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Q&A With Choate's Hugh Scott

Law360, New York (March 25, 2013, 2:07 PM ET) -- Hugh Scott is a partner in Choate Hall & Stewart LLP's insurance and reinsurance group, where he represents insurers in the litigation and arbitration of coverage disputes regarding claims on hazardous waste sites, asbestos, business disparagement and directors and officers liability. Scott clerked in federal court and was an assistant U.S. attorney.

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

A: Challenges come in a variety of flavors.

In terms of trial challenges, I recall two cases in particular. One was defending a major national insurer before a small-town Midwestern jury against claims for insurance coverage by a large local employer. When some of the prospective jurors showed up wearing the employer's baseball hats and windbreakers, we were concerned. When the plaintiff rested after six weeks of trial, we convinced the judge to grant a directed verdict. We were allowed to talk to the jury afterwards and learned that, lo and behold, at the close of the plaintiff's case the defense was ahead. As it turned out, the plaintiff local employer wasn't all that popular with the local citizenry despite the baseball hats and windbreakers, thereby debunking the myth of the hometown advantage.

The second case was prosecuting a powerful state senator for bribery in reliance on testimony of the unsavory fellow who had paid him and who had given several versions of the events. After six weeks of trial, followed by cliff-hanger deliberations, the jury convicted two days before Christmas, thereby belying the old chestnut about charitable Christmas verdicts.

In terms of "bet the company" litigation, one of the most challenging cases I've had was defending a major national insurer from staggering potential liability for nationwide asbestos claims. That litigation involved cutting edge issues that unfolded over the course of a decade in a multiphase arbitration, two state court cases and two federal cases, resulting in successful resolution for the client. Another challenging "bet the company" case was defending a large New England Bank in a federal criminal fraud trial. Although the bank was found guilty of technical reporting lapses, it was acquitted of the fraud charge, which, if the bank had been found guilty, could have caused major regulatory problems.

The biggest organizational challenge I've had is a recent experience representing a major national insurer in the Chinese Drywall multidistrict litigation proceeding, which involved about 10,000 individual plaintiffs and several thousand defendants.

The greatest personal challenge I can recall came in my pro bono defense of an Iranian national charged with attempting to buy missile parts illegally in the U.S. in the early 1980s. My client spoke no English. The hysteria surrounding the Iranian hostage crisis of 1979-1980 was still fresh in everyone's mind. My biggest challenge was trying to convince my client that my job was to do my very best to protect his interests and that I was not just part of a political show trial. I don't know that I ever fully accomplished that, but I do know that he was a pleased man when he got on the plane headed east at the end of the month-long trial.

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

A: Class actions come to mind. Insurers who have been sued in consumer class actions readily understand the potential for their abuse. Over the last decade, Congress has tightened up the procedural rules for class actions and expanded federal class action jurisdiction to provide somewhat of a safe haven from generally hostile state class action venues. But more needs to be done.

Unfortunately, a class action complaint remains a potent weapon to extract a "strike settlement" unrelated to any real notion of harm or liability — the proverbial perpetual plaintiff who flyspecks regulatory filings for any minor inaccuracy in the confidence of being paid something just to go away. As originally conceived by the drafters of the federal rules decades ago, the Rule 23 class action has a valuable role to play. The challenge is to return to that model. The hope is that recent jurisprudence from the U.S. Supreme Court is doing that.

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

A: We spend a lot of time trying to figure out what the next "big problem" will be. Global warming and fracking are on most people's short lists. These areas have a couple of things in common — the potential stakes are dramatically high, but not much has happened yet (and maybe never will). Oil industry experts are quick to assure that fracking is safe and poses no threat to the nation's groundwater. Hopefully, they are right because the current goal of national energy self-sufficiency is premised on a nationwide program of large-scale fracking to supply the country with oil and natural gas. If fracking turns out to damage the environment, that damage may be irremediable.

Similarly, most people are coming to recognize global warming as a reality that is beginning to change weather patterns and exacerbate natural disasters. To date, neither of those developments has gained traction in litigation seeking insurance coverage. However, that could change.

Before 1970, no one would have guessed that our society would come to look to commercial general liability insurers to finance both a massive nationwide environmental cleanup and compensation for a nationwide epidemic of asbestos disease. If something like that occurs with fracking or global warming, it will dwarf the environmental and asbestos issues that have faced insurers over the last 40 years.

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

A: Associate Justice Robert Cordy of the Massachusetts Supreme Judicial Court wrote the court's opinion in Boston Gas v. Century Indemnity Company in 2009. What is impressive about that opinion is the clear, lucid and simple manner in which it explains and resolves complex insurance issues with clarity and guidance. As far as I know, Justice Cordy has little or no background in complex insurance issues. I am impressed that he could teach us insurance lawyers so well.

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

A: I learned many years ago never to take for granted that your motion for extra pages for a brief will be allowed. As a young prosecutor, I was working on an important appellate brief, which we finished and filed around midday on the day it was due. The final version was a page or so over the limit. But we were the government and had important things to say, so we just filed a pro forma motion for extra pages and left it at that.

It being a Friday, the rest of the team left. In the early afternoon, I got a call from the clerk's office to pick up the brief as it had been rejected as over the page limit. Now, this was long before computers, when "word processor" meant typewriter, and secretaries still used carbon paper. So, I spent the next couple of hours with scissors, cutting out the extra white spaces between sections and taping down the text on new pages — fortunately, we did have a newfangled "Xerox" machine. The brief got refiled just before 5 p.m. And ever since, I've always moved in advance for any extra pages.

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