

Dealmakers Q&A: Butler Snow's James Lawless

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James J. Lawless Jr. is a member of Butler Snow LLP's health care, regulatory and transactions group and pharmaceutical, medical device and health care team. He focuses his practice on mergers and acquisitions, business and commercial transactions, joint ventures and strategic collaborations, corporate law, and business planning and operations.

Lawless has more than 20 years of experience in representing public and private companies and businesses of various sizes and stages of development, from startups to the Fortune 500. Throughout this time he has managed and negotiated a broad range of major transactions for clients, including mergers and acquisitions, joint ventures, private placements, financings, licensing, co-marketing and co-promotion agreements, and strategic collaborations. He is AV-rated by Martindale-Hubbell and has been named a BTI Client Service All Star.



James Lawless

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

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

A: Joint venture transactions tend to be the most difficult in my experience. First, they often involve two or more entities that have historically worked in competition and not in collaboration with each other. Add to that two or more different cultures of management and decision-making as well as advisers, and the joint venture may very well be on difficult footing from the outset. Second, parties entering into joint ventures often fail to see the importance of detailed governance and exit provisions and frequently avoid difficult discussion in the honeymoon phase. Talking about decision-making and exit often appears tantamount to talking about divorce after an engagement or before a wedding.

Unfortunately, statistics suggest that while joint ventures have many benefits, including the ability to share investments, risks, and assets (all good things), failure rates are high. The best and most successful joint ventures are those with compelling business reasons, a strong strategic and financing plan, and a clear set of governing and operational documents that detail what happens if and when parties no longer wish to be wed.

Third, reaching a definitive agreement in the joint venture context often takes much longer than in the buy/sell context as the salient deal points must be discussed and agreed to in detail. There are fewer deal “norms” and standards, with each joint venture having its own unique set of deal terms in many cases. With that said, joint venture transactions are some of the most fun too. Lawyers get to really know the underlying business and operations involved and frequently get to work with people who aren’t often seen in deal work.

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

A: Frequently representing non-U.S. clients in deal work in the United States, clients often express frustration with the triple layer of regulation we experience in the United States at the federal, state and local level. Adding to this the need to structure transactions to maximize tax efficiency not just in the United States, but in the client’s home country, also adds a layer of complexity. While I do not see any change in either of these areas going forward, ensuring that affected clients understand the various layers and the timing of approvals involved is crucial to managing client expectations, timing, and cost and expenses.

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

A: Companies, public and private, are under increasing pressure from shareholders and markets to invest in core businesses and shed noncore businesses. In addition, in both the public and private context, shareholder activism is influencing and sometimes driving board decisions to invest or divest, likewise increasing deal activity. Finally, in the pharmaceutical industry, increasing efforts to accelerate and leverage research has created much deal activity in collaborating on drug research and development.

Q: What advice would you give an aspiring dealmaker?

A: A few years ago, an associate told me that he really wanted to negotiate a deal, not simply conduct the diligence, turn drafts of documents, or draft closing documents. I certainly appreciated this. There is nothing quite like the pace and exhilaration sitting at the helm of a fast-moving deal. Always on your “A game” and thinking on your feet at pace or a step or two ahead (you hope) of everyone else. In response to the associate, I delivered some advice that a seasoned dealmaker gave to me at a similar point in my career development. If you had a complicated medical condition, you would want to get the best advice and care possible for treatment. Likewise, if a client is doing a deal that is clearly very important, the client will want a dealmaker who has the experience necessary to get the deal done on the terms most favorable to the client. In other words, you want an experienced surgeon to handle a critical surgery, and you want an experienced dealmaker to handle your deal. Stated otherwise, be patient and develop that experience.

Beyond experience, which obviously requires time, there are two immediate habits that an aspiring dealmaker can practice. First, get to know the client’s business and industry well and learn the drivers and hot buttons of the client and deal up front. Sounds simple, but many dealmakers don’t get to know the client’s business as well as they should. Second, don’t hesitate to ask questions and garner the information you need to make informed recommendations to your client. Dealmakers don’t have to have all the answers, nor do they need to appear as if they do.

Finally, I often find that dealmakers take themselves very seriously all of the time, sometimes too seriously. Over my career as a deal lawyer, I have come to appreciate a great sense of humor, even one at my expense. Early on in law school, I learned that my last name would prompt some very interesting comments. Every time I meet someone new, I run the risk of being asked, “Did anyone ever tell you that 'Lawless' is a funny name for a lawyer?” which of course I have been asked thousands of times in my 25-plus-year career. Instead of responding as I once did, “No, you’re the first ...,” which used to limit or halt any conversation on the topic, I now use it as an icebreaker of sorts and genuinely enjoy getting others take on my last name. And, yes, it is a funny name, but also a memorable one!

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

A: Marla Persky, now retired general counsel of Boehringer Ingelheim, would be among the most impressive dealmakers with whom I have ever worked. From a background in litigation on the product liability side, Marla brings a keen ability to assess and prioritize issues and then propose creative and workable solutions. Much like speaking to a jury, Marla always knows her audience. At heart, she is a problem solver and she brings this problem-solving perspective to literally every deal conversation and negotiation. Additionally, she has a terrific sense of humor. She is one of the best of the best.

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