

## Energy Group Of The Year: Davis Polk

By **Keith Goldberg**

*Law360 (February 7, 2024, 2:15 PM EST)* -- Davis Polk & Wardwell LLP helped ExxonMobil Corp. pull off the largest deal of 2023 with a \$60 billion acquisition of Pioneer Natural Resources Co., earning the firm a place among Law360's Energy Groups of the Year.

Exxon announced its all-stock purchase of Permian Basin drilling giant Pioneer in October, doubling down on its U.S. oil and gas production — specifically, production in the Permian Basin, which stretches from West Texas to eastern New Mexico.

Before the deal, the Permian accounted for more than 50% of Exxon's net U.S. oil and gas output in 2022, with production at 550,000 oil-equivalent barrels per day. The company said the Pioneer acquisition would more than double that to 1.3 million barrels per day.

Louis Goldberg, who co-chairs the firm's mergers and acquisitions practice and represented Exxon, said the company had long been looking to make a major Permian purchase. With Pioneer founder and CEO Scott Sheffield poised to retire at the end of 2023, a window of opportunity opened, but getting the companies to agree on a sale price was a challenge, Goldberg said.

Striking a balance between Exxon getting adequate value for the company and its shareholders and Pioneer getting an acceptable sales premium was the trickiest part, according to Goldberg.

"We didn't only look at the fixed-exchange ratio, but we also looked at how much of a dividend Pioneer could pay out between signing and closing," he said. "It's the first public deal I've done that has a variable dividend that basically allows incremental cash to be paid out to shareholders based on profits earned during this period. That bridged the gap on the deal price."

The transaction also features compromises that include Exxon refusing to pay a reverse termination fee if the deal falls through, as well as the company's willingness to litigate in order to get approval from antitrust enforcers. The Federal Trade Commission is currently scrutinizing the deal, and several U.S. Senate Democrats have urged the agency to closely vet it.

"Deals like this, given the size, are going to get scrutiny from the government," Goldberg said.

Davis Polk also made its energy mark on the bankruptcy front in the past year. The firm represented



Brazilian oilfield services company Ocyan SA in its restructuring of \$2.7 billion worth of debt, which closed in June 2023. The restructuring plan was initially approved by a Brazilian court and subsequently blessed by a U.S. bankruptcy court through the Section 15 process.

Cross-border restructurings add another layer of complexity to what's already a complex process, said Damian Schaible, who co-heads the firm's restructuring practice.

"You have to plan out the process in each of the jurisdictions that need to approve the restructuring and coordinate the schedules, the arguments and the process so that you're able to get approval in two different proceedings," Schaible said. "The judges aren't bound by the other court's rulings. You need to plan out in advance what each of the courts are going to require. It's basically like a corporate closing."

Davis Polk also represented an ad hoc group of noteholders in the Chapter 11 proceedings of gas pipeline owner Ruby Pipeline. Weeks after the start of the case, the committee of unsecured creditors sought court termination of Ruby Pipeline's ordinary, 120-day window for exclusive control of the Chapter 11 case.

The committee argued Ruby's equity sponsors were using Chapter 11 to maintain control while avoiding payment on the notes. An ad hoc group of noteholders sided with the unsecured creditors, with the fight ending after a pre-trial compromise.

Ruby's reorganization plan was confirmed in January 2023 and included payments sufficient to cover a \$475 million recovery for unsecured notes.

Davis Polk doesn't have a dedicated energy practice group, but Goldberg and Schaible said what the firm has done is leverage the historical strengths of its M&A, capital markets and restructuring practices to counsel more and more energy companies.

Those range from traditional oil and gas companies like Exxon — which Davis Polk also represented in its \$4.9 billion purchase of carbon capture and storage firm Denbury Inc. in July 2023 — to renewable energy companies and climate change technology startups.

"In the lifecycle of different things, small startup companies have different needs than an Exxon," Schaible said. "We've developed specialties across practice areas, so we're better able to serve companies across the spectrum as well as in the changing macroeconomic environment."

And with every major energy-related deal the company guides to completion, the more deal work becomes available, Goldberg said.

"We're seeing more inbound activity as a result of the work we've done," he added.

--Additional reporting by Al Barbarino and Jeff Montgonery. Editing by Kristen Becker.