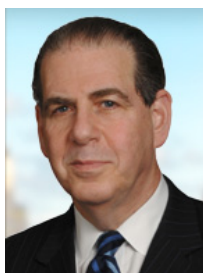


Q&A with Dykema's Jonathan Feld

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Jonathan Feld

Dykema member, Jonathan Feld, is the subject of Law360's White Collar Q&A feature, published on May 23, 2013. The article is reprinted below, with the permission of Law360 and its parent company, Portfolio Media, Inc.

Feld is a member in Dykema's Chicago office. His practice is focused in the area of business litigation. Although resident in the firm's Chicago office, Feld spends considerable time practicing out of the firm's Washington, D.C., office. His practice focuses on complex civil and criminal matters, including antitrust, health care, financial and anti-bribery actions. He represents companies, directors and officers in investigations and enforcement actions by the U.S. Department of Justice, the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, the U.S. Food and Drug Administration and other regulatory agencies. He also represents parties in False Claims Act and whistleblower litigation in a variety of industries including healthcare.

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

A: I represented a European company in a criminal antitrust investigation and then later a civil antitrust litigation. It involved an array of issues that often arise in parallel proceedings which were further complicated by governmental inquiries in Europe. Throughout the many years of litigation, we needed to keep in mind how decisions made during the criminal case could affect the class action litigation that eventually followed.

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

A: Discovery in white collar criminal cases can be voluminous, especially given the length of investigations and complexity of cases. It is difficult, as a defense counsel, to evaluate and wade through the hundreds of thousands of documents without tremendous expense. Recently, the development of policies to allow the sharing of electronic access to documents obtained by the government have been a significant step forward.

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

A: The expansion of the Park doctrine raises the spectre of new civil consequences. Recent corporate integrity agreements have included financial recoupment or "clawback" provisions for responsible corporate officers. Such a provision was included in the GlaxoSmithKline CIA and allowed it to recoup up to three years of annual bonuses and incentive payments from any executive who was involved in "significant misconduct."

Senior executives are facing long-term exclusion from the health care industry when there is a misdemeanor plea. The SEC has also brought civil enforcement against former executives as "control persons" for not having appropriate controls in place even though there was no direct involvement in the underlying conduct. So the potential for the expanded liability under the responsible corporate officer doctrine is escalating.

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

A: I had the privilege to work with Arlin Adams, a former court of appeals judge for the Third Circuit, when he was the independent counsel for the investigation of the U.S. Department of Housing and Urban Development. Judge Adams exemplified leadership, judgment and integrity that were so essential to his role in this very sensitive matter. Before working with him, I served as an assistant U.S. attorney in New Jersey and appeared before him when he was on the Third Circuit. It was especially enjoyable to have the opportunity to work with him after being an appellate lawyer in cases before him.

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

A: During my second trial as an assistant U.S. attorney, I developed a demonstrative graphic that I used during my closing to show “how the pieces of evidence” fit together. While it worked well during my closing, a well-known defense counsel literally disassembled parts of the graphic during his closing to show “gaps” in the government’s evidence. Now, when I use charts or other graphics during trial, I’m careful to evaluate it not only to ensure that it accurately communicates my message, with an eye toward seeing how opposing counsel might use it—perhaps against me—in their presentation.