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Q&A With Schiff Hardin's Thomas Battistoni

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Law360, New York (July 22, 2011, 10:43 AM ET) -- Thomas P. Battistoni (<http://www.schiffhardin.com/ThomasPBattistoni.htm>) is a partner in the New York office of Schiff Hardin LLP (/firms/schiff-hardin). He prosecutes claims and defends clients in commercial disputes. With 30 years of experience as a trial lawyer, he has represented Fortune 100 companies, financial institutions and corporate officers in litigations in federal, state and bankruptcy courts. He also resolves issues through arbitrations and mediations in alternative dispute resolution proceedings.

Battistoni is a former Assistant U.S. Attorney and former deputy division chief in the U.S. Attorney's Office for the Eastern District of New York.

Q: What is the most challenging lawsuit you have worked on and why?

A: Every case presents the foremost challenge of serving the client's interest in getting to the best outcome earlier and more economically. You have to figure out how to get to the core of the matter without using every tool in the shed that adds to the client's expense without increasing value in your results.


It is a lot easier to fight the Thirty Years' War than it is to uncover the essence of a dispute early and then move it to a prompt and successful resolution. It is a matter of distilling the client's needs and creating the levers that can be pulled to get to the desired result.


We also think of matters being challenging if they encompass multiple parties, complicated corporate transactions, maybe "bad facts" or very high stakes for the client. I have had cases where I used my past experience as an Assistant United States Attorney to synthesize documents and testimony to prove two sets of books and massive fraud through affiliated company transactions. Most recently, I successfully defended an international company facing a class action with strict liability claims that could have put the company into bankruptcy.


Q: Describe your trial preparation routine.

A: I keep old-fashioned, three-ring binders with the pleadings, the core documents, chronologies and overlapping timelines showing when various activities or transactions were occurring in relation to each other. I review short memoranda I have prepared to summarize key legal points. I keep thinking about how things are interrelated, how business judgments were made and influenced, and how I might simplify the narrative to tell a persuasive story grounded in the demonstrable facts and documents.

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New York

Port Authority Draws Fire For \$2B WTC Spending Plan (/newyork/articles/292009/port-authority-draws-fire-for-2b-wtc-spending-plan)

The Port Authority of New York and New Jersey's plans to spend \$2 billion on the World Trade Center, revealed Thursday in its 2012 budget, quickly drew flak from New Jersey Gov. Chris Christie in the latest round of criticism for the embattled agency.

Toll, REIT Join On \$134M NYC Development Blockbuster (/newyork/articles/291865/toll-reit-join-on-134m-nyc-development-blockbuster)

Luxury home builder Toll Brothers Inc. and real estate investment trust Equity Residential have joined forces on a \$134 million residential development project in New York, Toll Brothers announced Wednesday.

Tudor Wins Transfer of \$96M Defamation Coverage Row (/newyork/articles/291747/tudor-wins-transfer-of-96m-defamation-coverage-row)

A New Jersey federal judge on Tuesday transferred First Advantage Litigation Consulting LLC's suit against Tudor Insurance Co. and other insurers over coverage for a defamation action that sought \$96 million, finding the case mirrors one pending in New York federal court.

Bankruptcy

Fox Strikes Out On Bid To Halt Dodgers' TV Rights Sale (/bankruptcy/articles/291934/fox-strikes-out-on-bid-to-halt-dodgers-tv-rights-sale)

A Delaware bankruptcy judge on Thursday said he would approve the Los Angeles Dodgers LLC's plan to sell its media rights after Fox Sports failed to make contact on claims that the sale process undermined its current broadcast deal with the team.

American Laser Heads To Ch. 11 To Ease Sale (/bankruptcy/articles/291976/american-laser-heads-to-ch-11-to-ease-sale)

Laser hair removal company American Laser Centers LLC, grappling with a failed growth strategy and liquidity problems, filed for Chapter 11 protection Thursday in Delaware to help facilitate a sale of its business.

White House Denies Cherry-Picking Solyndra Docs (/bankruptcy/articles/291942/white-house-denies-cherry-picking-solyndra-docs)

The White House on Tuesday denied House Republicans' accusations that it cherry-picked only a small number of documents in response to subpoenas concerning the government's \$535 million loan guarantee to bankrupt solar panel manufacturer Solyndra LLC, according to a news report.

Q: Name a judge who keeps you on your toes and explain how.

A: I have had the great pleasure of conducting a number of trials before the great Judge Jack B. Weinstein of the United States District Court for the Eastern District of New York. My first trial before him was more than 25 years ago during my first week as an Assistant United States Attorney. It was a rite of passage in that office for a new AUSA to defend the first order to show cause filed against the government after he arrived in the office.

An immigration attorney brought an emergency motion to prevent the deportation of his client who was accused of having been part of an immigration fraud ring. Judge Weinstein heard both sides argue on the motion for a temporary restraining order and set it down for a trial the next day on whether the immigrant's marriage to a local Brooklyn girl was a sham.

The following day I had my first bench trial before Judge Weinstein. He had his students from Columbia Law School sit in the jury box and observe the trial. Twenty years later, I was before him defending one of many international manufacturers in a reverse class action nuisance claim brought by the city of New York and other plaintiffs.

Judge Weinstein keeps the litigation moving no matter how complex or how many parties are involved. He hears motions in limine at 8 each morning so that the trial may proceed without delays or boring the jury. He is extraordinary in his ability to analyze and simplify the most complex matters, his ability to work incredibly hard, and his ability to be pleasant to all those in his courtroom. He expects the same from those who appear before him.

Q: Name a litigator you fear going up against in court and explain why.

A: David Brodsky of Latham & Watkins (/firms/latham-watkins) in New York. David is one of the most articulate, persuasive and likeable advocates you will ever meet. The more complicated the matter, the more awesome his presentation. His razor-sharp intellect always comes across. With all this going for him, he also projects his warm and affable side, sometimes with a twinkle in his eye or a self-effacing remark.

He once had a trial before a freshly minted federal judge who seemed paralyzed with the fear of making mistakes as the case got messy with objections and interruptions from David's unscrupulous adversary. David looked at the judge kindly and said directly, "You know you do have a role in this thing," which caused the judge to snap out of it without feeling insulted.

Q: Tell us about a mistake you made early in your career and what you learned from it.

A: During a deposition early in my career, I let a bullying adversary get under my skin. I could feel my adrenaline rising and I foolishly tried to play his macho game. I later read the transcript and was very disappointed to see that several times I let myself get distracted from following up with a more probing question or seeing another lead that I logically should have pursued.

I never let an adversary get to me this way again. Years later, after reading one of my key deposition transcripts, an in-house lawyer for a Fortune 100 company remarked that he thought I deserved combat pay for maintaining a Zen-like calm and probing analytically — while ignoring a nasty lawyer's unsuccessful provocations.