

Daily Journal

MAY 11, 2011

Top Women Lawyers 2011



Ursula H. Hyman

LATHAM & WATKINS LLP

Location: Los Angeles

Practice type: Finance

Practice specialty: Public and tax-exempt finance, real estate

Hyman knows how to get creative when it comes to finance. The Latham & Watkins partner specializes in tax-exempt and public-private financing, two areas that look beyond the tradi-

tional corporate banking sector to get projects done.

One major transaction last year involved raising funds for a toll road in the Dallas, Texas area called the LBJ Freeway. Hyman represented the underwriters in the \$615 million private activity, tax-exempt bond component of the project's financing. Other funding came from a Texas state grant and private equity.

The deal had her working with investors as far away as Spain and France. Getting money from abroad is not uncommon these days, she said, adding that, "As the universe becomes smaller, these deals are getting funded with [amazingly] different sources of capital."

The freeway is expected to open in 2015, at which point the money collected from the toll will first go toward repaying public debt.

In some public-private partnerships, money put up by the public sector isn't directly repaid. Instead, she said, the public indirectly benefits through a trickle-down effect of new jobs; an influx of taxpayers to the area; and a boost to stores and restaurants.

In every such deal, both sides have to foresee obvious benefit for it to be a success, Hyman said.

Work on several public-private projects has stalled since Gov. Jerry Brown announced in January his intention to eliminate redevelopment agencies. Right now, such agencies receive money from tax increment — additional property tax revenue created from new

development — if they build in areas needing rehabilitation.

Well-known state landmarks, such as the Staples Center and Bunker Hill in downtown Los Angeles, were created using tax-increment financing. Brown's proposal would divert an estimated \$1.7 billion in redevelopment funds into the state budget to be used toward education and local services.

Projects already in the pipeline are in flux, Hyman said, including two of hers. "They're between a rock and a hard place. Do they have an agreement that's enforceable or not?" she said. "That happened throughout the state. All kinds of people are in that middle position."

Hyman said that at any time, roughly 15 percent of her practice is tied up in redevelopment projects. Her clients are nationwide in scope, and the proposed change would affect only California.

Also in the past year, Hyman led financing for the Sanford Consortium for Regenerative Medicine, a collaboration of four research institutions. The transaction involved leasing land from UC San Diego and issuing tax-exempt bonds to finance construction of a new complex to be housed on its La Jolla campus.

In another transaction, she completed a \$100 million tax-exempt commercial paper deal for the California Institute of Technology. Commercial paper, an unsecured short-term promissory note with a term of one to 270 days, is rarely used by tax-exempt organizations.

Hyman said she's seen nonprofit organizations utilize a broader range of techniques in recent years to cut costs and get work done, thanks to more sophisticated management who understand saving an 8th of a basis point here or a 10th there makes a difference.

— Sara Randazzo

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Katherine Lauer

LATHAM & WATKINS LLP

Location: San Diego

Practice type: Litigation

Practice specialty: Health Care Fraud

Lauer's health care practice — with an emphasis on fraud under the federal False Claims Act, Stark Law and Anti-Kickback Statute — is getting busier all the time.

She represents individuals as well as hospital systems, health care providers, medical device companies and pharmaceutical firms in government investigations and disclosures of possible misconduct to regulators. She also advises clients on structuring compliance programs and understanding regulatory risk in mergers and acquisitions.

"Clients want to know what kinds of potential problems are out there," Lauer said. "On a number of occasions, that leads to disclosures to government agencies when a situation is discovered to avoid False Claims Act cases."

She currently represents HCA Holdings Inc. in litigation and government investigations, as well as Tenet Healthcare Corp. in a variety of matters.

In recent litigation, Lauer is defending an individual at a global manufacturer in a national criminal and civil False Claims Act investigation by the U.S. Department of Justice. At issue are allegations of off-label marketing, the illegal practice of promoting drugs or medical devices for uses other than those approved by the U.S. Food and Drug Administration.

In other investigations, Lauer represents a national hospital system accused of false claims related to implanted medical devices; a national provider of mobile diagnostic services suspected of paying illegal kickbacks and violating Medi-Cal pricing rules; a large California hospital system in resolving Stark Law and Anti-Kickback Statute

allegations; and a West Coast hospital system subject to a 10-year investigation for allegedly filing false claims with Medicare.

The Office of the Inspector General at the U.S. Department of Health and Human Services and the Department of Justice have always had a way for companies to disclose possible False Claims Act violations and other federal breaches, but the Center for Medicare and Medicaid Services only last year outlined a self-disclosure protocol for Stark violations.

"In the past few years, that part of my practice has grown significantly," Lauer said, as companies report misconduct in exchange for leeway in negotiating civil and criminal settlements with the government.

The heightened emphasis on rooting out health care fraud under President Barack Obama has expanded her practice substantially.

"We're working on things that people haven't seen before," Lauer said. "There are a lot of new laws, so there's room for more creativity than in a lot of other practice areas."

On the transactional side, companies are pursuing acquisitions of competitors again after holding off while Congress debated health care reform, which passed in March 2010. That means they're researching regulatory compliance at the companies they're buying and preparing to disclose any violations to the government.

"Clients are much more attuned to these issues than they were 10 or 15 years ago, so they have more sophisticated compliance programs and have the resources to handle it," Lauer said. "They're likely to be more proactive when they find an issue rather than sitting back and waiting to get caught."

— Mandy Jackson

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Karen Silverman

LATHAM & WATKINS LLP

Location: San Francisco

Practice type: Litigation and Regulatory

Practice specialty: Antitrust

A new administration in Washington, D.C., usually brings changes in antitrust enforcement. President Barack Obama's arrival at the White House ushered in new guidelines that, Silverman said, "we're still

getting used to it."

"But, overall, it's opened up new theories and ways of thinking about economic problems and new categories of evidence, and has reinvigorated the substance of the practice."

Silverman, long a key player in the antitrust bar in California, was poised to take a lead role in major cases. She represents Live Nation in investigations related to its merger with Ticketmaster, a transaction that is undergoing review in the U.S., Europe and elsewhere.

Silverman also headed up the regulatory portion, and participated in a trial, involving Ovation Pharmaceuticals Inc., now Lundbeck Inc.

In that case, she successfully defended Lundbeck against antitrust lawsuits filed by the Federal Trade Commission and the State of Minnesota, challenging the company's January 2006 acquisition of an exclusive license to manufacture and sell NeoProfen in the U.S.

(Federal Trade Commission v. Lundbeck Inc., 2010-2 Trade Cas. (CCH) 77, 160 Aug. 31, 2010).

Lundbeck denied its acquisition of rights relating to NeoProfen substantially lessened competition, or that it constituted illegal monopolization. The FTC was trying to force a divestiture and the disgorgement of profits. The FTC is appealing.

And she is optimistic about the immediate future of the practice.

While some industry watchers have focused on the Obama administration's approach to enforcement, Silverman said, "I don't think that is the hallmark. The administration is more engaged in an analysis, and they're not afraid to think about these issues from a fresh perspective. This sometimes leads to more enforcement and remedial action, but sometimes it doesn't. At the core, it's to think about things differently."

The fact is, antitrust issues are in constant motion, she observed.

"We're very often on the front lines, because everything is very current," Silverman said. "There is no question that, particularly in the merger practice, antitrust is a reflection of what's going on out there in the broader community."

— Pat Broderick