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## Q&A With Seward & Kissel's Jim Abbott

Law360, New York (November 24, 2009) -- Jim Abbott is a partner in the New York office of Seward & Kissel LLP and co-leader of the firm's business transactions group. He has 25 years of experience as a mergers and acquisitions/private equity lawyer in New York and London. Abbott received a B.A. in economics and political science, magna cum laude and Phi Beta Kappa, from Colgate University and a J.D. from New York University School of Law, where he served on the Moot Court Board.

### **Q: What attracted you to your practice area?**

A: In college I became interested in business, including owning a small business selling submarine sandwiches in the college dorms, so business law was a natural. M&A to me is the most interesting practice area because each deal involves a business that we must understand in order to help our clients complete a successful transaction. Every deal presents different business issues that must be resolved to achieve a closing and different parties whose business objectives must be satisfied to arrive at an agreement. The work is always challenging and interesting and is never repetitive.

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

A: When I was a relatively young partner, our client CIDCO (the leading maker of caller-ID machines) asked us to help them with a venture capital investment transaction. After completing due diligence, the venture capital firm threatened to walk away because of an unfavorable agreement the company had with its independent contractor software developer. To get a deal done, we needed to negotiate to bring the software developer into the company as a vice president with an equity stake in exchange for terminating his previous contract; and then we were able to complete the venture capital investment. Overcoming this issue allowed the company to grow its business dramatically and within a year we represented CIDCO in connection with an IPO that was a huge success for everyone.

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

A: With the market for M&A transactions depressed and the availability of debt financing very scarce at the moment, the most serious problems facing clients seeking to complete transactions in this environment revolve around creative structures to bridge the gap between buyer and seller valuation expectations and the shortfall of available financing. We are negotiating more deals involving seller financing components and earnout consideration, with much added contractual complexity to allow all parties to reach an acceptable agreement.

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

A: We think a wave of activity is already under way and will continue to build for our clients undertaking M&A and private equity/venture capital deals involving investment management businesses, including hedge fund managers who make up a substantial portion of our clientele. Business, market, tax and regulatory changes following the recent economic and market collapses have changed the business model for operating a successful investment management firm and should lead to consolidation. We are assisting many of our investment manager clients with transactions involving their businesses and expect the volume of these transactions to increase going forward.

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

A: When I was a fairly junior associate, my firm asked me to participate in an exchange that involved me working for Ashurst [LLP], one of the premier M&A and private equity law firms in London. It was my great fortune during that year to work for Ashurst corporate partner Michael Johns, who has been recognized among the top corporate finance partners in London. Michael has a real understanding of business (and for many clients he served a dual advisory role by being on their board of directors) and he always focused on negotiating the substantive business issues that were important to the client's bottom line. He taught me to never be intimidated by adversaries and to always identify what was really important to both parties so the most advantageous agreement for our client could be reached. Some significant part of my own style of lawyering has been influenced by seeing Michael Johns in action, and I know the year I spent in London was among the most important experiences in my career.

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

A: To be a well rounded corporate transaction lawyer, it is important to have a deep understanding of business operations, accounting principles and tax considerations, so a young lawyer would do well to find educational and work experiences that expose him or her to learning in these areas. Working in a business setting is a major advantage as it gives a view into what are the real priorities and objectives of a corporate client (which

unfortunately may sometimes be lost on those operating solely within a law firm structure). The best way to learn is by doing, so it is important to find a position where one will be involved in a variety of transactions and where responsibility will be liberally delegated.