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TRIBUTE TO GENE ANDERSON

By: John G. Nevius*

"Eugene R. Anderson Dies at 82: He Made Insurers Pay Up."
The New York Times (August 2, 2010)

Gene Anderson, a giant in the field of coverage law, passed away on July 30, 2010, after complications arising from pneumonia. I was privileged to work with Gene for the last 15 years and offer this brief tribute based mostly on already published material. His contribution to the field of environmental insurance and risk management cannot be overstated. Gene would have been proud of the above headline from his New York Times' obituary, but would have preferred the term "insurance company" to "insurers." Insurers and insureds makes it sound like the two are on equal footing. One of the first things Gene taught the host of people who worked with him was that policyholders being on an equal footing with insurance companies was a myth.

A one time U.S. prosecutor in the office of then-U.S. Attorney for the Southern District of New York, Robert M. Morgenthau, Gene Anderson founded Anderson Kill in 1969 and was integral to the firm's success over four decades. Recognized as "the dean of policyholder's attorneys," as BusinessWeek dubbed him, he pioneered widely influential approaches to insurance coverage litigation on behalf of policyholders. It is no exaggeration to say that Gene Anderson led the way in accomplishing recovery of billions of dollars from liability insurance to fund environmental clean-ups.

His practical approach to litigating against insurance companies by using their own words against them has influenced every aspect of environmental insurance and the resulting claims. In other words, Gene Anderson delved deeper into insurance industry "lore" than anyone had before — that is, to unearth and contrast what insurance industry representatives had told regulators and policyholders about policy language while getting it approved, selling policies and handling claims, with what they told courts when denying coverage moments or years later. He pioneered building

databases of such information — before personal computers were ubiquitous.

With his hard work and generous spirit, Gene Anderson found like-minded peers who devoted themselves to coverage litigation on behalf of policyholders only. He mentored a generation of attorneys who exploited and built on precedents he established. Among those principles: that "pollution exclusions" (or as Gene called it: "the qualified polluter's exclusion") to liability policies written in the 1970s did not bar coverage for accidental pollution that occurred over an extended period of time. One signature victory on this front was on behalf of the Central Illinois Public Service Company, in a \$12-million lawsuit against Allianz Underwriters Insurance Co., and other companies. After a jury found in October 1991 that the utility's pollution was neither expected nor intended, a Seventh U.S. Circuit Court of Appeals judge ruled that the common clause "sudden and accidental" in the polluter's exclusion was ambiguous, upholding the win.

Gene Anderson's impact began with his landmark 1981 victory on behalf of Keene Corporation, which sought insurance coverage for millions of dollars in asbestos liabilities. In this signature case, Mr. Anderson represented Keene as it faced millions of dollars of personal-injury claims from power plant workers who said they had been exposed, over many years, to asbestos in thermal insulation. Keene had taken on the problem when it acquired another company which sold insulation made with asbestos until 1972.

Keene had turned to three insurance companies for help. But because the workers' illnesses had taken years to develop, each insurance company denied responsibility and pointed fingers at the others. One said the problem belonged to the insurance company whose name was on the policies when the workers were first exposed. Another said it belonged to the insurance company bearing the risk when the plaintiffs first learned that they were ill. The third looked to the insurance

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company that should have been standing behind Keene when the first plaintiff demanded relief.

Mr. Anderson's solution looked a little like that of a parent breaking up a children's dispute over who was to blame when a baseball broke a window. Each of the insurance companies, he argued, was correct in what it said about the others. A federal appellate court accepted his thinking, giving rise to the legal doctrine of the "triple trigger" for insurance coverage. Under the doctrine, a claim can be brought when the damage occurs, at the time it becomes apparent or when the disease manifests or the claimant dies, as long as a "carrier" insured the policyholder company at one of those times.

Mentoring dozens of the nation's leading policyholder's attorneys, he built Anderson Kill into "a national giant in insurance law," as Best's Review dubbed the firm in 1998. A tireless advocate on behalf of all policyholders, individual as well as corporate, Mr. Anderson took on a long succession of pro bono clients in insurance matters. Working in partnership with the nonprofit advocacy group, United Policyholders, he led Anderson Kill to file over 250 amicus briefs on behalf of policyholders, including in key environmental insurance coverage cases. Many of these had a major impact on insurance law, including a brief cited in the U.S. Supreme Court decision in *Humana v. Forsyth* (1999), which subjected the insurance industry to liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO).

Mr. Anderson also authored hundreds of articles on insurance coverage matters, as well as the definitive two-volume reference for insurance recovery attorneys, *Insurance Coverage Litigation* (Aspen Publishers; Second edition, 1999).

"We are deeply saddened by the loss of a mentor whose boundless energy, creativity, tenacity and zeal on behalf of policyholders has inspired those of us now working at Anderson Kill, as well as hundreds of attorneys in practice throughout the nation," said Robert M. Horkovich, Anderson Kill's managing partner.

"While Gene is truly irreplaceable, few attorneys have imparted what they know with as much passion and impact as Gene did," said William G. Passannante, co-chair of Anderson Kill's insurance recovery group. "He has left behind a firm strongly committed to his ideals and infused with his work ethic and methods."

Mr. Anderson was a member of the New York City Mayor's Task Force on Automobile Insurance, chairman of the Amicus Committee of United Policyholders, director of Citizens Against Unfair Insurance Practices and a director of the Police Athletic League. He was a graduate of the University of California at Los Angeles, Harvard Law School and New York University.

Mr. Anderson is survived by his wife, Jenny Morgenthau, executive director of the Fresh Air Fund; by his son, Matthew R. Anderson, and by three grandsons.

Gene was not only a legal mentor to me, but also a personal role model. Gene thought outside the box before the phrase was coined, but he also was immensely practical in addressing legal problems for policyholder clients of all stripes, including when it came to protecting the environment. He was that rare human being who gave freely of himself and looked for the best in people. He will be sorely missed.

About Anderson Kill

Anderson Kill practices law in the areas of Insurance Recovery, Anti-Counterfeiting, Antitrust, Bankruptcy, Commercial Litigation, Corporate & Securities, Employment & Labor Law, Real Estate & Construction, Tax, and Trusts & Estates. Best-known for its work in insurance recovery, the firm represents policyholders only in insurance coverage disputes, with no ties to insurance companies and no conflicts of interest. Clients include Fortune 1000 companies, small and medium-sized businesses, governmental entities, and nonprofits as well as personal estates. Based in New York City, the firm also has offices in Newark, NJ, Philadelphia, PA, Ventura, CA, Washington, DC and Greenwich, CT. For companies seeking to do business internationally, Anderson Kill, through its membership in Interleges, a consortium of similar law firms in some 20 countries, assures the same high quality of service throughout the world that it provides itself here in the United States.

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