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Q&A With Seyfarth's William Prickett

Law360, New York (May 26, 2009) -- William Prickett concentrates his practice in the areas of securities litigation, shareholder and corporate governance litigation, patent litigation, and other complex business litigation.

He has extensive experience counseling and defending clients in securities litigation and U.S. Securities and Exchange Commission investigations and representing clients in shareholder derivative actions, mergers and acquisitions disputes and other complex commercial disputes.

Prickett devotes significant time to counseling clients on avoiding securities and insider trading liability and advising clients on fiduciary duty issues in M&A and other corporate transactions.

He concentrates his intellectual property practice on patent infringement litigation, where he has successfully litigated patents involving, among others, oil and gas technology, recycling technology, dental products, laser angioplasty and encoded pay-per-view television technology.

Q: What is the most challenging case you've worked on, and why?

A: I've worked on many cases that were challenging for very different reasons.

However, perhaps the most challenging one was representing a generic drug manufacturer several years ago in a securities class action which was filed after the company recalled several of its products — including one that was alleged to have caused several pediatric patient deaths.

In addition to the challenging facts alleged in the securities class action, which precluded full dismissal at the outset on the pleadings, there were simultaneous product liability class actions filed all over the country and a DOJ investigation related to the recalls of these products.

The product liability class actions and the DOJ investigation were each handled by separate firms and it was very challenging coordinating among the 3 defense firms.

Indeed, it was often like “herding cats” to ensure that no firm was taking any position on one front that could adversely impact the company or strategy on the other two.

As you might imagine, among many others, there were significant issues with how any assertions of Fifth Amendment rights in the criminal matter might adversely impact the civil matters.

Other challenges posed were how to control the pace and timing of the different cases in order to best position the client. In the end, we and the other two firms were able to collectively navigate the company through the shoals to a successful conclusion.

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

A: Training and mentoring younger attorneys who go on to develop into successful and talented litigators.

While I have had many case victories and some spectacular client successes, I am most proud of the work I have done to help other colleagues develop their careers and become productive and contributing members of the bar and society.

There are many lawyers that do not have the opportunity to get good training and mentoring, and that hurts our profession as a whole.

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

A: There are several areas that could use further reform, but two stick out in my mind.

First, despite the good intentions of Congress in 2002, Sarbanes-Oxley did a lot more damage to the business world than was needed or probably intended.

Some of the hoops that issuers have had to jump through to comply with many provisions of the statute have significantly increased their operating costs — almost always unnecessarily.

Some companies have opted to list on non-U.S. exchanges, largely as a result of these increased costs and layers of management necessary to comply with SOX.

While there have been some recent changes to relieve some of the resource and cost burdens on smaller companies, more reform is needed to make the cost of compliance in line with the actual risk of securities law violations.

A second area involves the standard for pleading scienter under the Private Securities Litigation Reform Act.

Despite the Supreme Court's 2007 decision in *Tellabs*, which was to harmonize the widely divergent views among several of the Circuits on this standard, the court adopted an unfortunately vague, middle ground approach and provided little guidance on how to apply the "cogent" and "at least as compelling inference" of fraud standard in the lower courts.

This will, and has, caused district courts to apply this new "standard" differently — a result that the court's decision was supposed to prevent.

Q: Where do you see the next wave of cases in your practice area coming from?

A: We are going to see a significantly reinvigorated SEC, both from the tone at the top from Mary Schapiro and through additional funding for enforcement staff.

We will also see new regulations put in place for banks, investment banks, hedge funds and other issuers subject to the federal securities laws.

My personal view is that we need less new regulation and more competence and staff to enforce the perfectly good regulations already in place.

I think the commission is likely to focus on detecting, preventing and prosecuting fraud by financial services firms and investment advisors, particularly hedge funds.

While I think this was coming anyway, the black eye the SEC recently received as a result of the Bernard Madoff catastrophe will really accelerate the process.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: I've always admired Brian Pastuszynski of Goodwin Procter LLP. He is smart, meticulous, driven and has probably the coolest head I've ever seen when the bombs are dropping.

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

A: Get hired by a firm that has a sophisticated and well-rounded securities litigation practice to gain the necessary experience and knowledge.

Then work on as many cases as you can with as many different senior lawyers as possible.

There is no one "correct" way to handle most cases or issues.

Learning different approaches and styles will best help you develop your own style, and give you the perspective, flexibility and frame of reference to deal with new issues and scenarios that will arise in your future practice.