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Q&A With Choate's Stephen Cohen

Law360, New York (December 21, 2009) -- Stephen M.L. Cohen serves as chair of Choate Hall & Stewart LLP's private equity group, where he focuses his practice on the representation of private equity funds, including mergers and acquisitions, equity investments, fund formation, and ongoing representation of portfolio companies. Cohen is also a member of the firm's executive committee.

Q: What attracted you to your practice area?

A: At the start of my third year of practice, I was somewhat randomly staffed on one of the first private equity funds ever formed, which had just become a firm client. I didn't know what to expect, because there really was no precedent for doing these transactions at that time.

Our first transaction was to take private a large and well-known media company. The deal was complex and interesting, with every kind of issue found in any business transaction. I loved the work and the challenge, but equally appealing was the opportunity to work closely with a very bright group of clients.

As is typical of private equity funds, our client had a relatively small number of investment professionals managing a large pool of capital, and they were my immediate and daily contacts. Over the years, my practice expanded to include many private equity funds, and the same opportunity to work closely with very capable clients on interesting deals has kept me committed to this practice area.

Q: What is the most challenging deal you've worked on, and why?

A: Probably the most challenging deal involved a company called Skilled Healthcare Group. We initially represented a client in acquiring a small California chain of health care facilities, but a year later this small company decided to purchase a much larger public health care company. The deal involved public debt financing, a tender offer,

numerous all-nighters (one in which I had a 103 degree fever and was negotiating from Boston by phone with a room full of lawyers and investment bankers in Los Angeles).

After we successfully completed the purchase, the company eventually went into bankruptcy, and then emerged leaving our client still holding most of the equity, and later producing a superb return to its investors. The transaction was awarded the “Deal of the Year” by Buyouts Magazine.

Q: What are the most challenging legal problems currently facing clients in your practice area?

A: By far the most difficult legal challenges facing clients in my practice area are potential changes in the law that are under consideration now in Congress. One of the most important of these proposed changes is the taxation of carried interest, which could significantly alter the profitability of investment funds for their managers. To a lesser degree, there are also concerns about increasing reporting and regulation of investment funds.

On the transaction side, the scarcity of debt financing has led to an increase in deals in which a portion of the price paid is in the form of an earnout or other deferred payment structure. Earnouts are particularly complex arrangements, and if drafted improperly can lead to disastrous results.

Q: Where do you see the next wave of activity in your practice area coming from?

A: The next wave of transactions will come across all business sectors as soon as credit becomes more available. Certain industries and market segments that are poised to be unusually active include health care and energy, in each case because of increased government focus and anticipated changes in policy. International transactions will also continue to gain in importance.

Until credit eases, the focus will be on growth equity investments, lower middle market buyouts and purchases of distressed debt and companies.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Donald Rice is a lawyer in New York with whom I worked about 10 years ago and then again over the past few months. What I particularly like and respect about Don, and I hope applies to me as well, is that he is both a superb technical lawyer and a very savvy business adviser. Unlike so many lawyers, Don doesn't get caught in the weeds, but is able to identify the issues that matter and to find effective solutions. He also brings a degree of civility to all of his dealings that is often in short supply.

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

A: Any young lawyer interested in private equity and corporate finance needs to start early. An understanding of business and finance is helpful (but, as in my case, can be learned on the job). Mostly, though, a willingness to dig in, work hard, take initiative and learn is critical.