insurance company.

The plaintiff alleged the child required residential rehabilitation substance abuse treatment for a variety of problems. The insurer denied the claim, saying additional residential treatment was not medically necessary under the plan, according to court documents.

The court found in favor of the firm’s client and awarded him \$113,000 plus prejudgment interest, along with substantial attorney fees and costs.

“We obviously have to look at and provide sufficient medical information that our client is disabled, but we also have to prove that our client is disabled under a particular definition under a particular contract,” McKennon said. “Depending on whether we are litigating an ERISA-governed insurance policy, versus a policy that is governed by California law or some other state law, the legal proof will differ.

“We have to be comfortable with laws of various states in order to litigate disability, life or health insurance issues in California and in other states.”

Business litigation is also one of the firm’s practice areas.

Erwin J. Shustak, managing partner of Shustak Reynolds & Partners PC, first met McKennon as opposing counsel.

“Robert McKennon was an adversary of mine probably six years ago in a large arbitration dispute,” Shustak said. “He won the case and did an excellent job for his client. I was so impressed with him that years later I hired him to represent me in a personal matter.”