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Q&A With Epstein Becker's William Ruskin

Law360, New York (March 11, 2013, 1:56 PM ET) -- At Epstein Becker & Green PC, William A. Ruskin has experience representing chemical manufacturers nationally in matters involving the defense of products liability, toxic tort and environmental actions involving claims of serious injury and damage to persons and property. Ruskin also authors' the firm's "Toxic Tort Litigation Blog."

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

A: The most challenging case I worked on was Reichhold v. United States Metals Refining Co. et al., a six-week bench trial in the U.S. District Court for the District of New Jersey in 2009. We achieved a resounding victory for our client, Reichhold Inc., in this environmental cost recovery litigation, but the case was extremely challenging. The case addressed claims relating to the cleanup of a contaminated chemical plant formerly owned by Reichhold in Carteret, N.J., along the Arthur Kill. The case was brought pursuant to Comprehensive Environmental Response, Compensation and Liability Act and the New Jersey Spill Act, as well as a 1994 settlement agreement between the parties.

The case was challenging for several reasons. The defendant, the USMRC, which owned the site prior to Reichhold, argued that the earlier settlement agreement prohibited Reichhold from even bringing the CERCLA claims in the instant lawsuit. The court rejected the USMRC's argument and held that because virtually all of Reichhold's claims constituted "New Environmental Obligations" under the settlement agreement, they were actionable. Accordingly, even before establishing our entitlement to damages, we had to prove that we were entitled to bring the case under the reopener provision in the settlement agreement.

The USMRC's experts presented arguments that the contamination at issue was caused by Reichhold's excavation and fill activities at the site over time. In conjunction with an aerial photogrammetrist, the USMRC's environmental engineering expert used historical aerial photographs of the site taken over a 60-year period to develop computer-generated surface contour maps that purported to depict Reichhold's excavation and fill activities during this time period. Using these topographical maps, the USMRC's experts argued that Reichhold had caused extensive metals contamination of the site in the 1960's and 1970's by using contaminated soil to fill in low lying areas of the property.

Our success at trial was attributable, in part, to our being to completely discredit the expert testimony of the USMRC's experts. At the end of the day, the court rejected the experts' testimony and held that the conclusions based on the photogrammetry performed were unconvincing. Consequently, in its decision in favor of Reichhold, the court placed no reliance on the "cut and fill" evidence presented. In contrast, the court accepted the testimony of Reichhold's witnesses that Reichhold had not disposed of any metals at the site.

The case was particularly important to the client because federal and state environmental regulatory agencies have devoted substantial regulatory attention to New Jersey waterways and rivers in the northwestern portion of the state that have been contaminated with metals, declaring some of them to be federal Superfund sites. In light of the findings at our trial, we obtained a judicial determination that the metals contamination on the southern edge of the property was due solely to the adversary's prior disposal activity.

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

A: There is still no uniform rule concerning the circumstances under which a cost recovery plaintiff may pursue an action under CERCLA 107 or 113. Practitioners generally seek relief under both CERCLA provisions in light of the uncertainty.

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

A: The U.S. Supreme Court's decision in Burlington Northern Santa Fe Railroad Company v. United States (2009) examined two previously unsettled areas of CERCLA: the proof necessary to establish whether a potentially responsible has "arranged for disposal or treatment... of hazardous substances..."; and CERCLA apportionment, that is, i.e., whether a PRP is jointly and severally liable for an entire site or only severally liable for a portion of the site. This case provided a much needed clarification of the law with regard to CERCLA allocation.

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

A: Larry Schnapf, a solo lawyer in New York, has an encyclopedic knowledge of environmental law and regulation. He can always be counted on to provide valuable insights on current developments in the environmental field.

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

A: In the early 1990s, I often brought common law claims for nuisance and trespass, in addition to my primary CERCLA claim. I learned that these common law claims were unnecessary because CERCLA was clearly emerging as the 800-pound gorilla in cost recovery litigation, rendering the common law claims unnecessary and distracting. I am amazed that even today, some cost recovery pleadings still contain common law claims for relief.

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