

Q&A With Holland & Hart's Holly Stein Sollod

Tuesday, Oct 02, 2007 --- The subprime mortgage meltdown will generate a new wave of securities and white collar cases, as real-estate-related losses spawns regulatory and private litigation and the sales practices of mortgage brokers come under scrutiny, Holly Stein Sollod tells Law360 in our series of chats with high-profile lawyers.

Q. What's the most challenging white-collar case you've worked on, and why?

A. They are all challenging but our most challenging representations have included defending corporations that are under investigation for serious ongoing law violations. Managing the government's requests for documents and testimony, while simultaneously identifying and remediating compliance deficiencies can present significant challenges. In addition, responding and managing follow-on inquiries and suits by regulatory agencies and private litigants stresses a corporation's resources. Our job as counsel is to deftly handle these events to allow the CEO and his or her team to concentrate on running their business.

Q. Which aspects of securities law do you think are in need of reform, and why?

A. I hear from clients that our system of securities laws and over-regulation discourages companies from participating in the U.S. capital markets. The threat of criminal liability and private litigation is hurting the American economy. I support changes that institute greater protections for outside directors, and elimination of enhanced criminal penalties against corporations who choose not to waive their attorney-client privilege or decide to advance defense costs for officers and directors accused of criminal wrongdoing.

Q. If you were in charge of the Securities and Exchange Commission, what changes would you make?

A. I would allow selective waiver of privileges to encourage public companies to produce documents and information to the SEC while maintaining their privileges against private litigants. I would offer more opportunity for early communications between the upper level decision-makers and the entity or person being investigated. Very often there are innocent or business explanations for events that if adequately analyzed early by the SEC decision-makers could reduce the time and money the entity or person must expend to clear their name and remove the negative economic consequences that flow from an SEC investigation.

Q. How do you think the problems associated with options backdating will play out over the long term?

A. Companies facing options backdating charges face a number of issues that will continue into the coming years. The SEC Enforcement Division has stated that it is investigating over 100 companies concerning possible fraudulent reporting of stock option grants. Companies under investigation for options back-dating face potential private securities fraud lawsuits and shareholder derivative claims. But they also face or have faced earnings restatements, delisting procedures due to their failure to file accurate financial information, bank covenant violations, and IRS fines and penalties. Additional costs to the company of internal investigations, attorneys fees, potential fines and reversal of tax benefits may impact their balance sheets. The private litigation cases will drag on for years as the experts debate whether shareholders were harmed by options back-dating and by what amount.

Q. Where do you see the next wave of white-collar and securities cases coming from?

A. Clearly the subprime mortgage meltdown will generate a next wave of white-collar and securities cases. There have been at least seven subprime related claims filed through June 2007. Insider trading cases will always be popular. Government contracts are heating up. If there is a market correction in 2008, there will be more securities arbitration filings. Losses resulting from real estate-related investments are likely to spawn both regulatory investigations and private litigation. I also expect state attorneys general to investigate fraud by mortgage brokers as the number of foreclosures continues to increase. Moreover, the sales practices of brokers selling 1031 "TIC" products are likely to come under regulatory scrutiny if the credit crunch starts to impact the commercial real estate market. Hedge funds and products sold to the elderly will also generate both SEC interest and private litigation.

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

A. While I've worked with many talented lawyers, I'd have to name George Curtis, who is now the SEC Central Regional Office Director. George was in private practice in Denver for many years. In our dealings he always treated everyone with respect and courtesy, while fighting fiercely for his clients. Those who know him all remark that he is a true Renaissance man.

Q. What advice would you give to a young lawyer who's interested in getting into securities law?

A. I would advise a young lawyer to read the securities law statutes to understand the regulatory system set in place by the Securities Act of 1933 and the Securities Exchange Act of 1934, and their amendments. If you did not take a securities law course in law school find a good seminar to teach

you the concepts. If you want to do broker-dealer work you must learn the industry. Spending some time in the government as a regulator or prosecutor or in-house at a financial services firm also helps. As for representing issuers and their directors and officers, my advice is to study how the U.S. capital markets work, learn about D&O insurance, and of course, read the Wall Street Journal.

Q. I'm a General Counsel with a Fortune 500 company facing a major SEC investigation. Why should I hire your firm?

A. With 14 offices in the Rocky Mountain region and Washington D.C. we cover a lot of territory. At Holland & Hart, we have a securities team comprising former securities regulators and former state and federal prosecutors who have unblemished credibility with the government decision-makers in an SEC investigation. We recognize that “chest-pounding” tactics sometimes used in litigation typically are ineffective in an investigative setting. We position our clients, whether companies or officers or directors, to receive maximum credit during an investigation for focusing on and fixing the concerns identified by the regulators. We are very adept at maintaining a productive dialogue with the SEC and, if appropriate, sharing information on a voluntary basis. We gain a thorough understanding of clients’ businesses and standards prevailing in the industries in which they operate. SEC staff members with limited industry experience usually appreciate our efforts to put suspected violations into context. Moreover, clients appreciate our Rocky Mountain rate structure, which enables our senior lawyers to do the key work.

Holly Stein Sollod is chair of Holland & Hart LLP's securities litigation, government investigations and white collar defense practice group.