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Q&A With Bracewell & Giuliani's Robin Miles

Law360, New York (January 11, 2012, 4:18 PM ET) -- Robin Miles is a partner in Bracewell & Giuliani LLP's New York office. He has led the firm's New York finance practice since the office opened in 2005. Before that, he represented energy companies and banks for 19 years out of the firm's Houston office. Recently, a large part of his practice has focused on pipeline, power and media infrastructure project finance — ranging from new construction to the restructuring of projects caught in the wake of the financial crisis. His project finance clients include corporate sponsors (such as El Paso Corporation), private equity sponsors (such as Rockland Capital), project companies themselves and banks (such as Societe Generale).

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

A: The most challenging project I've worked on would have to be the restructuring of a power project that was caught up in the perfect storm of the easy money available through the summer of 2007 and the 2008 financial crisis that followed. Our client — the project company — was building a state-of-the-art 665-megawatt coal-fired power plant in Arkansas.

The project was on time, under budget and coming together beautifully. The only problem was that the banks had financed essentially 100 percent of the costs of construction with a 30-year loan guaranteed by an "invincible," formerly AAA-rated insurance company that in 2010 found itself in a sort of receivership and on the verge of bankruptcy. To make matters worse, the loan was a failed syndication, having closed in the waning days of the easy money in 2007. One bank held $600 million of the loan, and another bank held the other $200 million. Both banks had also essentially been rescued by a foreign government, so were under great pressure to shed assets.

With pressure from the government combined with the fact that the $800 million loan was priced like a 30-year AAA-rated bond, the banks decided to use every trick in the book to call a default and bring the company to the table to renegotiate the pricing and terms. Unfortunately for us, as with any complex project nearing completion, there were immaterial technical changes to the project that arguably required bank consent or amendment; so we had to work out something with the lenders. Our challenge was to preserve equity value while making peace with the bank lenders who were in no mood to be flexible or reasonable. After all, they were in a place where they had to ask the government for permission to go the restroom.

We solved the challenge with a very big stick — we began preparing the company to file bankruptcy in Arkansas with a plan to reinstate the debt with its original terms. We added to our stick the carrot of a shorter loan term and improved pricing so the lenders — who wanted nothing more than to be rid of this asset — would have some chance of selling the loan at a more attractive price. A year later, the sponsors and lenders came to terms, and now this incredible plant is humming away with a stable balance sheet.

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

A: This is probably a statement against interest since legal fees increase with complexity, but we need lawyers and business people who can better focus on what's material in a transaction, and not on the minutiae that adds unnecessary transaction cost and complexity. You can gold-plate anything, but the value of solving for the last 10 percent of perceived problems is usually little and often doubles the transaction costs.

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

A: Probably the most important issue today is the instability in Europe. European banks have been major players in U.S. infrastructure project finance in the last decade, providing the capital for and leading a large portion of the deals we have seen. The pullback of the European banks in 2011 from this market will mean shorter-term and more expensive financing of the important infrastructure development happening in the U.S.

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

A: Probably one of the most impressive structured and project finance lawyers I have worked with is Robert Stephens from Cadwalader's new Houston office. He has an unusual mix of excellent structured finance, commodity trading and hedging, and leveraged finance experience and skills. He also has a calm, logical bedside manner and, unlike what I see more and more, works constructively with opposing counsel to solve sticky issues.

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

A: I gave a client the wrong answer on an important question about what a document permitted him to do. In my haste to please the client with a quick answer, I read the document too quickly. Later that day, when rereading the document, I had that near-death feeling when I realized I was wrong. I let my supervising partner know immediately, and she gave me the sage advice to suck it up and call the client back right then. She was kind enough to reassure me that not only would I live, but that I'd also keep my job.

While displeased to realize that I had given the wrong answer, to my great surprise and relief, the client was impressed that I responded quickly, was forthright and took full responsibility. This hiccup actually served to cement what has become a long-term client relationship. Clients know we're people and people aren't perfect, but expect and need their lawyers to make that hard phone call and own up when problems inevitably occur.