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Q&A With Waller's Ed Callaway

Law360, New York (May 14, 2013, 2:29 PM ET) -- Edward M. Callaway is a partner in the Nashville, Tenn., office of Waller Lansden Dortch & Davis LLP and head of the firm's environmental and regulatory law group. He performs critical due diligence assessments for development projects and for clients involved in mergers and acquisitions in the health care, wireless communications and other industries and provides enforcement defense and compliance advice to clients in manufacturing and solid waste sectors.

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

A: Working with some of the largest retail chains in the country on aggressive build-out schedules has provided a number of challenges. Evaluating 20 acres of land for existing contamination, wetlands, endangered species and impacts on cultural resources, while devising ways to address any issues and obtain permits quickly can by itself be daunting.

But when the deal-makers and engineers are rushing headlong toward a closing and construction at the same time, making the deal work requires the ability to triage issues quickly, identify practical solutions and get buy-in from a disparate team. When a project is approved, however, and construction runs smoothly, there's a tangible accomplishment environmental lawyers don't often get to see.

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

A: The standards and procedures for conducting phase I environmental site assessments need reform because currently, the quality of the product varies wildly. I often find that clients are not well served by selecting the cheapest proposal they can because the resulting reports do not meet the standards required to provide the liability protections the clients think they are buying.

Often, the consultants don't staff the projects with personnel experienced enough to recognize problematic issues, fail to conduct necessary interviews, don't follow up with file reviews when appropriate or don't give proper time to analyze the site because there simply isn't enough money in the project's budget. I'm hopeful that the pending revisions to ASTM Standard 1527, due out later this year, will raise the level of professionalism applied to phase I ESAs.

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

A: Opinions from the U.S. District Court for the District of South Carolina and the Fourth Circuit in Ashley II of Charleston LLC v. PCS Nitrogen Inc. are the only reported court decisions so far to provide any detailed guidance to practitioners about what's really required to take advantage of the bona fide prospective purchaser defense to federal Superfund liability. The district court provided at least some analysis of each of the eight

criteria for qualifying as a BFPP. On appeal, the Fourth Circuit recently addressed one of the criteria.

While some of the courts' analysis was not what the brownfield redevelopment community would like to see, and while the Fourth Circuit didn't address a number of the issues we hoped would be settled, together, the two decisions provide some guideposts for future projects.

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

A: Joe Sanders, general counsel of the Tennessee Department of Environment and Conservation, strikes a perfect balance of zealously representing his client agency, while at the same time, seeking to find practical solutions to problems that help the economic development in the state. Joe has been with the department and its predecessors for decades, and so, has seen everything at least once, and nothing leaves him flummoxed. He applies that experience to bring creative ideas for solutions to the legal issues TDEC faces.

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

A: As a young associate, I sometimes viewed assignments to assist clients with due diligence review as the unsexy part of environmental law practice and dreaded the next project. Over time, I came to recognize that due diligence and development projects can actually be the type of assignment that brings together all the substantive areas of environmental law in one place. While transactional work is only one part of my current practice, it still provides some of the greatest intellectual challenges and rewards.

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