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LAWYER PROFILES AND LEGAL NEWS

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Lawyer Limelight: Frank Aquila

By John Ryan

Earlier this year, Frank Aquila was optimistic about a few important issues in his life. The lifelong New Yorker believed, as he does just about every Spring, that 2010 could be the year that the New York Mets win their first World Series since 1986. He also believed that the struggling economy would pick up and bring an increase in mergers and acquisitions activity, ending the slow dealmaking pace of recent years.

Though the Mets quickly (and perhaps predictably) dipped after a promising start, Aquila remains enthusiastic about the economy and the "cornucopia" of deals he expects to see in 2010 and 2011. Personally, Aquila remained busy during the downturn, representing InBev in its $52 billion acquisition of Anheuser-Busch in 2008.

Aquila joined Sullivan & Cromwell back in 1983, after graduating from Brooklyn Law School. He developed his dealmaking skills under legendary M&A lawyer H. Rodgin Cohen, the firm's former chairman. Aquila's clients have included Amgen, British Airways, Diageo, Medtronic, Collective Brands and EchoStar, among many others. He also is a columnist for Business Week and a regular commentator on economic matters for numerous media outlets.

Lawdragon: How would you characterize the past few years and the present state of the economy as it relates to deals?

Frank Aquila: Clearly 2008 and 2009 were pretty slow years for the M&A world. Having said that, there were certainly many interesting deals that went forward despite the downturn in the market. Of course, the one that I am most proud of was InBev's successful bid for Anheuser-Busch in 2008. There were also many acquisitions that took place specifically because of the liquidity crisis. Bear Stearns being acquired by JP Morgan, Wells Fargo buying Wachovia and most of the other transactions that occurred in the financial services industry took place because of the crisis. At the same time, there was a sharp decrease during the last two years in transactions by private equity groups. Although private equity activity is well below the levels we saw a few years ago, we are beginning to see the private equity guys finding ways to get back into the game.

The most important recent development was the return of strategic buyers in the second half of last year. Today companies have significantly more cash than they did two or three years ago. When you consider the last 24 months, we have had a period in which businesses in all sectors were under tremendous financial and commercial pressure. Now, having coming through that, it appears that most companies are actively assessing their strategic strengths and weaknesses. Most boards and management teams are asking, "What's my next move?" In a lot of cases that's going to mean one or more significant acquisitions. We are already seeing a lot of early stage deal activity. Assuming that we do not have another significant economic or geopolitical shock, we can expect a very active M&A environment over the course of 2010 and into 2011.

LD: What types of deals are we going to see?

FA: A cornucopia! We are going to continue to see stock deals, stock and cash deals and all-cash deals. Dealmakers are being creative in terms of deal structures and how they finance transactions. We will see deals in a wide range of industries, and geographies, for that matter. In addition to the continuation of consolidation in the financial sector, we will likely see consolidation in the energy and basic materials sector, as well as in consumer products, tech and media. We may not see deals in every sector, but we will see companies across a range of sectors doing deals in 2010 and 2011. We will see a significant amount of cross border transactions as well.

Lawyer Limelight: Frank Aquila, *continued*

In the last 10 years "cross-border M&A" has largely meant U.S. companies buying European companies, or European companies buying U.S. companies. But what will be more interesting and more challenging in the years ahead will be cross-border activity from Latin America to North America, Latin America to Africa, India to Africa, the Middle East to Asia, and so on. We are likely to see activity where acquirers, huge companies from Asia or Latin America some of whom you may have never heard of before, are buying U.S. and European household names. This sort of global dealmaking is what cross-border M&A will look like in the years ahead.

LD: What about all the debt accumulated in recent years? How is that going to impact how companies pursue deals?

FA: A mountain of debt was incurred to finance deals from 2003 to early 2008, and much of that debt will need to be repaid or refinanced between 2010 and 2015. Many companies have already taken the opportunity to refinance some or all of their debt over the past year. The companies that have done so are the stronger, better credits. Not all borrowers will be able to refinance and many of them will ultimately need to sell all or part of their businesses. If you can't refinance, you may have to sell assets. And still some companies may have no choice but to go into bankruptcy.

In the end, it will all depend on what the financing markets are like, and how robust the recovery will be. If we have a very robust recovery, concerns regarding refinancing will evaporate for many companies and the economy will allow them to refinance and return to profitability.

LD: What are some of the challenges of handling cross-border deals?

FA: You have to be part lawyer, part orchestra conductor and part traffic cop to pull off everything at the same time. You have to work closely with the litigators in preparation for litigation and the regulatory lawyers to be sure that all of the regulatory issues are being handled. You need to fully understand all of the legal issues that could arise in multiple jurisdictions. You have to do this while remaining focused on the big picture, what the client wants and what their objectives are. You always have to understand their constraints and limitations. Clients rightfully expect more than just technical support; you have to provide the best possible strategic and tactical advice while taking into account all of the practical and legal factors.

