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Q&A With Duane Morris' Seth v.d.H. Cooley

Law360, New York (July 10, 2009) -- Seth v.d.H. Cooley is chair of Duane Morris LLP's environmental law practice group. He has handled major environmental litigation, regulatory matters and transactional matters for more than 20 years.

Cooley has served as common counsel in Superfund litigation, defended against criminal Clean Water Act enforcement proceedings, challenged Title V permit actions, and asserted cutting-edge challenges to Clean Air Act test methods and fugitive emission determinations.

Q: What is the most challenging case you've worked on, and why?

A: In the late 1980s a compressed gas cylinder exploded at a New Jersey analytical laboratory owned by a Duane Morris client, resulting in three deaths, serious injuries to a fourth person, and a fire engulfing the facility. Within hours two firm partners and I were on site to begin an internal investigation.

Upon arrival, we witnessed a frantic emergency response action aimed at preventing the explosion of other cylinders, including ones containing phosgene, a WWI nerve gas. An evacuation of a one-mile radius area was ordered by authorities shortly after our arrival, and thus began our campout at the town's City Hall, where press conferences and meetings were held with officials including the commissioner of the New Jersey Department of Environmental Protection and the regional administrator of EPA Region 2.

A two-week stay ensued, during which we completed the internal investigation and began to formulate our defenses to the many charges and claims.

The fallout included a state criminal investigation, an OSHA enforcement case, an NRC investigation (there were radioactive gases at the lab), wrongful death and survival cases, business interruption claims, insurance coverage disputes, and administrative proceedings related to soil and surface water contamination resulting from fire

suppression water runoff. As a mid-level associate, I was given tremendous responsibilities in defending all of these claims, beginning with calming and debriefing witnesses who had just lost friends and colleagues due to the tragic explosion.

This was a classic young lawyer's experience of learning to swim by being thrown in the water, and the many lessons that I learned from it have stuck with me to this day. Among them are to not ask for a receipt for the client's lunch for which you've just paid, when you really do not intend to bill for it!

Q: What accomplishment as an attorney are you most proud of?

A: Securing the reinstatement, through an expedited administrative appeal proceeding, of a national company's revoked Pennsylvania Department of Environmental Protection (PaDEP) Company Certification to perform underground storage tank (UST) inspections. PaDEP had revoked the Certification on the stated grounds that the company's UST inspections did not comply with applicable test protocol.

The challenge was severe in this case because the company, unbeknownst to it or me until well into the proceeding, was also the subject of a federal undercover sting operation, with the key witness in the federal criminal investigation being our friendly PaDEP inspector, a self-styled "expert" on the company's test protocol.

Without exaggeration, had we lost the PaDEP case, the company would have lost its national customer base and failed. This case required more application of instinct and judgment — including a decision to have the company's chairman meet with PaDEP senior officials without counsel present in order to rebuild credibility — than any other matter on which I have worked.

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

A: The "deference doctrine" needs to go. Years of hearing and reading arguments by regulators as to the meaning of statutes and regulations under which they operate has convinced me that self-interest and a desire to win — not objectivity or specialized understanding — pervades the positions taken by regulators in disputes over the meaning of words.

Also, state Superfund laws need to be amended (where this has not already occurred) to include an analog to CERCLA's "bona fide prospective purchaser" defense. It doesn't do much good to have a defense to a federal claim if that defense is unavailable to defeat a parallel state claim.

Q: Where do you see the next wave of cases in your practice area coming from?

A: No offense, but it's the climate (change), stupid.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Lou Minella, then in-house counsel with Rollins Environmental Services Inc. (now with Weston Foods), impressed me greatly with a masterful job of guiding an unwieldy group of lawyers with diverse personalities and client agendas to a successful allocation of one of the biggest allocation disputes in CERCLA history. Lou showed us all how to use statesmanship and listening skills to find common ground.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Learn to litigate first, and learn about insurance along the way. A science background is nice, but at the heart of things, good lawyers are good because they can effectively advocate, not because they can decipher chemical equations. Having said that, the ability to figure out “how stuff works” is a very helpful quality for an environmental lawyer to have.