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Q&A With Seyfarth's Philip Comella

Law360, New York (June 10, 2009) -- Philip Comella is a partner in the Chicago office of Seyfarth Shaw LLP and chair of the firm's environmental, safety & toxic torts practice group. He has experience defending state and federal enforcement actions brought under a host of different environmental laws, including Superfund, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act.

Comella has defended companies from toxic tort lawsuits in a variety of contexts relating to the release of hazardous chemicals, and also has experience defending environmental and engineering professionals against negligence and contract claims. In the growing area of renewable energy, he has experience with environmental, contractual and tax issues.

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

A: We handled a matter in bankruptcy court on behalf of a landfill that had been unsuccessful in previous attempts to terminate a contract with a bankrupt landfill gas collection company.

The bankrupt company's failure to operate the system properly had subjected the owner to a multimillion-dollar enforcement action brought by the State of Illinois for Clean Air Act violations. Meanwhile, after the client terminated the services of its prior firm, the bankruptcy court had entered a negative finding extending the very contract the landfill wanted to terminate.

Making matters still worse, the client's mother and brother had both died during the decade-long effort to terminate the contractor and he was essentially spending the rest of his savings account on us, his last effort to terminate the contractor.

With a poor factual and legal record, we took the case, developed new grounds for termination (including the recently filed enforcement action as showing failure to stay in compliance) and prevailed at trial.

The bankruptcy court's decision has recently been affirmed by the Seventh Circuit. At the same time we settled the enforcement action for a modest payment and are now assisting the landfill in evaluating various means to generate alternative energy at the facility, including landfill gas recovery, wind and solar energy.

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

A: We represented a landfill in a contract dispute with a bankrupt landfill gas collection company that had been unsuccessful in prior attempts to terminate the contract. (See above.)

The gas collection company had ceased operating the pollution control equipment and consequently subjected the landfill to a multimillion-dollar enforcement action by the state for Clean Air Act violations.

After prevailing at trial on the termination case, I was able to convince the firm to handle the remaining part of the case on a pro bono basis because of the public interest in assisting the landfill with coming back into compliance with the environmental laws.

We wound up handling both the enforcement action defense and two appeals of the bankruptcy court decision pro bono, prevailing on all levels and in fact, helping the landfill come back into compliance with the environmental laws.

With these matters now behind it, the landfill is evaluating options to convert the property into a renewable energy park, using landfill gas, wind and perhaps solar power to supply energy to the nearby electric grid. I was also proud of the firm for allowing to take this difficult case pro bono.

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

A: Litigation, including environmental litigation, is in need of more reform. Too many nonmeritorious claims clog the courts and result in settlements not because of the value of the claim, but because of the cost of litigation.

There should be procedures, in addition to Rule 11 of the Federal Rules, to weed out frivolous claims with accompanying sanctions. At the same time, parties should have the option of a "fast-track" litigation, where they agree to shorten the discovery and deposition process and get to the point, and a judgment, faster.

Litigation is a necessary tool to resolve business disputes but the cost of litigation too often plays a disproportionate role in determining the ultimate resolution.

In the administrative realm, we are still seeing environmental agencies doing too much regulating through unpublished guidance and internal memos.

Agencies need to evaluate their binding pronouncements and make sure that they have followed proper rulemaking procedures before alleging violations and imposing fines upon the regulated community.

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

A: Although it is fashionable to predict a flood of global warming mass tort actions, I think it is more likely that the next wave will be in one or more of these areas: (1) private citizens suits or governmental actions for failing to report or accurately report greenhouse gas emissions under state and federal GHG reporting laws; (2) false or misleading claims for “going green;” (3) inappropriate or unverified taking of carbon credits, renewable energy credits, or other environmental credit; and (4) toxic tort actions seeking medical monitoring related to school children exposure to various permitted air emissions.

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

A: Robert O'Meara of ReedSmith. Bob has a good mix of legal and personality skills that together are necessary to achieve real results. He is sharp in litigation but has the social skills to deal with aggressive opposing lawyers, cranky judges and difficult witnesses.

He is good at looking ahead in a case and plotting out strategy that stands a good chance of prevailing in the long term. He also writes well and quickly captures the core legal issues in a case.

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

A: Must gradually, but decisively, answer the question, what do you want to be known for? Distinguishing yourself is only possible if you possess a skill set that others do not have.

Pick a specialty that you like, read up on it, go to conferences, write articles and speak. Join an organization that focuses on the area. Soon you will be an expert, or if lucky, a recognized expert.

Further, do not forget that clients care about skill sets but they hire people; being smart is only half of the battle: you must know how to get along with people and gain their trust.