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## Q&A With Baker Donelson's Buck Lewis

*Law360, New York (October 19, 2009)* -- George T. Lewis III is a shareholder in the Memphis office and chair of the appellate practice litigation group at Baker Donelson Bearman Caldwell & Berkowitz PC. He focuses his practice on complex business, personal injury, insurance coverage, Consumer Protection Act, health care and class action litigation. He also has extensive experience in the areas of securities and governmental law. He is the former chair of the litigation department and business litigation group.

### **Q: What is the most challenging case you've worked on and why?**

A: The most challenging case involved an interlocutory appeal on the issue of whether the Tennessee Consumer Protection Act allowed class actions. One reason it was challenging was because it was an interlocutory appeal, which is rarely allowed by our appellate courts.

In this case, our intermediate appellate court had turned down the interlocutory appeal and our brief to the Supreme Court had to persuade the Supreme Court that the intermediate appellate court was wrong to decline the appeal and that the trial court was wrong in the way it analyzed the statute. There were also significant damages for the client. Also, the case was significant for the entire automotive dealership industry and for consumer class actions in every industry in Tennessee.

The case is *Walker v. Sunrise Pontiac*, No. W2006-01162-SC-S09-CV (Tenn. Sup. Ct., Feb. 13, 2008).

### **Q: What do you do to prepare for oral argument?**

A: I re-read all the briefs and while re-reading the briefs, I select portions of the record that I want to re-read and portions of the record to have copied to take with me to the podium. I then schedule three practice arguments. I invite the client to the practice arguments. I also invite an attorney from our firm familiar with the case and two

attorneys who are not familiar with the case. In the first oral argument, I do not impose time limits. In the next two practice arguments, I impose time limits. After each practice argument, I invite critique as to the quality of the answers and comments regarding the strengths and weaknesses of our positions. On the day of oral argument, I get to the court early so that I can hear arguments in any cases argued before mine. I find that comments made by the judges in one case may often be usefully quoted during my oral argument.

**Q: What are some of the biggest problems with the U. S. appeals process?**

A: The three biggest problems with all appellate processes are delay, delay, and delay. Clients have an extremely difficult time understanding why appellate litigation takes so long. Most of the time, the delays are not the fault of the judges. Clients just have a hard time understanding why it takes so long to prepare a lengthy transcript, research and write a brief, or research and write an appellate opinion. I am always in favor of steps to reduce the time from trial to appellate opinion.

**Q: Aside from your own cases, which cases currently on appeal are you following closely, and why?**

A: I am following several cases regarding the proper measure of recovery for medical bills. It has now become the practice of most health care insurers to pay a fraction of the nominal medical bills submitted by a provider. Discounts typically run between 60 and 70 percent of the nominal amount.

I am following several cases in which the defendants are arguing that the plaintiffs should recover the actual amount that the health insurer paid to the provider, not the nominal amount before the “network discount.” This could have a profound impact on the recovery of medicals, and therefore, damages for pain and suffering.

**Q: Outside your firm, name one lawyer who has impressed you and tell us why.**

A: I have been impressed by our attorney general, Robert Cooper. General Cooper manages an extraordinarily wide array of lawyers and issues in his office. He issues opinions on legislation and his office is arguing cases in the appellate courts, both civil and criminal, in almost each and every term of court. His ability to manage the case load, to be fair to all the various interests in each case, and to protect the public’s interest, is quite impressive.

**Q: What advice would you give a young lawyer interested in getting into your practice area?**

A: If possible, I would advise them to spend a year as a judicial law clerk for an appellate judge. I would advise a young lawyer to find a mentor who can teach them to write appellate briefs. Writing appellate briefs is quite different from writing analytical memoranda.

I would advise them to participate in practice arguments whenever the opportunity arises and attend as many appellate arguments as possible. I would also advise them to attend CLE presentations on appellate law, especially those presented by appellate judges.

I would also advise them to read appellate cases as they come out. In Tennessee, the Tennessee Bar Association sends a nightly e-mail, entitled "TBA Today," which includes every appellate opinion released each business day. This is an invaluable resource for appellate lawyers.