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ANALYSIS

You Probably Can't Buy the Insurance Policies That Saved Quinn Emanuel Tens of Millions

Policies like the ones that preserved most of the firm's \$185 million fee award against a subsequent 50% reduction are harder to find after recent losses for providers.

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🕒 4 minute read

Fee Disputes



By Dan Roe
Reporter

What You Need to Know

- Judgment preservation insurance helped Quinn Emanuel keep most of a \$185 million fee award that was halved on remand this month.
- The insurance offering was gaining steam until several major losses for insurers reduced providers' appetite for risk.
- Insuring sums under \$100 million remains possible, one industry broker said.

Oct. 10 could have been a bad day for Quinn Emanuel Urquhart & Sullivan.

That Thursday, Judge Kathryn C. Davis of the U.S. Court of Federal Claims halved Quinn Emanuel's initial \$185 million fee award in a lawsuit the firm filed for insurers seeking repayment from Obamacare. After winning \$3.7 billion for the insurers, multiple insurers challenged the \$185 million fee award, prompting the U.S. Court of Appeals for the

Federal Circuit to vacate the award and remand it back for reconsideration.

Worse still, the firm had already distributed the funds among the partnership, partner Adam Wolfson had previously informed the court.

However, two judgment preservation insurance policies Quinn Emanuel took out in 2022 covered nearly \$167 million of the total award against such a reversal.

Minus policy premiums, the sums of which were redacted in court filings, Quinn Emanuel is set to walk away with most of its fee award, which the firm said represented 10,000 hours of legal work (or an \$18,500 hourly rate, fee objectors noted). The firm declined to comment on the policies, which appeared in court filings.

While such judgment preservation insurance policies were becoming more popular when Quinn Emanuel took out its policies, such a policy may no longer be available to plaintiffs firms that want to insure nine-figure fee awards against reductions on appeal.

In April, a consortium of JPI providers led by Liberty Mutual found itself on the hook for between \$500 million and \$750 million after a federal appeals court reversed an insured ruling that had favored BMC Software Inc., a company that sued IBM and won \$1.6 billion in damages.

And in September, an appellate court reversed a \$564 million verdict against a Bank of Montreal subsidiary in a lawsuit filed by the bankruptcy trustee of a Ponzi scheme. The initial verdict was insured, Insurance Insider reported in October, leaving insurers on the hook for "\$80 million to 90 million."

"Towers that are exceeding \$100 million are very, very rare, and they're hard to find," said litigation finance broker and consultant Rebecca Berrebi of Avenue 33 LLC, referring to the stack of insurers that distribute risk in large policies such as Quinn Emanuel's \$141.9 million quota

sharing policy, which kicks in after an initial \$25 million policy is exhausted.

Smaller judgments are still getting insured, Berrebi said, but larger sums are on hold while the industry awaits the final decisions in a handful of major cases. "For big cases that are \$100 million or more, I don't know if those days are gone for good but they're temporarily paused," Berrebi said.

Quinn Emanuel's use was just one application of JPI, which often gets taken out by cash-poor plaintiffs in intellectual property disputes who either can't afford to risk losing their entire judgment or can't afford to wait through a lengthy appeal process.

Policies are also taken out in merger and acquisition transactions when target companies are defending against significant legal claims.

"A buyer [may] not want to acquire the defending company if it would mean taking on that potential litigation exposure," said Hunton Andrews Kurth insurance coverage partner Geoffrey Fehling. "In that case, the buyer and seller can transfer some of the litigation risk to a JPI insurer to help close a deal."

The market for such policies grew rapidly until JPI policies became so large that single-case losses shocked the industry, Pillsbury Winthrop Shaw Pittman insurance recovery and advisory partner Mark Plumer said.

"The difficulty for this market is the insurers agreed to insure some very large verdicts, on the order of \$1 billion," Plumer said. "One came back the wrong way and they suddenly had to pay out, and it's been a cooling market ever since."

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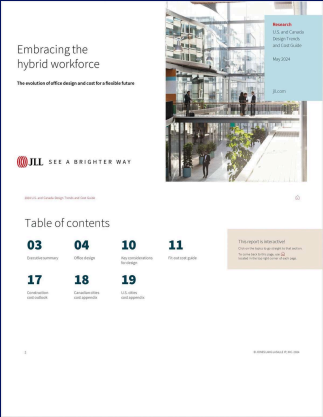
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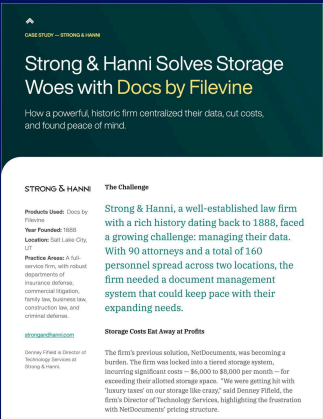
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