

Q&A With WilmerHale's Paul Jakubowski

Law360, New York (January 11, 2012, 4:10 PM ET) -- Paul Jakubowski is partner in WilmerHale's Boston office, where he chairs the firm's real estate practice group. His practice is national in scope and includes representation of public real estate investment trusts, fund advisers, offshore investors, Boston-area value-add real estate companies and national retailers. Recently, he has focused on distressed investments and high-profile headquarters lease transactions.

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

A: For me, the challenging deals are the transactions involving high-profile assets and high-profile parties battling over a short time period in which the legal issues are novel or the facts are uncertain and the lawyers are asked to make critical judgments on the fly. It's three-dimensional chess with a very fast clock and a very vocal and active audience.

I'm working on one of these deals right now: a \$500 million loan gone bad, with multiple cross-claims among borrowers, guarantors and lenders, the foreclosure date looming, potential loan sales with third parties and potential settlements being negotiated in parallel, a deal structure that changes daily, shifting alliances, nobody sure who's in bed with whom, and high finance bumping up against ancient real property procedures bumping up against bankruptcy possibilities bumping up against tax traps. This is why I'm bald.

A completely different sort of challenge is handling my own firm's leases, which are complex enough simply as transactions, but which bring the added benefit of 1,000 very hands-on "clients." If the elevators aren't fast enough, I hear it from every partner, associate and secretary in the firm. I take it as a comment on my approachable and nonthreatening demeanor that every stakeholder at WilmerHale is comfortable berating me for these failings.

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

A: The commercial mortgage-backed securities market is a critical source of real estate financing that makes too much sense to abandon simply because of a few structural issues that, um, helped bring the world financial system to its knees. More rigorous underwriting, skin in the game, model representations to investors, and a less complicated mousetrap for loans in distress. Smart people will figure this out.

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

A: I often worry that WilmerHale's highest-profile and most glamorous practice areas — intellectual property litigation, Supreme Court advocacy, bet-the-company congressional investigations — will attract all of the considerable talent we have at the associate level. Year after year, however, I'm gratified to find that really smart, committed young people are signing up for real estate for the same reason I did: It's fun.

Real estate is tangible, lay people understand it intuitively, it attracts colorful entrepreneurs, and it shapes people's lives in a more obvious way than most other practice areas. I can walk around Boston and tell you interesting stories, block by block and building by building, about the deals I've done. Try doing that with someone who reviews mutual fund prospectuses for compliance with the 40 Act regs (no offense to my colleagues in that area, which I'm sure has its own charm). I hope my fears about the future talent pool continue to be unfounded.

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

A: I am impressed by lawyers who don't define themselves narrowly and who learn and grow and reinvent themselves and expand into new areas. Gil Menna (whom I know only by reputation) of Goodwin did not start out as a REIT lawyer; he saw the opportunity early, made himself an expert, and built a franchise out of that expertise. Charles Goldstein of Herrick Feinstein moved from New York real estate development to Russian and German real estate development to international art law. Andy Cohn of WilmerHale expanded from real estate finance to project finance to energy law.

I admire their intellectual curiosity and fearlessness. In the area of high-profile headquarters leasing, which has become an important component of my own practice, I'd mention two lease experts with whom I love to tangle: Ray Kwasnick of Goulston & Storrs in Boston and Ray Sanseverino of Loeb & Loeb in New York. Both Rays are smart, pragmatic, forceful veterans who have seen it all, and both have personality to spare.

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

A: I'd been negotiating eight land deals in parallel, secretly, for months, as part of a covert land assembly. In a land assembly, it's very important that the people selling their land not know that you're buying up all the other land around them, because if even one person realizes what's going on and refuses to sell, you're dead. I was trusted with this task because the land agreements themselves were fairly simple.

Well, I did something really stupid. I accidentally emailed Party A's purchase agreement to the lawyer for Party B. If Party B learned that I was dealing with Party A, it would have been the end of the game, an utter disaster. With my heart in my stomach, I called Party B's lawyer's secretary — with whom I had developed an excellent working relationship over the course of the previous few months — and explained in as jaunty and carefree a manner as I could muster that I'd inadvertently sent the wrong attachment, would she please delete that email (right away, please) and I'll send the right one. "Oh hi, Paul! No problem!" Email deleted, crisis averted, career saved.

Maybe she'd have done this for anyone, but I'd like to think I was saved by the fact that over the previous months I'd been friendly and polite and respectful. Lessons: (1) check and double-check those attachments; and (2) be nice, to everyone.