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## Q&A With Gray Plant Mooty's John Brower

*Law360, New York (January 20, 2010)* -- John E. Brower is a principal with Gray Plant Mooty and concentrates on general business law and transactional law, with an emphasis on mergers and acquisitions. He also works with clients on joint ventures, lending transactions, executive employment arrangements, and general business matters.

### **Q: What attracted you to your practice area?**

A: I began my practice as both a tax lawyer and a general business lawyer. While I enjoyed the intellectual challenge and analytical requirements of tax practice, fairly early on I had the opportunity to work on some M&A deals. I enjoyed the M&A transactions because of the opportunities to negotiate transactions and to interact with my clients on an intense and focused basis.

An M&A practice combines analytical challenges — you are always trying to figure out the best way to put a deal together and what issues you have to work around — with the opportunity to work with people. It is always fast paced and intense, which I find energizing.

I particularly enjoy full-scale negotiation sessions with all parties and their lawyers represented. You have to be working at multiple levels, considering what you are going to say, watching the other parties' reactions to what you are saying, and trying to guide your client in what they say. As part of this, you try to maintain a good relationship with the other side even though you pursue your positions firmly.

Often one of the most interesting decisions is what not to say. Sometimes if you bring a topic up, the other side will consider it and push back, with the result that you end up in a position worse than you would have been in if you had never brought the topic up in the first place.

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

A: There have been a number of deals with special challenges. Still, one that stands out is a transaction that closed in 2008. This was a deal that was going on during the absolute bottom of the economic crisis, at a time when very few deals were getting done.

Among other things, many deals were failing because of lack of financing or banks pulling out. In the transaction I was representing clients who were significant shareholders of a company. They were buying out the other shareholders. My clients partnered up with a private equity group which provided the financing for the transaction and which took a significant equity position.

The initial challenge was negotiating the terms of my clients' deal with the private equity group. This included significant issues as to how my clients' equity was to be treated and as to what types of incentives they would have. Then negotiations with the sellers commenced. At the same time we were negotiating for bank financing in a very negative lending climate.

We reached agreement on the terms of one transaction but then the lending challenges and the continuing decline in the economy led to a restructuring of the transaction. We were able to keep the bank involved — the bank stood up to its commitments in a very negative environment — and also reached agreements on a number of complex issues with the private equity group. The transaction successfully closed at a time when very few deals were getting done.

**Q: What are the most challenging legal problems currently facing clients in your practice area?**

A: In reality the most challenging problems facing clients in my area — buyers and sellers of businesses — probably are not fundamentally legal. They are the interrelated problems of continuing poor economic performance and continuing reluctance of banks and other lenders to lend on any reasonable basis.

The continuing poor economic performance makes everybody cautious and also makes it very difficult for people to reach agreement on the value of a company. Sellers are trying to value the company as if times were more normal, while buyers are justifiably cautious, being uncertain as to how long the economic problems will continue. Lenders continue to be very conservative. This depresses pricing because buyers are unable to leverage transactions in order to increase their potential rate of return.

The significant legal problems in the current environment occur mostly in the context of deals that have been closed. In many of these deals the purchased companies have been running into problems with their bank covenants. This in turn has triggered extensive negotiations with the banks and sometimes extensive negotiations for additional equity investments.

**Q: Where do you see the next wave of activity in your practice area coming from?**

A: One current and still developing wave of activity is in the distressed acquisitions area. There are a number of troubled companies which have become available for sale. Slowly, buyers, including strategic buyers, are starting to try and take advantage of these opportunities.

When the economy starts to turn around I think the huge wave of activity will be a surge of purchases by private equity groups. Private equity groups have large amounts of committed funds. In large part they have not been using these funds because they are unwilling or unable to put together a significant number of transactions in the current climate. The funds typically are on a use-it-or-lose-it basis. I anticipate there will be a big wave of transactions as soon as conditions get better.

**Q: Outside your own firm, name one lawyer who's impressed you and tell us why.**

A: I have been impressed by Bruce Engler, who heads up the M&A practice at Faegre & Benson LLP. He is a very knowledgeable M&A lawyer and businesslike in his approach to transactions. I have found him good to work with. He ably represents his client but also stays focused on the issues of business significance.

**Q: What advice would you give to a young lawyer interested in getting into your practice area?**

A: First, I would say consider your talents and if they are a match, go for being in the M&A area. It is an area that presents a wonderful opportunity to combine legal analysis with personal interaction and negotiation skills. However, understand that your schedule will not be your own, because in every deal things need to get done right away.

Also, if you still have the opportunity, consider getting an MBA or doing a joint JD/MBA program. Business considerations are central to M&A. This kind of background will help you understand the nuances of transactions. It also will mean that you have a different alternative career path you could consider during your professional career.