

## Q&A With Mayer Brown's Hank Bullock

*Law360, New York (April 08, 2013, 2:26 PM ET)* -- Henninger Bullock is a partner in Mayer Brown LLP's New York office and co-leader of the firm's mass torts/product liability group. He has handled dozens of complex disputes in state and federal courts throughout the country, at trial and appellate levels. For pharmaceutical clients, he provides defense against all types of product liability claims. He also defends financial clients including major commercial and investment banks, broker-dealers and commodity trading firms, in lawsuits, government regulatory proceedings and internal investigations involving securities, commodities, derivatives and foreign exchange products. Additionally, he represents clients in complex contract and tort matters.

### **Q: What is the most challenging case you have worked on and what made it challenging?**

A: Much of my focus in the pharma world these days is on the issue of innovator liability — i.e., whether brand-name manufacturers can be held liable for the alleged misstatements in a drug's label when only the competing generic version (which carries the same warnings) is ingested. For the most part, we have been successful in convincing courts to reject this type of liability, but there have been a few instances in which a court has recognized the theory as potentially viable, allowing it to proceed past an early dispositive motion. Crafting strategy for my clients in this small number of cases has proven particularly challenging. On the one hand, you must defend the case as though your client's medication had been used, but, on the other hand, you must determine the extent to which the absence of product use will impact the jury's thinking. To date, a case in this posture hasn't been tried, but, when it is, it will be interesting to see how the case is tried and how a jury reacts.

### **Q: What aspects of your practice area are in need of reform and why?**

A: In general, I think each side — plaintiff and defense — needs to be more discriminating in the submissions it makes to the court. Too often, lawyers get caught up in the throes of litigation and feel compelled to advance every available argument. Discovery disputes become the most unforgivable sins. Multiple pages of summary judgment briefing are spent discussing material facts that are clearly in dispute. And a Daubert motion is filed for every expert on every conceivable issue. If each side focused solely on the issues that ultimately are likely to sway the judge and/or jury, the parties would have more credibility and might be better positioned to narrow the issues and streamline the process.

**Q: What is an important issue or case relevant to your practice area and why?**

A: Innovator liability has always been an important issue in connection with the defense of branded pharma companies whose products have gone off patent. Given the U.S. Supreme Court's ruling in *Mensing*, holding that failure-to-warn claims against manufacturers of competing generic products are preempted, the focus on this issue has only grown stronger. Plaintiffs argue that someone must be held accountable for their injuries and argue that branded companies, who are the only companies that can change the label, are best suited to do so. Such a ruling could cause branded companies to withdraw their new drug applications once their drugs go off patent or, worse, stifle drug development entirely.

**Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.**

A: Early in my career, the partner who had given me my start in the products liability world left Mayer Brown to take an in-house position in another industry. That departure left me with both an opportunity and a quandary. I was now in a position to manage a client's product liability needs on a nationwide basis while only an associate, but it came with an extremely steep learning curve. Jeff Pilkington at Davis Graham & Stubbs in Denver was my counterpart at the time, representing one of my client's codefendants in the same litigation on a national level. Jeff took me under his wing and spent countless hours answering questions when I needed advice. He also taught me how to handle defeat with grace. It didn't happen very often, but when we took our lumps, Jeff handled it in an even-keeled way, always keeping his eye on the larger picture and how we could rebound to improve our clients' relative positions.

**Q: What is a mistake you made early in your career and what did you learn from it?**

A: As a very junior lawyer, I was asked to cover a hearing for a colleague who assured me that it would be perfunctory and that I would only need to stand up and make an appearance. Relying on this assurance, I only skimmed the background materials on my way to court. Of course, once the hearing started, the judge asked all sorts of substantive questions and I found myself forced to admit that I didn't have the necessary answers. Ever since, I have treated every court appearance as though it were an argument before the Supreme Court. You can never be too prepared.

*The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*