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Q&A With Reed Smith's Jim Davis

Law360, New York (February 21, 2013, 2:10 PM ET) -- Jim Davis' national litigation practice at Reed Smith LLP focuses on representing policyholders in insurance coverage disputes involving product liability, product recall, product contamination, first-party property and business interruption losses, additional insured and vendor endorsements, historic coverage for environmental and asbestos claims, cyberliability, directors and officers liability, professional liability, employment practices liability, commercial crime and fidelity bonds, workers' compensation liability, domestic and U.K. insolvencies and U.K. solvent schemes.

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

A: The most complicated case I worked on involved an insurance recovery matter that was litigated in multiple different forums and locations at the same time. Insurance disputes often involve towers of insurance issued by domestic and foreign insurance policies, which may contain London or Bermuda arbitration clauses.

My client was forced to file a lawsuit in one state court, initiate a U.S.-based arbitration and start a London-based arbitration, while trying to argue that all of the matters should be heard in state court and fending off a competing insurer lawsuit in another state. In the end, all of the matters moved forward separately and applied different legal standards to the same occurrence.

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

A: Insurance litigation is thriving largely due to the refusal of Congress to remove the insurance industry's antitrust exemption and to regulate property and casualty insurance at the federal level. Currently, insurance is regulated by the states, and each state regulator develops, applies and enforces standards differently. This 50-state patchwork of laws and regulation leads to uncertainty as to the actual scope of coverage of insurance at the time it is placed and at the time of a claim.

This, in turn, contributes to increased litigation over the meaning and effect of insurance policy language, which is further complicated by disparate rulings by courts in different states and often in the same state which lack clear guidance about the meaning and intent of everyday insurance policy language.

Moreover, insurance companies are encouraged to deny claims and resort to litigation because courts rarely take bad faith claims-handling rules seriously, and insurers can often force policyholders to compromise a covered claim.

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

A: The reasonable expectations doctrine is essential to the practice of insurance recovery. In the end, insurance is a product that must provide some useful function and meet the expectations of the consumer. Indeed, insurers often make promises about how the product will work and perform when needed but refuse to perform when claims are made.

It is common for insurers to argue that the insurance does not cover the core operations of a policyholder for which it was procured. It is incumbent on the courts to apply the reasonable expectations of the policyholder and make the product work, even when a strict interpretation of the policy would otherwise make it useless.

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

A: One of my early mentors, Jim Ziegler, is a lifetime Chicago small-firm practitioner who taught me many lessons about the right way to practice law. Rather than accept the "law" as summarized in a treatise or article, he always broke cases down to the fundamentals and personally researched the key issues. If confronted with the same issue repeatedly, he still regularly checked the law to make sure it had not changed.

His cases ranged from the most sophisticated banking issues to the simplest collection cases, but he spent the time needed on each to maximize the chance for a successful result and gave good value for his services. He treated everyone in the process, including his employees and adversaries, as equals. He believed that everyone should have a personal will and would often prepare them pro bono.

Perhaps most importantly, he kept a balance between his work as a lawyer and his family, which has helped him maintain a passion for the practice of law over many decades.

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

A: My first mistake as a lawyer was to assume that the other side in a dispute was wrong and to litigate cases for the purpose of proving that my client was right. As with everything in life, no one is entirely right, and litigation should be a way to solve problems and not increase them. I now keep an open mind about the "facts" of a case and realize that a "win" for my client may include accepting that neither side was right nor wrong.

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