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## **Q&A With Mayer Brown's Joseph DeSimone**

Law360, New York (July 06, 2009) -- Joseph DeSimone is a partner with Mayer Brown LLP and co-leader of the firm's securities litigation and corporate governance action group.

DeSimone represents corporate and individual clients across a broad spectrum of civil, criminal and investigative cases.

### **Q: What is the most challenging case you have worked on, and why?**

The most challenging cases on which I have worked are the IPO Cases before Judge Scheindlin in the U.S. District Court for the Southern District of New York. In the IPO Cases, we represent eight issuer corporations and 45 of their respective officers and directors in one of the largest securities class actions ever.

Plaintiffs sued 309 companies, approximately 60 investment banks and over 1000 of the issuers' officers and directors. They alleged an industry-wide conspiracy to inflate the shares of almost all of the initial public offerings from 1998-2000.

The lawsuits were filed in 2001 and a global settlement is presently being considered by Judge Scheindlin for approval. I have been a member of the Issuers' Counsel Committee that has run the action for the 309 issuer-defendants from the beginning of the matter, and have been lead counsel for our firm's clients since 2006.

This case has had everything: complicated legal issues; hard fought motions; difficult politics to navigate among the various constituents; e-discovery battles; a watershed Second Circuit opinion fashioning great new law for defendants in securities actions; and a mediation comprised of over 100 lawyers and two skilled mediators. It has been very exciting for me to have been in the middle of this matter for so long in a leadership role. This case is truly one of historic proportions.

**Q: What accomplishment as an attorney are you most proud of?**

A: I am most proud of my work on 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 Sept. 11th Victim Compensation Fund set up by Congress.

Each of the 20 applications to the Victim Compensation Fund entailed a two part process: (i) assembling and submitting the application for compensation to the Fund; and (ii) appearing before Special Master Ken 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.

Litigating the Victim Compensation Fund cases for each of our 20 families was an experience like no other one I have had in all of my years practicing law. 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. I grew so much as an attorney during this process with respect to my craft, including the ability to work with and prepare witnesses and to elicit difficult trial testimony and argument. But, more importantly, I was given the opportunity to guide these families – who had lost so much – through the difficult victim compensation process.

I found that the process was a difficult but important and cathartic experience for the families. They received a chance both to face their grief publicly and to testify about how special their departed loved ones were. These cases were a once-in-a-lifetime experience.

**What aspects of law in your practice area are in need of reform, and why?**

The area of securities litigation most in need of reform is the plaintiffs' bar. For decades there had been whispers of unethical behavior from the plaintiffs' bar with respect to a wide variety of its tactics, from soliciting plaintiffs to scorched earth litigation strategy and coercive settlements.

These criticisms came not only from the corporations and advocates of corporations that

were penalized by the wave of securities litigation that swept the United States commencing in the 1980s, but from more neutral observers as well. And for many years the plaintiffs' bar claimed that these accusations were politically motivated or just sour grapes from corporations that were "defrauding" their investors.

However, the recent successful criminal prosecutions of several of the most prominent plaintiff attorneys of the past 30 years, including Mel Weiss and William Lerach, have conclusively demonstrated that criminal activity has permeated the highest ranks of decision-making in the plaintiffs' bar.

Accordingly, serious reform is clearly needed in the plaintiffs' bar. It must include a commitment to the highest ethics in the most noble tradition of our profession, as well as a commitment to reforming the way plaintiffs' firms do business.

There are many persons of integrity in the plaintiffs' bar and these individuals must strive to implement changes – both aspirational and practical – to ensure that the high profile prosecutions of its former leaders are not repeated in the future.

### **What do you see the next wave of cases in your practice area coming from?**

The next wave of securities law cases will likely involve some unforeseen fallout from the recent chaotic dislocations in the financial and credit markets. The collapse of titans like Lehman and Bear Stearns, as well as the many near-collapses of other prominent investment banks, commercial banks, insurance companies and automobile giants, has demonstrated the fragility of our sophisticated, 21st century financial markets.

There has been a predictable first wave of securities litigations brought by shareholder plaintiffs against virtually all of the financial institutions and other large corporations under a theory that they intentionally or recklessly failed to disclose the risk of heavy investments in these financial derivative instruments.

The collapse of Madoff's fund has generated a slew of Madoff-related securities litigation and if other large funds like Madoff's are exposed as fraudulent schemes, the fallout from these failures may form the next wave of securities litigation.

Of course, it is difficult to precisely map the next wave of securities cases relating to the credit crisis. Perhaps it may involve nontraditional plaintiffs in securities cases, e.g., hedge funds, financial institutions or foreign pension funds, rather than the traditional U.S. pension

funds and individual shareholder plaintiffs.

**Outside of your own firm, name one lawyer who has impressed you and tell us why?**

One lawyer that has always impressed me is Jordan Hershman, who is currently the co-chair of securities litigation at Bingham McCutchen LLP. Jordy is one of my role models and mentors in securities litigation. We worked closely together many years ago when I was a legal assistant, and have worked together as co-counsel on securities cases during my years practicing as a litigator.

When we worked together years ago, Jordy instilled in me many of the qualities (passion for the law, hard work, loyalty, creativity, humor) that have served me well in my development as a lawyer. He was a great teacher and friend, and helped inspire me both to go to law school and to develop an interest in securities litigation.

Working with him as a co-counsel and colleague in the defense bar has been enriching. Jordy brings a passion and style to each case that is truly his own.

**What advice would you give a young lawyer interested in getting into your practice area?**

There are several pieces of advice that I would give to a young lawyer who wishes to become a securities litigator.

First, I would tell that young lawyer that securities litigation is one of the most fascinating areas of the law. It is complicated and intellectually rigorous yet also involves practical skills and personality.

You are equally likely to research and draft a complicated brief as you are to argue with a colorful adversary over some disputed discovery issue. The cases will bring you to the U.S. Circuit Courts of Appeals to resolve important legal issues of the day and will involve cases on the front page of the New York Times. Alleged corporate fraud dominates the headlines and is a critical issue of our day.

I would conclude by telling that young associate that you will need to work on some key attributes to become a successful securities litigator: honesty, diligence, integrity, strong work ethic, humor and humility. Of course, these important qualities will serve you well in

any professional endeavor.

Finally, and perhaps most importantly, I would urge a young lawyer to be yourself. Do not try to fit into a certain mold or way of practicing. Study different styles and ways of practicing to develop your own particular style.

You must be comfortable with the substantive law that you choose to pursue as well as the style of lawyering you employ. That is really the only way that you will be happy as a lawyer.