Q&A With Carlton Fields' Jim Walker

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Law360, New York (October 22, 2014, 2:37 PM ET) -- James Walker IV is a shareholder in Carlton Fields PA's Atlanta office and co-chairman of the firm's technology industry group. His practice is focused on representing companies and investment funds in complex capital-raising, acquisition, divestiture and joint venture transactions. He represents companies, investors and investment funds in a wide variety of industries, including health care, financial services, telecommunications, technology and real estate. Walker also has experience representing issuers and underwriters in public and private offerings of equity and debt securities. In this capacity, he has acted as counsel in offerings by many of the most prominent growth companies in the Southeast. **Q: What is the most interesting or challenging problem you've worked on to date within your capital markets practice?** A: It was a large "merger in the alternative" transaction involving our public company client, another domestic public company and an international public company. By a "merger in the alternative," I mean a transaction that contemplated, as a first alternative, that all three companies would merge, but if that transaction failed for some reason then, as a backup, only the two domestic companies would merge. Not only did we have to simultaneously negotiate two separate merger agreements with two different counterparties that were represented by several different law firms, but this structure also made it necessary to disclose financial and other information and to obtain shareholder votes with respect to both possible outcomes. That made for a very interesting proxy filing. Because of the relative rarity of this structure, we were constantly plowing new ground. And because the transaction was being challenged by senators on an almost daily basis, we really didn't know which transaction we would be closing until the last minute. **Q: Currently, what is a pressing concern for your clients in this practice area, and how are you addressing it?** A: Our clients' most pressing current concern is how to negotiate and consummate corporate transactions in an environment of high economic and regulatory uncertainty. For example, when trying to complete a debt-financed acquisition in an unfriendly credit market, the seller will focus intensely on the "financing" provisions of the acquisition agreement with the goal of maximizing the certainty that either the debt financing will be available at closing or that the seller will have certain rights if the financing falls through. (Of course, on the other hand, the buyer does not want to be liable if the financing becomes unavailable through no fault of the buyer.) In previous economic cycles that were more robust, because there was greater certainty that debt financing would be readily available,

there was considerably less pressure on the "financing" provisions of acquisition agreements. Now, we are negotiating those provisions very precisely and we've had to develop a number of creative solutions to appropriately balance the risk between buyers and sellers. As another example, due to economic uncertainty, valuation gaps between buyers and sellers have become much more common. To deal with these issues, and in order to keep a number of deals from falling apart, we have had to develop some very esoteric earn-out and other valuation adjustment mechanisms, both in the merger and acquisition context and in the corporate finance context. As a final example, given increased regulatory uncertainty — both with respect to the number of new regulations that have been proposed or adopted and the fact that many existing regulations are being interpreted and enforced differently than in prior periods — there is a lack of consensus and increased jockeying over how risk should be shared and over how extended closing times should be managed. As a first step to spotting these issues and being able to negotiate these provisions, counsel needs to understand the underlying regulatory framework. Therefore, although staying current on fast-moving regulatory developments can be difficult for transactional counsel, it is of critical importance in this market. **Q: What do you anticipate being the biggest challenge in your practice in the coming year and why?** A: "Pharaoh gave this order … : 'You are no longer to supply the people with straw for making bricks … but require them to make the same number of bricks as before; don't reduce the quota.'" As noted above, in many situations our clients, including in-house counsel, are dealing with increased complexity and uncertainty and are doing so on reduced budgets. I'm sure that sometimes they feel like the children of Israel in Exodus 5. (However, they might point out that, in contrast to Exodus 5, they aren't just being required to make the same number of bricks as before — they have to make even more bricks with fewer resources.) While they could certainly use a greater allocation of "straw," failing that, then this coming year we will again be working with them on the challenging task of attempting to increase overall efficiency. "Efficiency" can be a difficult concept to understand in the context of legal services. When discussing "efficiency," there seems to be a natural tendency to focus on short-term expenses, which are easy to quantify, in lieu of analyzing a project's overall costs and benefits, which is a more difficult task. In the litigation field, the fact that "efficiency" is not necessarily defined by reference to short-term costs is easy to demonstrate. If a complaint is filed, it would be cheaper in the short run to simply ignore the complaint because then it would be unnecessary to pay a lawyer to answer it. However, given the consequences of a default judgment, only in rare circumstances would this course of action be more efficient on an overall basis than properly answering the complaint. It can be more challenging to explain and prove out this concept in the context of a corporate transaction, especially because some corporate clients find it difficult to assess the difference in quality and value of various work products (although these differences very clearly exist). In this context, our challenge is twofold. First, we do have to continue to work hard to maximize overall efficiency — meaning that we have to perform the highest quality work and achieve the best results reasonably possible while keeping costs as low as possible in that context. Second, we have to engage our clients in dialog in order to explain our view of these concepts to them, to prioritize items that must remain a focus even in light of reduced resources, and to find out how we can work together better and more efficiently. **Q: Outside of your own firm, who is an attorney in**

your practice area whom you admire, and what is the story of how s/he impressed you? A: I have had the pleasure of working with many excellent attorneys, but one of the standouts was McNeill ("Mac") Smith. He was a civil rights pioneer in North Carolina, a North Carolina state senator, a co-founder of a law firm (Smith Moore Smith Schell and Hunter — a predecessor firm to Smith Moore Leatherwood), and the holder of more positions and the recipient of more awards than a person can reasonably be expected to count. He rode a bicycle to work, in a suit and a fedora, every day. He was a former Naval bomb disposal and underwater demolition officer who was also known to play the clarinet. He was a polymath who refused to be pigeonholed. He would try cases during the day and work on business law matters at night. His experience was wide and varied, so upon an initial introduction one might have jumped to the conclusion that he was scattered or a dilettante, but I was impressed to find out that the exact opposite was true. He seemed to dedicate all of his considerable talents, energy and analytical abilities to each matter he took on, no matter the size or apparent importance, and in so doing he could cut through the meat of the matter right to the bone with a speed that was astounding. He provided a teaching by example of how law should be practiced and how clients should be represented. *Originally published by Law360 (subscription required). The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

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