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Q&A With Haynes and Boone's Scott Night

Law360, New York (January 11, 2010) -- Scott G. Night is the chair of Haynes and Boone LLP's finance section. He has experience in corporate, commercial and real estate lending and workouts. He has represented lenders and borrowers in loan transactions including structuring and documenting syndicated credit facilities, real estate secured loans, commercial loans, acquisition facilities, multicurrency loan facilities and debtor-in-possession credit facilities. His representation has also included lenders and borrowers in subordinated or mezzanine financing transactions. He is also a frequent speaker on Texas usury law, guaranties, and other finance-related issues.

Q: What attracted you to your practice area?

A: I was an accounting major at the University of Texas and worked as a CPA for three years at what was then known as Peat Marwick Mitchell & Co. (now KPMG) before law school. As a result, I was leaning towards a transactional practice and frankly thought I would be a corporate securities attorney. Although I clerked primarily in the corporate section at Haynes and Boone, I became attracted to the finance section because of the diverse types of transactions on which they worked.

The smaller commercial loans offered me a good opportunity to get early client contact and deal responsibility, while the larger syndicated loan transactions were more complex and often very challenging. The practice also offers the benefit of working on loans to different types of industries, each with their own specific issues.

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

A: In 2005, we worked on a credit facility for a large, international real estate investment trust. The facility replaced separate bilateral facilities in the U.S., Europe, Japan, Canada, Korea and China. There are over 40 lenders that provide over \$3,000,000,000 in commitments under the facility. The facility includes separate sub-facilities for the various jurisdictions in which the REIT operates and offers loans in, among other currencies, U.S. dollars, euros, yen, sterling, Canadian dollars and won. There is also a

complex intercreditor agreement that provides for the sharing of collateral, guaranties and collections from different lenders and creditors including bondholders. From inception to closing, the structuring, documentation, and closing of the facility took more than 10 months.

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

A: Primarily, the uncertainty over what regulatory changes the federal government may enact to further regulate financial institutions and new regulations for other companies that the government perceives pose “systemic risk.” Everyone expects increased regulation in response to the financial crisis, but no one really knows what will ultimately become law and, more importantly, whether any of the changes will actually work.

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

A: We have already seen a huge increase in debt workouts and restructurings this year including simple covenant relief, lenders requiring new collateral, conversions of unsecured facilities into secured facilities, equity infusions coupled with debt reduction, and other major amendments. This activity will continue and likely increase as more companies struggle in this economy and additional companies start to face debt maturities.

We also anticipate a flood of commercial real estate workouts, restructuring, foreclosures and bankruptcies. Real estate owners facing debt maturities in the near to medium term will continue to struggle to find refinancing alternatives. Some lenders may stretch to work with their borrowers to avoid foreclosure, but many others will have no other option other than to take the collateral.

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

A: It's a bit tough to limit to one lawyer, so I'll name two. I have worked for many years on the other side of Rob Baptista at Mayer Brown (LLP) in Chicago, who is one of the smartest lawyers I know and has a relentless work ethic. Sylvia O'Neill in the Bank of America legal department in San Francisco never ceases to amaze me with her always prompt and practical advice.

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

A: Building a finance practice is all about building relationships. If you are a young lawyer working on a big deal, then get to know the young banker working on the deal. Get involved in outside activities such as trade organizations and ABA and state bar committees. Treat your opposing counsel fairly. The circle of finance lawyers is such that you will likely run into them again in future deals. Finance lawyers have long memories!