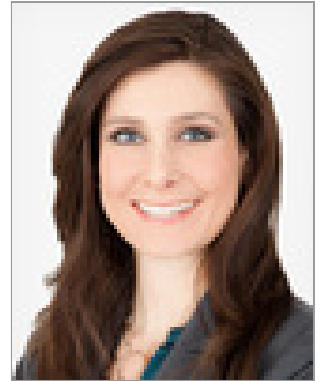




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Q&A With Ezra Brutzkus Gubner's Michele Seltzer

Law360, New York (April 16, 2013, 2:32 PM EDT) -- Michele Seltzer, a partner with Ezra Brutzkus Gubner LLP, has represented clients ranging from individual investors and small business owners to Fortune 100, multinational corporations. She litigates on disputes that include real estate, business, commercial litigation, bankruptcy, product liability, general negligence, professional liability (attorneys, architects and engineers), elder abuse, construction defect, medical malpractice, insurance bad faith and catastrophic injury actions.



Michele Seltzer

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

A: My current caseload involves business losses as a result of product defects, however, in a former life, I defended companies in horrendous personal injury actions.

Somehow, I ended up as the person to depose children, spouses and "next of kin" of the people involved in these accidents. There is nothing easy about asking an 8-year-old about what she saw during an accident where her father died, especially when you know that you are asking that question to establish a key defense in the case.

But, perhaps I broke the stereotype as an attorney because I felt a real sense of compassion for these people, sometimes to the point where their stories moved me to tears. My genuine empathy was a real advantage in defending these cases because people were much more forthcoming in their depositions when they felt that they were speaking to another human being rather than some stereotypical attorney hired by the big company that injured them.

Some of the cases bothered me less — the ones where the person hurt himself doing something stupid and risky. Others bothered me more — the ones that could have happened to any of us.

One case, in particular, stuck with me. It involved a family driving to Mexico for the Christmas holiday. Their van rolled over repeatedly. The daughter was thrown from the vehicle and killed. The mother and son had some broken bones. The father had suffered a severe brain injury that left him paralyzed on one side of his body in addition to other severe problems. Worse, their insurance had run out. I still carry the sadness of that tragedy with me as a reminder of how precious life and health really are.

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

A: There are many aspects of the legal profession with which people can find fault — the litigious nature of our society, the fact that we do not have a "loser pay" system. None of these really bother me, and I always see the merit in our excellent but imperfect legal system.

However, despite having ended my practice in the area of medical malpractice years ago, the Medical Injury Compensation Reform Act's capitation on pain and suffering recovery continues to disturb me because it affects everyone in California. The legislature has not raised the limits in nearly 30 years. It is ridiculous to limit pain and suffering to \$250,000 in cases of medical malpractice, especially when we consider the societal impacts of this decision on the quality of medical care in California.

Further, it seems ridiculous to limit pain and suffering awards only for doctors, who can educate, practice and insure for such risk, but not limit pain and suffering for other negligent defendants.

How can I, as a driver of a vehicle, risk more by getting into an accident with someone than a doctor who performs a surgery that he is not qualified to perform or fails to provide medical care that is up to a quality standard of care?

As a doctor's daughter, I remember physicians being run out of practice in the 1980s and 1990s due to high insurance costs. Now, the pendulum has swung too far in the other direction. MICRA has made medical malpractice insurance in California affordable but at the cost of patient care.

Like it or not, the risk of a lawsuit deters reckless conduct. In product liability, you see the positive impact of those lawsuits in the market. We are all safer because of those lawsuits and because of a concerted effort by companies to manufacture and sell quality, safe products.

Some doctors, like companies, are intrinsically motivated to offer the safest, highest-quality services. For the rest, and perhaps it is only a small few, the threat of a lawsuit can provide real motivation to make better, safer decisions — but only if that threat is not an empty one.

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

A: Insurability for loss is the most critical issue in product liability. Whether it is a business or physical injury, the availability of insurance helps both businesses and individuals bear those losses. I often find that clients are unaware that they can insure against certain losses.

I have had clients whose entire operations have come to a grinding halt because of equipment malfunction. A small business can quickly experience catastrophic consequences from such delays. Fortunately, there are insurance products out there to help alleviate the burdens with these losses. Although the manufacturer and/or distributor may ultimately be legally liable, their ability to pay is another issue.

Then, there is the additional issue of the cost and time to pursue a legal claim if that manufacturer or distributor does not pay quickly. Many business owners can sleep better at night knowing that their own insurance will reimburse them, at least in part, for these types of risks. The faster everyone can return to "business as usual," the better it is for everyone.

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

A: Perhaps the easiest question to answer is to name the attorney in my field who has impressed me. Brad Bleichner of Selman Breitman was my first mentor and is still one of the finest trial attorneys I know. I had the incredible fortune of working with Brad when I was a mere puppy lawyer.

Brad epitomizes the phrase, "speak softly, and carry a big stick." Known equally for his skill as an attorney as well as for his loyalty and generosity as a person, Brad is adored by his associates and respected by his colleagues. Brad has a real integrity that goes beyond winning. He is the true lawyer, an advocate. Brad tries cases and works tirelessly while never losing his great sense of humor and humility. Of course, juries love Brad.

Perhaps because he is so skilled and confident, Brad has trained dozens of young lawyers, including me. Brad threw me in the "deep end" early. I recall my first deposition. I was 24 years old and deposed an elderly woman in the hospital. Brad sat with me as I trembled and repeated the same questions over and over again. The old, sick woman nearly jumped across the table to wring my neck in frustration.

As much as I think he had a good laugh inside at the experience, I have yet to see anyone else take that time to train a new lawyer. Weeks later, he let me mediate a case. By the time I stopped working for Brad, I had attended hundreds of depositions (expert, witness and party), dozens of mediations and even first-chaired a few arbitrations.

Brad walked me through everything at first but then let me try it on my own. Now, I know that training a young lawyer is a lot like teaching a teenager to drive. You have an impulse to hit the brakes and take the wheel away from them at the first sign of trouble. Of course, if you do, they will never learn. Brad understood that I had to keep trying in order to learn and somehow controlled that impulse that we all have to do it "our way." Without a doubt, I would never have been the lawyer I am today without him.

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

A: The mistake that I made early in my career was not taking criticism from other attorneys. You cannot accept praise from your colleagues and attach any weight to such comments if you are not also willing to listen to the criticism. Of course, like with compliments, which can be empty and self-serving, the trick is to learn whose criticism to trust and whose to disregard.

While I have never been deaf to criticism, I rationalized to myself why that criticism was not fair or did not apply to me. There are people who are better than others at communicating criticism, but you cannot disregard feedback as a young lawyer just because you do not like the package in which the message was delivered. Criticism is never easy to hear, but you can and will become a better lawyer if you pay attention to it and really try to learn from what you hear.

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