

INSURANCE EXCHANGE

Jeffrey A. Wothers, managing partner of Niles, Barton & Wilmer, talks insurance, Lloyd's of London, and why the founder of his firm was jailed by Abraham Lincoln

INTERVIEW CONDUCTED AND EDITED BY ERIK LUNDEGAARD



Q: Is Niles, Barton & Wilmer the oldest law firm in Baltimore?

A: In the state of Maryland, actually. There's a bankruptcy judge in town, Judge [James F.] Schneider, who is sort of the historian for the bar, and he is the one who informed us about our history: We were the oldest law partnership; we are the oldest firm in the state; and the founder of our firm founded the Baltimore City Bar library, which still exists in the courthouse, and was the mayor of Baltimore when Abraham Lincoln was inaugurated. A bit of rich history there.

Q: And how did your founder stand on the Civil War?

A: I don't know. ... His name was [George William] Brown; Brown & Brune was the name of the firm. He was not a Southern sympathizer, I don't believe, but Lincoln was not going to let anyone be a Southern sympathizer. I'm told that to make sure they didn't, he took a lot of the local leaders—you remember he suspended the writ of habeas corpus—and sent them down to Fort McHenry and put them in jail. I think our guy was in jail for 18 months. He could've gotten out sooner, all he would've had to do was sign an oath, pledging allegiance to the Union, but he wasn't about to do that because he thought it was unconstitutional and un-American.

Q: "Jailed by Abraham Lincoln." You should put that on the website.

A: [Laughs] We should.

Q: What was it like taking over as managing partner of the oldest law firm in Maryland?

A: It was an honor. I was pretty young, I'm 46 now, and it was interesting for a lot of reasons. The person that was the managing partner when we moved [to the Inner Harbor district] in 1988, his name is Forrest Bramble, and Forrest is still a partner at the firm. Then he stepped aside and a gentleman named Bob Scholz became managing partner. Bob's head of our corporate department. Having the benefit of two former managing partners is quite a privilege. So many of the things that I deal with, they've dealt with in the past, so I can get the benefit of their experience.

Q: Examples?

A: We've been through a tough economy here in the last several years, and Forrest Bramble went through a similar situation back in the '80s.

Q: The early '80s recession or the late '80s S&L scandal?

A: There was a time—and I don't know if it was in the early '80s, or the late '80s—where the common wisdom was that midsized firms can't survive. You're either a little firm or you get gobbled up by the big firms. There was a lot of pressure to say, "We need to be merging with someone else" or "We can't stay a midsized firm." And the reality is that the size of the firm is what's attractive. We're entrepreneurial, we work for businesses that are sort of like

us—entrepreneurial—and we didn't want to give up that identity.

Q: “Can a midsized firm survive” was the question back then. What’s the question now?

A: I don't think any of this is going to be earth-shattering. We had to get more efficient. We had to get leaner.

Q: Are we talking about laying people off?

A: It was part of it.

We [also] put together a strategic plan. The demand used to be to understand our clients' business and answer their legal questions when they had legal questions. [Now] clients expect us to anticipate what their needs are, and then be ready to help solve them. [To do that] we need to be better educated in terms of the industries our clients are in, the overall economic circumstances, and the law. That puts a premium on education. We've implemented more extensive and intensive training in terms of getting more out of the technology that we have on the floor. Instead of reflexively hiring another person, we offer training so those on the floor are more capable of using the technology we've already invested in.

Q: What’s been your toughest decision as managing partner?

A: I've had to hold some of my partners accountable and sometimes ask them to leave the firm.

Q: When the managing partner position was first offered to you, did you pause? Was it something you aspired to?

A: It was not something I aspired to. Ever. Which might be one of the reasons I was offered it. It came up because the prior managing partner and I were having lunch. He had started inviting me to go to certain meetings with him. I didn't know why. I was new to the management committee, which is our core leadership team, and the managing partner chairs

the management committee. I figured it was part of me drawing certain assignments on the management committee. So [at lunch] I said to him, “Have you given any thoughts to the succession plan?” And he said, “Yes, I have.” And I said, “Care to share what that is?” And he said, “Yes, it's you.” I said I was flattered and not sure I qualified; and he said the major qualification is that your partners trust you.

Q: How much does it cut into your legal practice?

A: A lot. It usually runs half of my time.

Q: Your practice area is insurance law, yes?

A: Insurance coverage litigation, primarily.

Q: For the defense.

A: I represent the insurance companies.

Q: One area of insurance more than another?

A: Not really. My primary client would be the Lloyd's market, Lloyd's of London, so I'm over there two or three times a year, meeting with the different syndicates; and they write all kinds of different insurance, mostly what's called the excess and surplus lines markets. They write what the standards lines typically won't write. ... Are you familiar with how the London market is set up?

