

## Most Admired Attys: Covington's Donald Brown

By **Evan Weinberger**

Law360, New York (August 31, 2010) -- In many ways, Covington & Burling LLP's Donald Brown set the standard by which insurance policyholder attorneys are judged with his early work on asbestos cases in California in the 1980s. Maintaining — and exceeding — that standard has made Brown one of Law360's Most Admired Insurance Attorneys.

Brown represented Fiberboard Corp. in its battles with insurers over coverage for settlements in asbestos litigation. The company had entered into billions of dollars worth of settlements that threatened its very existence. But, at the beginning of the process, the insurance companies offered just \$1 million in coverage, Brown said.

The trial itself was huge. Brown said there were 75 attorneys involved, and that at one point a high school auditorium was converted into a courtroom to handle the number of attorneys and the spectators.

Brown was given the responsibility of handling the opening phase of the trial — and the trappings that went with it.

"There I was, with TV cameras and reporters," Brown said, noting that he was an associate when the four-year trial began and a partner when it ended.

The first phase of the trial ended with a jury finding in a 9-3 ruling in favor of Fiberboard. Eventually, on appeal, Brown and his team were able to get Fiberboard \$2.3 billion worth of coverage — a figure more than 2,000 times higher than the insurers' initial offer.

That award set the stage for what has become a record of big wins for Brown and his clients.

Brown understands the issues surrounding insurance litigation inside and out, and knows how to put the "jigsaw puzzle pieces" together in order to get a jury or judge to understand them, said David Steuber, the co-chair of Howrey LLP's insurance recovery practice.

Ty Childress, the co-managing partner of Howrey's Southern California office, said Brown is a top-notch attorney who is extremely prepared for each of his cases.

Childress, who said he has been "fighting on the same side" on similar insurance-related issues, said that when Brown's name appears on the docket, it sends a signal to insurers.

"Whoever that policyholder or client is that has chosen him is taking that case seriously and picked a top-notch counsel," he said.

Steuber, who worked with Brown in the early asbestos cases, said opponents seeing Brown's name know they're dealing with the "first team. And not the regular first team. They're dealing with the all-star team."

"It might actually alter what their ultimate position will be in terms of whether they'll even go forward with the litigation," he said.

Brown said he has a simple philosophy when handling a case. He tries to outwork his opponents and never takes a position he doesn't believe in.

"I never advance an argument that crosses the line of reason or crosses the line of what the case law says or what the facts say," Brown said.

In court, Brown said he attempts to win by having the right arguments, rather than bludgeoning the other side or witnesses.

"I doubt anyone would describe me as aggressive, but I'm usually right," Brown said.

One example bears this out.

In the 1990s, Brown represented ExxonMobil Corp. and its Canadian subsidiary, Imperial Oil Ltd., in a sprawling case over insurance coverage for environmental cleanup of over 6,200 oil refineries, terminals and chemical plants throughout the U.S. and Canada. Some of those sites had operated as long ago as the late 1800s, Brown said.

"It's just the biggest, hugest case you'll ever see," Brown said.

Exxon's team was comprised of around 80 attorneys, all reporting, at least indirectly, to Brown. "It really was an army," Brown said, and he had to oversee a lot of lieutenants.

There were over 100 insurers on the other side of the case, raising variations of the argument that they did not have to provide coverage if the insured intentionally did wrong, Brown said.

When the trial started, Brown delivered an eight-hour opening statement, and the case was settled that night. Brown recouped over \$2 billion from the insurers in a series of individual settlements.

"And my colleagues said that was either your best opening argument or your worst," Brown said.

Brown wears two hats at Covington. Along with running a major insurance practice, he is the managing partner of the firm's San Francisco office.

Managing an office with 80 lawyers plus staff in harrowing economic times is difficult enough, said Jim Snipes, a corporate partner in Covington's San Francisco office. Doing it while managing a busy practice adds a higher degree of difficulty.

But you wouldn't know it from looking at Brown, Snipes said.

"Don does just a fabulous job without breaking a sweat," he said.

Brown has a special feel for balancing the pressures of the bottom line with maintaining a humane workplace, Snipes said.

While other big law firms laid off thousands of lawyers and support staff during the recession that has dragged on for the last few years, Covington has not let any associates or staff go.

“We made a policy not to have workflow-driven layoffs,” Snipes said. “Don was a big believer in that.”

Brown and the rest of the firm took the long view when it came to layoffs, Snipes said. “There really is a sense of commitment, that we’re all in this together,” he added.

In addition, Brown is known for spending time working closely with associates on cases, Snipes said, often devoting extra time that he doesn’t necessarily have.

“He’s very much committed to the culture of mentoring young lawyers in the way he was trained,” Snipes added.

In mentoring young attorneys, having one-on-one time is key, Brown said.

“I do spend a lot of time with associates working on their argument skills and their writing skills and their thinking skills,” Brown said.

It is a relationship that benefits both sides, he added.

“I need them as support, but I also think it’s a part of my job to send them on the trajectory of partners themselves,” Brown said.

That generosity with his time extends beyond Covington’s walls, Howrey’s Steuber said.

The two men chat from time to time, Steuber said, and Brown is always willing to contribute thinking on issues facing other policy-holding counsel.

“He’s just a valuable resource because he’s been involved in so many types of cases and so many areas that his judgment is so well-respected,” Steuber said.

Brown brings something else to the table, or perhaps even the microphone, Snipes said.

“He’s really one of the funniest people I know,” he said. “Lawyers tend to be a very serious bunch and he’s a breath of fresh air.”

Brown is known for his toasts and speeches at the annual holiday party and other firm events. Sometimes, he even bursts into song.

At the last Christmas party, Brown turned part of his toast into an a capella parody of Dickens’ classic “A Christmas Carol.” Snipes said Brown’s voice was a cross between a choir boy and Rod Stewart, and the song had the normally stolid attorneys “rolling on the floor.”

“He could’ve been a comic,” Snipes said.

*Methodology: From May 25 through June 11, Law360 invited readers to nominate attorneys they admire to be profiled for the “Most Admired” series. Readers were asked: “Is there an attorney you’ve argued against in court who you respect — or whose briefs you fear? What about a lawyer whose views on the latest hot-button issues you eagerly seek out? Or a former classmate who is practicing the law in novel ways?” Survey participants were not permitted to nominate attorneys from their own firms and submissions from public relations and marketing professionals were not considered.*

*Separately, Law360 sought out nominations from practice group heads at the 100 largest law firms in the United States. In total, 1,016 nominations were received.*

*Nominations were reviewed by a board comprising experienced lawyers and Law360 editorial staff. Sixty-five attorneys covering seven practice areas of the law were then selected to be profiled for the "Most Admired" series.*

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