

## ***Law360 Q&A's with:***

---

- [Michael Enright](#)
- [Edward Heath](#)
- [Megan Naughton](#)
- [Gregory Varga](#)
- [Jeffrey White](#)

## **Q&A with Robinson & Cole's Michael Enright**

---

*Law360, New York (April 26, 2013, 2:16 PM ET)* — [Michael R. Enright](#) is a partner in [Robinson & Cole LLP's Hartford](#), Conn., office. He handles all types of complex commercial insolvencies, including bankruptcy and receivership cases, and workouts. He also regularly defends preference, fraudulent transfer and other bankruptcy litigation, and analyzes transactional structures to identify and mitigate risks based on such claims. Enright has authored numerous bankruptcy-related publications and speaks frequently on bankruptcy matters, including as a member of the Task Force on Current Developments of the [American Bar Association's](#) Business Bankruptcy Committee. He is licensed to practice in New York, Illinois and Connecticut.

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

A: If I had to pick just one, it would be a surprisingly small case where we represented a major big box retailer in a nasty dispute with a local developer. The developer pitched a new store site to our client in a strip center to be built and successfully leased the site to our client. After becoming impatient over the glacial pace of progress at the site, due to the real estate recession, the developer turned around and sold the (already leased) site to our client's major competitor on the sly. This did not play well with our client, which was faced with losing a prime site and suffering a loss at the hands of its archrival. After a skirmish in federal court yielded an unpleasant preliminary result for the developer and the competitor, a Chapter 11 filing by the developer followed shortly, and we continued the slugfest in bankruptcy court.

The case was interesting because it featured two major retail competitors against each other. In short order, these competitors were able to resolve their mutual differences, and we forged a settlement that left the developer to fight on alone against the two of them. Very challenging injunction litigation followed in the bankruptcy court over our client's right to build its store on the approved site it had leased (and bought back from its competitor under the settlement terms). Not only was the developer, who controlled the surrounding property, uncooperative in the extreme, but oftentimes also went out of its way to actively interfere with the parcel's development, including setting up static and moving roadblocks to deter site access. It's the only case I've ever handled where the opposing party actually cut the client's phone lines (and admitted it on the witness stand) or where I was required to put into evidence 8" by 10" glossies of freshly dug ditches. In the end, both retailers got their new stores open (less than a quarter mile away from each other), and after a long delay, the developer settled on relatively favorable terms, having forfeited any upside whatsoever and having become a mere distraction for the retail behemoths.

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

A: The bankruptcy case venue still needs an overhaul. Despite all the press about what great bankruptcy courts and professionals New York and Delaware have, the simple truth is that it has been a race to the bottom for administration of large Chapter 11 cases, and the biggest players have run roughshod over the smaller ones. Rates and costs have accelerated astronomically, and results remain unimproved despite all the consultants, advisers and layers of process. This needs to change, at least insofar as the burden of administering these cases needs to be spread around the courts more evenly and with improvements in process.

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

A: The Supreme Court's decision in *Stern v. Marshall* really didn't add anything new to the bankruptcy jurisdictional morass, but it certainly (and unpleasantly) reminded us all of what the Supreme Court ruled 30 years earlier, and we've all tried to ignore ever since: that the 1978 Bankruptcy Code incorporated a jurisdictional flaw that undermines the efficient administration of bankruptcy cases in one forum. As the lower courts wrestle with this issue with some renewed focus in the wake of *Stern*, we need to find some procedures and new rules that will work better than what we have in place, much of which is built on a fatally flawed foundation.

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

A: Jack Costello at [Edwards Wildman](#). I worked for Jack in my first job and learned the most important fundamentals about practice from him: prepare thoroughly, especially better than the other side; never panic, even though everyone else is panicking all around you; and treat your opponents with respect but beat them soundly while you do it. Jack demonstrated to me in real time the value of reducing a problem to its component parts for analysis and exploiting the other side's weakness relentlessly.

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

A: I assumed that another lawyer would treat me the same way I would have treated her. Instead, she unexpectedly used a situation to her advantage, forcing me to act in a very creative (and uncomfortable) way, including putting myself on the witness stand and being forced to ask myself questions and to give myself answers in open court. As crazy as this was (and it reminded me of a scene from a Woody Allen movie at the time), it worked to protect my client's interests, but I learned a hard lesson about relying on fair play by others too much, particularly when the other side sees an advantage for its client, though short-lived and unwise.

## **Q&A with Robinson & Cole's Ed Heath**

---

*Law360, New York (May 01, 2013, 1:09 PM ET)* — [Edward Heath](#) is a partner in [Robinson & Cole's](#) Hartford, Conn., office, where he is chairman of the firm's white collar defense and corporate compliance practice group. He has taken business and criminal matters to verdict in

federal and state courts. He has appeared on behalf of international and domestic companies in courts throughout the country, and he routinely counsels clients in connection with government investigations and threatened litigation. Since 2008, he has served as the chairman of Robinson & Cole's pro bono program.