Q: No idea.

A: But you've heard of Lloyd's of London?

Q: Sure. They insured Betty Grable's legs.

A: [Laughs] Right. Lloyd's of London is not an insurance company; it's actually a marketplace. It started as a coffeehouse back in the 1600s, and it's made up of what they call syndicates, which are like different insurance companies. Syndicates can be big or small, and they write stuff literally all over the world.

If you go back to the very beginning of Lloyd's—and, as I say, it was a

coffeehouse—but if you had a cargo ship, and you were sending cargo to the New World and wanted to insure it, you'd come into Lloyd's. You might go to the first booth and say, “I've got cargo worth 100,000 pounds and I need to insure it; would you four gentlemen sitting in this booth be interested in insuring some or all of this cargo?” And the four people in the booth may say, “We'll insure 25 percent of the value and we'll charge you a premium of X pounds.” Then you go to the next booth and they say, “We'll insure 10 percent.” And you keep going until you've got a hundred percent of your value covered.

Q: Is that true today? Is there a physical location?

A: Yes, the Lloyd's building. And these people sit at what they call boxes, which are tables, and they have a pole with a name on it, which is the name of the syndicate. And they have London brokers that will come in and sit down; they'll get in the queue and say, “I have a client that's interested in insuring this. Would you be interested in insuring this?” Physically, it's all right there at the Lloyd's building in London.

Q: So your client, or clients, are various syndicates within Lloyd's of London.

A: That's right.

Q: How many syndicates do you represent?

A: They're forming and going away over time like any business. I would guess maybe 15 or 20? Maybe more.

Q: Are they the oldest insurance carriers?

A: I would suspect Lloyd's has to be one of the oldest insurance markets in the world.

Q: So you're a relatively young man who is the managing partner of the oldest firm in Maryland and who has clients that are part of the oldest insurance market in the world.

A: I never thought about it that way, but you're right.



Three managing partners at the oldest law firm in Maryland: from left, Wothers, Robert Scholz and Forrest Bramble.

Q: What drew you to the law?

A: A business law course I took. Neither of my parents was a lawyer.

Q: What did they do?

A: My father was a truck driver and farmer; my mom was a secretary.

Q: This was where?

A: On the eastern shore of Maryland. Neither of them went to college. I didn't even really know what college was going to be like. So I took my basic courses, like we all do, then looked for which classes I thought were pretty neat. Ultimately, I majored in economics and finance. I also took a business law course—didn't know what it might involve—and I found myself doing *that* work ahead of my economics stuff. I said, "I like how practical all this is."

I clerked for a small firm while I was finishing up law school [in Delaware], and then I got a job clerking for a trial court judge and was in trial every day with the judge. Then got a position here in the litigation section.

Q: Any memories of your first case?

A: My first case as a law clerk, with a judge, or my first case here?

Q: However you want to take it.

A: I can't say that I do. Courthouses are a kind of mayhem. You're not always just in the courtroom, where everything is very controlled. We've got settlement conferences going on in chambers, we've got motions, you're in and out of the courtroom. You might have a family law matter, and that might take a half-hour or hour, and then you're back in a settlement conference. So what I remember more was the surprising pace of the courthouse.

Q: Faster than you anticipated.

A: And fragmented. It was all over the place.

Q: How did you wind up in insurance law?

A: That's where the opening was. I didn't really know anything about insurance when I started.

Q: What's one of the more surprising things you learned about insurance once you began?

A: How pervasive it is. Insurance is behind and imbedded in and integrated in almost everything. When you say you deal with insurance, to the uninitiated it seems like, you know, after the yawn ... [Laughs]

But I like the variety. I'm a member of four different bars. I'm in Pennsylvania a lot, and West Virginia, and down in

Washington, D.C., and all over Maryland. I'm in different geographic regions dealing in different industries with different issues every day. To me, it's dynamic.

Q: Did you have a mentor?

A: I had three.

After my first year of law school, I got a job clerking at a small firm up in Harford County, where I worked for a founding partner named Max Miller. He did business litigation. He had been county attorney and was very scrupulous and detail-oriented. There was a quote by John F. Kennedy during the Cuban Missile Crisis where he said, "There's something immoral about abandoning your own judgment." Max Miller is somebody who would never abandon his own judgment. He was his own man.

He wrote a great letter of recommendation for me and helped me get a job clerking for Judge [Cypert O.] Whitfill, who was the senior judge at the time. Judge Whitfill was great because he liked trying cases. He said, "I'd rather be out on the bench in the courtroom trying a case than sitting back here in chambers." He didn't need me at all. He did the job just fine. But he saw clerking as similar to residency for doctors. So he saw his primary role was to teach me. I had priority with him. If I had a question, we might have a roomful of lawyers out in his chambers, but he would shut the door and answer my question first because that was his priority.

