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Q&A With O'Melveny & Myers' Eric Rothenberg

Law360, New York (June 08, 2009) -- Eric Rothenberg is a partner in the New York office of O'Melveny & Myers LLP and directs the firm's environmental practice. He represents business and financial institutions in a broad range of adversarial environmental matters, including superfund proceedings, related toxic tort claims and private cost recovery actions.

Drawing upon prior experience as a graduate-degree environmental engineer, Rothenberg directs diligence and documentation of transactions, financings and reorganizations involving industrial and commercial properties. He also serves as lead counsel and court-appointed allocation counsel at National Priorities List superfund sites. He is a frequent speaker and author of numerous publications on environmental law issues.

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

A: We act as regulatory/litigation diligence counsel for Apollo which, since its inception in 1990, has been a leading private equity player in the chemical manufacturing sector, investing over \$16 billion in companies worldwide.

Our environmental team has worked on a variety of transactions for Apollo, including its \$3.8 billion acquisition of the GE Advanced Materials Silicones and Quartz divisions; its \$1.4 billion acquisition of the coated and supercalendered papers business of International Paper (since renamed Verso Paper Holdings LLC); and its \$1.25 billion acquisition of Jacuzzi Brands Inc., a publicly traded company.

We also provided environmental and litigation diligence on the \$15.1 billion buyout by Apollo and the Texas Pacific Group LLC of Harrah's Entertainment, the world's largest casino company (the fifth-largest leveraged buyout in history).

Perhaps our most significant accomplishment for Apollo was our work over more than a decade in a series of acquisitions from inter alia, Borden, Royal Dutch Shell, Eastman

Chemicals, Akzo, Rhodia, Orica, Arkema and Rutgers to create Hexion, one of the worlds largest specialty chemicals companies.

Q: What accomplishment as an attorney are you most proud of?

A: When, in 1998, the EPA and the State of New Jersey brought a \$200 million claim for Combe fill South landfill remediation and natural resource damages costs, we assumed the role of common counsel for the 14 defendants with the mission of negotiating a reasonable settlement of the governments' claims and allocating the same among a large universe of private and municipal parties that had used the landfill (including state and federal agencies).

We initiated third-party claims against more than 300 parties, stayed the case through use of an alternative dispute resolution allocation proceeding, entered settlements with governmental authorities and resolved a portion of the governments' cost demands through intervention in related litigation. A consent decree was executed by the parties and presented to the court on April 10th.

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

A: Federal and state superfund laws continue to spawn litigation among alleged responsible parties (and their insurers) with associated transaction costs that are often hard to justify in light of the underlying cleanup expense.

Both governmental agencies and private parties have had increasing success in reducing these transaction costs through the use of alternative dispute resolution techniques, but we have very far to go.

For contaminated sites not associated with many solvent liable parties, our laws should be reformed to provide for government-funded, prompt and cost-efficient remediation without collateral government cost-recovery efforts.

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

A: Superfund-like regimes and hazardous waste regulatory systems have been adopted around the globe and we are starting to see tougher enforcement of the same, especially in the EU.

The Obama EPA will soon seek to regulate greenhouse gases under the Clean Air Act and will vigorously pursue natural resource damage claims and cleanup claims at formerly unaddressed "mega" sites (large complex sites, such as those with waste from mining).

Plaintiff's lawyers have also sought to extend cleanup liability to manufacturers of products which, once discarded, contribute to site contamination. Commercial disputes

over greenhouse gas credits are likely as trading systems become more robust in the U.S.

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

A: Michael Gerard of Arnold and Porter. Michael has for many years played a central role in environmental law scholarship through his periodicals, treatises, amicus work and now as a professor at Columbia Law School.

He has shown real vision in defining a broad issues template which recognizes the wide scope of environmental law and regulation as well as dramatic differences which exist between federal law and state/local regimes.

By way of example, his work encompasses land use issues, toxic tort trends and important developments in insurance coverage for environmental loss.

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

A: These should be boom times for environmental law in the U.S. Adopt a perspective on where you want to position yourself early and stick with it.

Consider both the sector you want to be in (government, private practice, corporate, NGO) and your primary areas of interest (superfund, land use, clean tech, industrial transactions, certain unique local law issues like the N.J. ISRA program).

Develop a rigorous CLE program for yourself to achieve your goals and get involved both in relevant bar associations and trade groups.

Don't be afraid to get your hands dirty. Most issues in environmental law are grounded in science and technology. This doesn't mean you need an advanced science degree, but it does mean you need to be willing to dig into often complex regulatory schemes and legal process or embrace highly expertised matter (fate and transport of toxic chemicals, for example).