MEET THE DEALMAKERS

Keith Berk

Keith Berk represents larger-sized, closely held businesses and their owners in mergers and acquisitions and as their outside general counsel. He counsels clients from a wide range of industries, including food production, asset and non-asset-based logistics, specialty truck manufacturing, and dealer networks. A well-known facilitator for middle-market deals, Keith helps his clients implement strategies for enhanced growth and for optimal exit strategies.

As outside general counsel, Keith develops strong relationships with his clients, some of whom have worked with him for more than three decades. Leveraging his accounting and business background, Keith helps clients formulate and execute on strategies to attract and retain key management, minimize risk, and maximize opportunities for long-term growth. He has also assisted numerous family-owned businesses with generational succession planning and creative family dispute resolutions.

Keith's work has earned many recognitions, including being listed in the 2024 edition of *The Best Lawyers in America®* and named a "Leading Lawyer" in 2023 for Closely and Privately Held Business Law by *Leading Lawyers* magazine.

HMB Legal Counsel recently combined with Kilpatrick. What made Kilpatrick the right platform for your practice and your group?
In short, the expertise, the management, the people, and the culture. Here is the slightly longer version. After starting my law career at a big firm, I wanted to do something more entrepreneurial, so I joined a "startup" 5-person tax firm—we were just a bunch of accountants who went to law school. Over the years, we grew HMB to a 70-lawyer, corporate-focused law firm with a great reputation. In M&A, we were punching well above our weight, competing with big law firms (who often poached our lawyers after seeing their work on a deal!). Deals with this level of sophistication often require specialized expertise, and we would have to source specialty services from other law firms, including IP firms and regulatory firms.

Eventually, managing these specialist relationships became overwhelming because we needed more and more specialist support. We looked for a firm that had all the expertise we needed in-house and Kilpatrick rose to the top of the list of possible merger partners on the strength of its attorneys' wide range of expertise.

We were also interested in a firm that had high-quality business processes so that our lawyers

could focus on their practices and on providing client service without distractions.

Because we were always big advocates of running a law firm like a business, as soon as we met **Alex Rahm**, the COO of Kilpatrick, we became excited with the idea of professional non-lawyer management and what a game changer it is. Our transition is working out as expected, which is the hallmark of a successful deal. We've integrated our legal teams quite seamlessly and already staffed several successful projects with a combination of legacy Kilpatrick and legacy HMB lawyers.

You are a renowned M&A attorney. But about half of your practice is supporting your clients as outside general counsel. What does this entail?
I have been blessed with a well-balanced practice. The M&A work is fun and fast-paced, while the trusted advisor role of an outside general counsel allows me to form long-term relationships with my clients. For example, I've represented one client for over 37 years and counseled this company through four owners. I'm the most durable feature of that client's board of directors—having served longer than the president or any other board member.

There is real magic in these long-term relationships. Sure, you're still the lawyer, and will always be asked to give legal advice, but you also get pulled into other fascinating issues. For example, what do we do when a contract with a very important customer is going off the rails? You can do the legal analysis and figure out who's right and who's wrong, but that's not the whole answer. What you really want to find is a business solution that will preserve the relationship while protecting the business and maintaining the company's integrity in the marketplace.

What makes you such an effective outside general counsel?
Aside from my ability to build relationships, I would say that my accounting background has been very beneficial. It allows me to immerse myself in the client's financials and understand the true state of the client's business.

I'm also a plant rat—I love learning about how things work and seeing the machinery up close. Take me on a factory tour and I am in heaven. My innate curiosity is a significant asset in this work because it allows me to ferret out the details. Once you understand the details, you can better assess opportunities for growth and innovation, and understand the headwinds and risks that the business is facing.

It is also important to have a talented team. I could not do either the outside general counsel work or the M&A work without the expertise and dedication of many other lawyers. Thus, **Alan Leib** and the M&A team, **Hal Wood** and the litigation team, and **Ken Goldstein** and the estate-planning team have been instrumental to the success of my practice.

There is one other unique aspect to my success—client experience. Here, my team is led by **Sylvana Toskov**, Manager of Practice and Client Services. We have a clearly defined approach to client experience which guarantees clients have access to someone they personally know and someone who understands their daily business needs. Our goal is to make sure clients know and feel they are important to us and that we value them. Sylvana works with our clients and our various internal teams to keep all the pieces moving in the right direction which sometimes is known around here as Sylvana just working her magic to make it happen.

Do you often have to work with groups of owners and their dynamics?
All the time! While some of my clients are companies with one owner, most are controlled by a group of owners, including many family businesses. These are not mom-and-pop companies. We often handle complex capital and debt structures working with banks, mezzanine and alternative lenders, private equity firms and alternative capital providers.

The structure of the ownership dictates the relationship. So, oftentimes a single owner shares all his or her secrets with me because they have no one else who understands the business as well as I do. If it's a group, sometimes I become the unofficial mediator for the group because I've already developed relationships of trust with each of the owners and they believe that I will provide the best advice for the company.

I do a lot of family-business dispute resolution, and which is something I'm very proud of because we've had very little litigation. This is an art, not a science: how do you prevent the owners from killing the golden goose with infighting? I have found that it comes down to developing trust relationships with the various owners and getting them aligned to do something that's in the best interests of all of them, including, sometimes, buying out some of the owners.

These relationships of trust are built on honesty and open communications. For example, even if a son believes I'm going to favor the father, the son has to trust me. If I favor his father's position, I'll tell him that—and explain why.

Do you find that the approaches you take in your trusted advisor role carry over to your dealmaking work?
Absolutely. Honesty and trustworthiness are the best way to negotiate a deal. In my experience, you do a much better transaction if at the beginning of the negotiation you can build a relationship with the lawyers on the other side—which is not to say you make friends with them. But you develop a working relationship that helps you get the best deal possible through clear communication.

How do you use your skillset for the benefit of the community?
Over the years, I have supported with and sat on the board of several community organizations with a focus on education, drug awareness, and social justice. I also formed four foundations, either with clients or on my own. I'll highlight just one: the Northmoor Education Foundation (NEF), which I founded in 2018. It awards educational tuition scholarships to assist Northmoor Country Club employees and their children study in college or vocational school programs.

I have also been a long-term member and supporter of the Young Presidents' Organization (YPO). YPO is a global leadership community of chief executives focused on becoming better leaders and better people through group interaction. It is a goldmine of best practices, proven systems, and processes that you can adapt to your business. But where it is even more valuable is in helping you realize that you're not alone. Other chief executives have dealt with the same struggles and stresses, both professionally and personally, and they are willing to listen, share their experience, and help.

To learn more about Keith and the firm's nationally recognized M&A Team, please visit *ktslaw.com*