

## Q&A With Morgan Lewis' David Luttinger

Law360, New York (May 12, 2011) -- David Luttinger is a litigation partner in the New York office of Morgan Lewis & Bockius LLP. Luttinger has represented and advised clients involved in litigation, arbitration and mediation in matters related to insurance coverage, toxic torts, environmental, commercial disputes and product liability. He has handled disputes over underlying environmental, asbestos/silica, toxic tort, product liability, directors and officers, errors and omissions claims, and employment practices; he has also handled first-party claims for loss covered by physical damage and business interruption policies, fidelity and crime policies, worldwide transportation policies, and representation and warranty policies.

Luttinger's clients include Fortune 500 companies involved in the energy, chemical, manufacturing, retail, banking and financial services sectors. Before entering private practice, he was an assistant district attorney in New York County in the Trial Division.

### **Q: What is the most challenging lawsuit you have worked on and why?**

A: This is a tough question, since I have worked on a variety of unique and challenging suits over the years. When I think back to my work as a prosecutor, I had the burden of proof beyond a reasonable doubt in many one-witness cases, where the witnesses had no financial interest in the case and his own troubles with the law. Each of these cases was about as challenging as they could be because there was always a real question about being able to even put on a case if we couldn't get that witness to court.

The commercial disputes that I mainly work on now can have logistical and evidentiary challenges, as well, but the greatest recurring challenge is trying to simplify and make manageable for judge and jury what appear to be factually and legally complex cases in a way that increases the likelihood of a cost-effective and favorable result for the client.

For instance, I was working for a gasoline refiner on an insurance coverage matter, where the refiner was facing over a hundred lawsuits by claimants who said the client's products were defective causing environmental damages. We ended up litigating against multiple insurers for nearly six years on both coasts and in an arbitration. The insurers hired some of the most respected law firms to represent them in these matters, which were aggressively litigated.

In an action we brought in federal court in Philadelphia, we quickly moved for and obtained summary judgment ordering one of the insurers to pay my client's mounting defense costs. That ruling was affirmed on appeal to the Third Circuit.

We also sued another insurer in California state court, where we had an extensive fight over whether that insurer's policy had been released as part of an earlier settlement in an unrelated coverage case (before that same California court) involving the insurer's sister companies. After that dispute was resolved favorably for our client following a bench trial, the insurer sought to arbitrate the substantive coverage dispute before agreeing to settle.

As that part of the dispute was coming to an end, we were also litigating coverage issues against the reinsurer of our client's wholly owned captive insurance company. Through a combination of litigation and mediation, we were able to reach an agreement with that reinsurer to brief and obtain rulings on certain threshold legal issues that the parties agreed would facilitate a reevaluation of their positions for purposes of settlement. The court agreed with our position on most of the issues and, in a subsequent mediation, we were able to reach a settlement.

**Q: Describe your trial preparation routine.**

A: I am a strong believer in trying to visualize what the trial might look like from the moment a potential new matter comes in the door and in preparing for that trial from the start. Even when pitching for a new matter, I think it is critical to be thinking about what the true factual disputes are that would warrant a trial in the case. At the same time, this helps me to put on a separate page the disputed legal issues that may allow the parties to move the case to an early resolution, or at least to streamline and simplify the dispute for trial. I often look for relevant jury instructions and study those to get a clear sense of what I will need to prove to a jury. If there are nuanced or unsettled issues, I try to sketch out special jury instructions on those issues as well.

From the start, I try to put into concrete, simple terms what my client wants to achieve out of the lawsuit. Whether it is a specific amount of money, declaratory relief or some type of equitable relief, I find it an invaluable trial preparation tool to focus on the client's concrete objective from the outset of the case. One of my mentors told me that once I identified that objective, I needed to approach the case and the objective as if it were my own money at issue. His point was, if I approach the matter as if it were my money that was taken or withheld, I would "plan my work and work my plan" more efficiently.

From there, it's a matter of rolling up your sleeves and trying to learn the case better than your adversary. I think of it as working backwards to figure out the testimony, documents and other evidence that will take us to the client's objective. With the end goal in mind, the team can effectively map out a discovery game plan, prepare key pretrial motions, and get witnesses and key exhibits ready for trial.

**Q: Name a judge who keeps you on your toes and explain how.**

A: Judge Stuart R. Berger of the Circuit Court for Baltimore City. While not wanting to single out any judges, I recently concluded a large and complex insurance dispute before him. He is extremely hard-

working and diligent — the type of judge that asks during the initial conference what date the parties will be ready to try the case, then cuts a month or two off of the date the parties propose, and is known for not moving that date.

**Q: Name a litigator you fear going up against in court and explain why.**

A: I don't think I have been afraid of any lawyer that I have been up against, but I recently had a chance to work with Ava E. Lias-Booker from McGuireWoods. She is tireless, strategic and extremely credible. She is a trial lawyer that genuinely demonstrates the strength of her conviction — welcomes the chance to get before a jury and has a laser-like focus on her theory of the case.

**Q: Tell us about a mistake you made early in your career and what you learned from it.**

A: In one of the first civil cases I worked on after leaving the New York District Attorney's Office, I was tasked with doing something that I had not had to do as a prosecutor — answer interrogatories. It was a complex insurance coverage matter that involved hundreds of insurance policies, many of which had terms that were considered relatively standard. We were seeking coverage for hundreds of underlying matters.

While reviewing my draft responses with the lead partner on the case, he asked if I had actually analyzed the policies in preparing the response. After I told him no, that I had relied on the generic descriptions of the policies from the complaint, he took me out to the woodshed.

It wasn't a pleasant discussion but he made his point: if I wanted to be an effective advocate, I had to try to know the policies as well as (and hopefully better than) my adversaries. He said that I couldn't rely on a superficial understanding of the policies because a single difference in a policy term or condition could make the difference in the case.

I learned two important lessons. First, that partner's reaction and the time he spent with me to teach me how to prepare responses to that discovery showed me how important it is to develop relationships with mentors who care and are willing to invest their time to help you become a better lawyer. Second, to be an effective commercial litigator, I was going to have to work hard to learn a new area of the law in addition to new procedures, but I also had to strive to know more about the case than anyone else.

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