

Q&A With Sills Cummis' Jeffrey Greenbaum

Law360, New York (December 2, 2010) -- Jeffrey J. Greenbaum is a member in the Newark, N.J., office of Sills Cummis & Gross PC, co-chairman of the firm's business litigation section and chairman of the firm's class action practice group. Greenbaum specializes in complex business litigation and defending class actions. He has handled cases of national prominence and defended class actions in the areas of consumer fraud, securities fraud and derivative suits involving a broad range of products and industries.

Greenbaum, a frequent lecturer in the class action field, has chaired the American Bar Association section of litigation's class actions committee, was a section officer and its liaison to the advisory committee on civil rules. He is co-chairman of the New Jersey State Bar Association class action committee and former president of the Association of the Federal Bar of New Jersey.

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

A: In an unusual case outside my regular practice of defending companies sued in class actions, I represented the Republic of the Philippines to recover the purloined assets of its former president, Ferdinand E. Marcos. The litigation sought to recover title to four commercial properties in New York City (The Crown Building, 40 Wall Street, Herald Center and 200 Madison Avenue), a condominium in Olympic Towers and an estate in Center Moriches, N.Y. A separate litigation involved efforts to recover six Old Masters and four impressionist paintings. I later commenced an action to recover a newly discovered Picasso painting brought to Christies for public auction. In New Jersey, litigation involved title to an estate in Princeton, N.J., (where the Marcos' daughter lived as a student at Princeton University), two homes in Cherry Hill, N.J. (where the Marcos' son lived as a University of Pennsylvania student) and a money market account.

In New York, the litigation involved preliminary injunctions freezing the properties which were affirmed by the Second Circuit, the installation of court supervised property management and ultimately the sale of the buildings in court supervised foreclosure sales with a substantial portion of the remaining equity going to the Philippines. We were up against at least 10 major New York firms representing the banks who were commercial lenders, parties who also claimed they were owners of the properties or paintings and those vying to buy the properties from the Court or the Philippines. The litigations were vigorously contested, involved many novel issues of law, and resulted in many appeals to the U.S. Court of Appeals for the Second Circuit.

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

A: I am most proud of the roles I have played in helping to reform substantive law and improving the practice of law for federal practitioners. As co-chair of the ABA section of litigation federal practice task force, I proposed a change in federal practice with respect to testifying experts to protect draft expert reports and expert-attorney communications. This proposal led to the revisions to federal Rule 26 which were adopted effective Dec. 1, 2010. Representing the ABA section of litigation, I participated in an ABA president's task force on class action legislation that led to the ABA position on legislation that became the Class Action Fairness Act and also commented on proposed changes to the Class Action Rule.

As president of the Association of the Federal Bar of New Jersey, I led a number of initiatives to improve local federal

practice, such as to encourage judges to increase the opportunities for oral argument on motions in federal court, and to streamline the pretrial order preparation practice so that it is only required shortly before trial and when a trial will actually occur. It is most rewarding to know you have had a role, no matter how small, in contributing to the betterment of practice for your profession.

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

A: Class action practice needs firm standards for class certification and more consistency in the application of those standards. While courts are required to apply a “rigorous analysis” for class certification, the rigor with which class action standards are applied varies greatly from judge to judge and from jurisdiction to jurisdiction. There is also great diversity in the availability of an interlocutory appeal from this critical determination from state to state, and even after the adoption of Rule 23(f) (permitting interlocutory appeal in the federal courts), standards differ by circuit. Lawyers and clients should be able to predict with greater certainty the outcome on this all-important determination in class action litigation.

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

A: Plaintiffs class action lawyers are increasingly seeking to expand the scope of nationwide class actions alleging consumer fraud in two respects. First, there is an increasing effort to take what traditionally have been product liability claims arising out of an alleged defective product and to re-plead those as consumer fraud claims, claiming that the manufacturer or seller did not disclose the defect in the product. Second, there is an increasing effort to seek to apply a single state’s consumer fraud law nationwide to create large consumer classes. They seek to include class members from all around the country who never engaged in a transaction in a forum state when traditional case law has limited similar claims to those class members residing in, or engaging in a transaction in the forum state.

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

A: Frederick B. Lacey, the U.S. district judge for whom I clerked. As U.S. attorney, he was a fearless prosecutor, taking on many cases of entrenched political corruption. He was an exceptional U.S. district judge and thereafter, in practice, held numerous appointments as federal monitor, and had an outstanding career. He was a great teacher and indefatigable worker. He is a lawyer’s lawyer, an outstanding professional and true role model. He taught me to have the highest respect for our profession and that you will be most satisfied when you seek to give service to it and improve it.

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

A: Become active in bar committee activities, write articles and speak on programs. These activities will add to your substantive credentials, hone your skills, keep you aware of the latest developments and give you the opportunity to meet the leading practitioners in the field. You will also make friends that you will cherish throughout your career.