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Q&A With Baker Donelson's J. Carter Thompson Jr.

Law360, New York (February 03, 2010) -- J. Carter Thompson Jr. is chair of Baker Donelson Bearman Caldwell & Berkowitz PC's product liability and mass tort group and co-chair of the firm's drug, device and life sciences team. He primarily defends drug and medical device cases. He is national product liability counsel for an international health care manufacturer. He serves as lead counsel for the distributor of anesthesia medication in over 200 cases in Nevada and recently served as lead counsel for the manufacturer of a hemodialysis product withdrawn from the market.

A frequent lecturer and author on issues important to the drug and device industry, Thompson is a member of the Product Liability Advisory Council and the Steering Committee of the Defense Research Institute's Drug & Device Committee.

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

A: In 2001-2002, I served as lead counsel for the manufacturer of a dialysis product withdrawn from the worldwide market. The product was alleged to have caused or contributed to the deaths of patients in Europe, Asia and North America. As a result, we had to deal with multiple regulatory bodies and the laws of numerous jurisdictions. My client's preliminary investigation revealed that its product was likely associated with some deaths, and the client's CEO held a news conference and pledged to make things right. With the client's support, my team was able to successfully resolve more than 125 suits/claims worldwide in less than two years.

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

A: Although my practice began in a rather small market, as I gained experience and "the world became flat," my practice expanded geographically. Currently, the vast majority of the cases in which I am involved are outside my home state and outside my region. I am proud to lead a practice group of many talented and experienced trial lawyers who handle serious product liability cases and mass torts in the South and around the country.

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

A: In some states, tort reform for health care providers has exposed manufacturers of drugs and medical devices to product liability suits. For example, prior to the institution of caps on noneconomic damages in medical malpractice cases, a medical error sometimes led to a rather straightforward medical malpractice claim. I am now seeing some of those cases turn into combined medical malpractice/product liability suits, where the manufacturer of one or more of the products involved is sued along with the health care provider. I support tort reform for health care providers, but I respectfully submit that others are in need of tort reform as well.

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

A: My friends at the plaintiffs bar are nothing if not resourceful and imaginative. There will always be a new cause of action and another mass tort on the horizon. In the last several years, government investigations have spawned a number of mass torts in the drug and device industry. I expect to see that trend continue.

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

A: Lawrence J. Franck was the head of the litigation department at my former firm. The first assignment I received as a summer associate in 1982 involved the preparation of a memo for Mr. Franck. The morning after I turned in the memo, Mr. Franck appeared at the door of my office and asked if he could come in to discuss my memo. I was nervous. The first thing he said was "Thompson, do you know what a misplaced modifier is?" While I stammered around a bit, Mr. Franck threw me a lifeline by telling me that there was an article about misplaced modifiers in the morning paper. He then said, "I suggest you read that article. You have a misplaced modifier in your statement of facts, but otherwise it's a good memo." I learned something about writing and editing that day.

I had the privilege of working with Mr. Franck on a large commercial case for most of the first five years of my practice. That was back when an associate traveled around with a partner everywhere he or she went. We took notes, watched and learned. I learned a lot from Mr. Franck. He was a consummate professional and the embodiment of a "gentleman trial lawyer." Although retired now, Mr. Franck was so highly respected at the bar that all the lawyers (on both sides) in the big case we worked on together looked to Mr. Franck for advice and counsel. At depositions, every time a lawyer asked a question that was close to the line, all the other lawyers would turn to Mr. Franck to see if he was going to object. To this day, one of the greatest compliments I have been paid as a lawyer was when Mr. Franck told me as a third-year associate, "Thompson, you're a good lawyer."

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

A: In the first few years of practice, a litigator should focus on the basics. Learn how to think like an advocate (e.g., you are not in law school any longer), and learn how to use the tools of a trial lawyer (i.e., investigation, discovery, the rules and the law). Immerse yourself in the rules of civil procedure. Find a good mentor (someone who is successful and whose practice is attractive to you). Once you have survived the most important learning period of your life, consider the product liability and mass tort area. The great thing about it is the law is fairly uniform around the country, and every case is different.