

Q&A With Duane Morris' Brian Kelly



Law360, New York (May 07, 2013, 1:02 PM ET) -- Brian A. Kelly is vice-chairman of the insurance division of Duane Morris LLP's trial practice group. Kelly represents clients in connection with commercial, environmental and insurance matters. He is a trial attorney with jury and court trial experience. He represents product manufacturers, industry groups and their associations in administrative, state and federal court proceedings relating to environmental impacts, product use restrictions and compliance with state and federal environmental regulations, including National Environmental Policy Act, California Environmental Quality Act, Clean Water Act and Comprehensive Environmental Response, Compensation and Liability Act, among others.

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

A: What's enjoyable about my trial practice is that virtually every environmental case, whether resolved through trial, settlement, alternative dispute resolution or even regulatory negotiation, presents new and interesting twists. Despite obvious similarity, each case involves a very different set of complicated facts and circumstances that drive the decision-making process.

Recently, I was involved in a jury trial over CERCLA responsibility and damages. The contamination at issue was fairly routine, but the factually and scientifically complicated hydrogeologic and chemical fate and transport issues needed to be distilled to basic, common-sense concepts that the jury could easily follow and comprehend. The verdict was rendered in my client's favor in a very short time, which I attribute to clear and concise expert testimony and demonstrative animation that allowed the jury to quickly grasp our theory of the source of the contamination.

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

A: Two of the bigger challenges facing California trial lawyers generally and environmental litigators in particular involve the economic cost to resolve disputes and the closely related budgetary impacts facing California trial courts. Combining these two challenges makes it very difficult and expensive for a client to pursue a reasonable resolution to an environmental problem, which often is the product of activities performed by unknown or insolvent entities many years earlier.

The often-crippling cost of resolution makes the need for a clear strategy from the beginning vitally important. I find that working closely with a client to devise a practical and efficient resolution consistent with their needs is essential to achieving their goals.

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

A: The area of environmental practice is constantly changing, both on the legal and scientific sides. In matters involving soil and groundwater contamination, I see a greater focus and interest on soil vapor exposure pathways. I'm also interested in watching developments on climate change and how it impacts legal doctrine and planning.

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

A: Certainly, Duane Morris has many great lawyers that I respect. Outside the firm, I often interact with attorneys working in governmental agencies. I am consistently impressed by their interest in working with the very often divergent and seemingly irreconcilable differences between the stakeholders.

Janill Richards, supervising deputy attorney general with the California Attorney General's Office, stands out in this regard as she is a strong advocate for her client. She does a very good job balancing the divergent views of adversaries in the process.

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

A: Hopefully, I haven't made this mistake often, but I believe one of the biggest mistakes that a lawyer can make is to ignore or marginalize the input and the important contributions that come from staff and others in clerical positions, both inside and outside your firm. In particular, it is a cardinal rule that judge's clerks, court reporters and bailiffs must be treated with the greatest respect.

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