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

A: The most challenging case that I have worked on in the last few years involved a civil claim brought by the federal government against a client under the Clean Water Act. The scope of the claim and the hundreds of millions of dollars in damages sought reflected the worst kind of government overreaching. Upon realizing that the government's case — and its unreasonably aggressive posture — hinged on two highly technical subjects of expert testimony, I spent hundreds of hours mastering those subjects and traveling around the country taking the depositions of the many witnesses whom the government relied upon for those subjects. The result was a slow disassembling of the government's case that ultimately led to a very favorable settlement for our client.

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

A: Discovery, generally, and e-discovery, specifically. The excessive cost and unnecessary delay that discovery routinely imposes allow the dispute resolution process to be hijacked. The federal courts that have adopted a "rocket docket" approach, limiting the length and scope of discovery and briefing while keeping the case on a short trial schedule, generally have the right idea. That approach to cases only works if it is universally adopted because an expedited case requires large portions of a lawyer's time.

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

A: Young lawyers are not getting enough time in court. When I began practicing in 1999, courtroom time was much easier to come by for a young lawyer. My colleagues who began practicing in the late 1980s spent most of their time in court. Regularly appearing before judges, handling witnesses, offering evidence and interacting with an opposing counsel are vital experiences for a young lawyer's technical, ethical, and professional development. Moreover, all of the parts that come before trial — document discovery, depositions and motion practice — only make sense when you have an understanding of their role at trial.

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

A: One of the lawyers who has impressed me the most over the years is Bill Bright, a judge on the Connecticut Superior Court, and former partner with [McCarter & English](#) and [Cummings & Lockwood](#). As an adversary, he zealously advocated for his clients without sacrificing even a hint of civility and courtesy. Not surprisingly, his high degree of professionalism has carried over to the bench. Even more impressive is his dedication to pro bono. I have had the pleasure during the last two years of serving on the Connecticut Judicial Branch's Pro Bono Committee, which Judge Bright chairs, and have found his tireless dedication and vision to be inspiring.

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

A: One of my greatest early career mistakes was not doing enough pro bono work. I strongly resisted any substantive pro bono projects during my first three years. When I finally took on a pro bono case, I quickly learned that I had missed many great opportunities to grow as a young lawyer. I thereafter joined our firm's pro bono committee, which I have chaired since I became a partner in 2008. A large part of my efforts as chair focuses on getting our young lawyers involved early in pro bono projects so that they can avoid making the same mistake that I did.

## **Q&A with Robinson & Cole's Megan Naughton**

---

*Law360, New York (April 29, 2013, 12:02 PM ET)* — [Megan Naughton](#), co-chairwoman of the immigration practice group at [Robinson & Cole LLP](#), practices primarily in the area of U.S. immigration law, focusing on business immigration. Her clients include startups, multinational companies and colleges and universities. Naughton serves as outside immigration counsel for the Connecticut Center for Children's Advocacy Center.

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

A: As a business immigration attorney, the most challenging and rewarding cases that I work on are pro bono cases involving foreign-born children in the U.S. without status who have escaped abuse or neglect from one or both parents. U.S. immigration laws offer a path to permanent residence for children who qualify as special immigrant juveniles. It can be a challenge to obtain the best evidence to present in these cases and to hold the hope of a child in your hands while working in an immigration system that can be unpredictable.

I had one case where the child's petition had been denied, and we had to refile before she turned 21. It was her last chance. We discovered at the last moment before refiling that the birth certificate provided to her by her abusive father, who abandoned her in the U.S., was fraudulent and that her mother's name was actually a name she had never heard before. The name on the fraudulent birth certificate was the name of the woman who accompanied her father to the U.S. when she was brought here as a young child.

This new evidence was able to legitimize my client's claim all along that her real mother had died when she was born and that she was abandoned in the U.S. by her father (the U.S. Citizenship and Immigration Services previously believed she lied because it had proof that the woman named on the fraudulent birth certificate had accompanied my client and her father to the U.S.). Ultimately, the case was approved, and this amazing young woman has been able to move on with her life and live legally in the U.S.

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

A: At this time, I can file three identical cases and receive three different responses/outcomes from the [USCIS](#) or the U.S. [Department of Labor](#). We need more clarity in the DOL and immigration regulations regarding eligibility requirements. While there have been attempts at uniformity through informal agency guidance, FAQs and field manuals, as a practical matter,

these have been applied inconsistently.

The body of case law is small in the business immigration area, specifically because it is too costly and time-consuming to fight the system when it is often easier and cheaper to refile, which could result in a different adjudicator and an approval. Based on statistics regarding approval and denial rates, it appears that there is a bias against beneficiaries and businesses based in certain countries (for example, India). Anecdotally, I have seen greater scrutiny applied to the cases of Indian nationals than I have for nationals of European countries.

We need clear regulations that these government agencies can follow so that there is less of an appearance of bias in the system.

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

A: Reform is finally on the table for the U.S. immigration system, and it is high time. We currently have a system that discourages U.S. graduates of our U.S. colleges and universities from remaining in the U.S. to work or start a business, especially those from China and India.

On a daily basis, I have meetings with bright, talented young people who attended U.S. institutions, and I must tell them that despite their education, it will take them five to 10 years to have any permanence to their legal status in the U.S. This is five to 10 years where they will live in flux in the U.S. and will not be able to easily establish roots (for example, buy a house).

