

Dealmakers Q&A: White And Williams' Lori Smith

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Lori S. Smith is a partner and co-chairwoman of the corporate and securities group at White and Williams LLP. She specializes in representing foreign and domestic companies at all stages of development from formation and early-growth stage companies to multinational public companies. With more than 25 years of experience, Smith has represented public and private companies in the negotiation of mergers and acquisitions, leveraged buyouts, equity and debt financing, private placements, strategic alliances, partnerships and joint ventures. She's also advised companies on various legal issues impacting their business.

In 2010, Smith was named one of "The Best Accountants and Attorneys for Growing Business" by The New York Enterprise Report. From 2008 to 2010, she was named by Chambers U.S. as one of New York's leading lawyers in the technology industry.



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Smith gives back to the community through her involvement with Women United in Philanthropy, which is a giving circle of nearly 100 women in Bergen County, New Jersey, that makes grants available to local organizations that help women in need due to economic hardships and abuse. In addition, she is a member of the New York Advisory Board of Astia, a not-for-profit that promotes and accelerates women-led businesses.

As a participant in Law360's Q&A series with dealmaking movers and shakers, Lori Smith shared her perspective on five questions:

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

A: The most challenging deal I've worked on took place about eight years ago. I represented a buyer who had a once-in-a-lifetime opportunity to buy significant assets at an extremely low price. The sellers were trying to complete a multibillion dollar merger and needed to divest the assets in less than a week. If they didn't, the Federal Trade Commission was threatening a lawsuit as they viewed their merger as anticompetitive.

Our client called on a Friday morning to inform us that we'd receive a draft of the purchase agreement over the weekend and the deal had to be finalized by Wednesday. In addition to this tight deadline, the

client told us the key deal terms such as price and the exact assets being purchased were not yet determined, but the purchase would significantly increase the size and capabilities of their company.

After reviewing the agreement, it looked impossible to sign this deal within 48 hours. Among other things we hadn't seen any due diligence. On Monday I went to work ready to discuss my questions and comments and set expectations for the client. However, before I had a chance to share my thoughts, the client told us to meet him at the sellers' lawyers office at 2 p.m.

We arrived and found a room filled with lawyers representing both selling companies and their business teams sitting around a large table ready to discuss the deal. As the conversations progressed I started to face a personal challenge; the cold I caught over the weekend got worse. By the time the meeting finished after midnight I had a fever and was feeling dizzy. I'm still not sure how I made it home.

The next morning I woke up with chills and knew this was more than a cold — I wasn't going to make it back to the meeting. There was a very senior partner who had a relationship with the client and I advised him that he would have to take the lead. Ten minutes later, the client called to tell me he needed me to lead the negotiations regardless of how ill I was. This was an important relationship so I reviewed documents and negotiated by phone from my bed for the next two days. Keep in mind technology was not yet what it is today.

Somehow, we were able to get the deal signed on the desired timetable. Even though we met the deadline, the FTC proceeded to sue to enjoin the merger. This led to renegotiations of the various agreements and discussions with the FTC for several more months.

This deal stands out in my mind as the most challenging because of the aggressive timing, the government regulatory issues, a demanding client, and of course my personal health issues.

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

A: Some aspects of regulatory reform are already in the process. For example, a large part of my practice involves early- and growth-stage equity finance. The rules surrounding regulation of private placements and crowdfunding have been up in the air since the U.S. Securities and Exchange Commission issued certain new and proposed rules approximately a year ago. Until there is more clarity around the requirements for raising funds through tactics like general solicitation and the amendments to Regulation A, companies and investors won't be able to take advantage of the reforms included in the 2012 Jumpstart Our Business (JOBS) Act. Currently, this is hindering fundraising for startups and small businesses and stifles the broader-based fundraising that Congress intended by adopting this act. The SEC needs to act, but I'm not sure when that will happen.

Other regulations that need further examination are the Sarbanes-Oxley and Dodd-Frank Acts. Both pieces of legislation were created in reaction to fraud and misconduct in the market. These regulations have created onerous restrictions for businesses that make it very expensive and difficult to operate in certain market segments. Now that these acts have been around for a few years, we need to take a retrospective look at the legislation's impact.

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

A: It's always difficult to predict trends, but right now I see the most activity in the health care space due to the Affordable Care Act and other related legislation. This is fueling dealmaking including

consolidation of hospitals and physician groups and investments in health care IT. In addition to traditional venture capital and private equity deals, I am seeing investments and acquisitions by health insurers and health care systems that wouldn't traditionally play in these markets. These new players are looking for ways to create efficiencies in the system through the use of big data and technology.

Q: What advice would you give an aspiring dealmaker?

A: Throughout my career I have worked with senior partners who approached corporate law practice with a business perspective, so I have naturally picked up some of their ideals. With that perspective, the best piece of advice I can give, and what has been the key to my own success, is to work hard to understand and focus on your client's business.

In order to successfully close a deal, it's imperative to understand your client's business, their goals and the importance of the transaction to the business. In addition, never solely focus on the win, but rather understand how to creatively achieve your client's goals. Being a successful dealmaker means finding a way to close each deal.

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

A: The dealmaker who has most impressed me is a prior colleague, Steven Kirshenbaum at Proskauer. He was a young partner when I joined that firm and was one of several partners who trained me. I learned from Steve that one can be both a good business dealmaker and a great technical lawyer. To this day, I believe Steve is one of the best lawyers in the New York market.

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