Q&A With Seyfarth's Will Prickett

Law360, New York (April 03, 2013, 11:06 AM ET) -- William L. Prickett is a partner in Seyfarth Shaw LLP's Boston and New York offices and chairman of the firm's securities and financial litigation practice group. His practice focuses on securities and corporate governance litigation and investigations, patent litigation and other complex business litigation.

He has experience counseling and defending clients in securities litigation and U.S. Securities and Exchange Commission investigations and representing clients in shareholder derivative actions, M&A disputes and other complex commercial disputes. He also devotes time to counseling clients on avoiding securities and insider trading liability and on fiduciary duty issues in M&A and other corporate transactions.

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

A: Very few of my cases, if any, are cakewalks.

However I do recall one that was particularly challenging. We were defending the officers and directors of a NASDAQ listed company that was being acquired. The target's stockholders brought their action is California state court (where the buyer was located) — asserting the habitual (and meritless) claim that the defendants agreed to sell for too low a price per share. However, the company was incorporated in Delaware and none of the individual defendants either resided in California or had much by way of contacts with California.

We filed several motions to dismiss the case (or in local parlance, demurrers), on a variety of grounds including failure to make a demand, forum non-conveniens and lack of personal jurisdiction. After several amendments to the complaint and rulings, which whittled down portions of the plaintiffs' claims, the superior court judge ultimately held that there was sufficient personal jurisdiction over the non-California defendants.

Despite many who advised us that our chances were exceedingly slim, we filed a writ petition to the Court of Appeal on that issue, and ultimately convinced the court that there were insufficient grounds for personal jurisdiction over the defendants. This was the final straw that broke the plaintiff lawyers back and they soon packed up their tents and moved on to the next M&A deal they could find.

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

A: There really is an epidemic of lawsuits, filed over and over by one or more of a relatively small group of plaintiff firms, immediately after the announcement of an M&A deal. It is an epidemic because the cases are virtually always without merit, they unfairly and improperly second guess the extensive effort and sound business judgment of the target company's board, or a committee of the board, and typically are settled for some minor "corrective" disclosures in the proxy statement and a pretty sizeable fee to the plaintiff lawyers. Because these cases are filed so often, it has created an unfair "toll" payment along the road to completion of the transaction.

Several legal scholars and jurists, including members of the Delaware Court of Chancery (where many of the cases are filed) have written recently on the topic in articles an opinions, but

as yet there is no definitive solution. There really is an opportunity here for reform by court rule or statute.

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

A: The SEC's bounty program and its "Office of the Whistleblower," where the commission has greatly expanded the scope of bounty-eligible matters and has increased the potential reward to as much as 30 percent of any recovery over $1 million if one provides certain information leading to a successful SEC enforcement action. Money is a real motivator and we are seeing an increase in allegations by employees of what they think are securities law violations at their organizations. This has led to a spike in internal investigations to look into these allegations and to increased enforcement activity by the commission -— all which will keep my colleagues and me occupied for what may be a significant period of time.

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

A: I've always been a fan of Mark Schonfeld, who is currently a litigation partner at Gibson Dunn in New York. Mark and I were litigation associates together years ago at the former Testa Hurwitz firm in Boston, and Mark went on to a highly successful career at the SEC, including leading the N.Y. Regional Office his last four years there. Mark is funny, with a wonderfully dry sense of humor, is super smart, and never gets bent out of shape. He also knows the securities laws cold and has become a sage counselor and leader in high stakes securities matters.

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

A: Growing up in the household of a pretty well-known trial lawyer, who definitively came from the old school, I started my career under the ideological assumption that most, if not all, lawyers were good souls at heart and would act professionally at all times. It did not take long to learn that the pressure to generate revenue or to please an unreasonable client causes some to push the behavioral envelope. Now I know that I not only need to learn the facts and law critical to my case, but also to occasionally manage the bluster and personality of my opposing counsel. The good news is that most are fair and honorable. But sometimes there is a need to be convincing not just on the facts and law, but also on the right path to resolve a matter.