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Q&A With Moore & Van Allen's Tom Myrick

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Law360, New York (July 01, 2011, 11:06 AM ET) -- **Thomas (Tom) D. Myrick** is a member in the Charlotte, N.C., office of **Moore & Van Allen PLLC**. He has a wide range of civil trial experience, including frequent appearances in both state and federal trial and appellate courts, with particular experience in business related litigation. He has been first-chair trial counsel through verdict in dozens of civil jury trials.

His practice has recently been focused on handling significant commercial cases involving sophisticated damage theories. Myrick also counsels clients engaged in complex business combinations on methods to minimize their exposure to litigation. He speaks regularly to groups of trial attorneys around the country about ongoing developments in the law.

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

A: I had the opportunity to represent a \$5 billion corporate defendant against a product liability claim with alleged damages in excess of \$100 million in lost profits. This jury trial was challenging in many respects.

First, there was a lot at stake. Second, it turned out to be the longest civil trial in North Carolina state court history, lasting over four months. Third, the trial took place after the book "Runaway Jury" by John Grisham had been published, and the jury, having obviously read it, coordinated the color of their dress each day from black to red to green to white and so on.

But the most challenging aspect was that during the trial, I had a murder-for-hire contract taken out on my life. You may recall the name Andrew Cunanan. He was the one who shot Gianni Versace on the front steps of his residence in South Beach, Fla. Prior to that, Cunanan had randomly killed in California, then Chicago and then in New York.

During my cross-examination of the plaintiff's first witness, my paralegal whispered to me that I had an urgent call from the **FBI**. The judge indulged a recess so that I could take the call during which the FBI agent said they had intercepted a murder-for-hire communication, which included directions to my house, the route I drove to work every day and the space where I parked at work, which had just recently changed.

The person who had hired Cunanan was a defendant in an earlier trial against whom I had obtained a multimillion-dollar judgment upon which I had proceeded to execute. When I told the judge what was happening he turned to the bailiff and, with suspicion of a stall tactic, instructed him to "check my story out" with the FBI.



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Class Action

Judge Will Hear State Claims In Pom, Coke Labeling War

A California federal judge on Friday reversed an earlier decision to send state law claims in Pom Wonderful LLC's deceptive marketing and unfair competition suit against The Coca-Cola Co. to state court after learning that he would have to rule on the claims regardless in a related class action.

Merrill Sweetens Deal With Ex-Advisers In Deferred Pay Suit

Merrill Lynch has slightly sweetened the deal in a proposed settlement with its former financial advisers who say the firm denied them deferred compensation, increasing the amounts brokers can claim and agreeing to pay attorneys from a separate pot, according to documents filed Friday in New York federal court.

High Court Takes Oxford Class Arbitration Appeal

The question of whether class arbitration is permissible when an underlying contract doesn't explicitly authorize it is headed to the U.S. Supreme Court, which agreed Friday to hear an Oxford Health Plans LLC appeal that could impact employers' ability to use arbitration agreements to bar class actions.

Product Liability

Newspapers' Bid To Unseal Pa. Fracking Deal Revived

A Pennsylvania appeals court on Friday ruled that a pair of newspapers could carry on with their bid to unseal a settlement between hydraulic fracturing companies and two homeowners over air and water pollution, after a lower court denied their petitions based on a timeliness issue.

Jury Awards Pa. Family Record \$109M In Power Line Death

A Pennsylvania jury Thursday awarded \$109 million to the family of a woman who was killed in 2009 after being struck by a fallen power line in a wrongful death suit alleging West Penn Power Co. was negligent in failing to properly maintain the line.

Insurer Says Chinese Drywall Coverage Row Belongs in Fla.

Westchester Fire Insurance Co. on Friday asked a Florida court to certify an Eleventh Circuit appeal of its 2010 ruling applying California law to a dispute in which a Florida builder seeks more than \$20 million in claims related to Chinese drywall.

Securities

Noble Execs Can't Shake FCPA Nigerian Bribery Suit

A Texas federal judge said Friday that he would not

When the bailiff returned, he was white as a sheet when he said, "Judge, it's true!" The judge proceeded to shut down the courtroom, had everyone entering the courtroom patted down and provided me with an escort to and from the bed and breakfast where I was staying.