Then when I started here at the firm, there was a partner named Tim Bambrick, who's still here. He was the one who hired me. He had a first-party property insurance practice and really taught me all I know about first-party property insurance.

Q: Any advice from those mentors stick out?

A: Judge Whitfill had a lot of advice. The one that sticks out is, "Good judgment is a product of experience, and experience is the product of bad judgment."

I didn't know how true that was until I started practicing law and realized I didn't know how to practice law. I would spend, you know, three-quarters of every day fixing the mistakes from the day before. Thankfully I didn't commit malpractice or anything.

Q: You list a couple of representative cases on your law firm bio. Any stand out?

A: No, they really don't. It's funny, I had a hard time finding a published case that I won.

Q: Because?

A: It seems every time I win a case it's unpublished, and every time I lose it's published for the world to see.

Q: Does it go unpublished because of a settlement or something?

A: No, it's just the appellate courts; they decide what they publish and what they don't publish. It's the luck of the draw, basically. During my career I've had a string of wins in the appellate courts, and then I get it back and it says, "Unpublished" and it's like, "Great." Then I get my teeth kicked in and it's published for everybody to look at.

Q: What about all of your cases? Which are the memorable ones?

A: The ones I tend to remember are the ones [where], you know, I had a judge who was nasty. That's just how my brain works. I had a particularly nasty judge in a Pennsylvania case. He referred to me by my first name and he just snarled at me. I was like, "This is surreal. Judges don't act like this."

Q: And he referred to opposing counsel with the honorific?

A: Yeah. It's typically Mr. Wothers. But this guy ... "Is that what you're telling me, Jeff? Is that what you're saying, Jeff?" I said, "Your honor, my point is simply this,"

and then I'd reiterate my point. It would just make him mad for some reason. But I still had a client to protect. So you stand your ground. You're respectful to the court even if the court is not respectful to you. You stick with it.

Q: What was the result of that case?

A: A settlement, ultimately.

Q: Any other memorable cases?

A: I remember an appellate situation. There were three houses down in Washington, D.C., and the house in the middle caught fire. The fire department showed up and hooked their hoses to the fire hydrant but there was no water pressure. The city was trying to save money so they shut off water to the fire hydrants. It took like 20 minutes to get the water turned on. Meanwhile the fire spreads to both houses on either side and burned them down.

Q: Yikes.

A: I represented an insurance company that insured one of the houses that caught fire as a result of the water not being on in the hydrant. Another lawyer represented the other carrier on the other side. They wanted us to bring an action against the city for failing to have on these hydrants, and I did some research and there's an argument to be made. But D.C. has this thing called "the public duty doctrine," which means that the fire department and the city owe a duty to the public generally, but they don't owe a duty to individual members of the public, which means they really owe a duty to nobody.

So I stressed the weaknesses, but ultimately, we filed suit, both us and the other insurance company. The city filed a motion to dismiss, the court agreed and granted the motion. But the other insurance company said, "We're going to appeal it." I said to my client, "I don't think it's a winnable appeal, but do you want to sit back and do nothing if the other

side is going to run with this appeal?" So my client said, "Yeah, let's ride on their coattails and see what happens."

The problem is the lawyer for the other insurance company didn't do much, so when we get to oral argument he's basically unprepared. I'm ready to sit back and ride his coattails and raise my hand and say, "Yeah, me too," but I meet him down in the cafeteria beforehand and he says I need to go first. I remember to this day there were 14 cases by the appellate courts in D.C. that had addressed public duty doctrine. Thirteen of them were written by this one particular judge, and they all went against me, and, lo and behold, that one judge is on my panel. So I stand up. Typically in those oral arguments you stand up and say, "Good afternoon, your honor, my name's Jeff Wothers. I have three major points in my argument." So I stood up and said it, and, "My first argument is this." And the judge, who has written these opinions, says, "Haven't we already addressed this issue and gone against you in every one?" And I say, "There are certain exceptions," but he waves his hand and says, "What's your second argument?" So I said it, and he says, "It seems to me that we've addressed those issues and found against you. What's your third argument?" My third argument was this throwaway argument but he says, "Fine. We'll hear your third argument."

Meanwhile I've got water running down my back. I haven't even gotten through my introduction and he's already shut me down. I look down onto the clock at how much time I have left, and I say, "I'll save the remainder of my time for rebuttal." Typically you would argue for 25 minutes and save five minutes for rebuttal. Well, I argued for three minutes and saved the other 27 minutes for rebuttal. [Laughs] It was one of my worst experiences in the appellate courts. We were soundly defeated.

It was published, by the way. [N](#)