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Q&A With Jones Day's Rick McKnight

Law360, New York (March 05, 2013, 2:38 PM ET) -- Frederick L. McKnight is a fellow in the American College of Trial Lawyers and is the head of litigation for Jones Day's Los Angeles office. His practice primarily involves complex business litigation, including bench and jury trials of antitrust, contract, securities, oil and gas, health care, fraud, intellectual property, business tort, entertainment, product liability, toxic tort, bankruptcy and environmental cases.

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

A: During the 1980s, I represented British Petroleum in its dispute involving five other major oil companies over the precise ownership interests in the Prudhoe Bay, Alaska, oil and gas reserves. We were brought in for a three-month trial in Delaware Chancery Court to replace other counsel that had represented BP in a two-year technical arbitration, which raised numerous issues and that spawned significant challenges to the arbitrators' award.

The trial that ensued was then the longest in the history of the Chancery Court, involved America's largest petroleum reserves, was focused on the "hydrocarbon pore volume" that underlay the oil companies' leases, threatened potential changes that could swing billions of dollars of interests, required the interpretation of a five-volume unit operating agreement and involved mastering a complex arbitration record and reservoir operational data.

The personal rewards, however, far exceeded the challenges as I got to work with the world's foremost petrophysicists, seismologists, geologists, economists and other petroleum experts and witnesses in a matter that was important and consequential.

It was also a reminder of what trial lawyers know well. We become saturated in the law and facts of our case, think and breathe the case exclusively for months on end, are exposed to the guts of how parts of our economy work and, when the case is over, we may well, in the words of Monty Python, "now try something completely different."

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

A: My current case load is focused on intellectual property, and I have mounting concerns that jury trials of patent infringement cases involving complex technologies are not promoting the worthy goals of our patent system.

I believe enormously in juries, their collective common sense and their motivation and capacity to deliver fair results. But many patent matters, particularly in the area of consumer electronics, present huge challenges for juries in understanding the technologies, especially when numerous patents may read on an accused product or method.

As a consequence, we see outsized damages awards, many based on economic expert opinions that lack rigor and are not truly focused on the specific accused feature of a product or method. That reality incubates "patent trolls," coerces settlements based on the distorted risks, discourages innovation and alters business judgments. The solution to the problem lies, as with most legal problems, in the wisdom of good trial judges but also with patent reform legislation.

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

A: There is a seminal case in the area of patent damages, Georgia-Pacific Corp. v. U.S. Plywood Corp., 318 F.Supp.1116 (S.D.N.Y. 1970), that, for nearly a half-century, has provided the intellectual structure for analyzing reasonable patent royalties but which has also become an impediment to rigorous economic analysis as its various factors are lazily invoked as a talisman to produce magical, but unsupportable, results.

It is a great credit to Judge Charles Tenney that his opinion in a bench trial 43 years ago has become authoritative in the critical area of patent damages. The use of the opinion also provides a case study (no pun intended) of how lawyers and experts can substitute references to the case as a substitute for analysis and as a platform on which royalty numbers are advanced based on the expert's ipse dixit cloaked in language from the case.

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

A: A great trial lawyer, now retired, who defined the ideal profile of a complex case litigator was David L. Foster, who practiced at Cravath, Jones Day and Willkie Farr and is a fellow in the American College of Trial Lawyers. Dave has a keen intellect and searching curiosity; he masters complex facts quickly, and more powerfully, sees relationships amongst those facts that can tell his client's story.

With a jury, he is modest, empathetic, persuasive and likeable. With a judge, he quickly gains credibility because of the soundness of and support for his positions. For all, he is a master orator and a great raconteur.

He was a great mentor to many younger lawyers and took huge pride in helping others learn the craft. And, like most good teachers, he had an endless capacity to learn. And he still does.

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

A: I made a serious mistake in selecting a juror in federal court when I represented plaintiffs victimized by a bank Ponzi scheme. The juror whose profile and answers during voir dire were unremarkable or favorable also said the person she most admired in history was Rasputin. While historians do debate Rasputin's role in history, my instincts told me that this juror's response suggested she was bitter, volatile and unlikely to meld with other jurors. On the other hand, our jury consultant insisted that we keep the juror and not excuse her because of her other favorable characteristics, including her gender, education, articulateness and employment.

My mistake, and it was mine alone, was in ignoring my instincts and keeping the juror. Ultimately, she prevented the panel of eight jurors from reaching a unanimous verdict and, to the other juror's great frustration, caused the jury to hang. I learned that if the client has reposed its trust in me to try its case then I should certainly take counsel of others, but in the end, I must make the trial decisions based on my own best-informed judgment. I cannot delegate those decisions.