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## **Q&A With Edwards Angell's Stephen Prignano**

Law360, New York (July 13, 2009) -- Stephen M. Prignano is co-chair of Edwards Angell Palmer & Dodge LLP's mass torts practice group. He has extensive civil litigation and trial experience in complex commercial and mass litigation and knowledge in cutting-edge issues concerning electronic discovery and information technology.

Prignano frequently has lectured and written on trial and appellate practice, electronic discovery, document retention, and the use of digital technology at trial, as well as insurance coverage litigation, bad faith and broker dealer liability issues. He serves as head of the firm's Providence office litigation attorneys.

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

A: In February of 2004, one of the worst nightclub fires in U.S. history took place in West Warwick, R.I. One hundred persons were killed in that fire, and scores more were injured. The fire was caused by a rock band that set off a series of pyrotechnics as they took the stage.

Along with several other talented lawyers, I represented a media defendant that had sponsored the event and was sued on various legal theories. The representation presented many challenges, not the least of which included the high-profile nature of the tragedy and the fact that it took place in a small Rhode Island community. We also wrestled with a number of unique and complex legal issues pertaining to the liability of an event sponsor, and presented several motions to the court on those issues.

Ultimately, a global settlement was reached finally concluding all of the mass tort cases that had been filed. Even in the process of concluding the settlement, however, the complexities of the cases continued to present challenges, especially in connection with obtaining settlement approval for the numerous minors who brought claims as a result of their parents' injuries.

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

A: Some years ago I took a pro bono case representing a U.S. serviceman who was stationed in Iraq. His son had been abducted by his estranged wife and brought back to the U.S. from their home in Germany. We instituted an action under the provisions of the Hague Convention relating to international child abduction, even though the suit was between two U.S. citizens.

The case actually went to trial in the Rhode Island Family Court, and we won an order compelling the wife to return the child to Germany. On the date set for the return, however, the wife absconded with the child again, leaving no trace of their whereabouts. We immediately hired a private investigator who, with some good leg work, finally located both the wife and child in another state.

Because our client was deployed in the field in Iraq at the time, we needed to contact him through the American Red Cross and were able to finally reunite him with his son. That was an amazingly proud moment for all of us.

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

A: Without question the area of electronic discovery. While I think some important and long overdue improvements were made with the latest Federal Rules revisions, much more needs to be done. The process continues to be too cumbersome and insanely expensive for most litigants.

There is something fundamentally wrong when the cost of complying with discovery demands outstrips the value of a case and leads, in many cases, to settlement decisions based not on the merits of a case but rather on the cost of electronic discovery. I think this situation has created an imbalance in the litigation playing field and some common sense limitations need to be implemented. The state courts also need to address electronic discovery and get on board with the latest Federal Rules revisions as a starting point.

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

A: Unfortunately, products manufactured in China continue to present problems. We've seen it in the lead paint context, food products and now Chinese drywall. As these products are coming under increasing scrutiny from the government and plaintiffs bar, I think we will see this trend continue.

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

A: John Tarantino of Adler Pollock & Sheehan. John is a lawyer's lawyer, a consummate professional and a role model for younger lawyers.

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

A: As a young lawyer I think the first order of business is to develop proficiency in litigation skills and obtain an in-depth knowledge of the law in your practice area. Young lawyers should look for any opportunity to hone those skills.

Ask to attend depositions, even for a portion of the testimony, observe more senior lawyers in action, sit in on a few trials at the local courthouse, take pro bono cases that will provide the opportunity to argue motions and present testimony. There are many ways to develop those skills and, for young lawyers in this practice area, that should be a priority.

Equally important is a very good working knowledge of the law that applies in one's practice area. Young lawyers should take the extra time to stay abreast of the latest developments, read the important sources for new information in your area (like Law360!) and, by all means, volunteer to assist with the publication of articles. Not only will you increase your depth of understanding, but you will also be getting your name into the marketplace.



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## Q&A With Edwards Angell's Kathleen Carr

Law360, New York (July 15, 2009) -- Kathleen B. Carr is co-chair of [Edwards Angell](#) Palmer & Dodge LLP's intellectual property litigation group. She has handled a wide array of patent, trademark and copyright cases and disputes for clients ranging from major pharmaceutical companies to startup companies and individuals.

Carr's patent cases have covered a variety of technologies including pharmaceuticals, biotechnology, mechanical devices, computers, business methods, printing machines, photocopiers and design patents. Her patent law practice includes providing opinions with respect to validity and infringement issues and patent prosecution. Carr is registered to practice before the U.S. Patent and Trademark Office.

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

A: At the beginning of every new case, I am pretty well convinced that it is the most challenging case I've ever worked on, because at that stage, everything is new: new technology, new facts and new legal issues.

