



Q&A With Crowell & Moring's Doug Sullivan

Law360, New York (June 1, 2011) -- Douglas W. Sullivan is a partner in the San Francisco and Los Angeles offices of Crowell & Moring LLP and is a member of the firm's litigation, intellectual property, and environmental and toxic tort litigation groups. Sullivan specializes in complex commercial litigation, including mergers and acquisitions, intellectual property, entertainment, partnership disputes and dissolutions, construction, real estate, environmental, insurance and securities litigation. He has trial experience in state and federal courts, having acted as lead counsel in approximately 15 trials.

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

A: I had the pleasure of representing NorthPoint Communications, a digital subscriber line (DSL) provider, in pursuing claims against Verizon in connection with a failed merger. Prior to receipt of regulatory approval, Verizon terminated the merger agreement contending that NorthPoint's business had suffered a "material adverse change."

Following the termination, NorthPoint was unable to line up financing for its operations and was forced to declare bankruptcy. The case posed many challenges, including having to prove that the drop in NorthPoint's business was not material, that Verizon had wrongfully terminated the merger and that NorthPoint had cognizable, non-speculative damages.

Verizon was represented by a team of prominent lawyers from two national law firms, but on the verge of trial we were able to favorably settle the case for in excess of \$175 million after defeating a motion for summary judgment.

Q: Describe your trial preparation routine.

A: I have found that there are five keys to effective trial preparation which can be very time-consuming for lengthy and complicated trials. First, I am a big fan of mock jury trials and mock trials for court tried cases. They allow you to test your themes, and the earlier they are conducted, the better. I have conducted dozens of mock trials, and on every single occasion I learned valuable information and what best resonates with the trier of fact.

However, to be effective, mock trials have to be well-balanced, a mistake often made by practitioners. Playing excerpts from videotaped depositions at the mock trial also allows you to determine how your witnesses are perceived.

Second, it is essential to develop a persuasive opening statement, with use of the key documents and testimony and with visuals that simplify the case. The opening has to function as a powerful roadmap, and the key witnesses have to sign off on the opening.

Third, it is important not to forget that trials are presented through witnesses. Thorough preparation of the witnesses with practice runs is essential. Videotaping the witnesses as part of the practice sessions is very useful.

Fourth, use of videotaped depositions at trial can be a very effective tool. Adversaries are often not as well prepared at the deposition stage, and excerpts from the depositions, either for use in cross-examination or to simply be played at the opportune time in the trial, can be extremely powerful. In some instances the videos may be portray the adverse witnesses in such a bad light that it might be useful to play sections of the videos while the witnesses are sitting in the courtroom without even being on the witness stand.

Fifth, in this digital age, the documents that will be used at trial need to be imaged so that key portions can be shown to the trier of fact during examination. The key sections of the documents have to be identified well in advance.

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

A: U.S. District Court Judge Marilyn Patel [Northern District of California]. She is a no-nonsense judge who likes practical and fair solutions to cases. Having been before Judge Patel on many occasions, it is clear that she admires parties who acknowledge mistakes and concede issues when appropriate rather than contesting everything. If you fail to do so, she lets you know it in no uncertain terms.

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

A: Roger Dreyer [Dreyer Babich Buccola Wood LLP], a very good trial lawyer. He relentlessly hones in on cross-examination, and your witnesses better be prepared with numerous practice sessions.

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

A: Telling a judge that “under the law, you cannot rule for the other side” only to have the judge respond by saying, “Well, watch me.” Since then, I always use the words “should not” rather than “cannot.”

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