

THE  
AMERICAN LAWYERKramer Levin's Howard Spilko on His Deal Firm's  
Saving Grace

By Patrick Smith

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**K**ramer Levin Naftalis & Frankel's co-managing partner Howard Spilko was (and is) a dealmaker before he was a Big Law firm leader. He knows a bit about the cycles, the ups and downs and the uncertainty of the deal world.

His firm had what could be considered a "typical" year for Big Law in 2022. It saw a modest reduction in revenue and further reductions in profitability numbers compared to 2021, and like many firms that are in the same boat, the comparative lack of deal activity was a driving force for those results.

Spilko spoke with *The American Lawyer* on the headwinds for deal activity in 2023 (which has not gotten off to a stellar start), what positive signs he sees in the market and whether or not firms that rely heavily on transactions and capital markets work will need to augment their approach in 2023. The below conversation has been lightly edited for brevity.

**Patrick Smith:** What are the largest impediments to deal activity getting back to either pre-pandemic or even peak-pandemic levels right now?

**Howard Spilko:** The M&A markets languish in times of uncertainty like this. I think it's obvious that the uncertainty ranges from interest rates to global tensions, and now we've added to that the turmoil in the banking industry. So, not a conducive environment for deals. The debt markets are tight, and they're more expensive than they were in 2021 and even most of 2022 and much, much less favorable in terms of the actual economic and non-economic provisions of the debt. That also impairs deal-making and then owners who have solid businesses with strong earnings capabilities in this market are just not eager to transact, largely because there hasn't been an equilibrium on deal valuation. So for all

those reasons, we're in sort of this slow M&A environment.

I think the way to answer your question in terms of moving away from this slog that we're going through is to release some of the uncertainty that has built up, principally around interest rates. If interest rates start to stabilize, that will be a big help. I think people are still waiting to see if there's going to be more fallout from the banking industry turmoil that we saw. If a couple more weeks pass, I think that people can start to breathe again and say okay, there's not going to be another domino that falls right now. It seems to be okay. But the severity and velocity of what happened with Silicon Valley, Signature Bank and then with Credit Suisse really surprised people. And I think people are a little bit scared about a repeat of that in some other way that we might not be able to forecast. It might not necessarily be the banking industry. I think that scared people, and then, of course, the conflict in the Ukraine is an overhang. I think people were nervous about where that goes and how it ultimately gets resolved. I think we have to see some of those uncertainties start to resolve themselves before you see some real desire to transact in the M&A market. And could that be this year? Sure. But I think you'd have to see some resolution to those issues.

**PS:** Are there any potential reasons for optimism you see at this point?

**HS:** What's been keeping us busy is the middle market. The middle market is healthier than the large-cap M&A market right now. It's not as reliant on the



**Howard T. Spilko of  
Kramer Levin Naftalis  
& Frankel.**

Courtesy photo

debt markets. So that's been keeping us busy, and we see some real activity there. The activity is coming in a couple of different ways. The first is there are a number of strategic clients, and some of the strategic clients could be portfolio companies that have existing private equity firms and are just looking to do add-on acquisitions. Or it could be just standalone strategic public companies or significant private companies where they have access to capital and are not reliant on the debt markets to be able to transact. I think they're taking advantage of the market. And in a way, in an environment like this, where there's a lot of uncertainty and turmoil, it creates some deal activity in carve-outs because it forces companies to take a hard look at their own operations.

We're seeing a fair number of those kinds of carve-out transactions happening. And they're complicated. They can be complicated because of the interconnectivity between the business that's being sold and the business that's being retained. It just requires more thinking and creativity from the lawyer's standpoint, which we excel at, so we like those transactions. And, whether you consider it an upside or not, there are some companies that are starting to experience some financial distress and they are compelled to sell. They're just running out of runway in terms of their term loan maturing. They know that they're not going to be able to refinance on acceptable terms, and it forces them to transact. I wouldn't call any of those true optimistic statements. I'm just telling you that that's how we're seeing more deal flow coming into the firm.

**PS:** Do you see firms that rely heavily on transactions and capital markets changing their approach if things don't shift in the deal environment? Could they allocate talent and funding to other practices that are more likely to yield revenue gains in the short term?

**HS:** A lot of those layoffs [we are seeing] are in the transactional space. I haven't seen some of the major players in the large-cap space make those similar announcements. It's early in the cycle to make abrupt changes. And I think people have long memories in terms of what happened in the Great Recession. The industry overreacted at that point. So I think there's a sense, at least at Kramer Levin, and my sense is at other similarly situated firms, not to make any abrupt changes in terms of headcount, and try to ride it out a little bit and see how we're working because markets can change very quickly. And then, if you don't have your talent, you're really caught behind the

eight ball trying to catch up. Our general view is to stay the course and see how the market progresses. We're staying relatively busy in the transactional space for the reasons I mentioned.

**PS:** If firms are going to stay the course on resource allocation and the workflow is slower than they would like, could firms be using that time to invest in long-term growth?

**HS:** Absolutely. And it is something we speak with our partners about all the time. Even if the workload is not so active, you can always be out there, meeting with your clients and speaking with your clients. They really appreciate it, and I think getting to know them and their business better is always a good strategy. We're always in front of them, because it seems to be that there's a correlation between meeting with people and then getting the next call for the transaction. It's being in front of mind and adding some value in a down market. For instance, we'll go in and we'll give presentations to clients about different topics. For instance, at private equity firms, we have a program for some of the more junior people to talk about how an acquisition agreement works and how it works in relation to their business model. And how they're thinking about the business that they're acquiring. That's a great presentation for us to be able to get in front of the younger associates at the private equity firm, to let them know who we are and to help them get acclimated to life at the private equity firm.

**PS:** Are there any industry verticals within the M&A environment that you feel are capable of outperforming this year, and is it wise for firms, even those that don't have great strength in those practices currently, to invest in them?

**HS:** That's hard to do, frankly, unless you're bringing on laterals who are well-known. For a firm that doesn't do a lot in health care, for instance, to basically say, 'OK, now we're going to start doing health care deals', I think that's a really hard thing to do. You can't just sort of wake up and say that's who I'm going to be. For us, our strategy is, has always been, to know what you're good at. Know what you're known for in the marketplace and go deeper, as opposed to wider and wider. Because it sort of dilutes the strength. Our view is that clients have a lot of choices in terms of counsel, and they want counsel that understands their business, understands the industry, and can be very effective in pulling a deal together in that industry.