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Q&A With Kirton & McConkie's William Meaders

Law360, New York (February 16, 2012, 1:27 PM ET) -- William A. Meaders Jr. is a member of the real property and land use planning practice section at Kirton & McConkie PC in Salt Lake City, and sits on the firm's board of directors. His practice emphasizes real estate and commercial transactions and disputes as well as lending law. He represents buyers, sellers, developers and lenders in the financing, acquisition, leasing and sale of commercial and industrial properties, and in basic shopping center development, including both anchor tenant and small tenant leasing.

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

A: I have found that the most challenging cases are not necessarily those that are the largest or most complex. Instead, the most challenging matters I've ever worked on are those where there is a lack of trust between the parties or where there are personality issues.

Take, for example, a case I worked on involving water rights. My client had purchased some water rights in connection with the purchase of a large tract of real estate. The owner of an adjacent farm maintained that the party who sold the water rights to my client had no right to do so and that he (the farmer) was the rightful owner. The first communication from the attorney for the farmer was a demand in very strong terms that my client convey the water rights to his client immediately.

A reasonable compromise solution was suggested early on, which provided significant value to both parties. It should have taken a month or so to implement the compromise and resolve the dispute. Instead it took nearly two years, mostly because the opponent kept sending strident demand letters that offended my client and made him unwilling to deal with the other side. This dispute did not involve a lot of money. It did not involve very complicated facts. The compromise solution was obvious. But it was still very challenging because of the personalities.

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

A: I believe the use of third-party opinion letters in loan transactions merits reform. In many loan transactions, lenders request an opinion letter from the borrower's counsel. The requested opinions usually focus on the legal capacity of the borrower to enter into the loan transaction and the enforceability of the loan documents. Certain exceptions are common.

For example, borrowers' lawyers nearly always include an exception noting that the remedies in the loan documents may not be enforceable if the borrower files for bankruptcy. The problem is that many lenders have their own preferred form and the requested opinions can vary widely from one lender to the next. Sometimes the requested opinions are patently unreasonable. Recently a lender I dealt with flatly refused to allow an exception for bankruptcy.

The lack of uniformity in third-party opinion practice can cause unnecessary cost to clients and friction between attorneys and their clients who may not understand why their attorney can't just agree to give whatever opinion the lender may request. Several state bar associations (notably California and New York) have issued sample opinion letter forms which attempt to balance the needs of lenders with the reasonable concerns of attorneys for borrowers. Hopefully, attorneys for borrowers and lenders can build on these initiatives and agree on more uniform third-party opinion letter formats.

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

A: Without a doubt, the biggest issue affecting any real estate practice right now is the state of the U.S. and global economies.

In my own practice, I am seeing more foreclosures and bankruptcies than I have seen at any time since the recession of the 1980s. However, even in these difficult economic times, many of my clients are finding a silver lining. Some have been able to refinance commercial loans at greatly reduced interest rates, lowering their monthly payments by thousands of dollars. Others have been able to purchase and rehabilitate distressed commercial properties.

Having experienced other economic downturns, I am confident that this one, too, will eventually pass and that the commercial real estate market will come back stronger than ever.

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

A: David Broadbent of Holland & Hart in Salt Lake City has impressed me. He is a very knowledgeable and careful attorney. One of his greatest strengths is that he is able to find creative ways to solve legal problems. He is also a tenacious advocate for his clients, while at the same time being a very reasonable person to work with who does not take extreme positions.

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

A: Early in my career, I had a tendency to view legal issues in a very cut-and-dried fashion. If a contract read in a certain way, I expected the courts to enforce it exactly as written. With experience, I soon learned that judges can be quite creative. If they believe that justice requires it, they will find loopholes in the most carefully drafted provisions.

I have learned that when contracts are interpreted, inequitable and onerous provisions are unlikely to stand up no matter how well they are worded in the contract. For that reason (and many others), I have learned that it is best for both parties to be moderate and reasonable in negotiating and drafting any deal.

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