
Dealmakers Q&A

with Sills Cummis'

Ira A. Rosenberg

Ira A. Rosenberg is a transactional lawyer at [Sills Cummis & Gross P.C.](#), co-chairman of the firm's corporate practice and chairman of the firm's life sciences practice. He regularly represents private and public companies in connection with mergers and acquisitions, financings, joint ventures and private placements. He has been actively involved in representing private and public companies in complex business transactions for more than 30 years, with a significant part of his practice devoted to representation of pharmaceutical, biotech and medical device companies.

Rosenberg's experience also extends to banking and finance, including venture capital financings of technology companies, private placements in public companies (PIPE), equity lines of credit for public companies, equipment leasing and other financing transactions. He has been selected for inclusion in the 2008-2014 editions of Chambers USA published by Chambers & Partners under New Jersey Corporate/M&A, the 1995-2014 editions of The Best Lawyers in America published by Woodard/White under Corporate Law and the 2005-2014 editions of New Jersey Super Lawyers published by Thompson Reuters under Mergers & Acquisitions and Securities & Corporate Finance.

As a participant in Law360's Q&A series with dealmaking movers and shakers, Ira Rosenberg shared his perspective on five questions:



Ira A. Rosenberg, Esq.

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

A: I have worked on many M&A deals, joint ventures, corporate collaboration and financing transactions, including pharmaceutical company and product acquisitions, and drug development collaborations on behalf of my clients with J&J, GSK, Hoffmann-LaRoche, Amgen and other pharma and biotech companies. In the early 1990s, I represented bank clients in significant bankruptcy, restructuring and workout transactions, including Trump, Penthouse, etc. However, the most challenging deal I ever worked on involved a private company that I represented that was being acquired by a private equity company. The transaction had to close as soon as possible because of the precarious financial condition of the company and other reasons discussed below.

I represented the founder and one-third owner of the private company. The private company owned seven related businesses and its three equal stockholders also owned a separate partnership that owned the real estate leased by the businesses. My client exchanged his ownership in the partnership, so that he owned 100 percent of the private company and his partners owned 100 percent of the real estate partnership. Although there were tax and other issues, this exchange was the easiest part of the deal.

The private equity company decided just before the proposed closing date that it wanted to purchase only five of the seven businesses, so my client had to quickly find a purchaser for the other two businesses. My client arranged for two executives of the company to purchase the two businesses. The purchase of all seven businesses were structured as asset sales, which led to a fight between the private equity company and the company organized by two executives over which purchaser was entitled to which assets of the businesses. Although difficult, these issues got resolved.

The most difficult part of the transaction involved my client's personal circumstances — he was in the middle of a contentious divorce and needed his soon-to-be ex-wife's consent to all of the transactions in which my client was involved. She was represented by competent corporate and matrimonial counsel. However, not surprisingly, she did not trust my client. The matrimonial judge had repeatedly scheduled and postponed hearings because of the importance of whether the transactions closed to the resolution of the matrimonial proceedings.

Finally, with all of the parties to the business transactions and their counsel gathered in my firm's largest conference room, it appeared four of the five interdependent transactions that had to close simultaneously were ready to close. My client then called his wife to explain everything and request her consent. She gave her consent. As my client was hanging up the phone, he announced to everyone in the conference room, "See, I told you I could talk her into anything." Unfortunately, she was still on the line and heard his comment. After a miserable period of about three months involving considerate renegotiation, the transactions finally closed.

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

A: As an active practitioner in the legal field of life sciences, the regulatory approval process is certainly in need of reform. The U.S. [Food and Drug Administration](#) requirements are getting more onerous, meaning fewer approvals that are more expensive to obtain. One of my clients recently had the marketing of its pharmaceutical product approved by the FDA, but only after the FDA rejected its prior applications and insisted on additional clinical studies related to its method of delivery that cost the client more than \$300 million. In the end, the FDA approved exactly the same product. Many similar stories can be told, with the result that small pharmaceutical and biotech companies are forced to partner with larger companies in order to bring products to market, at considerable economic cost and risking a significant impediment to innovation.

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

A: The U.S. Affordable Care Act has already had, and in the near future will continue to have, a significant impact on the life science industry. The ACA has had a greater-than-expected impact on industry profitability, with new fees for manufacturing, new taxes on medical devices, reduced Medicare reimbursements and lower drug prices. There may be no better recent example of the increased pressure on the industry than the U.S. and European government actions to negotiate a lower price for the Sovaldi treatment sold by Gilead for hepatitis C.

Q: What advice would you give an aspiring dealmaker?

A: Most importantly, an experienced dealmaker should understand the financial aspects of a transaction, to understand better the motivation of each party and the incentives necessary to close the deal. This information may be obtained from a mentor or colleague, reading about similar transactions in legal and business periodicals and reviewing precedents from other similar transactions. It is critical that the aspiring dealmaker learn how to listen to his client, his adversary and his adversary's counsel. Like the famous quote by Albert Einstein — "We all know that light travels faster than sound. This is why certain people appear bright until you hear them speak."

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

A: Theresa (Terri) Stevens, the chief corporate development officer of [Lupin Pharmaceuticals](#), is one of the most impressive dealmakers that I have met. I first met Terri when she was a senior business development executive working in Basel for [Novartis](#), with which my client was negotiating a significant corporate drug development and commercialization collaboration. She was very successful in managing the overall process, as well as the negotiating teams of both parties, to resolve difficult issues and minimize conflict so that the transaction could close and both parties consider their objectives as being satisfied. When she left Novartis and joined Aptalis Pharmaceuticals, I had the opportunity to represent the company and work with Terri on several transactions before the company was sold to [Forest Laboratories](#) for approximately \$3 billion. She has excellent insight and is a terrific corporate strategist. There is no doubt that she will be very successful in her current role at Lupin.