



Q&A With Adams and Reese's Tom Clark

Law360, New York (March 14, 2013, 1:52 PM ET) -- Tom Clark serves as partner in charge of Adams and Reese LLP's Baton Rouge, La., office. He focuses on complex commercial litigation and insurance regulatory dispute resolution, as well as filmed entertainment representation. He has represented parties in complex commercial disputes, including directors and officers and their insurers, accountants in contract and professional liability disputes and various insurance, reinsurance, excess and surplus lines entities.

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

A: Several years back, I was engaged to handle a dispute involving defunct health maintenance organizations in three states that were placed in receivership suing my client, a large accounting firm, the former directors and officers of the HMOs, along with the former owners and one of the former law firms. The case involved multiple claims for relief, the laws of three different states and a small army of attorneys, a fact pattern of developing insolvency that spanned multiple years, and a nine figure aggregate collective damage model. The entire proceeding was consolidated into a single state court and the initial trial date was scheduled less than three months after the order of consolidation was entered. When initial efforts to extricate my client were unsuccessful, we decided to aggressively defend the allegations with the intent being to be prepared whenever the trial date was to occur. While the initial trial date did not hold, there were no extensions of more than three months. As such, we worked feverishly in multiple states to keep pace and develop our defenses. With the assistance of a remarkable group of co-counsel from three different law firms and in house counsel, we successfully positioned our client to a favorable settlement position in less than seven months time.

2. What aspects of your practice area are in need of reform and why?

A: Despite our efforts to encourage professionalism, practice and professionalism amongst members of the bar are at times lacking. While the vast majority of attorneys treat one another with respect and are compliant with ethics and professionalism, our lack of willingness to succinctly address frivolous filings from within the proceeding results in inflated litigation expense and a further deterioration in respect for our profession. While our efforts at educating attorneys annually in professionalism has been a step in the right direction, it does not provide for the type of quick resolution that clients want.

3. What is an important issue or case relevant to your practice area and why?

A: A developing theme in cases I am currently handling is the extent to which rights and privileges over confidentiality and privacy entitled should be handled when litigating disputes involving contracts with governmental agencies and quasi governmental

organizations when these agencies and organizations are engaged in the commercial aspects of governance (e.g. public contracting and procurement). On the one hand, the government entity's role is to act and conduct itself in the same manner as a private individual, who when similarly situated is subject to comprehensive, some might say invasive, discovery. On the other hand, the government entity is acting to fulfill or promote a public good and is frequently protected by statutory immunities and confidentiality that at times streamline access to this information, while at other times allow for barriers that conversely inhibit the flow of information depending on the agency that is involved. With the prevalence of outsourcing of many traditional governmental functions to private entities, this concern become further contorted when the need to assess the rights of a private entity who successfully contracts with a governmental agency. Areas of concern include the extent to which this "successful" party must now make its private records subject to public inspection; is this limited to only those records that directly pertain to the contractual obligation; does it extend to financial records that bear on the ability of the company to perform the contract; should this right extend to request this information limited to a certain class of individuals or all taxpayers? While this area is in flux in my state, it provides a constant challenge to our notions of propriety and the role of citizens with respect to government that shifts slightly with each new case.

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

A: While I have learned something from every single attorney I have practiced with and against, there are two that bear particular mention: Mary Olive Pierson (sole practitioner) and Bill Treeby (Stone Pigman). Mary is an attorney whom I have had the pleasure of working with during two key cases in my career. She stands out for her uncanny ability to encapsulate very complex fact patterns into a digestible nugget that can be parsed and assessed by anyone. I was adverse to Bill in a case almost 20 years ago and the experience still resonates due to his diligence, knowledge of the facts and dogged attentiveness to detail.

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

A: Early, very early in my career, I followed the advice of a partner too close to the letter and failed to trust my instinct that perhaps I was pressing too hard on a point. The matter involved a personal injury case and a witness who "elected" to not appear for a court hearing. It was a small town environment and my request to hold this witness in contempt was not necessarily the best way to introduce myself to the bar or the relatively small medical community. Because it was a small town, my overly aggressive approach was written off to youthful exuberance, but it taught me that active communication is key to success. This is all the more true when you are faced with an uncooperative witness as I was in this trial, in which case you need to set aside your objective and find a way to resolve the reason behind the lack of cooperation. This may require creativity or the assistance of the court in advance of trial, but this is the clearly better alternative.