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Q&A With Holland & Hart's Sue Oakes

Law360, New York (October 09, 2009) -- Sue Oakes is co-chair of Holland & Hart LLP's mergers and acquisitions practice group. She formerly chaired the firm's emerging growth practice group. Sue is an experienced corporate attorney with more than two decades of extensive transactional and boardroom experience representing clients in a variety of industries including software, Internet, mining, natural foods, consumer products, banking, insurance, consulting, and medical products. She has represented a variety of public and private companies in mergers and acquisitions and in venture capital and private equity financings.

Sue acts as outside general counsel for several companies, and regularly advises clients with respect to general business matters, business and intellectual property strategies, establishment of strategic relationships, executive compensation, and formation of new business entities.

Q: What attracted you to your practice area?

A: Developing into an M&A specialist was a natural progression — I started my career as a corporate finance lawyer specializing in representing venture capital funds and venture capital fund portfolio companies (that is, companies that received their funding from VCs). VCs invest in companies — in my case, primarily technology companies — with the expectation of some sort of liquidity event occurring within a time frame of 3 to 7 years. While in some cases, we took the companies public, in the vast majority of cases, my clients were sold. I loved the fast paced and intellectually challenging excitement of deal work, and still do 25 years later!

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

A: Early in my career, I represented a technology company client that was at the cutting edge of its industry, and was founded by a seasoned, smart executive team. Over a period of 3 years, I chaired two VC financings for the client, and 2nd chaired its initial public offering — the company was soon the 3rd largest player in its industry. Shortly

after its IPO, it decided to acquire the 4th biggest company in its industry in a stock-for-stock merger of two public companies. The day prior to stockholder meetings to approve the deal, my client was hit with a hostile tender offer by the No. 2 industry competitor.

The ongoing battle, and eventual agreement to be acquired by the hostile offeror, was incredibly tense and acrimonious. And to make matters worse, about 6 months after antitrust clearance was finally received and the two deals were closed (as we went ahead with the merger we had originally planned), the buyer defaulted on the subordinated debt it had used to pay the tender offer price, and the entire combined companies ended up on the auction block in bankruptcy court.

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

A: This one is pretty obvious these days for M&A practitioners — the lack of any viable credit and equity markets has made clients' abilities to buy and sell companies, or to obtain financing for ongoing operations, almost nonexistent. Where financing is available, the legal and economic terms extracted by investors or banks have been very onerous.

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

A: We are beginning to see anecdotal evidence of an improvement in deal flow. Investment bankers are reporting an increased number of sell-side engagements, with companies that can realistically expect to be sold, our buy-side clients are calling with smaller, self-funded deals, and in general, activity seems to be heading in a positive direction. I'm not seeing a particular industry highlighting the improved market, but after the last year, any activity in any industry is a positive sign.

Private equity funds also will have a fair amount of pent-up supply and we may see the biggest number of deals coming from this sector.

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

A: Back in the early '90s, I represented the target company in a very contentious merger transaction. The buyer was my client's biggest competitor, and relations between the two companies had been hostile for years, and included TROs against employees going to work for the other company, very aggressive sales tactics, and generally using every possible method to undercut the other company. To top it off, in order to meet the clients' agreed upon timetable, the deal had to be signed and closed in under 3 weeks.

I fully anticipated that the merger negotiations at the legal level would follow suit with the business tactics the parties had employed for years. Instead, I was very pleasantly surprised by the good humor, pleasant demeanor and business-like negotiating style — as well as the great legal skills — of Paul A. Blumenstein (then of Gray, Cary, most

recently of DLA Piper). Paul was the consummate professional, and he made the deal both fun and interesting to do.

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

A: You must learn the technical legal aspects of M&A practice, so work for as many partners and senior associates in that practice group as you can, on as many different types of deals as possible.

Also, do as many other types of work as possible so that you can learn the substantive legal and business issues that are common in the industries that you are engaged in — for example, if you work with technology companies, learn about technology licensing (in fact, try to do some licensing work), understand the general principles of patent and trademark law, know the differences between employees and contractors with respect to the work-for-hire copyright rules. Your clients will always appreciate you catching potential issues before the other side's subject matter experts do!

And always, always put common sense and good business judgment at the top of the list of necessary traits for a superb deal lawyer — all the legal expertise in the world will not make up for a failure to grasp what goals are important to a client, and how to reach those goals.