Q&A With Seyfarth's Joe Dyer

Law360, New York (March 01, 2013, 2:46 PM ET) -- Joseph J. Dyer is a partner in Seyfarth Shaw LLP's Washington, D.C., office and chairman of the firm's government contracts practice. He has been practicing in the area of government contracts as well as in the area of U.S. export controls and anti-corruption laws for over 30 years. He currently is a member of the board of directors of the Pro Bono Resource Center of Maryland.

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

A: We litigated a claim against NASA arising out of the crash of the Space Shuttle Columbia. Our client had leased NASA equipment that was loaded on Columbia and lost in the crash. We claimed for the value of the equipment, $87 million. We filed claims based on the lease contract and negligence.

The lease claims were based on mistake — mistake regarding NASA's indemnification of our client against losses. Mistake claims are always challenging. This was especially so given that the lease contract was executed more than ten years before hand and there existed very little contemporaneous records of the parties' intentions, and after 10 years, many of the participants' memories had faded (and some had died). It took a bit of detective work to discern the parties' intentions from the documents — luckily, we were able to confirm our conclusions based on the documents in depositions of NASA officials.

And as one might imagine, working one's way through the technical aspects of the shuttle program and NASA procedures to establish negligence was extremely challenging. I was appreciative of the several years of physics courses I took in college.

Perhaps more challenging than the legal aspects, however, was the challenge of managing the case to accommodate NASA's sensitivity to charges of negligence — especially in such a high-profile matter. The NASA personnel with whom we worked were, however, all very professional.

A side benefit of the case was that we got to meet, and in some cases depose, a number of high ranking NASA officials.

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

A: It doesn't involve law per se. The practice that I believe is most in need of reform is what I see as an increasing lack of transparency in government contracting processes. I suppose that we all want less transparency of our own actions. And I suppose that government counsel may sometimes take the view that the less companies or their counsel know the better. Given the deference accorded the government in all types of procurement matters, however — protests, claims and the like — I do not understand government counsel's reticence to fuller transparency.

I believe that greater transparency would improve the procurement process generally and result in quicker and more accurate resolution of legal actions that might arise with respect thereto.

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

A: The court's decision in United States of America v. Science Applications International

Corporation, 626 F3 rd 1257 (D.C. App. 2010) holding that a contractor's withholding of information regarding its noncompliance with a material contract requirement can render contract invoices false claims is important and will, I suspect, taking on increasing importance in the coming years. The court took pains to state that the requirement with respect to which the contractor withheld information regarding its compliance must be material to the government's decision to pay. That analysis is, however, obviously vague. And there is concern that, over time, the theory will drift to encompass an increasing number of contract requirements — in effect, transforming simple breaches into false claims.

Other circuits have adopted the theory, and some have adopted it in more restrictive terms. This is, in any case, a matter to watch in the coming years.

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

A: There are so many. Not at the risk of, but with certainty that I am, omitting many deserving attorneys, I will mention Paul Debolt. Paul, now at Venable, was a young JAG officer when I first met him. I was a young associate. We were on opposite sides of a case involving strong personalities on both sides. Even at that relatively young age, Paul impressed me as someone who strove to put personalities aside and to focus on moving the case forward based on its merits. Thanks in good part to Paul's attitude, we were able to settle the case to, I think, both parties' benefit.

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

A: Do I really have to admit to a mistake?

I was a very young attorney. I wrote a relatively strident letter to a government project manager complaining of the government's failure to fulfill a number of its contract obligations and the severe impact its failure was having on my client. The project manager wrote back pointing to an even longer list of my client's failures and the severe impact our failures were having on the government. He then called me to suggest that we cooperate to identify the significant issues and work to resolve them — and ignore the insignificant issues. We did, and the project continued on to great success.

The lesson I learned, or at least have tried to learn, is that there are often two sides to a story — and even if there are not two sides to a story, there are two interests, both of which must be accommodated if a matter is to proceed to either parties' benefit. In the heat of disputes, that sometimes is a difficult path to follow. It is, however, invariably to both parties' benefit.

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