Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Q&A With Morgan Lewis' James Pagliaro

Law360, New York (March 08, 2013, 12:10 PM ET) -- James D. Pagliaro is a firm managing partner of Morgan Lewis & Bockius LLP and a partner in the litigation practice. As a firm managing partner, he is responsible for client relationships, including managing the firm's client feedback program, implementing initiatives to expand the firm's relationships with its clients and supervising the firm's client outreach projects, marketing, communications, public relations and business development. In his legal practice, Pagliaro focuses almost exclusively on mass tort and product liability litigation.

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

A: The most challenging matter that I have encountered was when we were retained by a major food company to serve as national coordinating trial counsel for product liability and toxic tort injury claims filed by hundreds of plaintiffs in federal and state jurisdictions throughout the country. We faced an uphill battle from the outset, having assumed the defense of the client from another law firm in the midst of discovery in multiple pending cases. The discovery against our client had been completed at the time that we undertook the representation, so we therefore lost the opportunity to handle the company discovery in the way we would have preferred.

Compounding this was the short time frame we had to prepare for trial. The first trial was scheduled only one month after we were retained. We eagerly attacked the challenge, quickly developing trial-ready defenses and expert witnesses as well as an effective risk management strategy. In the final outcome, we successfully resolved hundreds of cases through early motion practice, obtained summary judgment in three major cases and tried two cases resulting in post-trial settlements favorable to the client.

We surmounted the obstacles immediately presented before us and in the end, were able to manage the risk to the point where the litigation was globally resolved in the client’s favor.

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

A: As highlighted by an article in [Law360] last year, according to the BTI Litigation Outlook 2013 report, a high proportion of corporate counsel are calling for law firms to manage e-discovery more "effectively and aggressively," particularly because the e-discovery costs of litigation are typically borne on one side. The bulk of companies' information is now electronic and managing this data can be a challenge, so corporate litigants turn to their law firms to do so, but their options are still few and the costs can be high.

Whether dictating strategy, cost, selection of service providers, negotiations, etc., the sheer volume of data that corporate litigants possess, is driving e-discovery. All of that data, which proliferates and duplicates inside and outside of the enterprise, creates risk and is potentially subject to discovery. Reform must address the volume problem and reach of discovery in order to meaningfully level the playing field between big data versus little data litigants and refocus litigation on the merits. This is particularly acute in products cases where the facts and sought after information can stretch back for decades.

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

A: The Wal-Mart Stores Inc. v. Dukes case, in which the U.S. Supreme Court overturned class certification of one of the largest employment discriminations class actions ever, has had wide reaching implications and has forced plaintiffs' attorneys to thoroughly evaluate whether to proceed with all forms of broad-based class actions that historically have been filed with the goal of forcing sizeable settlements. The court, in its June 20, 2011, decision, rejected class certification, where a handful of named plaintiffs sought to represent over 1.5 million female Wal-Mart employees in asserting claims that the company discriminated against them in determining promotions and compensation.

The Dukes decision has forced plaintiffs' attorneys to rethink their strategies with regard to the execution of massive class actions. While the decision undeniably struck a blow to the plaintiffs' class action attorneys, they have proven resourceful and have already attempted to navigate this new obstacle by filing smaller, more specific class actions and actions under state laws in state courts.

Furthermore, they have worked to identify (and sign as clients) more named plaintiffs, so they can be prepared with multiplaintiff cases that attempt to consolidate individual discrimination claims should their class claims fail. As outside counsel, we must manage risk and prepare our clients for this new wave of cases and prepare effective defenses amid this changing class action landscape.

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

A: Over the course of my more than 35 years as a practicing lawyer, few other lawyers, if any, have left the lasting impression on me that Christopher Reynolds has left. Chris is a talented and dynamic attorney who left our labor and employment practice six years ago to tackle a new challenge at Toyota Motor Sales, U.S.A., where he is now group vice president and general counsel, chief environmental officer and chief compliance officer. Chris' ability to thrive under pressure, develop creative ideas and solutions and effectively manage staffing issues has translated well at Toyota.

Not long after joining Toyota, he was thrust into handling mass tort litigation against the company, which he has done successfully. Chris left a quite a mark at Morgan Lewis with his cutting edge work assisting employers in implementing diversity programs, his high degree of skill in Title VII employment litigation and his innovative work on human resources-related counseling. I still miss him on a professional and personal basis. However, I get great pleasure from seeing him move on to other challenges at Toyota and take them on with fervor.

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

A: Early on in my career at Morgan Lewis, we didn't have the sophisticated preparatory jury research exercises that we do now. In lieu of these exercises, we instead would present our arguments and summary of cases to our associates and legal secretaries. During these early years, I was preparing for a case in which I was defending a client against claims that low levels of lead resulted in the loss of IQ points in exposed children. I presented in front of my associates and secretaries, who were a tough and scrupulous crowd, leading me to believe that I would have to craft a very convincing argument to sway a jury.

However, the jury pool in Philadelphia proved to take a much different viewpoint — they were relatively unconcerned about the loss of a few IQ points. The lesson I culled from this is that if I have ideas on how to argue a case, I should not always limit myself to testing them on my peers alone — my peers are not always the best source of feedback on the persuasiveness of arguments. In a court room, I don't have to convince my colleagues but rather a more diverse set of individuals with varying thoughts and backgrounds.

The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.