
Antony Ryan
CRAVATH (NEW YORK)

ANTONY RYAN

BY KATRINA DEWEY

IN THE ERA OF VASTLY COMPLEX

financial litigation, it's good to be one of the most trusted advisors to PricewaterhouseCoopers and Deloitte & Touche, among many others. But Cravath's Antony Ryan did not achieve that role through rigorous accounting training or a background in business.

Instead, he learned the niche working alongside Evan Chesler, Tom Rafferty and others as they dissected claims against their clients – in part, by thinking as their clients do. Ryan brings an honest empathy to that work as well as his significant public interest contributions, which include winning freedom for a man wrongfully convicted of murder.

His civil litigation practice defines cutting edge. He argued in the 2nd U.S. Circuit Court of Appeals Bear Stearns opt-out litigation on behalf of Deloitte, which is facing claims of facilitating a fraud against a Monaco-based hedge fund. He argued there should be no private right of action under Section 10(b) of the Securities Exchange Act of 1934 and under SEC rule 10b-5 for someone who has entered into a total return swap. He's also working on an SEC enforcement action for a corporate client that began as an accounting investigation, and has morphed into a Foreign Corrupt Practices Act case about business in China. And he's working to resuscitate the languishing common-law defense of in pari delicto. State courts are split on whether auditors should be able to defend claims against them by saying it's the client's fault, barring their claims because of unclean hands. He won a ruling in 2010 allowing the defense in New York.

LAWDRAGON: How does one become an expert in accounting litigation?

ANTONY RYAN: I didn't have any particular accounting background, that overlay happened by serendipity. I knew I wanted to be a lawyer because I liked debating and was interested in the adversarial process. The only other career I considered was as a history professor.

Since I came from an academic family I was interested in something practical where I could make a real world difference. The law has intellectual aspects, but it is a practical endeavor. I thought going to law school was like learning the rules of life. It was amazing to me how everything in the world is governed by law. Being able to experience that and have the key handed to you to appreciate that fully was eye-opening.

LD: While at Harvard Law School, you spent your second-year summer at Cravath. Can you talk about that?

AR: I was very drawn to how immersed, sink or swim, the work was even as a summer associate. I liked being immediately made a member of the team here and that I had responsibility even as a summer associate. I remember I helped Bob Baron get ready for a client meeting and went with him – it was nice of him to bring me along. And the client asked more and more detailed questions about the nature of the legal analysis I'd undertaken. At some point during the meeting, Bob turned to me.

The CEO was himself a former lawyer and he had more ability to interrogate his lawyers. That was a new experience for me, and because I had investigated what he asked about and had formed a view, I felt comfortable in the process.

LD: Once you joined Cravath, what was your first exposure to accounting issues?

AR: I started out as a litigator and was assigned to a team for 18 months. At Cravath, our system allows for outstanding training by having us work directly with a partner then rotate to another partner. My first partner was Evan Chesler, and I obviously learned a tremendous amount from him. He was handling a case involving Mid-American Waste Systems in Columbus, Ohio. Evan's always involved in lots of different kinds of cases, so I was exposed to different types of matters and that case provided an introduction to accounting issues.

But I really started to focus on accounting liability as a fifth- or sixth-year associate. I rotated to work with Frank Barron, who was working for PricewaterhouseCoopers on Allegheny Health, which was an SEC investigation and enforcement matter, and also a large private civil litigation. What was so interesting about that case is we were a defendant and subject of an investigation, but this involved a financial fraud the former client had perpetrated on its auditors.

That gave us the opportunity to go on the offensive – to ask who had been involved, how they had successfully concealed the fraud from the auditors, how they

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lied to the auditors. Though we were the defendant, the onus was on us to uncover all these facts and to show why the audit had not found this fraud.

LD: That sounds like the hallmark Cravath strategy, of taking a step back and looking at things differently.

AR: Exactly. We switched the whole lens. In discovery, we took the initiative to depose people to find out the facts. It was a case where the plaintiffs' case was 'look, a fraud occurred, the company is bankrupt, you were the auditors, ipso facto, you are at fault'. The whole burden shifted onto us to explain why the company failed and how the fraud had gone on for some time.

For me, there was a very human aspect to the case and helping the auditors. They were auditors who had been running this engagement, whose professional careers were obviously now at stake. They were being impugned as having been a part of this fraud.

LD: Accountants are people too?

AR: That's how I feel. Audits are very complex endeavors and involve a lot of judgment. Any time an issue is missed somehow, there's this immense hindsight bias to say that it must have been obvious, and it's apparent something wasn't accounted for properly. But there can be lots of reasons – financial fraud, yes, but there are also differences in accounting judgment.

Few accounting issues are black and white, cut and dried, there really is a lot of judgment and common sense involved. Auditors are professionals trying to do the right thing, trying to make judgments in real time.

I remember distinctly defending the three main auditors in that case, the engagement partner and two managers. Being a professional caught up in a malpractice case is a very frustrating experience. You have lawyers saying 'don't tell anybody about the case except when you're under oath'. So you feel kind of helpless, that you don't have any ability to defend yourself. Having a lawyer who's a voice for you is very important. So while I had exposure to accounting issues in cases before Allegheny Health, the additional auditor overlay – how they go about conducting an audit – I learned on that case. We ended up settling the case with the SEC and the civil action; the SEC never brought a claim against PwC.

While accounting cases have a veneer of complexity and quantitative issues, at bottom accounting cases are great storytelling cases. There's an underlying clear story about what happened at the company, what happened to that company's business that led to an accounting issue and how that accounting issue was handled. Fundamentally what appeals to me is that these are stories.

LD: You have significant experience for PwC and others in international litigation. What are some of the challenges there?

AR: Earlier this year, I had a 2nd Circuit argument involving financial fraud in Saudi Arabia, *Certain Funds, Accounts and/or Investment Vehicles Managed by Affiliates of Fortress Investment Group L.L.C. v. KPMG L.L.P.* It involves a petition for discovery under Section 1782 of the U.S. Code, that allows a litigant in matters outside the U.S. to apply to a U.S. Court to obtain discovery for use in the non-U.S. proceeding.

The case was brought by a hedge fund that lost money on debt instruments, such as Sharia-compliant bonds, issued by two Saudi Arabian entities. The hedge fund brought the action in New York, saying they should be able to obtain the work papers of the KPMG and PwC firms that audited the underlying companies in various Arabian countries. My client is PwC International Ltd., which coordinates certain activities of firms in the PwC network. We argue that they are not entitled to the papers.

The 1782 area has been on the books for a long time, but used very little over the years. It attracted attention recently in the Ecuadorian oil litigation where it was used to great effect by Chevron and Gibson Dunn to obtain lots of documents. That led people to realize a statute is on the books that can get you U.S.-style discovery even when the underlying case is in a country that wouldn't otherwise provide for it.

Forum non conveniens claims are also significant in this practice. We try to help our clients figure out where they would be best off to have cases located. In the Madoff fund cases, for example, we have had cases in Florida and New York dismissed on forum non conveniens grounds in favor of Ireland and are advising on related cases in various European countries. When you, in particular, have foreign clients, they generally have a strong aversion to being a defendant in any U.S. litigation. They have a view that discovery has run amok. And our greater use of jury trials in civil cases is unusual, it makes foreign companies very nervous. Being able to help demystify the process for them, explain to them what avenues are available to them, is a very important part of a lot of cases we have. *Read the full Q&A at www.lawdragon.com/lawyer-limelights/antony-ryan*.