

Q&A With Choate's John Pitfield

Law360, New York (May 02, 2013, 2:09 PM ET) -- John R. Pitfield is a partner in Choate Hall & Stewart LLP's business and technology group in Boston. He focuses his practice on corporate and securities law, including public offerings, tender offers, and debt and equity financings for U.S. and Canadian companies. He has expertise in public company compliance issues including corporate governance matters and public company reporting and regulatory compliance. He also serves on the firm's hiring committee. Pitfield has been named in The Legal 500, by Mass Lawyers Weekly as a "Massachusetts Super Lawyers Rising Star" and as a "Client Service All Star" by The BTI Consulting Group.

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

A: I recently worked with a new public company client on the concurrent sale of two of its product groups. Because the product groups being sold were not housed in separate entities or divisions of the client, the transaction required a precise carving out of assets and intellectual property rights. A key concern was not only what it would mean in the specific transaction at hand for the particular buyer to own the assets and intellectual property rights, but what it would mean if that buyer was subsequently sold to a competitor.

While the project issues themselves were challenging, the transaction was both successful and enjoyable because we had this incredible collaboration among the team at Choate and with the client. I still remember one of our most senior intellectual property lawyers coming into my office well into the late (or was it early) hours, only to hear me on a call about a particular European aspect of one of the transactions. Perhaps it was the lack of sleep, but we looked at each other and just laughed, recognizing the seriousness of the issues we were each dealing with, and still laugh to this day about that late night encounter!

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

A: A significant portion of my practice involves the representation of public companies in transactional, governance and SEC reporting matters. Within that world, one of the biggest complaints I hear is the amount of time spent dealing with what could be perceived as noncore business matters, including structuring compensation to be compliant with the most current guidance from shareholder advisory firms such as Institutional Shareholder Services. We need to collectively find a way to enable companies and boards to focus their time on growing shareholder value through business operations.

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

A: A common concern for both private and public companies is director liability in the M&A arena. An emerging area of focus within the Delaware courts in fiduciary duty litigation has been the scrutiny of transactions involving conflicts of interest. Courts are increasingly willing to look at the actions of directors and their advisors to assess whether fiduciary duties were complied with.

One of the most noteworthy — and jaw dropping — recent cases was Southern Peru that resulted in an award of \$1.347 billion, or one-third of the transaction price. Because of this, we are seeing an increased use in M&A transactions, particularly those involving conflicts of interest, of special committees of independent directors charged with negotiating the transaction at hand. I think that increased use of special committees will be the next big thing, similar to the increased focus on process that followed *Smith v. Van Gorkom*.

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

A: Phil Kurtz, M&A counsel at Blackberry. I've known Phil since law school, and I first started working with Phil in 2010 when we were hired to assist Blackberry with its acquisition of Cellmania, a California-based app infrastructure company. I've been consistently impressed with Phil's calmness under pressure, and his unique ability to mobilize internal resources at Blackberry to reach consensus on key decisions in the various deals we've worked on together. He's a true leader who always makes sure everyone has an opportunity to voice their opinions.

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

A: Growing up, I played a lot of tennis, and a key mantra was "take charge and kick butt" or TCKB. I remember that it took living through a few M&A deals as a junior associate before I fully got that the same TCKB that yielded tennis success would also yield professional success. Once I learned that my job was not only to do the specific item asked, but also to think more broadly and to offer "take charge" solutions, I was able to move forward in my career much more quickly.

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