

Q&A With Akin Gump's Steve Zager

Law360, New York (February 15, 2013, 4:08 PM ET) -- Steven M. Zager is a partner with Akin Gump Strauss Hauer & Feld LLP in the firm's Houston, New York and Longview, Texas, offices. He leads the firm's intellectual property practice and has represented clients in civil cases across the United States and in a dozen different countries. In 2006, Zager represented a global chemical company in the prosecution of a trade secret case in Houston that ended in a verdict of \$158 million.

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

A: That would have to be the Hexion v. Formosa Plastics trial a few years back. I tried that case with Ed Fernandes of Hunton & Williams and a great team of lawyers.

It was a trade secret case. We represented Hexion Specialty Chemicals and we alleged that Formosa Plastics stole our trade secrets for making epichlorohydrin, a precursor chemical to epoxy resin, and used those trade secrets to improve the performance of its own plant in Taiwan.

First, we had to learn how the chemical processes work. Then, we had to find a way to explain it to the judge and the jury. We used a lot of demonstratives including animations to show the jury how the chemical plant worked. We were confident that if we could do that we would carry the day.

The jury awarded our client \$158 million so I think we did a pretty good job. At the end of the trial, the jury foreman asked me what we were going to do now. I replied that I guess we are supposed to go to Disney World like sports champions. She said, "Honey, I think we have all been in Disney World for the last six weeks of this trial."

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

A: There are hundreds of rules that apply to trial lawyers that tell us what we can and cannot do. There are even local rules that oftentimes conflict. There are precious few rules that tell judges what to do.

I would like to see a rule that says that if a contested motion is not ruled upon within 90 days of submission, it is overruled by operation of law. There is no magic to the 90 days, heck it could be 120 days, but clients deserve some certainty and we waste a lot of time and money waiting for judges to rule on contested motions. I have waited three years in one case, and delays of one year are pretty common.

Moreover, there are some local rules that were written for a different time when trial practice was very, very local. They require lead counsel to appear in person on a moment's notice for every hearing. Other rules require meet and confers to take place in person between lead trial counsel in the district where the case is pending.

When a trial lawyer is handling cases across the country, that can be expensive for the client and time-consuming for the trial lawyers involved. In the past year, I have traveled across the country three times for hearings that took less than 10 minutes. And, I have flown to other cities just to meet face to face with opposing counsel and confirm that we do not agree about a contested motion.

We can and should take advantage of technology to reduce fees for our clients. There is no reason there cannot be more telephonic hearings and meet and confers.

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

A: The gatekeeper function of the judge is critically important in patent litigation.

You can find an expert witness on just about anything who is willing to say just about anything for a price. Judges must police that sort of thing and take their role as “gatekeepers” seriously. Too often, I hear good judges say, “Well, the jury can consider his opinion for whatever weight they want to give it and you can cross-examine.” But, that is not the law, and clients should not be put to the significant cost of a trial if the plaintiff cannot get past a Daubert challenge to their expert witnesses.

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

A: Rusty Hardin in Houston, who has his own firm, Rusty Hardin & Associates, is a fine trial lawyer and a real gentleman. Watching Rusty try a case is like watching Muhammad Ali box in his prime. You know you are watching a real artist and that something special is happening in the courtroom. Rusty puts our profession of trial lawyering first. That is rare these days. And, Rusty will fight like hell in the courtroom and then ask you to have a drink with him after court. Roy Minton of Minton Burton Bassett and Collins in Austin, Texas, is like that too. They are from a generation of outstanding Texas trial lawyers that I fear we may not see again. I am glad I had the opportunity to learn from both of them.

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

A: I used to believe my own B.S., and that can be pretty dangerous for a trial lawyer. If you get to thinking that you are a little smarter than everyone else, the jury will remind you that you aren't.

I am sure that I let my ego get out in front of me in my 20s and 30s. Then, I had children, and my four kids remind me each day of how much I have yet to learn. My wife is pretty good about telling me when I am wrong, too. She is also a lawyer, so she is a pretty good sounding board.

Trial work is a team sport, and I am privileged to stand on the shoulders of some very fine lawyers at Akin Gump. They make me look good. What success I have enjoyed I owe to them and to a little good fortune along the way.

My father gave me a pretty good piece of advice in the back and beyond of my career. He said, “Steven, my boy, no one ever learned anything while he was talking.” Dad was right, and I try to do a lot more listening these days.

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