

## Q&A With Akin Gump's Ed Zaelke

Law360, New York (January 09, 2012, 3:30 PM ET) -- Edward W. Zaelke is a partner in Akin Gump Strauss Hauer & Feld LLP's Los Angeles office, where he co-chairs the firm's global project finance and renewable energy practice. He focuses his practice on project development and finance, with a particular emphasis on representing companies engaged in the development, financing and operation of wind power, solar power and other alternative energy projects. Zaelke is the former president of the American Wind Energy Association and has been a board member of AWEA since 2002. He is also a board member of the American Wind Energy Foundation and chairman of the AWEA Conference and Education Committee.

### **Q: What is the most challenging transaction you have worked on and what made it challenging?**

A: While I have worked on a number of challenging and interesting projects over the past 10 to 12 years, one that stands out is the development joint venture between BP Alternative Energy and Clipper Windpower a few years ago. I represented Clipper in what was about a \$4 billion transaction involving the co-development of five separate wind projects and the purchase and option to purchase over 1,500 megawatts of the Clipper wind turbines.

The deal had to be completed in 12 days due to the timing of the release of financial documents for the company. Clipper had just recently gone public, and the deal was extremely important to the growth of the company at that time. I think when the deal was finally announced, the price of Clipper's stock more than doubled. The transaction was extremely complex and involved the coordination of lawyers in London and the U.S. on a nearly round-the-clock basis.

The transaction was made even more challenging because I was asked to get involved while I was on a family vacation in Lake Powell without any cellphone coverage. I had brought with me a satellite phone that required a direct unobstructed line of sight between the phone antenna and the satellite somewhere above. So, until I could get a boat back to civilization, I spent the first day or so sitting with an unobstructed view of the sky in 100 degree-plus heat on conference calls and coordinating my team, having to redial in to the calls every 30 minutes or so when the satellite moved. Today, I try and take vacations where my cellphone will work.

**Q: What aspects of your practice area are in need of reform and why?**

A: For the most part, the sale of electricity from large wind energy and solar energy projects must be made on a wholesale basis to a public utility company, which then resells the electricity to consumers. These wholesale purchases of wind power and solar power are usually made pursuant to state mandates, which require that a certain portion of the electricity produced in the respective state be generated by renewable resources, rather than from burning fossil fuels. Public utility companies receive a very generous guaranteed rate of return when they build power plants, but receive very little when they purchase and resell power produced by third parties, such as wind and solar power developers.

Thus, there is a built-in adversity between the “customer” for the power from wind and solar projects and the developers of those projects. In many cases, you have a customer who is being mandated to buy a product that is not in the customer’s economic interest. The results are protracted negotiations over power purchase agreements or, worse, terms imposed on the developers that unnecessarily drive up the cost of energy. I would like to see public utility commission-mandated forms of power purchase agreements that provide a fair deal to the parties without the delays and costs that the industry has experienced over the past several years.

**Q: What is an important deal or issue relevant to your practice area and why?**

A: A stable energy policy that includes renewable energy as an important part of our energy mix is the most important challenge facing my practice area. When I decided to focus on renewable energy as my career when I graduated from law school in 1983, I looked at it as an opportunity to be involved in the challenges facing our country to reduce our dependence on foreign oil and reduce the impact of environmental problems, such as acid rain, caused by the burning of coal to make electricity.

At the time, I didn’t know about global warming and what we have been doing — and are continuing to do — to the planet. While it has taken a while for policies to be put in place that have allowed a renewable energy industry to develop in the United States in response to all of these challenges, fossil-burning industries are now fighting back. There is a well-financed campaign of misinformation arguing that man-caused global warming does not exist or that the issue of whether climate change is caused by burning fossil fuels is “uncertain.”

Others argue that renewables are too expensive in this economy, and we should abandon the environmental concerns in favor of whatever is cheapest now. Many elected officials respond to these claims and pressures from other industries by being inconsistent on their support for renewable energy from year to year. This causes a whipsaw effect on renewable energy policies at both the state and federal levels, and makes it very difficult for the companies in the renewable energy industry to make the long-term investment they need to make to continue to improve technology and reduce costs.

**Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.**

A: Keith Martin of Chadbourne & Parke has impressed me on several levels. Keith is an excellent tax attorney and a very creative problem solver, and is also an excellent communicator. He is one of the best speakers on the seminar circuit because of his strong subject knowledge and his ability to simplify and communicate very complex issues. As a friend and former law partner of his, I can also attest that he is one of the hardest-working lawyers I know. He strives to be — and is — one of the best at what he does.

**Q: What is a mistake you made early in your career and what did you learn from it?**

A: As a young lawyer, I remember advising a client to change a provision in a lease about which I was concerned; however, when the client pushed back, I let it go. Of course, as Murphy's law states, whatever can go wrong will go wrong, and the problem soon developed with the lease over this provision. This incident taught me the importance to always remember my role as counselor with clients and that it is appropriate to say "no" to clients and engage them when issues arise. Sometimes, for young lawyers, that can mean taking the issue to a senior partner.

To this day, my clients and I will freely argue and debate both legal and business issues in deals. While the decisions at the end of day will be the client's, the mutual respect required to have those types of discussions and debates is critical to a successful and rewarding relationship between good transactional attorneys and their clients.

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