Big news for this relatively small North Carolina town, so apparently, the bailiff scurried over to the local TV station after court to spread the word. When I got to my room that night and turned on the local news, there was my picture in the background behind the anchor woman who was announcing that the FBI's most wanted fugitive was coming to town, coming after the attorney who was trying a case in courtroom number four and was staying at the bed and breakfast.

My FBI contact assured me that the odds of Cunanan being in range of what was a very local station and, in fact, watching that station at that particular moment was remote and for me not to worry. Right! Two days later, CNN reported that Cunanan had been spotted at a nearby town. My FBI contact again said not to worry, that they were aware of Cunanan's location well before CNN and that they suspected he had fled North Carolina after being spotted.

Several days later, Versace was killed, and I saw on the news that police had Cunanan surrounded on a houseboat where he ultimately took his own life. Had Cunanan not been spotted in the nearby town, it could have very well been me instead of Versace. The next morning as I arrived at the courthouse, I heard the judge's deep voice echoing down the quiet halls, "Myrick, you're off the hook!"

Q: Describe your trial preparation routine.

A: I subscribe to the theory that trial preparation starts when you first meet with a client. At that initial meeting, I try to formulate an outline of a closing argument and then continue to refine it throughout the different phases of pleading, discovery, and motions practice. That helps focus my efforts on those things that directly contribute to my closing.

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

A: The Hon. Graham C. Mullen [of the United States District Court for the Western District of North Carolina] was an experienced trial lawyer before he was appointed to the bench. He has been on the bench for 21 years, and I believe he has seen it all. I can vouch for his reputation of being understanding of the stresses that trial lawyers deal with, but, at the same time, instantly recognizing disingenuousness.

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

A: Any trial lawyer worth his salt has no business in court if he or she is in fear of anything in the courtroom. Like a timid gladiator, trial lawyers in fear are ineffective.

One of my colleagues in the trial arena who shows no fear and for whom I hold much respect is James P. Cooney [of [Womble Carlyle Sandridge & Rice PLLC](#)]. Although I'm sure neither Jim nor I would fear each other in court, we know that each of us would put the other to "trial."

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

dismiss the U.S. Securities Exchange Commission's suit against Noble Corp. executives allegedly involved in a bribery scheme to secure illicit permits for oil rigs in Nigeria.

Miami Businessmen Charged In \$40M Investment Fraud Scheme

Two top executives of a bankrupt Miami Beach-based manufacturing company were arrested and charged with fraud on Friday for conning investors out of \$40 million as the U.S. Securities and Exchange Commission brought a parallel civil suit over the alleged scheme.

Chesapeake Calls Investor Suit Over Loans 'Dead Wrong'

Chesapeake Energy Corp. and its CEO, Aubrey McClendon, demanded Thursday that a federal court toss investors' class action against them, saying it fails to make compelling allegations of securities fraud regarding \$1.1 billion the chief executive borrowed against his stakes in the company's gas wells.

Southeast

Nalco Skirts Lawsuits Over Corexit Use After BP Oil Spill

A Louisiana federal judge on Tuesday dismissed personal injury lawsuits against chemical maker Nalco over the use of its oil dispersant Corexit after the 2010 Deepwater Horizon spill, ruling that federal authority to clean up oil spills preempted injury claims by workers and residents.

SC Builder Coverage Law Lives On, But Insurers Get Reprieve

Though South Carolina's high court last week upheld a state law declaring that general liability policies cover property damage and injuries from faulty construction, it also ruled the statute cannot apply retroactively, providing some relief to insurers fearing the legislature had rewritten their contracts.

Florida West Fined \$1M For Price-Fixing After Rare Plea

A federal judge sentenced Florida West International Airways Inc. on Friday to pay \$1 million over a five-year period after allowing the carrier to make an unusual no-contest plea to charges that it conspired to fix air cargo rates.

from it.

A: North Carolina is one of the few jurisdictions that still recognizes contributory negligence as a complete bar to a negligence claim. One of my first jury trials was for wrongful death involving my clients' son, who was riding on the back of a motorcycle when the driver elected to speed away from a highway state patrolman to elude arrest.

The driver crashed the motorcycle at high speed, killing my clients' son. The driver claimed that he had pulled over and switched seats such that he was not the driver and was not responsible for the death. I took great pains to piece together what little evidence there was to prove that the defendant's story was fabricated, only to have the jury agree with me but then find my clients' son contributorily negligent for getting on the motorcycle in the first place.

This taught me to focus on every element of your case and never assume that the fact finder will get it without your guidance.

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