Portfolio Media, Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | www.law360.com
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Q&A With Latham & Watkins' Robert Howard

Law360, New York (May 26, 2009) -- Robert M. Howard is a partner with Latham & Watkins LLP in the firm's San Diego office and co-chair of the firm's product liability, toxic torts and consumer class actions practice group. He also chairs the environment, land and resources department and has practiced with the firm since October 1990.

Howard handles a variety of government civil and criminal enforcement actions, toxic tort and product liability cases, environmental litigation, nuisance disputes, military base closures, federal facility divestitures, brownfield redevelopment, energy projects, contractor disputes, environmental compliance matters emphasizing CERCLA, RCRA, Clean Air Act, Clean Water Act and various other federal and state environmental laws.

He also represents governmental agencies and defense contractors in BRAC and non-BRAC facility closures and divestitures involving local redevelopment authorities.

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

A: Even though not a traditional products case, the six-week criminal clean air act trial in United States v. San Diego Gas & Electric (U.S.D.C. S.D. Cal 2007) was the “most challenging” case because of the enormously high personal stakes: the fate of three individuals and the reputation of a company were in serious jeopardy.

It was also the most surreal case of my career because the federal government indicted individuals and a company in spite of the fact the product at issue (asbestos-containing coal tar pipe wrap material) did not emit asbestos fibers even under conditions of duress.

Indeed, it was documented by hundreds of air and soil samples taken by multiple outside agencies and consultants that nothing actually regulated by the Clean Air Act was ever emitted into the air during the decommission of a natural gas storage facility.

All Content Copyright 2003-2009, Portfolio Media, Inc.

We were successful in eliminating various counts and obtaining a new trial with respect to those where the jury ultimately voted to convict based on the fact that the government failed to adhere to proper scientific methods that had the effect, according to the trial court, of leading to a “manifest injustice.”

In the more traditional mass torts and products liability area, the mega-Stringfellow case in Riverside, Calif., of the 1990s was the most challenging for me because of the highly technical scientific issues combined with the tragic facts.

In a decision he would forever regret, James Stringfellow agreed after repeated State of California requests to convert his remote quarry operation in the foothills of Riverside County located upgradient to a small community into the state’s largest liquid hazardous waste site to service a growing Southern California industrial base after World War II.

Decades later, after evidence that the rock quarries failed to contain the 34 million gallons of waste, Stringfellow was widely known by the public as California’s “Love Canal.” The resulting Newman v. Stringfellow toxic tort case involved over 4000 plaintiffs, virtually every heavy industry in Southern California, 17 “test plaintiffs,” and even a specially built court room for trial.

My client was one of the largest contributors to Stringfellow in terms of volume. Most of the manufacturing defendants, including my client, settled under favorable terms after opening arguments after years of litigation.

The State of California remains liable for the vast majority of the cleanup after it was found liable for the negligent design and construction of the facility, which will take several decades to cleanup at an estimated cost of over $500 million.

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

A: Making new law on cutting-edge product liability causation issues in the Texas Supreme Court, and a close second is successfully defending the criminal Clean Air Act case discussed above after uncovering the previously unnoticed fact that EPA has long been applying the wrong test method for the last 14 years to define federally regulated material and for purposes of its civil and criminal enforcement programs in asbestos cases.

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

A: Unlike traditional federal law practices, in the products and mass torts areas that are often state law dependent, there is a complete lack of consistency among the states on the standards to prove medical causation and how the various states apply the statute of limitations for products cases. This makes certain jurisdictions very risky for manufacturers to do business.

All Content Copyright 2003-2009, Portfolio Media, Inc.

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

A: Post-Wyeth, given the absence of any express preemption for federal pre-market drug safety approvals, the drug and pharmaceutical cases likely will increase dramatically.

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

A: Robert Newman at Fulbright & Jaworski in San Antonio. He has a top-notch intellect and temperament. He is not afraid to try to make new law even when the odds are long and in tough jurisdictions, and he is always exceptionally well-prepared for court.

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

A: Get comfortable with the science. Get comfortable with detail of the cases. They are the cornerstones of a successful practice.

All Content Copyright 2003-2009, Portfolio Media, Inc.