

Rainmaker Q&A: Latham & Watkins' Mark Gerstein

Law360, New York (November 14, 2016, 4:46 PM EST) -- Mark D. Gerstein is a global chairman of Latham & Watkins' mergers and acquisitions practice in Chicago and New York. His practice focuses on mergers and acquisitions, both in the U.S. and globally, corporate governance (including in the restructuring context) and takeover defense planning. He has frequently represented special committees of boards of directors, bidders and financial advisers in going-private and other conflict of interest transactions. His experience also includes advancing and defending both friendly and unsolicited tender offers and he has similarly represented both insurgents and management in proxy contests for the control of public companies.



Mark D. Gerstein

Gerstein has provided mergers and acquisitions counseling to numerous public and private companies, including A.O. Smith, Delphi Automotive, GATX Corporation, Host Hotels and Resorts (a public REIT), IDEX Corporation, Koch Industries, Libbey Inc., Orbitz Worldwide Inc., QEP Resources Inc., Simon Property Group and The Toro Company. Gerstein also advises lenders and financial advisers in financial and strategic acquisitions.

Q: What skill was most important for you in becoming a rainmaker?

A: The confidence that allows one to go into any pitch with the expectation that you will win it, and treating those you lose not as a personal loss, but simply part of the business. The nature of my practice is that I need to constantly be in touch with all of my clients and even more prospects in order to be front of mind when a possible engagement arises. If one becomes demoralized by the handful of engagements that inevitably go elsewhere, you will lose the enthusiasm that is not only necessary to maintain these contacts, but you might also begin to convey a reticence that will undercut your ability to win future mandates.

Now, this does not mean that the pitch is all about you. It is critical to strike the balance between selling yourself as lead — since, at the outset, the client is hiring you as their counselor — with presenting the capabilities of the team, which the savvy client appreciates is critical to the success of any complex M&A transaction.

Q: How do you prepare a pitch for a potential new client?

A: We do our homework as a team, including my partners, associates and business development colleagues. While the team's general skills and experience are foundational for winning a mandate, what I find differentiates us from competitors in pitches is the extent to which we have studied in advance the client and the proposed transaction. That way, we can present not only our capabilities, but our perspectives on the opportunities and risks we have preliminarily identified in the deal based on our past experience, the particulars of the parties to the possible transaction, and what we have learned from the client in advance of the presentation about their objectives for and concerns as to the deal.

Our team similarly prepares for a pitch by capturing the experience and strengths we bring to the table that bear most particularly on the transaction. For example, experience in the client's sector, or speaking with the intermediary who introduced us to the possible engagement (banker or otherwise) about the client's goals for and concerns regarding the transaction. Together, this preparation puts us in the best possible position to present at a level of granularity that not only reflects our intense interest in winning the mandate, but also how "we think" as lawyers, as we can speak to the client substantively about the possible transaction, whether it be project management, key legal issues or concerns unique to the industry.

Q: Share an example of a time when landing a client was especially difficult, and how you handled it.

A: We are a law firm best known for handling the largest and most complex M&A transactions. Like many of our competitors, however, a large portion of our work continues to be serving transactions other than the megadeals that capture the headlines. We were recently pitching a client for such a mid-market matter, and were challenged as to our ability to handle the matter cost-effectively and at a total fee within the budget the prospect had set.

To win the mandate, we spent significant time in the pitch presenting our legal project management capabilities and our experience handling transactions of comparable scale and complexity efficiently. We also tailored the fee arrangements to accomplish the client's goals of mitigating cost to the greatest extent possible prior to the time the bidder gained comfort that its expectations for the target were verified through financial diligence.

Q: What should aspiring rainmakers focus on when beginning their law careers?

A: Every person you meet on a deal is a potential client, whether it's the junior banker on your team who will have the ability in a few years to refer you matters, the lawyer across the table who may go in-house and later hire you as company counsel, or the business development vice president at the client who moves to another company and has the opportunity to provide input on counsel for the next deal. You are planting seeds at this point in your career, you do not need to be harvesting yet.

Q: What's the most challenging aspect of remaining a rainmaker?

A: Having your own clients handled by the best team possible, and at the same time enabling those partners who are junior to you to succeed on their own. Too many rainmakers develop a cadre of partners who do nothing but handle the rainmaker's portfolio, and then those partners are left without the skills to build the next generation of clients when the rainmaker retires.

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