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Q&A With McDermott's Michael Pope

Law360, New York (June 09, 2009) -- Michael A. Pope is a partner with McDermott Will & Emery LLP in the firm's Chicago office and head of the firm's international product liability practice group. He has a national practice in product liability and consumer fraud matters and has organized products liability prevention programs for many client companies.

Pope has experience in handling reinsurance disputes, in the interpretation of excess and umbrella liability insurance policies, and in professional liability and complex business litigation. He is also active in alternative dispute resolution and serves as a mediator on major disputes involving these subjects.

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

A: The most challenging case I have handled in recent years is the defense of 15 Blue Cross Blue Shield Plans in *In re HMO Litigation* (S.D. Florida).

This national class on behalf of some 900,000 doctors — virtually all the medical providers in the country — was basically a RICO conspiracy claim alleging that the health insurance companies routinely and intentionally delay, diminish and deny valid payments to the doctors.

Since several very similar cases had been certified as class actions by the trial court and affirmed on appeal, we early on developed a strategy to avoid extensive discovery and initiated settlement conversations with plaintiffs' counsel.

That strategy proved very successful and we were able to resolve the litigation by agreeing to fund certain business practices which would facilitate communication with doctors and make many of our clients' decisions regarding their payments more transparent. By avoiding discovery on the merits, we may have saved our clients as much as \$50 million in legal expenses.

These complex negotiations occurred over four years with approximately 40 meetings in Chicago, New York, Washington, D.C., Miami, Denver and San Francisco. The court approved the settlement, and our clients have been very satisfied with the outcome.

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

A: In approximately 40 years of practice, most of it as a trial lawyer, I have encountered very few personal or professional problems with opposing lawyers or my clients. I have also attempted to show leadership by serving in professional lawyer organizations, and by urging both organizations and individuals to practice law with true professionalism.

The International Association of Defense Counsel, of which I was president, adopted the Tenets of Professionalism, and my prior firm was able to fund a lecture series at Northwestern University School of Law entitled the Pope & John Lecture on Professionalism, which continues to hold programs each year.

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

A: While reform has been accomplished in the area of class actions, there are two remaining issues in great need of reform. The first is the lack of legal standards governing punitive damage claims. This quasi-criminal sanction is often used to threaten companies or individuals into unfair settlements, and yet there are very little legal boundaries governing its use.

Secondly, most trial judges, especially in the state court system, regularly fail in their duty to review the pleadings and dismiss cases that obviously do not state a cause of action, or after discovery should be dismissed on summary judgment.

As a result, the litigation process has been bogged down by cases that should have been disposed of earlier, and the overall cost to the system of settling such cases makes the trial of valid claims too expensive.

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

A: We have already seen and expect to see a continued growth in the number of consumer fraud claims. These cases are frequently based on 40-year-old state statutes that tend to contain statements of generality such as outlawing "unfair practices." This lack of clear standards allows lawyers to apply them to virtually any set of facts against business entities.

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

A: Thomas Morsch is a distinguished lawyer who previously practiced at Sidley & Austin in Chicago. I had a case against him when I was a very young lawyer and he conducted himself with dignity and respect, and several times refused to take advantage of my inexperience.

Upon retirement from Sidley, he went to Northwestern University School of Law and created a small business opportunity clinic. He also has donated a substantial sum of money to fund an annual cash award for outstanding pro bono activities by Illinois lawyers.

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

A: Treat your profession as precious and invest in it! Work very hard to learn the law of evidence and the procedure followed in trials, and try to get into court as often as possible, even if you are only there to observe other lawyers try cases.

Read whatever you can get your hands on about trials and great trial lawyers. I especially recommend Mike Tigar's *Persuasion: The Litigator's Art*, and Henry Miller's *On Trial*. Also, each issue of *Litigation Magazine*, published by the ABA Section of Litigation, has tons of insights into trial practice.