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Q&A With Choate Hall's David Attisani

Law360, New York (July 16, 2009) -- David A. Attisani is a partner with Choate Hall & Stewart LLP in the firm's Boston office and chair of the firm's insurance and reinsurance practice group, as well as co-chair of the ABA's reinsurance subcommittee. He represents reinsurers, cedents and intermediaries.

Attisani has been elected to The International Who's Who of Insurance & Reinsurance Lawyers, World's Leading Insurance and Reinsurance Lawyers, and Best of the Best USA 2009 for Insurance/Reinsurance. He received his BA, magna cum laude, Phi Beta Kappa from Williams College and his JD, cum laude from Harvard Law School. He also clerked in the U.S. District Court for the Southern District of New York.

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

A: I have worked on a number of challenging cases, many of which I can't discuss because they are subject to confidentiality agreements. However, one I can talk about is *Commercial Union v. Swiss Re America*.

This was one of our most challenging cases because there was no reinsurance law on the subject of our dispute — annualization of facultative certificate limits.

Specifically, the federal trial court in Massachusetts (and, later, the First Circuit Court of Appeals) was asked to determine whether Swiss Re was obligated to cover a ceding insurer's annualized multiyear occurrence limits, when Swiss Re's certificates did not specify annual limits or otherwise address the issue.

Our trial team prevailed, convincing two different U.S. district court judges to conclude, on summary judgment, that Swiss Re's certificates — which set forth only per occurrences limits — did not permit annualization.

Although we did not prevail on appeal, both sets of courts clarified (and/or reinforced) several principles of reinsurance law that had been dormant or unclear for some time.

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

A: Choate has always had a rich tradition of high-quality insurance coverage work on behalf of carriers. When I joined the firm in the early '90s, I had the opportunity to serve (with others) as counsel in *Compagnie de Reassurance v. New England Re*, a federal court fraudulent inducement/retrocession case.

We prevailed in the First Circuit and obtained a \$68 million reversal on behalf of the Hartford companies. Since that time, I have been instrumental in building a robust reinsurance practice which is one of the leading reinsurance coverage practices of its kind.

Since 2000, I have had led the insurance and reinsurance group, which includes more than 20 lawyers representing insurers, reinsurers and intermediaries in complex litigation, arbitration and bankruptcy proceedings, and I have handled cases venued all over the world.

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

A: Some companies and practitioners in the insurance industry think that the arbitration panel selection process requires greater scrutiny and (perhaps) reform.

In the past, the majority of panels were selected by cross-striking names from an adversary's list of candidates and then drawing lots to select from between the two remaining choices.

Although this process has been successful — even when a candidate from our opponent's list is selected — some practitioners believe that too many arbitrations are decided by a coin flip.

As a result, ARIAS and other trade organizations have proposed alternative processes. In general, they seek to dilute each side's umpire pool (i.e. force the parties to proffer some candidates with whom they have less familiarity), in an effort to create a pool of more neutral candidates.

Although I would favor a process that made umpire selection fairer and more svelte, I am not sure that we have identified an ideal model yet.

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

A: For a number of years, APH disputes dominated the insurance/reinsurance landscape — specifically disputes regarding pollution and asbestos.

Although asbestos and asbestos-nonproduct cases continue to be robust (on some books), a number of other major dispute areas have become important features of our practice, i.e. finite risk; D&O; Archdiocese sex abuse claims; tropical storms; financial fraud; building defects; and breast implants.

I predict the next major wave of cases will be losses due to fraudulent financial practices. Natural disasters, will, of course, continue to be significant sources of loss. Health care disputes will also continue to play a prominent role industrywide.

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

A: I have had the good fortune to work with a number of talented lawyers, so it is impossible to pick just one. Among many others, I would highlight: Bob Bates at Bates & Casey; Neal Moglin at Lovells; Mark Kreger at Kerns, Frost & Pearlman; John Nonna at Dewey & LeBouef; and James Crabtree of Taylor Wessing.

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

A: Insurance and reinsurance requires a binary approach — new lawyers must acquire both trial skills and industry-specific knowledge.

First and foremost, an insurance/reinsurance practitioner must be an excellent trial lawyer. To that end, I would advise young lawyers to obtain as many trial and hearing-related experiences as possible early in their careers. They need to learn by doing — with appropriate support and instruction.

Next, it's critical for clients to believe that their insurance/reinsurance lawyer knows the industry well enough to protect their long-term business interests.

For example, in insurance/reinsurance disputes, a client will often be pitted against its active business partners. It is important to resolve an honest dispute by means that will preserve valuable business relationships, but also establish the client's legal and business position going forward.