

Q&A With Morgan Lewis' Justin Chairman

Law360, New York (February 26, 2013, 4:34 PM ET) -- Justin W. Chairman is a partner in Morgan Lewis & Bockius LLP's Philadelphia office in the firm's business & finance and securities practices. His practice focuses on representing public and private companies in a variety of industries, including life sciences, technology and media, with a special focus on real estate investment trusts. Chairman focuses specifically on advising clients with respect to securities matters, mergers and acquisitions, corporate governance and board issues, corporate finance, contract and general corporate matters.

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

A: I often work with smaller public companies that constantly weigh a variety of strategic and operational decisions. Recently, I assisted one of these clients as it evaluated a multitude of financing and strategic options, while its board and executive team were concurrently involved in broad discussions regarding the appropriate governance and management structure for the company.

Providing helpful and insightful advice to all constituencies while ensuring that all parties understood that our client was the corporation itself, and not any one constituency, proved at times to be a difficult balancing act, as it frequently is in such situations. It was gratifying to be able to help the client navigate these waters and arrive at decisions and conclusions that all agreed were in the best interests of the corporation and its stockholders.

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

A: While I think that the Securities and Exchange Commission has made substantial improvements over the course of my career in the rules relating to public disclosure (e.g., plain English standards, more current reporting), I still question whether the disclosure of many public companies is as clear and valuable to investors as it could be.

In particular, I think that while they are relatively new, the rules regarding compensation disclosure could potentially be modified to require disclosure that would be more accessible to even sophisticated readers. Also, while it's an area that may not be often discussed or debated, I think that the rules under Section 16 should be re-examined to determine whether they still accomplish the goals for which they were enacted. At the least, these often arcane reporting principles should be streamlined.

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

A: Maybe it's because we're in the middle of proxy season, but I am convinced that there is no issue more consistently important to my clients than the disclosure of compensation information and the manner in which that information is interpreted by various constituencies, including proxy advisory services and institutional investors.

There is a particularly sharp focus this year due to the putative class action lawsuits that have been filed against many companies with respect to their say-on-pay proposals seeking injunctive relief. Companies are very concerned that even after allocating a great deal of time and effort crafting compensation disclosure that they feel is fulsome and clear, they may still encounter such a situation.

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

A: Well, for starters I'm going to have to interpret my "field" quite loosely — my wife, Aliza Karetnick, is an outstanding litigation partner at Duane Morris LLP and I certainly have to give her a plug here, for the sake of peace on the home front!

More closely related to my field, I've worked over the years on a number of securities matters with Clifford Chance partner Larry Medvinsky, and I've always been very impressed with his acumen and judgment. I also do a lot of work in the REIT field, and have worked on a number of Maryland law matters with Eric Orlinsky, partner at Saul Ewing LLP, and he too has always been a sage advisor in that area. On public company M&A matters, I have also had very positive experiences working alongside John Grossbauer of Potter Anderson Corroon LLP on Delaware law issues.

Finally, as an adviser to numerous public companies of varying sizes, I often think of myself as an outside general counsel. And in this regard, I have been aided by observing and working with numerous in-house general counsels over the course of my career. I don't want to name anyone in particular because I have enjoyed learning from too many to mention them all, but hopefully, if they're reading this, they'll know who they are.

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

A: I have a client whose CEO is fond of saying "Don't stop at the first right answer." That phrase crystallizes a lesson that I learned early in my career when, on a question related to a Schedule 13D filing, I researched a complex question on reporting and concluded that no filing was necessary in this particular situation. And I was convinced that I was correct. Fortunately, when I reported my findings to the partner supervising the matter, he (not very gently, but certainly effectively) suggested that I also consider the question by viewing the facts from a slightly different perspective — under which reporting was indeed required. I learned from that experience that it is important to look at any situation from all possible relevant perspectives. Hopefully, I have been able to impart that same lesson to the junior attorneys I've worked with and mentored over the years.

Another early lesson I learned is perhaps a bit more humorous. Years ago, I was called before a grand jury as a witness with respect to a matter I had worked on as a first-year associate at my previous firm. My notes of a certain meeting were placed in front of me. I could not believe the doodles that covered all of the margins of the paper. I'm no Michelangelo — my "artwork" looked ridiculous, and it also looked like I had been spending my time during the meeting drawing, not listening. My notes have been much cleaner ever since.

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