

Seth Joseph Featured in Law360: Capital Markets

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Q&A With Carlton Fields' Seth Joseph Law360, New York (October 23, 2014, 12:06 PM ET) -- [Seth P. Joseph](#) is a shareholder in Carlton Fields PA's Miami office, focusing his practice on securities and mergers & acquisitions, including both domestic and cross border assignments. He represents corporate issuers and underwriters in public and private offerings, merchant banks, private equity funds, venture capital firms, and emerging clients in acquisitions and financing activities. Joseph has experience in the telecommunications and technology industries and provides legal support to growth companies. He has twice served as general counsel of public and pre-IPO technology companies with substantial cross border technology sharing and ownership of non-U.S. companies.

Q: What is the most interesting or challenging problem you've worked on to date within your capital markets practice?

A: Our client was a \$1 billion multinational, private company. Three of its shareholders who, together, held a near majority of the company's stock, were approached by the company's principal supplier, which wanted to buy them out. The proposed buyout would have left our client's remaining 500 shareholders in a very vulnerable position, as the supplier could have quickly and easily acquired actual control, and run the business in its interests. After getting word of the proposed sale, the company asked my counsel on how to protect the company and the smaller shareholders.

Although the company was profitable, it had little cash on hand due to required capital expenditures and a history of paying generous dividends. Historically, it paid out excess cash as dividends, which the 500 shareholders depended on receiving regularly.

We took a variety of steps to recast the buyout discussions. First, we prepared and filed registrations under an applicable foreign anti-takeover statute. Next, we took steps to reclassify the capital stock into voting and nonvoting shares. As a result, once voting shares were transferred to the supplier, they would automatically convert to nonvoting shares.

With that accomplished, we persuaded the three shareholders, who desired liquidity, to sell their shares to the company. We set up bridge financing to complete the purchase, with a plan to repay the financing with proceeds from an IPO. We represented the company in its public stock offering. During the process, we sold the supplier a small interest in the company, accompanied by its agreement not to acquire any additional company stock without board approval.

Still, one problem remained: The three near-majority shareholders lived in a country where kidnapping was rampant. If their identities as sellers were revealed, as required by SEC rules, they would become targets. So, we persuaded the SEC to allow their identities to remain confidential given the particular circumstances of the sellers.

In the end, we fashioned a solution that minimized unnecessary pain to all parties.

Q: Currently, what is a pressing concern for your clients in this practice area, and how are you addressing it?

A: Our clients are dealing with many new regulations simultaneously. They face issues related to labor and employment, privacy, rapidly changing online advertising methods, new health care regulations, data security, and protection of their intellectual property and trade secrets. The competitive landscape changes much faster than it used to as the economy becomes increasingly digitized and globalized. This poses competitive threats, as well as opportunity costs, as clients must make decisions on where to allocate their limited resources.

Institutional investors have become extremely knowledgeable about these challenges. They will not invest in a management team that is unstable or lacks a track record of adapting and overcoming. They ask probing questions about issues that have hindered other companies in which they have invested, and expect specific answers. Public companies have an obligation under Regulation FD to disclose to the market generally the answers they provide to any investor. So company managements feel pressure to provide answers. At the same time, they are concerned about any weaknesses that their answers may expose to competitors.

We do not offer one-size-fits-all counsel. In advising clients, we help them evaluate their risk disclosures so that the markets understand the structural and execution risks they face. These disclosures are high-level, and there is an art to ensuring they do not prejudice the company's relationship with a particular customer or business partner. We work with client's management teams to develop satisfactory answers to anticipated questions — without causing unintended consequences.

Q: What do you anticipate being the biggest challenge in your practice in the coming year and

why?

A: As lawyers, we need to increase the value of our service relative to its cost on an ongoing basis. To do this, we must become more knowledgeable about our clients, their industries, technologies, customer bases and competitors. We must also be conversant with the effectiveness in particular circumstances of all the swords and shields the law can provide them. At the same time, we need to collaborate with clients to reduce overall cost. We can accomplish this by providing clients with budgeted costs, and investing our time in non-outcome specific work on their behalf. Understanding their environment better than other lawyers provides clients with a great value. But they shouldn't have to pay for their attorneys to get up to speed on their industry.

Q: Outside of your own firm, who is an attorney in your practice area whom you admire, and what is the story of how s/he impressed you?

A: During my salad days as a lawyer, I was mentored by Cesar Alvarez, now co-chairman of Greenberg Traurig. The firm was considerably smaller at the time — less than 60 lawyers — and Cesar was a young partner. He taught me to take on challenges and not to be intimidated by highly specialized lawyers. From him, I learned the importance of developing great knowledge of both the legal issues and our clients' businesses.

Back then, regulations had been passed to provide government guarantees on loans to airlines for aircraft purchases. We had a client that decided to take full advantage of the program to greatly expand its fleet. No one at the firm had experience with this type of work, but Cesar said, "Let's find a book." He studied the transaction well enough to negotiate with the highly specialized lawyers from a much larger, money center law firm that no longer exists. I supported him on this account, and I remember the pride he took in my hard-won industry- and company-specific knowledge, which included knowing what the interior kits for the airframes cost, and understanding why the client chose to expand to certain routes rather than others.

Cesar was the perfect mentor. Now, when I mentor young lawyers, I often recall how Cesar interacted with people, and served clients.

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