

Dealmakers Q&A: Rutan & Tucker's Gregg Amber

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Gregg Amber is chairman of the corporate/securities/tax practice at Rutan & Tucker LLP, where he has a broad range of experience in commercial and corporate finance and mergers and acquisitions. He represents commercial lenders, private equity firms and various commercial enterprises, including technology companies and oil and gas exploration and development companies.



Gregg Amber

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

A: I suppose it would be the leveraged acquisition of oil and gas leases offshore California and in the Cook Inlet region of Alaska. It was challenging for several reasons. First, some of the leases were U.S. federal, some were state (two different states) and some were private, so there was a wide variety of different purchase and assignment documents, regulations, bonding requirements and filings and recordings in several jurisdictions to deal with.

Second, there were several layers of financing (senior debt, subdebt, equity) with multiple financing sources, so there was also a wide variety of documents there, including complex subordination arrangements.

Third, the geography of the participants was challenging. The sellers were in California, Colorado and Alaska, the senior debt, subdebt and equity players were in New York, Illinois, Texas and Canada, and there were lawyer participants in all of those jurisdictions, plus Louisiana. Fourth, the buyer and seller were both public companies, so there were various SEC filings to be made.

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

A: I probably sound like a broken record, but I guess it would have to be securities regulation. The pendulum seems to swing back and forth in this area. As scandals and abuses occur, regulation gets very heavy until the effect starts to hamper business and finance, then it swings back perhaps too far until a new crop of abusers appears. Scandals occur, and politicians feel that they have to react, and the reactions include things like Sarbanes-Oxley and Dodd-Frank, which have made it very difficult for small- to medium-sized companies to be public, among other things.

I am also not very impressed with what the SEC has done with rule-making arising out of the JOBS Act, particularly with respect to crowdfunding. It feels like the SEC is saying, “yes, Mr. Obama and Congress, we know you had to make the public feel like you were doing something to jump-start the economy, but we don’t like some of this law, so we’ll just effectively brush it aside through rule-making.”

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

A: On the deal side, I would say the trend is simply toward greater deal activity, generally, than we have seen in several years. At least I hope it is a sustainable trend. I’m almost afraid to say it out loud for fear of jinxing it, but because the first quarter of the year is typically slower for transactional attorneys than other quarters due to a rush to close fourth-quarter deals. Because this has not been the case this year, I am thinking that it might actually be a trend.

On the law firm side, I will make an observation of something that happened to me recently that I am not sure represents a trend. The chief financial officer of a client recently moved to another company. His new employer is middle-market company, majority owned by a large private equity firm. The PE firm is represented by a major international law firm. The company wanted to refinance its bank credit line. It was not a particularly large line, even for a middle-market company. The PE firm wanted the company to use its major international law firm. The new CFO, knowing our firm primarily does middle-market work, wanted to use us. The major international law firm quoted a large discount on its fees to get the work. Normally we don’t see that (i.e., the major international firms discounting for the opportunity to enter our space) during periods of strong deal activity like we are experiencing now, so I don’t know if this is a trend or if it simply represented an accommodation for a significant PE client of that firm.

Q: What advice would you give an aspiring dealmaker?

A: Be flexible (to use a cliché, think outside the box) and practice your original drafting. Things rarely fall into neat buckets. Litigators’ (and, unfortunately, some clients’) perception is that corporate lawyers just cut and paste from a variety of templates, and sometimes the way deal lawyers operate perpetuates that myth. For example, we hired a lateral associate from one of the best-known international corporate finance firms a few years ago. After four years there, he had assembled (and brought with him) the most impressive set of forms I’d ever seen. However, if the deal in question didn’t match up nicely with one of his forms, he was lost. He kept trying to pound square pegs into round holes, but the best dealmakers don’t work that way — sometimes a transactional lawyer actually has to come up with a new and original concept, or some new and original language, scary though that may be!

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

A: That’s a tough one because I have worked with many terrific deal lawyers over the years. I think I’m going to have to name two.

First would be George Bermant from Gibson Dunn who unfortunately passed away last year. Two things in particular impressed me about George, apart from his brilliance (and he did shine): (1) his breadth of knowledge was, in my experience, unparalleled. He could move seamlessly from securities regulation to M&A to asset-based lending, and always knew more than anybody else on the deal; (2) he never lost sight of the goal and had unerring instincts for which issues were important and which were not.

Second would be Susan Alker from Winston & Strawn. Susan has a warm, friendly and charming manner that makes others in the deal feel like they are not her “opponents,” even when they are 180 degrees

from her on a particular issue. She has a way of negotiating such that, by the end, she not only has her counterparts swayed to her side of the argument, but believing that they (not she) were the ones who came up with the answer she was looking for all along!

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