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Q&A With Mayer Brown's Joseph De Simone

Law360, New York (May 29, 2013, 4:00 PM ET) -- Joseph De Simone is the leader of Mayer Brown LLP's New York litigation and dispute resolution practice and co-leader of the firm's global securities litigation and corporate governance groups. He focuses his practice primarily on securities and regulatory disputes, internal corporate investigations, Sarbanes-Oxley compliance, complex arbitrations and general corporate litigation. He represents corporate and individual clients across a spectrum of civil, criminal and investigative cases.

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

A: The most challenging set of cases on which I have worked are the 9/11 cases. We represented the families of 20 Cantor Fitzgerald employees who died in the terrorist attacks on Sept. 11, 2001, in their applications to the September 11th Victim Compensation Fund enacted by Congress. Each of the 20 applications to the Victim Compensation Fund entailed a two-part process: (1) assembling and submitting the application for compensation to the fund; and (2) appearing before Special Master Kenneth Feinberg for a mini-trial to establish the appropriate amount of compensation. I was the lead attorney for our 20 families and led 20 mini-trials before the special master. We recovered $65.5 million for our 20 families.

These cases were challenging to litigate. First, the subject matter of the cases — the horrible and tragic attacks of Sept. 11, 2001 — permeated all aspects of the litigation process in these proceedings and gave even the most mundane litigation tasks a special meaning. Second, our sessions with the families involved the complete spectrum of emotions: from rage and anger about the attacks to the most tragic sorrow and heart-wrenching stories to uplifting vignettes about departed loved ones. There was not a dry eye in the room during these incredible sessions with the victims' families. From an emotional standpoint, these cases were extremely draining.

Third, the trial process involved putting on over 50 witnesses, including parents, children, spouses and friends of departed loved ones, before the special master and making arguments based on the evidence presented with the families at my side. These mini-trials were among the most challenging experiences I have had as an attorney.

Fourth, the Victim Compensation Fund, itself, stirred controversy from all sides. Some in the press argued that public funds should not be used to compensate the victims' families or that the awards rendered by Special Master Feinberg were too large. On the other hand, some argued that Special Master Feinberg imposed an artificial cap on awards in violation of the statute passed by Congress and that many of the awards were too low.

Finally, I was an associate while these cases were litigated, and it was challenging for me to be the lead attorney on this large matter, which included 20 separate individual cases. I learned how to run a large team of associates and paralegals; to interact with multiple clients and witnesses in real time; and to deal with the various logistical issues that arise in such matters. And I had to more-than-occasionally joust with Special Master Feinberg, a formidable adversary.

In the end, this emotionally charged set of cases has been my most rewarding experience as an attorney.

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

A: One issue that needs reform in the area of securities litigation is the continued prevalence of strike suits — instances in which the plaintiffs' securities bar reflexively files actions against publicly traded companies upon the announcement of negative news and a drop in stock price. Although there have been attempts at legislative reform (the PSLRA in 1995 and SLUSA in 1998), as well as some degree of success for the defense bar in the United States Supreme Court in recent years, there still is substantial room for reform.

Here, the goal should be to reduce the incentive for plaintiffs (and plaintiffs' law firms) to bring meritless securities actions in the hope that the corporations (or their insurers) will write a large check rather than face the unenviable task of spending several years in the modern day Scylla and Charybdis of depositions and e-discovery. The vexing question is how to punish this reprehensible conduct while at the same time preserving the option for truly meritorious actions to be brought and litigated.

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

A: One issue that has become increasingly important in recent years is the extra-territorial application of the United States securities laws and related statutes such as the Foreign Corrupt Practices Act (FCPA). As the nature of the practice of law has become international, the issue of the extent to which the United States securities laws and related statutes can reach beyond our national borders has been hotly debated and litigated.

Some of the interesting and complex issues include the following: to what extent prosecutors or regulators may enforce the United States securities laws against foreign entities and individuals; whether aggrieved foreign entities and individuals who invest in foreign securities on foreign exchanges may use the courts in the United States to enforce the United States securities laws; and to what extent domestic plaintiffs may assert jurisdiction over foreign defendants under the securities laws of the United States. These issues came to a head in the Supreme Court's seminal decision in Morrison v. NAB, 130 S. Ct. 2869 (2010). This landmark decision has spawned a slew of post-Morrison progeny litigation throughout the federal courts.

Furthermore, as prosecutors and regulators in recent years have materially increased the frequency with which they employ the FCPA to initiate wide-ranging and complicated investigations, the question of the extent of the extraterritorial application of the FCPA is a hot-button issue. This question is especially timely as the FCPA is increasingly being used as a model for foreign authorities and regulators.

Among the many complicated issues involving the FCPA is the extent to which prosecutors and regulators may indict or bring civil charges in the United States against foreign individuals who reside in far flung jurisdictions and whose allegedly improper actions arguably were limited to activity in those exotic locales. This question has engendered considerable debate — both political and legal. These difficult questions are being debated by legislators, agencies and lobbyists, as well as litigated in the federal courts.

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

A: There are two attorneys with whom I have worked that deserve recognition: Matthew McLaughlin of Venable LLP and Daniel Zinman of Richards Kibbe & Orbe LLP. They are each excellent litigators with keen intellects, vast substantive knowledge of the law, and a practical approach to problem solving. More importantly, they both exhibit the most admirable qualities of our noble profession: honesty, integrity, diligence, loyalty, creativity, humor and a passion for both the law and life in general. I have known Matt and Dan since law school and it has been exciting to see both of them develop into top-notch lawyers. They are not only leaders at their respective law firms, but they have become leaders of the Bar and of our beloved alma mater, Fordham University School of Law.

Working with both Matt and Dan as co-counsel on matters and as colleague in the defense bar has been a privilege.

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

A: Looking back on my early days as a developing lawyer, I could have been more flexible and open to the array of different options that are presented to junior associates with respect to their career path, such as participating in a secondment to a client to work as an in-house litigator or spending a block of time in public service (SEC, AUSA, ADA). These breaks from law firm life are great opportunities for junior litigators to broaden their horizons and gain valuable experience outside of a firm. Less traditional options, such as internships or sabbaticals are also interesting options at some firms. Associates should take advantage of these opportunities. They can be enriching and fun.

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