LD: What was particularly challenging about the InBev deal?

FA: Clearly, if nothing else, the very fact that it was completed in the midst of the financial meltdown, with a financing package in the tens of billions of dollars, is testimony to the planning and commitment of our client. Luckily, the financing was put in place by InBev relatively early in the process. It would have been impossible to contemplate raising that amount of acquisition financing in September or October of 2008.

LD: What's a key factor as to why some deals fail and others succeed?

FA: I think the key is that there has to be a compelling business rational for the deal. If there is an industrial logic for the deal, then there is a high likelihood that the deal will succeed. Deals make sense for different reasons. If both sides see the benefit of getting the deal done, it is much more likely that it will move forward.

LD: Do you recall when you wanted to be a lawyer?

FA: I guess I had thought about law school for a long time, possibly as far back as grammar school and certainly in high school. When I was an undergraduate at Columbia I toyed with the idea of becoming a history professor, but I never really questioned the fact that I wanted to be a lawyer. I've always been interested in and involved with public policy, politics and international issues. Going to law school and having the opportunity to think about these issues more deeply, and then practicing law, was probably always in the cards for me.

LD: How did you develop a focus on M&A?

FA: In law school I probably would have told you that I would wind up in securities law, and my first couple of assignments at Sullivan & Cromwell were in securities. But that was 1983, and if you remember, there was a lot of M&A activity back then. I quickly wound up being pulled into one M&A transaction after another. To my surprise, I found that I really liked it. I kept doing more and more deals and then I woke up one day and realized that basically all I was doing was M&A work. I have never looked back, I have never regretted it.

One of the reasons that I like M&A is that you have to deal with a range of legal issues. Every single deal is different. On any given deal you are dealing with a different set of tax, antitrust, securities, IP, environmental and other issues. The range is even broader with cross-border deals. M&A really provides an intellectual challenge at every turn. People think of dealmaking as a bunch of guys with cigars in some back room cutting a deal, but the reality is that it takes a lot of patience and creativity to make a deal work for all parties.

Lawyer Limelight: Frank Aquila, *continued*

LD: Who was an early mentor for you?

FA: One of the earliest transactions I worked on was in late 1983, after being at S&C for just a few months. Our client, Lincoln First National Bank was being acquired by Chase Manhattan bank. I had an opportunity to work directly with Rodgin Cohen, to see the master in action if you will. It had a profound impact on me and really made me want to become a deal lawyer. Rodge is one of the greatest people to work with when you're young and starting out. Actually, Rodge is one of the best people to work with at any stage of your career. It was a great experience.

LD: What do you like about Sullivan & Cromwell?

FA: Sullivan & Cromwell has a very collegial and supportive partnership. It's an environment where the typical lawyer starts here after law school, works their way up to become a partner and then retires in their 60s. And that really isn't the norm today in our profession. At S&C you work with people who you know are going to be here for a long time. That leads to such a high degree of collegiality, that the philosophy is that no client is a client of any particular client but rather that all clients are clients of the firm. There is never any hesitation to call up another partner to get help on a client's problem, because it's their client too.

LD: I hear you're a Mets fan. What's your take on the year so far?

FA: If you're going to be a Mets fan, you have to be resilient. Mets fans know that there will likely be more downs than ups. Every year you look forward to spring training and feel that this year is the year they're going to go all the way. This is the year that the Mets will redeem our faith in them. It seems that every March I think, if they stay healthy this year and get a few lucky breaks, they have a real shot at the playoffs. And once they get there, they can go all the way.

Then the season starts, and all too often it's "wait until next year" before you even get a chance to light the coals for the fourth of July barbecue. Unfortunately this year has been more of the same. A good start, the Mets in first place for a couple of days before falling into last place in their division. But wait until '12, they are going to be amazing next year!

LD: How do you feel about the new stadium, Citi Field?

FA: It's a great new facility. Citi Field certainly has a lot more of the amenities that you expect today at a major stadium. Shea certainly didn't have them. I guess having grown up with Shea there is a nostalgia about it and I miss it, but the reality is that the new stadium is far superior.

LD: I heard that you're a "foodie." Is that true?

FA: I'm certainly into food, wine and travel. I think the area I'm most interested in is wine. I collect and have a fairly large wine cellar. I don't buy wine hoping that it appreciates in price, but rather I purchase wine for the sake of enjoyment. I like all types of wine. Wine gives you a perspective on how things are similar, yet different all over the world. I think learning about wine is a lot like my experience with M&A and learning to appreciate the great similarities and differences in different jurisdictions. It all makes life a lot more interesting.

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