Q&A with Robinson & Cole's Greg Varga

Law360, New York (April 01, 2013, 2:55 PM ET) — Greg Varga is a partner in the Hartford, Conn., office of Robinson & Cole LLP, where he chairs the firm's insurance and reinsurance practice group. For nearly two decades, he has represented insurance companies nationally in complex coverage litigation, in lawsuits seeking punitive damages and other extra-contractual remedies, and in other corporate litigation.

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

A: I am proud to have handled numerous high-exposure insurance disputes all over the country during my nearly 20 years in practice. One case that stands out as particularly challenging was referred to me in March 2011, just three weeks before the federal court trial against our insurer client was to begin. The dispute arose from a trucking accident that destroyed a massive bridge beam, which was being transported to a highway construction site. Our client's policyholder, the project general contractor, accused our client of impairing its right of recovery against the company allegedly responsible for the accident, and thereby causing the policyholder to absorb millions of dollars in liquidated damages, project delay costs and other losses.

What made the case especially challenging (aside from the immense time pressure under which my team was forced to work) was that a number of key depositions remained to be taken before trial, and no expert witness had been retained to address the complex claims of project delay and liquidated damages. Within just two weeks, our team — which included a seasoned construction law partner and a cadre of talented associates from our insurance and construction practice groups — digested tens of thousands of pages of construction project records, insurance claim documents and financial records; completed the depositions of the plaintiff's principals and other key witnesses; retained an expert on the subjects of construction delay and liquidated damages, who prepared an excellent report within just four days; prepared a series of motions in limine and Daubert motions; and otherwise readied the case for trial.

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

A: We regularly defend insurers around the country in actions seeking consequential, exemplary and punitive damages for alleged violations of various consumer protection laws and common law duties of good faith and fair dealing. Over the past several years, I have observed that courts have become increasingly willing to uphold (or to affirm on appeal) significant punitive damages awards in direct actions against liability insurers for their alleged failure to settle underlying tort claims against their policyholders.

A recent example is Rhodes v. AIG Domestic Claims, et. al., 461 Mass. 486 (2012), wherein the Massachusetts Supreme Judicial Court amended the trial court's judgment and awarded the injured plaintiff double damages of $22 million on her consumer protection act claim against an excess liability insurer for the tortfeasor. The actual harm attributable to the excess carrier's failure to settle the underlying tort claim was a loss of use of the $11 million verdict from the date judgment entered and the date it was finally paid by the carrier. Nonetheless, the court held that the Massachusetts Consumer Protection Act compelled a punitive damages award equal to a multiple of the underlying $11 million judgment. While consumer protection statutes like

Chapter 93A can serve a useful purpose in deterring unfair claim settlement practices, they should not be utilized to provide a windfall for a tort plaintiff.

The Rhodes case others like it plainly show how far the pendulum has swung in favor of the consumer. Meaningful reform of statutes like Chapter 93A is needed to improve the environment in which liability insurers conduct their business. Indeed, the Supreme Judicial Court itself recognized the need for reform at the close of its opinion, stating that, "[t]he Legislature may wish to consider expanding the range of permissible punitive damages to be awarded for knowing or willful violations of the statute to include more than single, but less than double, damages; or developing a special measure of punitive damages to be applied in unfair claim settlement practice cases brought under c. 176D, § 3 (9), and c. 93A that is different from the measure used in other types of c. 93A actions."

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

A: The United States Supreme Court's decision in State Farm Mutual Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003), remains a critically important decision in the context of insurance "bad faith" disputes inasmuch as it imposes limits on the award of exemplary and punitive damages.

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

A: I have always admired Douglas Houser, a founding member of Bullivant Houser Bailey PC of Portland, Ore. Doug has been a leader in the property and casualty insurance bar for decades, and during his illustrious career, has successfully tried numerous cases in judicial environments that are known to be unfriendly to insurance companies. In the process, he built a strong name brand and developed a devoted clientele.

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

A: As a young associate, I once deferred to a client on the choice of an engineer to serve as our testifying expert in a coverage dispute. The engineer was someone the client had used as a consultant on numerous insurance claims, and I was given assurances that the expert was a very good witness. Though the expert was strong on the technical issues, he performed terribly during his deposition. Needless to say, it wasn't long before the case settled. That rather unpleasant experience taught me the importance of fully vetting experts early in the life of a case.

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