You really have to become somewhat of an expert on whatever the technology in each new case is, or whatever the subject of the intellectual property that you are addressing is. This is one of the greatest things about patent law: It provides the opportunity to learn about the inventions in each case, such as new medicines that help people, and new technologies.

Each new case also requires learning and understanding the particular business area as well, which has been particularly interesting in some of the trademark cases I have handled. Those have ranged from protecting a modeling agency mark to enforcing tradename rights against a seller of "homeopathic" products.

Overall though, I would say that the most challenging case I can think of is one that involved 29 patents. That was quite interesting. Imagine asserting 20 patents and defending against assertion of nine others, all involving related technology and all in the same case. We were very pleased to have reached a favorable settlement in that case.

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

A: I am happy that I have been able to balance my case workload, commitments to my firm and commitments to my family. I think it is very important to make sure that all get the full attention they need. Each case comes with its own timing requirements, as do my firm responsibilities, including working as co-chair of our intellectual property litigation group, serving on our hiring committee, and assisting with personnel issues through my ombuds role.

I have worked very hard to make sure I am available for my family as well. I spent last July in a hospital room with my mother, and wouldn't have missed that for the world.

I still feel the need to clone myself on occasion, but as I have not yet been able to figure that one out, I am happy that I have worked as hard as I have at trying to make it all work together.

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

A: Patent reform needs reform. Over the past few years, several efforts at patent reform legislation have been launched taking aim at several aspects of patent law, including how damages are calculated, when and how recovery for willful infringement may be sought, and interlocutory appeals of Markman claim construction rulings. Many aspects of these reform efforts so far have been misguided.

Patent law cases are special, but not so special that general federal law precedent should not apply to them, as the U.S. Supreme Court appears to have recognized recently with respect to the standards for declaratory judgments and injunctive relief.

The proposed patent reform legislation, which thankfully has not yet gone through, needs substantial reform itself before it will be in any sort of form that would actually be helpful for my practice area of patent law or improve the law.

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

A: Biologics litigation might be on our horizon. Right now, we have the Hatch-Waxman Act in effect, which provides a statutory scheme for new drug product market exclusivity and later entry of generic pharmaceutical products under specified circumstances. No such set of rules governs biologics, which are drug products that are made by using living things such as tissues or microorganisms.

Last week, the FTC released a report indicating its views of market protection applicable to innovator biologics, suggesting that a period of market exclusivity generally is not necessary. It appears that if the FTC's approach is followed, that will leave the potential for market entry for follow-on biologics subject only to patent restrictions. That makes it likely that patent litigation related to such products would be substantially advanced in time as compared to the Hatch-Waxman rules applicable to ANDA litigation involving generic drug products.

While the FTC's report appears to have met initial resistance, and some legislative efforts are in the works with respect to biologics, it will be interesting to see the end result.

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

A: Bob Ciociola. Bob is one of the most wise, practical and smart lawyers I know, and has a great ability to maintain a classy and considerate approach to everything he does. As a talented and skilled trial lawyer, he is a credit to the profession, and as a kind and thoughtful person, he is a credit to our community.

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

A: Do it! It is a great practice area. I have had inquiries from young attorneys interested in intellectual property litigation concerning whether you need a Ph.D. or something along those lines to practice litigation in this area. The answer is: You do not. First of all, intellectual property litigation comprises several areas, including patent, trademark and copyright law.

Trademark and copyright litigation involve fairly complicated areas of law, but do not require science degrees. With respect to patent litigation, every case is so different, you really need to learn the technology for each case. A science degree is helpful, but not required to practice in the area of patent litigation. The key is to be able to explain the technology in the context of the applicable law to the jury or judge.

One thing I would recommend though is that if you qualify for taking the Patent Bar Exam, you should do it. That adds experience and a perspective that is helpful for providing a broader base of knowledge and more perspective for the nuances of the issues that may arise during a patent litigation matter.

And finally, to all who are considering joining our area of practice, I would like to say: Welcome! The patent bar and intellectual property litigation attorneys in general are an eclectic mix of people from different and interesting backgrounds. I have heard that the perception of attorneys in our practice area has transformed from the "nerds" of the law into "techno cowboys."

I consider us to be just plain enthusiastic lawyers ready to embrace and dive into the next case. We generally are a welcoming sort who genuinely enjoy and are committed to the work that we do.

All aboard!



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## **Q&A WITH EDWARDS ANGELL'S STEPHEN HUGGARD**

Law360, New York (July 10, 2009) -- Steve Huggard is co-chair of the securities and government enforcement practice group of [Edwards Angell Palmer & Dodge LLP](#). Huggard served for 17 years as a prosecutor with the U.S. Department of Justice, and for four years as chief of the Public Corruption and Special Prosecutions Unit at the U.S. Attorney's Office for the District of Massachusetts.

