

Rising Star: Blank Rome's Omid Safa

Law360 (August 24, 2018, 2:06 PM EDT) -- Blank Rome LLP partner Omid Safa helped a policyholder client win a sprawling, yearslong fight for asbestos coverage, and has also won a major bad-faith trial to get coverage for underlying claims against a health system, making him one of five insurance attorneys under 40 recognized by Law360 as Rising Stars.

THE BIGGEST CASE OF HIS CAREER:

Safa said an October win from a Missouri appeals court in a case called *Nooter* was the culmination of years of work and many smaller victories. The court upheld a ruling that industrial supply company *Nooter Corp.* could exhaust insurance policies for a given year for losses from asbestos injury claims up to policy limits, rejecting the notion that *Nooter's* coverage must be prorated among policies in multiple years. *Nooter* has faced some 20,000 claims by individuals allegedly harmed by asbestos in pressure vessels *Nooter* sold to refineries and chemical plants over a 100-year span.

The appeals panel also agreed with the trial court's decision to apply "all sums" allocation to the case, which allows the policyholder to select policies in a single year and tap them for a loss up to applicable limits, and to apply the "vertical exhaustion" method, under which excess coverage kicks in for a given year once all that year's lower-level policies are depleted — as opposed to "horizontal exhaustion," which would have required the company to drain lower-level policies across every triggered year before tapping any excess coverage.

Though some dollar amounts in the cases are confidential, Safa said, "We had the trial, and we got the past damages. And that stuff is important — we're talking multimillion dollars there. But more important were the rulings that were forward-looking, that are going to provide access to policies that can go up to hundreds of millions of

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STAR



Omid Safa
Blank Rome

Age: 37

Home base: Washington, D.C.

Position: Partner

Law school: William & Mary
Law School

First job after law school:
Associate at Dickstein Shapiro
LLP

dollars, depending on what company you're dealing with. That's why those rulings are so important."

"It also helps move the insurers and bring them to the table," he said. "Certain unknowns and uncertainties that people may use as bargaining chips are no longer there."

HIS PROUDEST MOMENT AS AN ATTORNEY:

Safa helped an Idaho health system get a big win against an insurer for egregious bad faith in the handling of an underlying claim against the health system. In 2009, a jury found the health system liable after one of its patients, a wife and mother in her early 40s, died of pulmonary emboli. During her weeks of chest pains and dizziness, her doctors had never given her a "simple and inexpensive test to rule out pulmonary embolism," in a court's words, which could have saved her life even on the day she died.

The health system, Primary Health Inc., turned to insurer Hudson Insurance Co., which acknowledged the claims were covered, selected trial counsel to defend Primary and took control of settlement negotiations with the family. But in the month or two before a spring 2009 trial, Hudson repeatedly rejected settlement offers between \$1 million and \$2 million, within Primary's \$2 million policy limit — often without even telling Primary, according to a judge's recap. Eventually there was even "a signal from underlying plaintiffs' counsel that they might take \$700,000," Safa said.

Hudson went to trial, though, and in May 2009, the jury awarded the woman's family \$4.2 million plus interest. Hudson told Primary it would not cover the damages in excess of \$2 million.

With Safa's help, Primary sued Hudson, and in March 2013 a jury awarded Primary \$2.4 million in compensatory damages and \$9.7 million in punitive damages for bad faith. The \$9.7 million was reduced to \$7.25 million to comply with Idaho statutory limits on punitive damages.

But Safa and lead trial counsel James Murray had asked the jury for only \$9 million in punitive damages, Safa said, making the \$9.7 million in punitives awarded something of a mystery at first.

"We were all very puzzled by it at first, '9.7, we didn't ask for that,'" Safa said. But when the trial team had a chance to poll the jury, they found out: "They wanted to remind the insurer that it had an opportunity to settle for the 700,000," Safa said.

WHY HE'S AN INSURANCE ATTORNEY:

Safa said it comes down to three things. One is that insurance "impacts everyone, all industries. It touches on innumerable subject matters. I find it fascinating."

The second is the ability to be in a courtroom. Blank Rome's insurance-recovery-only practice gives Safa lots of chances to go to trial and keep the litigator part of himself sharp.

The third draw is basic fairness. For a person or company that's just gone through something devastating, being hung out to try by an insurer feels like the addition of insult to injury, Safa said, and he feels good helping clients who are "attempting to pick up the pieces."

“The importance of insurance resonated with me. I had a close family member that was given the runaround for several years before the insurer finally paid the amounts due,” Safa said. Seeing what that family member went through, Safa knew he could make a difference.

ON THE FUTURE OF INSURANCE:

For one thing, asbestos cases aren’t going anywhere, Safa said. “People have been saying that asbestos cases are dead for at least a decade. But they still continue to be litigated, and Nooter’s an example of that,” he said.

But cyber insurance is going to become huge as well. Insurers are writing cyber policies, and have been, but those policies haven’t faced any major tests yet, and the language in them holds a lot of unknown unknowns, Safa said.

“We’ll start to see more and more cyber insurance claims reach the dispute phase and be litigated, and have some questions answered. Right now, cyber is really the Wild West of insurance: We don’t have a whole lot of cases that have been published on the applicability of cyber insurance. We do have some, but they’re relatively narrow in scope,” he said.

— *As told to Cara Salvatore*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2018 Rising Stars winners after reviewing more than 1,200 submissions. This interview has been edited and condensed.

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