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Featured Seasoned Litigator: Samuel Lanier Felker

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Q: Why did you decide to become a lawyer?

A: I was attracted to the legal field because of a desire to help other people. I read a biography of Clarence Darrow and learned how much good a lawyer can do to achieve justice in our society. Also, in the small town where I grew up there were several lawyers who were well-respected community leaders. They were good role models for me and further attracted me to the profession.

Q: What drew you to litigation specifically?

A: While in college I was studying to be a journalist and reported on the legal dispute between the NCAA and Mississippi State over placing their football program on probation. My school and its players felt terribly mistreated. I observed the lawyers argue in court and was immediately hooked. I knew that I wanted to be in the courtroom arguing cases instead of reporting on them. Then, because of my firm's needs at the time, I started my legal career as a transactional lawyer drafting loan documents. I was bored and finally told the partner I worked with, "This is not what I signed up for." I transferred to the litigation group and never looked back.

Q: How many cases have you tried over the course of your career?

A: I lost count a long time ago because as a very young lawyer, I tried lots of cases in the lower courts, then worked my way up. I also had the good fortune of working with a couple of very busy attorneys who handed off to me smaller- and medium-sized cases that went to trial. That gave me an opportunity to try jury cases as an associate in a first chair role. Then, I was assigned to support some very good trial lawyers who mentored me and allowed me to assist their trials. We called that "packing leather" back then. I continued trying cases, big and small, throughout my career and love it. I have probably tried or had substantial roles in well over 100 cases.

Q: Thinking on the number of cases you've tried, which ones stand out to you? What made those trials unique?

A: One of the most challenging trials ever was in federal court defending a television station accused of defaming a local state court judge by airing an investigative report that suggested the judge was funneling business to a probation company because of an affair with its owner. The judge's wife, and a lot of other

people in the community, were not happy with the story. I remember in opening statements the plaintiff's theme was, "the truth is usually left on the editing room floor," referring to the cutting and splicing of film to portray someone in a false light. We tried the case to an angry federal judge and jury and were hit with a large dollar verdict for the plaintiff. As one of my law partners used to say sarcastically, "Unfortunately for the client, justice was done." Fortunately, we were able to get the verdict reversed on appeal at the Sixth Circuit and obtained a new trial. No one wanted to go through that ordeal again, so the case was settled on favorable terms. I learned the importance of preserving issues on appeal, especially when you have a very unpopular client and biased judge and jury. Sometimes the decisions made by the trial judge in those circumstances will provide the best fodder for an appeal. We ultimately won the case, but it was a long, tough fight that I will not forget, along with the lessons I learned.

Q: Is there anything you know now that you wish you'd known during your first trial?

A: My first jury trial is one of the most memorable. I was representing a car dealership concerning damage to new cars sitting on his lot and being exposed to ashes from a nearby barbeque restaurant pit. Sounds pretty open and shut, but the problem was the barbeque shack was the most popular restaurant in this small town and everyone loved the owner and his barbeque ribs. The case went to the jury late on Friday afternoon and it took about two minutes before the bailiff said the jury had a question, "If we decide the defendant didn't do anything wrong can we go home?" I was particularly disappointed because I knew that the facts and the law were on my side. It taught me very quickly that the outcome of the case will often depend on how the jury views the parties and whether they like them or not. I also learned not to give a case to the jury late on a Friday afternoon.

Q: How have you seen trial practice evolve over the course of your career?

A: The number one change has been technology – and it affects every aspect of the trial. In the pretrial stage we are now able to investigate jurors and obtain detailed profiles on them before jury selection. During the course of the trial, the presentation is comparable to a theatrical production because all of the evidence, video or otherwise, has to be carefully choreographed in order to get the message over to the jury. And, we know that these days, everyone wants a "sound bite" to quickly assess a situation. There are also incredible resources now with graphics and other demonstratives, so that the trial themes can be presented to the jury in a way that was not possible years ago. Lastly, the ability to instantly locate and present a document to the jury on screen, selected through technology from a vast database, can be particularly effective and devastating to the other side, especially if they are not as organized and capable with technology.

Q: Though class actions don't often end up in trial, those cases are a focus of your practice. Tell us a little bit about how your trial practice informs your approach to class actions.

A: Like any other case, in a class action the trial themes must be developed very early in the case, and they dictate the trial preparation and discovery. One major difference with class actions is that the early skirmishes over the initial motion to dismiss and class certification motion are pivotal and can be similar to a mini-trial.

Q: Are there any specific trends you've noticed from your recent class action cases?

A: One of the biggest trends I've seen is that class actions are much more common now and as a result judges seem much more likely to allow the cases to progress past the motion to dismiss and class certification stages. Another trend I have noticed, particularly in Florida, is that plaintiffs try to morph every class action into a fraud or consumer protection action.

Q: In addition to focusing a large portion of your practice on class actions, you have also advised food and manufacturing companies throughout the COVID pandemic to help ensure they can navigate compliance with state and local stay-in-place orders. How did you decide to make that part of your practice? How have you seen operations at those type of companies adapt over the last 18 months?

A: I became involved in advising clients about their response to the COVID pandemic out of necessity. From the very beginning there was anxiety over whether the food industry would be impacted by COVID and a possible supply chain disruption. I found in the beginning that the best thing I could do for clients was help them stay completely up-to-date on government mandates and CDC guidelines for operating their businesses so that they could be in compliance and also protect their employees to the best extent possible. I also counseled some clients about contractual provisions dealing with inability to perform because of the pandemic. Although I studied force majeure contract clauses in law school, I never had an occasion to litigate them until now. That is one thing I find very enjoyable and challenging about the practice of law – there's always something new or different that requires a creative and thoughtful analysis and response.

Q: You recently made the decision to move to Florida after being based in Tennessee for most of your career. How has that move impacted your practice?

A: I like to tell my clients that I have one foot in Music City and the other foot in the sand in Florida. My practice is still divided between our offices in Nashville and Fort Lauderdale. Because of the excellent technology we have at Baker Donelson, I am able to work seamlessly in both places. I can handle litigation matters in both jurisdictions, regardless of where I am officing at the time, and I have excellent support staff and attorneys working with me at both places. I sat for the Florida Bar a few years ago because I wanted to pursue a long-range plan of spending more time in Florida, where I've had a home for 15 years and love the warm weather and ocean. That has proven to be a good decision primarily because Florida is a "hotbed" for all sorts of litigation including class actions and serious tort cases. While other states have had tort reform, Florida is not one of them. That keeps me very busy – which is what I prefer anyway.