More immigrant visas (green cards) need to be available for these legal immigrants so that their wait for a green card is reasonable and so that they are not dissuaded from staying in the U.S.

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

A: Senior counsel at Pro-Link GLOBAL, Andrea Elliott, is an attorney in the field of immigration who greatly impresses me. She has taught me a lot, and I thoroughly enjoy working with her and her team. She listens so well to her clients. She seeks their feedback, and then, based on their input, she works to constantly improve her service model. Andrea also introduced me to the idea of process improvement (Six Sigma). This has been a terrific tool for my practice. Andrea is always finding new and better ways to do things, and I admire her greatly.

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

A: Because my field involves where people live their lives and how they build their career, and the immigration system can be unforgiving, mistakes can have dire consequences. Checking the wrong box on an application can result in a denial, which can send an entire family abruptly out of the U.S., perhaps without a way to return. At the very least, mistakes cost people time and money. We all make mistakes. That is a given. Applications can get sent to the wrong address, and emails can get lost.

Early in my career, I was terrified of mistakes, and I thought that fear would keep them happening. Of course, it did not. Later, I realized that I could put into effect various checklists

and foolproof ways to make sure these mistakes would happen less and less. I learned that fear of mistakes was not enough. Action was required. Even with every caution we take, mistakes can still happen because we cannot predict every one. We can only learn from the mistake and take action to ensure that it does not happen again.

From all of my mistakes, I have learned that how we are accountable and how we seek to correct our mistakes is extremely important. I have learned that when a mistake is made, it is important to disclose it quickly and to present a plan for a remedy, being as honest as possible about the likely outcomes. Even with a mistake, if we can remedy the situation and still exceed expectations, we have succeeded.

## **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.

## **Q&A with Robinson & Cole's Jeff White**

---

*Law360, New York (May 07, 2013, 12:27 PM ET)* — [Jeffrey J. White](#) is a partner in [Robinson & Cole LLP's Hartford](#), Conn., office. He chairs the firm's appellate practice group and has participated in over 40 appeals in courts around the country. He handles corporate compliance and litigation matters for both domestic and international manufacturers and distributors. His clients range from publicly traded Fortune 500 clients to privately held businesses that involve a range of industries, including aerospace and defense, pharmaceuticals and life sciences, nutritional and dietary supplements, and retail and consumer products. He also created the firm's [Manufacturing Law Blog](#).

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

A: I spent six years representing a worldwide helicopter manufacturer in litigation that arose out of a heli-logging accident in British Columbia that resulted in the deaths of the two pilots. The first phase of the litigation was in Connecticut and involved a wrongful death case involving multiple defendants. In the second phase of the litigation, which was filed in Oregon, I represented the manufacturer in a contribution/indemnification action brought against the owner/operator of the helicopter.

This case was challenging on many different levels. From a factual perspective, I needed to oversee an investigation that spanned North America as we attempted to develop our case through third-party witnesses. From a legal perspective, I had to tackle issues arising out of the law of many different jurisdictions, including workers' compensation law in British Columbia. To this day, this case remains the most satisfying of my career for several different reasons, including the successful outcome reached for my client.

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

A: There has been an explosion of consumer fraud class actions filed against manufacturers, distributors and retailers around the country. I have had significant experience defending those types of class actions. Unlike a classic products liability lawsuit where someone claims an injury as a result of using a certain product, in these consumer fraud class actions, the situation is often quite different. A number of these plaintiffs have never even used the product but are allowed to proceed simply because they made a purchase. Unfortunately, it appears that many of the class actions are used as a lever to force an early settlement due to the legitimate fear of manufacturers that the expenses for defending such actions will be cost-prohibitive. Although there has been more attention paid to class action reform over the past decade, more needs to be done in this area so as to encourage new investments in American manufacturing.

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

A: As to be expected, there continues to be a great deal of activity surrounding contracts between



manufacturers and distributors and others up and down the supply chain. In particular, a number of companies are taking a hard look at the indemnification clauses in their contracts in the event that a lawsuit is filed or some other dispute arises. There are many occasions where both parties to a contract will have their own competing terms and conditions, and it is unclear which party's terms will govern. It is important for manufacturers and distributors to continually review their agreements so that they can be proactive in spotting potential problems in order to ensure that they are managing risk while maintaining a good working relationship with their business partners.

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

A: Benjamin Buckley, who is the global compliance and integrity officer and senior counsel at The [Barnes Group Inc.](#) (a global manufacturer). I have known Ben since law school and I have followed his career with much interest. He is able to handle complex legal issues within the confines of a fast-moving business environment.

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

A: When I first started in private practice, I tended to rely too much on my clerkship experience. In other words, I tended to over-analyze issues so that I could arrive at a neutral result. While that skill can be a strength, it can also undermine a lawyer's advocacy skills over time. I was lucky to be surrounded by a number of skilled trial lawyers who taught me how to use my ability to look at both sides of an issue in a way that benefited my clients.

*The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

All Content © 2003-2013, Portfolio Media, Inc.