

## Q&A With Sheppard Mullin's Olivier Theard

*Law360, New York (March 07, 2013, 1:55 PM ET)* -- Olivier Theard is a partner in the business trial practice group in Sheppard Mullin Richter & Hampton LLP's Los Angeles office. He specializes in environmental litigation, regulatory compliance and administrative law. Theard represents commercial and manufacturing clients in judicial disputes and administrative law hearings before various federal, state and local environmental regulatory agencies. Theard is also the chairman of Sheppard Mullin's diversity and inclusion attorney network.

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

A: Early in my career, the most challenging case I worked on was also the case that led me into environmental law. As a junior associate, I worked on a toxic tort matter brought by a law firm connected with Erin Brockovich. The case involved almost 1,000 plaintiffs alleging that exposure to chemicals at Beverly Hills High School caused them to develop cancer. I was the only associate from my firm on the matter, and the learning curve was steep.

I took percipient and expert depositions (often as the youngest person at the table), was involved in case strategy and helped develop the arguments that ultimately led to a summary judgment victory. Not only was the case valuable for honing my professional skills, I developed mentoring relationships with the partners who supervised and directed the work. These and other mentoring relationships developed over the years have been crucial to my professional advancement.

More recently, I had a fascinating case involving whether birds impacted air quality monitoring results at my client's facility. Fearing Sylvester the Cat, Tweety and his friends nested in my client's air quality monitors, using twigs and leaves (and tracking dust) to make a comfortable home. We argued that the birds, not facility operations, caused certain high readings. These birds became the subject of two contested administrative hearings before the South Coast Air Quality Management District (AQMD).

The case was challenging because what looked like a *res ipsa loquitur* fact pattern (of course, birds would impact the results) became a complex scientific and statistical analysis of monitoring methodology. In the end, we earned a satisfactory resolution. I also learned a lot about birds, so perhaps my next career will be as an ornithologist.

From the nonenvironmental arena, the most challenging matter I ever worked on was a pro bono immigration case. I represented a young woman seeking asylum in the United States based on domestic violence she suffered in her native country. The matter was challenging because the law was not in our favor, but the primary challenge was emotional and psychological. We lost in the initial proceeding and breaking the news to the client was devastating — this was literally a matter of life and death. After doing all I could to raise her spirits, we fought on and eventually prevailed on appeal. Breaking that news was considerably easier!

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

A: Business and economic considerations need to be front and center. Sensible environmental regulations modify behavior, spur innovation to achieve compliance and benefit health and safety. However, I am increasingly concerned about businesses fleeing this great state to avoid what they perceive as a crushing regulatory burden.

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

A: Chemical regulation is an important issue. The green chemistry regulations soon to be finalized by the Department of Toxic Substances Control may prove important for how consumer products are designed in the future. As a concept, "green chemistry" signals a paradigm shift, whereby the old model of chemical regulation — a wait-and-see approach in which chemical risks are assessed after someone gets hurt — is replaced with a new model in which chemical risks are analyzed in advance of exposure.

The purpose is to encourage manufacturers to make safer products from the beginning rather than wait for lawsuits and product recalls to stack up. In the short term, green chemistry will likely have a modest impact. [In the] long term, however, manufacturers may be more likely to avoid problematic chemicals in their products — partially as a result of green chemistry but mostly because of consumer demand. In other words, California's green chemistry program may be too limited to fulfill its promise directly, but the program may help spur consumer demand for safer products.

The U.S. Congress also appears set to consider reform to the Toxic Substances Control Act (TSCA). Under the current version of the TSCA, the U.S. Environmental Protection Agency has the burden of demonstrating (often with limited information) that a chemical poses an unreasonable risk to human health or the environment before it can regulate the substance.

Reform bills under consideration would essentially flip the burden of proof, requiring chemical manufacturers to prove that the chemicals are safe before they are used. It will be interesting to see how the law develops in this area and how legal changes will impact manufacturer and consumer behavior.

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

A: Nancy Feldman and the district prosecutors at the South Coast AQMD.

Much of my practice involves assisting clients in regulatory compliance matters, including air quality issues under the AQMD's jurisdiction. The AQMD's lawyers are tough advocates. Even though I often oppose them, they are professional, reasonable and do their jobs well. Where appropriate, they are willing to discuss issues to achieve mutually agreeable solutions.

More generally, I have had good experiences working with lawyers representing the EPA and other federal and state environmental agencies. Whether dealing with the government or a private party, I believe it is critical to maintain civility and mutual respect. Otherwise, little gets accomplished, bridges are burned, and everyone gets an ulcer.

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

A: It is important to provide legal advice that reflects the reality of your client's operations. Understanding your client is critical. For instance, if you are negotiating a settlement, how many layers of review will your client need? Who is authorized to sign? If the client is a public company, will they need to disclose the settlement amount in regulatory filings?

When I was more junior, my sole focus was on getting the right legal answer (which is critical), but I did not focus much on how to structure the advice to fit the client's business operations. This led to situations where I could explain a client's legal obligations, but I could not offer a pathway for the client to satisfy its obligations. In other words, I could answer the client's "what do I do?" question, but I could not answer the "how do I do it?" question. Knowing how your client works allows you to provide the best practical legal advice.

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