Huggard was one of the few assistant U.S. attorneys in Boston selected to work around the clock investigating the Sept. 11 attacks. He also headed the federal inquiry into the Catholic Church sex abuse scandal.

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

A: I once represented an executive who was indicted in a federal health care fraud case in a different state. Several executives had already pleaded guilty and there were several million pages of documents to review.

The judge was plainly hostile to an out-of-state lawyer. Sentencing guidelines indicated that the client was facing 3 to 4 years of jail, and the judge seemed inclined to follow those guidelines on conviction.

After extensive discovery and motion practice, we were able to get all federal charges dropped in exchange for my client pleading guilty only to two state misdemeanors which resulted in unsupervised probation. It took great courage on the part of the client to vigorously defend under the circumstances and a tremendous amount of work on behalf of the firm to achieve the correct results.

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

A: I have had many clients come to me and tell me that their life was in my hands, which is a humbling experience. At the conclusion of their cases, many of those clients continued to confide in me by writing heartfelt letters of thanks. I am always very proud when I am able to help someone whose life had hit a low ebb.

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

A: Prosecutors and defense attorneys should work better to resolve issues that can be resolved and focus on the issues that actually matter in a particular case. Each side tends to stereotype the other, causing cases to become more complicated and expensive than they should be. This only serves to harm the client and it works to the detriment of achieving proper results.

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

A: I think there is going to be an increase in the number of cases related to the Foreign Corrupt Practices Act. I also believe there will be a resurgence in the number of criminal tax cases.

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

A: The best lawyer I ever tried a case with or against was Bob Morvillo in New York. He has an amazing command of the facts and the law. He also has a great ability to communicate with both the judge and the jury.

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

A: Go to court and try cases. If you can become a prosecutor, even if only for a short time, do so as you'll find that to be quite helpful later on in your career. This will provide you with added confidence. It will increase your likelihood of being able to settle the case early on.

If settling isn't an option, you will have the advantage of knowing that your experience has better positioned you to try the case to a successful conclusion.



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## **Q&A WITH EDWARDS ANGELL'S JEANNE DARCEY**

Law360, New York (July 14, 2009) -- Jeanne Darcey is co-chair of the restructuring and insolvency department at Edwards Angell Palmer & Dodge LLP and focuses her practice on representing indenture trustees, bondholders and secured and unsecured creditors in workouts and Chapter 11 proceedings.

Darcey also advises clients with respect to bankruptcy implications in structuring transactions, purchasing assets, litigation and other strategic alternatives. She currently serves as chair of the Bankruptcy and Restructuring Section of the World Law Group and as co-chair of the education committee for the Bankruptcy Section of the Boston Bar Association.

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

A: The most challenging case was United Air Lines, in which we represented mortgagees or lessors in almost 300 separate aircraft financing transactions, with total liabilities of almost \$9 billion. The case was extraordinary in that, in addition to restructuring a number of the transactions, we were also involved with taking back aircraft, through either rejection or abandonment by the debtor, or by making demands for the return of aircraft as provided in the Bankruptcy Code.

Along with customary restructuring and ultimately plan negotiations, the case also involved becoming familiar with, and responsible for, the mechanics of storage, maintenance, and insurance of aircraft, and negotiations over the resale and/or release, both domestically and internationally, of aircraft.

A third layer of the case involved significant and time-consuming litigation involving antitrust allegations against our client, but those claims were ultimately dismissed by the 7th Circuit Court of Appeals, on writ of mandamus.

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

A: In 2004, I was selected to serve as a panel member on the Merit Selection Committee, organized by the First Circuit Court of Appeals to fill the bankruptcy judgeship vacancy in the District of Massachusetts created by the retirement of Bankruptcy Judge Carol Kenner. This recognition by the First Circuit and my peers in the bankruptcy community will always remain a

proud accomplishment of mine.

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

A: A number of reforms that took place with the 2005 amendments to the Bankruptcy Code have proven to be problematic for Chapter 11 filers, and may need to be rolled back.

Increased costs, in the form of new administrative priority claims, and shortened deadlines imposed upon debtors, both with respect to executory contract decisions and plans of reorganization, have given some creditor constituencies greater leverage over the process.

In some instances, these changes have had a dramatic, negative impact on the ability of a company to reorganize. Whether or not the cases would have succeeded under the pre-2005 regime is questionable, but there seems to be a number of cases that either wind up in liquidation, or even contemplate a liquidation from the outset.

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

A: Being in the restructuring and insolvency field, I can honestly say that the next wave of cases can arise from almost any sector of the economy, including automotive (manufacturers, suppliers and dealerships), retail, media and communications, hospitality, airlines and others.

