

Crowell & Moring

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Friday, Sep 07, 2007 --- Crowell & Moring LLP's torts practice believes in staving off high-profile litigation before it happens. But if it happens, the firm's attorneys aggressively handle every aspect of it, advising on public relations just as they seek early dismissals.

"What clients tell us is unusual about our practice is that it's soup-to-nuts," said the practice's co-chair Scott Winkelman. "You'll find niche specialists in the practice, but due to the culture of generalism here, we're jacks-of-all-trades—which of course the clients tell us they like because it's one-stop shopping for them."

In recent years, those clients have run the gamut from construction equipment makers to baby products vendors. The practice has defended an aerospace and defense behemoth in a major environmental tort case over a defunct barilium site in Florida, as well as a major aluminum wheel maker in a wheel-off personal injury suit.

Happily coexisting with the firm's culture of generalism is an approach geared toward institutional clients, two of the largest of which are CSX Corp. and E.I. DuPont de Nemours & Co.

Winkelman has spent almost 20 years with Crowell and almost 15 years working in torts—a field he entered when Crowell began representing DuPont back in 1992 as one of its primary firms handling cases over asbestos, fungicides and even antitrust and labor disputes.

But it wasn't just DuPont that brought Winkelman to torts. Really, he said, he had followed a client—an automotive company that made ignition switches for Ford Motor Co.—into the area and handled for the company what was at the time the second-largest recall in history.

And at his prompting in 2002, the firm gained his current practice co-chair Kathleen Taylor Sooy. As an attorney of 17 years with McGuireWoods LLP, she had worked alongside Winkelman as national coordinating counsel for DuPont, and today, five years into her career at Crowell, she has spent 15 years working on DuPont's litigation.

That relationship began with her handling of a wave of product liability suits over polybutylene plumbing pipe fittings that other manufacturers had made with Delrin, a DuPont-made plastic. In those cases, Sooy said, she and Crowell devised a strategy for settling a national class action and resolving

all the claims against DuPont.

More recently, the practice defended a group of energy and chemical companies that were sued, along with scores of other entities, for allegedly contributing to global warming, which, according to the plaintiffs, made them partly to blame for Hurricane Katrina.

And in a landslide victory for her clients, that litigation was dismissed completely last week against all of the defendants, who had contended that the plaintiffs lacked standing and that the dispute should have gone before Congress, not the courts, Sooy said.

While it lasted, that suit had attracted a good deal of media attention—something the firm is well equipped to handle.

“We give advice not just on how to litigate but how to handle the attention that comes with that high-profile kind of litigation,” she said. “If, for example, a company gets a call from a reporter about what's going to happen in court, we give advice about ensuring that what's going on in the courtroom is consistent with what's going on in the media.”

“Tort lawsuits are not just lawsuits. They're broad challenges,” agreed Winkelman. “They have media overtones, investor relations overtones, government affairs overtones and regulatory overtones. As a full-service practice, we must be able to work on all those levels, because the mega-cases are not just cases anymore. Our approach is holistic; we try to address the entire challenge, not just the litigation.”

That holistic approach, he said, is enabled by the diverse skill sets and expertise of the practice group's members.

“The firm is blessed with numerous Ph.D.s,” he noted, citing the firm's on-staff consulting scientists with backgrounds in chemistry, industrial hygiene and engineering, among other areas. “We're comfortable confronting the hardest science issues in tort litigation.”

The firm's strong IP department, he said, was conveniently available to tort lawyers in need of technical expertise. Industrial engineer Bob Glenn, he added, is often the first person to whom the tort practice members turn, and Crowell partner Ann R. Klee was formerly general counsel for the Environmental Protection Agency.

“We are blessed to come to know our clients intimately so that we can help them think about all these things and a whole range of stakeholders who care about a problem,” Winkelman continued. “We become, in effect, the institutional knowledge for our clients.”

The demand for such a wide range of knowledge and advising services, Sooy said, exploded among clients beginning with the much-ballyhooed tobacco litigation of the last decade. More recently, the practice has worked

with high-profile clients like CSX on those media issues, particularly when the company has a trial approaching.

In addition to the Katrina litigation, CSX faces a wide array of class actions involving claims of workers' exposure to stored chemicals and of environmental contamination.

"Our tack in those cases is to go for the jugular and try for early victories in court, so we come up with arguments for letting the court dismiss cases immediately"—for instance, by getting cases removed from state to federal court, Winkelman said.

"We don't settle those class actions on a class basis, unlike many clients and companies," he added of the CSX litigation. "We don't really believe in that, and we don't want to encourage lawyers to sue our clients on a class basis."

He noted a West Virginia state court suit several years ago filed under the Federal Employers' Liability Act, which provides a sort of workers' compensation for railroad workers, by CSX employees who had used chlorinated solvents in cleaning railroad parts.

The plaintiffs, Winkelman said, wanted to certify a nationwide class of workers, but "there had never been a nationwide railroad case in history, and we weren't going to be the first."

"You're not allowed to remove a FELA case from state to federal court," he said, "but we did it anyway" by convincing the court that, since the plaintiffs had not yet been injured by the solvents and were suing based on risks, the FELA claims held no water. Once the case had been removed with the FELA claims axed, Winkelman said, a federal judge dismissed it, and the plaintiffs gave up on appeal.

"We try to be, essentially, a thorn in the side of the plaintiffs bar so that they're better off not having our clients in their cases," Winkelman admitted. "We try to get early victories, which sounds so mundane, but it surprises us that defense lawyers can be so defensive and not go for the early victories."

Sooy agreed, saying she thought the practice's small size—besides its chairs, it has just a dozen other full-time partners—and deep well of experience in national litigation equipped it well for such aggressive tactics.

"We pride ourselves on working efficiently," she said. "Many firms approach this work in a hierarchical fashion, with partners as the generals and associates as the troops marching," said Sooy, adding that that approach is anathema to Crowell's spirit of collegiality.

"We think of ourselves as a lean and mean team when it comes to handling large litigation," she added. "A lot of firms will put massive teams on projects, but we use a very streamlined approach that's very cost-effective for our clients."

Even more cost-effective, she said, is the practice's belief in heading off problems before they occur. She said she has seen a trend of companies being more proactive when it comes to their products in order to prevent litigation.

"It's sort of an interesting twist to see companies talking to litigators who take on a counseling role," she said. "That way, when they have the product actually out there in the marketplace, they've taken the time to avoid the pitfalls that could have led to litigation in the future."

Those preemptive measures haven't made the practice's workload slacken, however. With seven full-time partners in the Washington, D.C.-based group, more attorneys based in London and Brussels, and plans to bolster its Irvine and New York offices, Crowell's torts practice is expanding fast and becoming more diverse.

Winkelman noted that the firm's FDA practice in particular was being built up, and Sooy said the same held for the firm's environmental and health care litigation groups.

"We've had the good fortune to see rapid growth in our practice during the time I've been here," said Sooy. Indeed, according to Winkelman, three years ago, the firm's handling of international matters was limited. This has change, however. Recently, the practice helped a baby products company negotiate with the CPSC and its Canadian and East Asian counterparts.

Winkelman said that was largely a part of the client-based approach the attorneys take, but noted that the practice's international presence certainly helps. "We're going where our clients take us," he said, "and I'm confident that our product risk management practice is going to continue to blossom and grow."