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Q&A With Hodgson Russ' Victoria Saxon

Law360, New York (December 12, 2011, 1:06 PM ET) -- Victoria Saxon is a member of Hodgson Russ LLP's real estate, finance and bankruptcy practice area, and a leader of its finance practice. She represents lenders and also privately and publicly held borrowers in connection with credit facilities of all types, and frequently works on acquisition loans, project-based financings, and international and cross-border loans, as well as restructurings. She also has represented trustees up front on corporate trust transactions and on the "back end" when there has been a default. Before starting her career as a lawyer, Saxon worked at a bank and in equipment finance for several years.

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

A: Though I have been involved in many more complex transactions, one of my most challenging deals involved representing a troubled, cash-strapped borrower, which had factories in several states and hundreds of employees, in a "do or die" refinancing of its existing debt with an asset-based working capital facility from a new lender.

The new lender would not close the deal unless the borrower could meet a certain liquidity test. From the beginning, it looked like it would be very difficult for the borrower to meet this test. It also became quickly apparent that the principal of the borrower liked to minimize potential problems rather than confront them. Though I considered extricating myself from the representation, I rejected the idea because it would have doomed the borrower to failure; its workers would have been put out on the street. I simply could not walk away.

As the deal progressed, the problems that the client did not want to confront materialized, causing delays worsening even further the client's liquidity. We finally closed the deal, but to meet the new lender's liquidity requirement, the client had to obtain several additional subordinate loans from other sources, including one from the client's landlord that was obtained on the eve of closing, and I secured the prior lender's agreement to take an additional "haircut."

It would make a better story if the client had survived, but unfortunately the client was forced into liquidation within a year. But in hindsight I do not regret the experience. It was worth the effort to try to save the client and I learned a lot about asset-based lending, difficult clients, troubled companies, and how persistent I could be.

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

A: Conflict-of-interest rules and practices are in need of change given the large size, range of businesses, and global reach of law firms and financial institutions alike. In my view, the representation of financial institutions on unrelated transactional matters from time to time should not disqualify a law firm from representing other clients of the firm on transactional matters, bankruptcy and even litigation adverse to the same financial institution.

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

A: Middle-market businesses and even small businesses are selling their products and services globally. This is a good thing. But such businesses often need to borrow under asset-based working capital credit facilities. U.S. lenders won't lend on foreign receivables and inventory of these borrowers (with some limited exceptions), which seriously undermines their borrowing ability.

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

A: Neil Katz at Blakes in Quebec recently impressed me on a cross-border lending transaction. He is very knowledgeable and careful as to technical matters, and also flexible, able to resolve matters from a practical perspective and sensitive to the client's need in a particular matter. When you work on cross-border and international financing matters, you need a flexible and practical approach to be able to resolve some of the differences in practice and expectation between jurisdictions.

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

A: Many years ago, I represented a bank client as the beneficiary of a very large and long-term standby letter of credit issued by a foreign bank as part of the security for a financing transaction. There was no mechanism in the letter of credit to force a replacement of, or draw on, the letter of credit if there was a deterioration of the financial condition of the foreign bank. I noticed this deficiency only after the letter of credit was issued and could not be changed.

Luckily, the letter of credit was early terminated without a problem. Whatever the transaction, whether it is a letter of credit, loan, factoring, derivative or other financing transaction, it is important to consider credit risk of all relevant parties. The recent financial crisis also emphasizes the importance of considering, when relevant, financial institution credit risk and not just borrower credit risk, and the steps that can be taken to mitigate that risk.

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