We have also seen that a number of countries have either adopted, or are in the process of adopting, restructuring regimes that are based, in part, on U.S. Chapter 11 proceedings. Consequently, it is almost certain that as global restructuring cases rise, so will the opportunities to be involved in cases that have cross-border or multijurisdictional implications.

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

A: I have always been impressed by Jack Butler, of Skadden Arps, who is an energetic, intelligent and diligent lawyer. Many of Jack's adversaries may claim that he is overly aggressive or dogmatic, but in my view, I appreciate that he will tell you honestly what he wants to do and how he intends to get there. Then the games can begin.

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

A: Bankruptcy involves many different skill sets, across virtually all areas of the law. To be effective, a practitioner needs litigation and courtroom advocacy skills, as well as transactional skills, particularly in the areas of finance, corporate acquisitions, real estate and, at least to some extent, tax. A bankruptcy lawyer will rarely be able to concentrate in a particular area or industry, so to some extent you need to be prepared to know a little of everything, rather than everything about a little. That helps to keep the practice interesting.

Also, even after 25 years of bankruptcy practice, I continue to be surprised at the number of novel issues that are raised, and that makes for a continuous process of learning.



## Q&A WITH EDWARDS ANGELL'S PATRICIA SULLIVAN

Law360, New York (July 28, 2009) -- Patricia Sullivan is co-chair of [Edwards Angell Palmer & Dodge LLP's](#) antitrust practice group. As an antitrust trial lawyer, experienced in handling civil and criminal litigation, she represents businesses that are the targets of civil treble damage actions, as well as companies facing civil or criminal investigations.

Sullivan's practice has also included counseling of businesses regarding strategic planning and mergers and acquisitions. She has established antitrust compliance programs in industries ranging from manufacturing to banking and insurance. She has also counseled companies regarding the antitrust issues that arise from a challenge to the viability of a patent, including the antitrust considerations associated with the settlement of patent litigation.

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

A: The most challenging antitrust cases that I have worked on are criminal price-fixing investigations that typically begin with a grand jury subpoena, culminating in treble damage actions. I have found particularly challenging the representation of a small business, whose executives may have been near the edge of cartel activity, where an aggressive defense is likely to result in the marshaling of facts sufficient to demonstrate nonparticipation in the illegal agreement.

The challenge is not only how to marshal the facts and the law, but to do so efficiently so that the "cure" does not kill the patient. The challenge of such matters is exacerbated by cost of data gathering and the complex expert economic work critical in such cases.

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

A: While many of my proudest moments as an attorney have come in connection with some of the pro bono projects that I have undertaken (most recently, the representation of detainees at Guantanamo Bay), one of my best moments as an antitrust practitioner came in connection with the representation of a business consortium that had launched a joint endeavor based on advice from other counsel.

I was asked to evaluate whether the conduct of the consortium might violate the antitrust laws. After an intense factual and legal analysis, I came to the conclusion that the consortium had crossed the line. In an extremely difficult and, confrontational meeting with client representatives, I ultimately brought them to understand how the antitrust laws applied to what they had been doing and to persuade them to repudiate conduct that had already been undertaken.

After the repudiation was accomplished, the consortium learned that it actually was already under investigation by the Federal Trade Commission. As a result of my advice, the investigation terminated with no adverse result.

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

A: The policy underpinning enforcement of the antitrust laws in the United States was conceived with the premise that businesses injured in the market by anti-competitive behavior may seek a private remedy, effectively acting as private attorneys general to ensure compliance with the law. In recent years, partly as a result of trends in interpretation of antitrust laws, but also because of the cost of antitrust litigation, including discovery and the cost of expert economists, business-to-business litigation is rare.

As a result, this mechanism for enforcement has virtually dried up. Instead, what remains of private litigation is largely limited to the class action that is not the result of independent action by an injured competitor, but rather was filed by class specialist who is following on the heels of investigations already initiated by the Department of Justice or the Federal Trade Commission.

Reform is needed to revitalize private antitrust enforcement by civil litigants by making it less daunting and costly.

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

A: With the change in administration and the appointment of Christine Varney as the new head of the Antitrust Division of the Department of Justice, and the elevation of Jon Liebowitz to chair of the Federal Trade Commission, I am expecting that there will be significant new enforcement activity, particularly focused on single-firm conduct and exclusionary behavior.

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

A: A trial lawyer whose skills have consistently impressed me is Brendan Sullivan of [Williams & Connolly](#) LLP.

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

A: An effective antitrust lawyer must have a thorough grounding in economics -- macro and micro -- as well as an understanding of the competitive dynamics of the marketplace, not just in the United States, but around the globe.