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Q&A With Covington & Burling's Michael Imbroscio

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Michael Imbroscio

Michael X. Imbroscio is a partner at Covington & Burling LLP in Washington, D.C., and vice chairman of the firm's products liability practice group. He represents life sciences companies in complex products liability and commercial litigation. Imbroscio previously served as associate counsel to the president in the Clinton White House.

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

A: Probably the most challenging case I've handled recently was a commercial matter for a life sciences company that had been sued by a business partner for allegedly improper and anticompetitive practices. There was absolutely no merit to the charges, but through some aggressive lawyering, the other company convinced the judge to issue a temporary restraining order that had a substantial economic impact on my client.

Convincing a federal judge that she made a mistake and got bamboozled is hard to do, and the pressure was enormous in that we had less than a week to prepare for the preliminary injunction hearing. In the end, we were able to lay out the full story at the hearing, and the judge courageously vacated the TRO and denied the injunction. That ruling was affirmed on appeal, and the matter settled favorably immediately thereafter.

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

A: More than anything else, there needs to be reform at the state level on the standards for the admissibility of expert testimony. There is a growing chasm between the federal Daubert standard and the standards being applied in many states. It offends the notion of impartial justice and encourages forum shopping when the location of a lawsuit can dictate the outcome.

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

A: Right now, I think the Bartlett v. Mutual Pharmaceuticals case in the U.S. Supreme Court is the case many of us are watching most closely. Differing majorities of the Supreme Court have offered competing views of the scope of federal preemption in the life sciences space — the hostile view of preemption articulated in Wyeth v. Levine versus the favorable views expressed in Mensing, Reigel and Bruesewitz.

On some level, the disparate views articulated in these opinions on the role of the state law tort system in the regulations of FDA-approved medicines and devices just can't be reconciled.

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

A: I am a big fan of Nina Gussack at Pepper. She has a tremendous capacity to see the big picture and identify issues very early on in a litigation. She's a great counselor who can really put clients at ease, even when they are facing significant legal peril.

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

A: I was naive as a young lawyer in thinking that the law provides black-and-white answers to every question and that, as Chief Justice Roberts recently put it, judges were just umpires calling balls and strikes. In reality, the law is a morass of gray, where individual judges wield enormous power in how they apply fairly malleable legal principles. In this setting, I've learned that the quality of advocacy is far more important in ultimate outcomes than it probably should be, but that's the reality.

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