

Dealmakers Q&A: Akin Gump's Thomas Yang



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Thomas H. Yang, a partner at Akin Gump Strauss Hauer & Feld LLP, has more than 20 years of experience in mergers and acquisitions, capital markets and securities. He has extensive experience in middle-market M&A transactions representing strategic and private equity clients in acquisition and disposition transactions. In 2011, he was named one of six top M&A dealmakers by the Dallas Business Journal, and has been repeatedly recognized by D Magazine as one of the best corporate lawyers in Dallas. Yang is active in the Korean and Asian-American communities and is a former president of the Dallas Asian-American Bar Association.

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

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

A: For me, whatever deals I am working on at the time are the most challenging. Although we consistently juggle multiple deals at a time, each deal requires your full attention and focus. Almost every deal, large or small, seems to always have at least one issue arise that threatens to derail the transaction. If I had to group the underlying causes of these issues, I would say that the most challenging ones tend to relate to the different goals, personalities and perspectives of the individuals involved in the deal.

While ultimately everything a corporate lawyer does ends up being reduced to paper, a deal lawyer's ability to understand and relate and adapt to different types of personalities and backgrounds is oftentimes the more vital piece to successful negotiations and transactions. Of course, some lawyers just use the same style deal after deal and that may work in most cases. However, I believe that developing a good understanding of counsel and principals on the other side and altering your approach accordingly usually leads to better success on deals.

One of the more difficult personal dynamics that you face as a dealmaker is a seller who was the founder of the target. In order to take the business to the level of success that it is a valuable target for acquisition, the founder is usually hardworking, set in his or her ways, and the unquestioned leader of the company. While those traits may be great for creating a successful business, they are not always conducive to navigating through a sale process. As the lawyer for the buyer or the seller within this dynamic, you must have the flexibility, awareness and demeanor to develop a relationship with the seller that is knowledgeable and deferential enough to not blow up the deal, but solid enough to withstand disagreements over key issues. More often than not, financial and legal issues are easier to resolve than emotional ones.

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

A: I do not believe there are any regulations generally affecting the M&A practice that are in need of reform.

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

A: One thing that we are seeing a lot more of in M&A deals is the use of rep and warranty insurance. Over five years ago, this insurance was oftentimes discussed but rarely actually used. However, in the past few years we are seeing a lot more policies actually obtained in M&A transactions.

As the market has shifted towards the sellers, rep and warranty insurance has become a way for certain buyers to help positively distinguish their bids in hotly contested auctions. In other cases, sellers with a particular desire to wrap up their ongoing indemnity obligations quickly, such as a private equity fund that is selling one of its last portfolio companies, have mandated the use of rep and warranty insurance in the bid process. While the decline in premium prices has made this insurance more affordable, one relative unknown that remains is how insurance companies will ultimately react to future claims made under these policies.

Q: What advice would you give an aspiring dealmaker?

A: I am often asked by young law students and attorneys about what is the difference between the way litigators and corporate attorneys think. The best answer I provide is to assume that you have a bag of M&M's that you are trying to divide between two parties. A litigator will just try to get as many M&M's as possible for their client. In fact, one of my litigation partners told me that a good litigator would try to get all the M&M's. A dealmaking attorney's approach needs to be very different. A good dealmaker will figure out that one party likes the yellow M&M's eight times more than any other M&M's and the other party likes the red M&M's 10 times more than any other M&M's. Armed with that knowledge, as long as the right parties receive the yellow M&M's and red M&M's, how you divide up the rest of the M&M's is just gravy. For young lawyers, it is important to remember that it is not a contest about how many negotiating points you win. It is

much more important to make sure you know which points are the most important to each side and craft deals based on that knowledge.

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

A: A couple dealmakers who have impressed me in the past are Don Liu, general counsel at Xerox, and John O'Connor, senior vice president and assistant general counsel at AT&T. A few of the common characteristics that these two legal minds share are the ability to jump into a relatively unknown situation or transaction and ask the right questions, quickly arrive at the right conclusion and explain very complex or difficult legal issues using clear and concise summaries without all the legal jargon. These are traits that I think all dealmakers should strive to possess. While several lawyers may ultimately reach the same conclusions, what sets Don and John apart is their ability to arrive at those conclusions so quickly and efficiently without being fully involved in the events leading up to the issue. Additionally, Don has been unbelievably active and helpful in the Asian-American legal community, which is not an easy sacrifice to make with all the other demands in his life.

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