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Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Q&A With Edwards Angell's Barry Bendes

Law360, New York (September 28, 2009) -- Barry J. Bendes is a partner with Edwards Angell Palmer & Dodge LLP in the firm's New York office and a leader of the firm's international trade practice. He concentrates his practice on domestic and international corporate and commercial transactions, financings, SEC-related matters and Internet and computer-related law matters.

Bendes is experienced in negotiating mergers and acquisitions, public and private debt and equity financings, joint ventures, all aspects of sales, secured and asset-based lending transactions, franchising, licensing and computer, Internet-related and high technology transactions. He also advises private and public companies and their owners, officers and both inside and outside directors; and venture capital and angel investors in commercial, business, securities and personal matters.

Q: What attracted you to your practice area?

A: As a summer associate at my first firm, and later as a junior associate, I was involved in a number of international transactions involving matters in Europe, Asia, North Africa, Israel, Lebanon and India. Each one required an understanding of both applicable law, international conventions, as well as customs, markets, distribution methods and practices in the relevant industry and countries affected.

Some of these involved discrete "one off" transactions, while others involved long term distribution, agency or marketing arrangements where dispute resolution methodologies, U.S. export controls, "Force Majeure," hardship, transfer pricing, transport, payment systems, currency and exchange rates, political risk, logistics and other concerns needed to be addressed.

Working with business executives and local counsel in these countries allowed me to learn about a number of business models, local customs and trade practices and methods that were differed greatly from those we were accustomed to seeing the U.S.

and forced to think “outside” the box that the UCC and traditional U.S. customs and business practices to find solutions to issues that needed to be addressed.

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

A: The most challenging case involved the intersection between the United Nations Convention on the International Sale of Goods and the U.S. Bankruptcy Code. It arose in connection with the Chapter 11 proceedings of a U.S.-based distributor of goods manufactured in various countries for an Australian based corporation.

The CISG provides a comprehensive commercial code for international trade. There are a number of important differences between the CISG and the UCC, including matters relating to the statute of frauds (requirement for a writing), battle of forms, curing of defective tenders and the prohibition of injunctive proceedings that might otherwise permit extensions of time for a party to perform.

Some of these were directly contrary to the rights of debtors under the Bankruptcy Code, including the provisions relating to the automatic stay, the ability to cure defaults and certain provisions permitting extensions of time to perform.

The matter also involved construing the provisions of an integrated distribution agreement that provided for minimum purchase levels, specific goods that were to be bought and sold, licenses of IP and what could have been considered personal services.

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

A: The application of differing models and rules in the area of what is commonly called competition law (antitrust law) in various areas of the world and how these intersect with various distribution methods, exclusive territories, exclusive dealing arrangements, grey market goods, IP rights, sales agents and representatives pose the most challenging problems that I face today.

Q: How do you see your practice area evolving in the next five years?

A: Over the next five years, I see more integration and cooperation among the various trading blocks and trading parties, through international conventions, international agreements on tariffs and trade, expansion of the EC, adoption of model agreements propounded by the ICC and others, UNCITRAL activities, the application of the UNIDRIOT Principles of International Commercial Contracts and other efforts to reach common ground between the civil law and common law based legal systems to the end that when an agreement is signed, they have actually reached a common understanding that is enforceable by all parties concerned.

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

A: Philippe de Boccard, a Swiss avocat, with whom I have had dealings since the early days of my practice, is an attorney involved in international law of the first rank. He is fluent in a variety of languages, skillfully represents his international clients and takes the time and makes the effort to understand the needs of his clients as well as those of the counterparties so that when a transaction is completed, all parties feel satisfied that their respective goals will be achieved.

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

A: I would recommend to any young lawyer interested in working in international trade that they try to understand that different cultures have different approaches to negotiation and different expectations with respect to the nature of agreements. What is a binding commitment in one country may be an agreement to agree or merely a basis for further discussion in another.

Cultural differences, financing, payment terms, duties, tariff schedules and their effects need to be understood. The shrinking of the business world through the Internet, and the need to study and understand the effects of possible governmental intervention and regulation (including the extraterritorial effects of the laws of the US, EU and other nations) and to “know” with whom you are dealing make the practice of international trade a challenging, dynamic and fascinating area with which to become involved.