

MVP: Covington's Raymond Biagini

Law360, Washington (December 12, 2017, 3:14 PM EST) --

Raymond Biagini's representation of defense contractor KBR in long-running multidistrict litigation showcased the Covington & Burling LLP partner's expertise at the intersection of tort and federal contracting law, helping land him a spot on Law360's 2017 Government Contracts MVPs.

HIS BIGGEST ACCOMPLISHMENT OF THE YEAR:

In July, Biagini led a team of Covington lawyers who helped defense contracting giant KBR Inc. win dismissal of a "contractor on the battlefield" tort case, a long-running multidistrict litigation challenging the use of burn pits to dispose of waste during the Iraq and Afghanistan wars.

In an extensive opinion, a Maryland federal judge ruled that KBR could not be held liable for alleged health issues stemming from exposure to the pits, as use of the pits was a "quintessential military decision ... driven by the exigencies of war."

The MDL had gone on since 2008 — including a previous dismissal and subsequent revival by the Fourth Circuit — and had involved substantial efforts by Biagini and his team to defend the company against those dozens of consolidated lawsuits, with multiple types of tort claims brought by more than 800 plaintiffs. Those efforts included, for example, gathering evidence from the Department of Defense and arranging for high-level military officials to testify on behalf of KBR.

"We brought to bear all of the strategies, and tactics, and evidence that not only the district court called for, but also the Fourth Circuit," he said.

The case is currently back before the Fourth Circuit, with Biagini and his colleagues "working to maintain our success on appeal," he said.

The MVP logo features the letters 'MVP' in a bold, blue, sans-serif font. The letter 'V' is partially enclosed by a red circle with a white outline, and a small red arrow points upwards from the top of the circle.

Raymond Biagini
Covington & Burling

WHY HE'S A GOVERNMENT CONTRACTS (AND TORTS) ATTORNEY:

Biagini's unusual practice, combining expertise in both tort and government contracts law, was a "natural migration" from what had originally been a solely contracts-based practice. It stems in part from his observations from work for defense contractors, which face a high potential for lawsuits because their products are often used in dangerous environments.

His own personal interest in the intersection between those areas of law — and the related principle of derivative sovereign immunity — also drove him toward his particular "niche within a niche."

"When you are a government contractor working for the United States, my belief always has been you should enjoy some kind of protection when you are doing the work at the behest of the United States ... and from that simple principle comes all sorts of interesting ways to defend lawsuits," Biagini said.

Over time, his dual-focus practice has allowed him to build a rare combination of expertise that has made Biagini and his colleagues part of a small, select group of go-to attorneys for contractors that face tort risks.

"Whether it's a space shuttle that goes down, or it's burn pits, or it's other kinds of catastrophic incidents that occur for government contractors, I know we're on the short list of outside firms that have this particularized expertise," he said.

HIS PROUDEST ACCOMPLISHMENT:

Biagini's unusual expertise has also given him an opportunity few attorneys will ever get: conceptualizing and drafting the core provisions of a major piece of federal legislation. He helped shape the 2002 Support Anti-terrorism by Fostering Effective Technologies, or SAFETY, Act, a bill intended to protect U.S. Department of Homeland Security contractors that supply anti-terrorism technology from liability connected to a terror attack.

The bill has stimulated the development of that technology and also given Biagini a chance to see how the fruits of his work could play out, "not just in victories that occur in court, but in these kind of legislative activities that truly made an organic difference in the protection of America from future terrorist attacks."

"It's those kinds of events that really motivate you to get up in the morning and look for the next opportunity that might arise, and to continue to work in the vineyards, and realize that that work can really, really pay off for your clients in the long run," he said.

HIS ADVICE TO ATTORNEYS:

There are "almost endless" opportunities to help clients, Biagini said, and young attorneys can serve themselves well by developing expertise in a particular niche. They should also be proactive with that expertise, seeking to minimize risks of an issue popping up, not just responding to calls for help when litigation is looming.

"There's no harm in offering to a client your thoughts," he said. "Oftentimes you will find that a client will say, 'You know what, I hadn't thought of that, come in and talk to us more about that.' And that was my own experience — I tried to think downstream for a client and what risks their business may give rise to on the torts side, and then proactively call them up in between the tort lawsuits ... and say, 'There are ways we can protect you should any of that ever occur.'"

— *As told to Daniel Wilson*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2017 MVP winners after reviewing more than 1,000 submissions.

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