

Dealmakers Q&A: Thompson Coburn's Fred Strasheim

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Frederick R. Strasheim is a partner in Thompson Coburn LLP's St. Louis office. His practice focuses on various areas of corporate and transactional law, including mergers and acquisitions, private equity and venture capital, general corporate representation, and commercial law. Over the past approximately 20 years, he has represented clients in a wide variety of industries on transactions ranging in size from a few million dollars to billions of dollars. He has also studied finance and valuation professionally and has earned the right to use the chartered financial analyst (CFA) designation.



Frederick R. Strasheim

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

A: I had the privilege of serving as lead outside counsel to a multinational oil company in connection with its acquisition and subsequent divestiture of a 50 percent interest in a multibillion dollar crude oil pipeline joint venture with operations on both sides of the Canada-U.S. border. My client had initially received an option to acquire the 50 percent interest in exchange for its commitment to ship oil on the pipeline, but the option documentation was silent on many of the details as to how the joint venture would operate once the option was exercised. Consequently, my client's decision to exercise its option necessitated an extensive negotiation of the terms of a very complex joint venture.

One of the things that I really like about my practice is that the transactions on which I work generally require a team approach with multidisciplinary expertise, and this transaction was a prime example of that. Lots of smart people on both sides spent months negotiating the finer terms of the joint venture, and, to my immense professional satisfaction, we ended up with very carefully crafted joint venture documentation. Although the parties' interests were not entirely aligned, the ultimate joint venture structure was fair to both sides and anticipated a lot of issues that subsequently arose. The fact that such care had gone into structuring the joint venture in the first place greatly facilitated my client's ultimate divestiture of its joint venture interest a couple of years later. I was very proud to have had the opportunity to play a key role in the process.

Q: What aspects of regulation affecting your practice are in need of reform, and why?

A: Although M&A transactions over a certain size require clearance under the Hart-Scott-Rodino

Antitrust Improvements Act, and transactions in certain industries are subject to industry-specific regulation, the private M&A transactions making up the bulk of my practice generally are not subject to intensive regulation. Accordingly, regulatory issues are typically not a major issue for me in my practice.

Q: What upcoming trends or under-the-radar areas of deal activity do you anticipate, and why?

A: In light of recent case law, I anticipate that merger agreements will be drafted to deal with attorney-client privilege issues in a much more explicit manner than in the past. I am already seeing signs that this is happening. In *Great Hill Equity Partners IV LP v. SIG Growth Equity Fund I LLP*, the Delaware Court of Chancery held that, in a merger governed by Delaware law, the attorney-client privilege passes from the acquired corporation to the surviving corporation as a matter of statutory interpretation. In so holding, the court specifically rejected the reasoning of the New York Court of Appeals in a case in which that court (interpreting Delaware law) had distinguished merger-related attorney-client communications from general business attorney-client communications and held that only the attorney-client privilege related to the latter type of communications passed to the surviving corporation.

The *Great Hill* decision — while based on Delaware law — will likely influence decisions in other states where the merger statute is similar to that of Delaware. It also highlights the need for a seller to use its contractual freedom to exclude merger-related privileged communications from the assets included in the transaction. Otherwise, the seller may discover in any post-closing litigation with the buyer that control of the privilege related to such communications has passed to the buyer.

Q: What advice would you give an aspiring dealmaker?

A: Effective legal representation in the transactional context requires the lawyer first and foremost to understand what is driving the deal from a business or economic perspective. My advice would be to make an effort to understand the client's business and what the client hopes to gain from the deal. Too many attorneys get lost in the details of relatively minor legal issues (such as the use of materiality qualifiers) and forget that such issues — while not insignificant — are generally not nearly as important as the basic economic terms of the deal.

As a corollary, a transactional lawyer is likely to be much more successful if he or she has a decent understanding of basic accounting and business valuation principles. Indeed, in my experience, the most fertile grounds for post-closing disputes are acquisition agreement provisions dealing directly with money — things like post-closing purchase price adjustment provisions and earnout provisions. Being financially literate helps an attorney negotiate these types of “money” provisions much more effectively.

Q: Outside your firm, name a dealmaker who has impressed you, and tell us why.

A: I have worked with a lot of exceptional M&A professionals over the years. If forced to choose, however, I would single out Leslie J. Parrette, who is currently the general counsel of Novelis Inc., as the individual who was most influential in shaping the way I approach M&A deals. Les was my mentor when he was a partner and I was an associate at my prior law firm, and he and I worked together on several M&A transactions for a multimillion dollar client of that firm.

Les had an astounding work ethic — he frequently worked late into the evening seven days a week — but nevertheless always had time to mentor young associates like me in their formative years. He was unflappable and taught me the importance of maintaining perspective and composure during the ups

and downs of a transaction. Les also helped me appreciate the importance of staying organized, drafting contract language that is as precise as possible, and distinguishing between the things that really matter and the small stuff in deal negotiation. Inevitably, everyone involved with the deal — not only our client but also the opposing party and its counsel — was impressed with Les, and I am a better lawyer today for what I learned from him.

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