Tucker Ellis LLP

Brian M. O'Neill

Partner

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Brian O'Neill represents public and private companies, private equity funds, and family offices in structuring and negotiating corporate mergers, acquisitions, divestitures, management buyouts, investments, joint ventures, ESOPs, and going-private transactions and advises on corporate governance matters. He also has represented numerous clients in out-of-bankruptcy restructurings and the acquisition and divestiture of distressed assets.

Brian's experience includes transactions and client engagements across a broad range of industries, including technology and software (SaaS), TMT (technology, media, and telecom) services, general and high-tech manufacturing and distribution, metals processing, business services, transportation and logistics, professional services, wealth advisory and other financial services, insurance, environmental services, consumer products, and food and beverage, as well as real estate.

Brian represents public and private companies on major real estate transactions. His work encompasses divestitures, exchanges, acquisitions, development, zoning and entitlements, construction, project financing, and equipment procurement and installation. He has handled a number of high-profile corporate headquarters projects. His national and local real estate developer clients rely on Brian's counsel on the acquisition, development, construction, financing, and leasing of all types of commercial and residential real estate.

Brian also regularly represents financial institutions and corporate borrowers on asset-based, cash flow, acquisition, and other commercial transactions, including agent representation on syndicated loan transactions.

A trusted advisor, Brian currently serves on numerous client boards and advisory boards where he has the opportunity to engage with executives, management teams, and ownership groups on financial, operational, and strategic priorities and initiatives.

Brian joined Tucker Ellis in 2012 as Business Department Chair. For several years, Brian did double duty as chair of the firm's General Corporate/M&A/Securities group, which is part of the Business Department. Under Brian's leadership, the quality and sophistication of the firm's General Corporate/ M&A /Securities practice and other key Business Department practices saw significant growth and expansion. In 2019, he voluntarily stepped down as chair to open leadership opportunities for other business attorneys.

Before joining Tucker Ellis, Brian chaired the business department at Ulmer & Berne LLP from 2000 to 2012 and served on the firm's management committee. Previously, he was a partner at McDonald Hopkins Burke & Haber Co., L.P.A. (1990-2000) where he served on the firm's management committee and headed the firm's banking practice.

Education

- Cleveland State University College of Law (J.D., cum laude, 1987)
- The Ohio State University (B.S. in Accounting, 1983)

State Admissions

- Ohio, 1987
- Florida, 1988

Service Areas

- Mergers & Acquisitions
- Real Estate
- Commercial Finance
- Financial Services
- Corporate Governance
- Middle Market
- ESOP
- Real Estate Finance
- Opportunity Zones
- Venture Capital
- Private Equity
- Educational Institutions
- Corporate Law
- Alcoholic Beverages
- Commercial Contracts

Experience

MERGERS & ACQUISITIONS

Technology and TMT

- Represented a leading technology solutions company in connection with the sale of its advanced technology, integration, and managed services divisions to a prominent worldwide technology company based in Europe with major U.S. operations and business
- Represented a regional consulting firm in the acquisition of a controlling interest in a technology solutions firm and the merger of the firm's technology consulting firm into the target to form an expanded IT-managed services company
- Represented the shareholders of a high-profile Michigan-based software and benefits compliance company in the sale/merger of the company into a subsidiary of Axcel Partners / KKR
- Represented a family office in connection with ongoing staged investments in a SaaS software services company with the objective of exiting in the next two to three years
- Represented a digital metrics / analytics database marketing and interactive firm in its merger with a private equity firm's platform company to create a leading analytics-driven customer engagement company; also represented the rollover equity shareholders in the successful exit several years later
- Represented the members of ToolingU, a venture-backed software and online learning company (for industrial sector) in the sale of the company to a high-profile national trade association
- Represented a U.S.-based corporation in the formation of a domestic joint venture with foreign partners to develop and commercially exploit a patented technology
- Represented a leading intelligence aggregator in the sale of the company to a joint venture formed by the top insurance companies in the U.S.
- Represented the shareholders of a high-profile technology and network consulting company in an exit transaction with a leading publicly held technology consulting company
- Represented a hedge fund in connection with a PIPE investment in a technology-focused company
- Represented numerous clients and corporate executives in the negotiation of employment agreements, non-qualified plans, equity incentives, and equity-related agreements

Manufacturing and Distribution; Business Services

- Represented a leading colorant manufacturer and its shareholders in the sale of the company to a private equity firm, including equity rollovers and management agreements; several years earlier, and as a key step in the successful exit, represented the company in the strategic acquisition of one of its largest competitors in the industry and related financing; with private equity support, the company has recently acquired another major competitor
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Represented a privately held corporation in the spin-off of a major operating division to the industrial platform of a major foreign-led investment fund

- Represented a foreign conglomerate and its North America holding company in the strategic acquisition of a privately held building materials manufacturer based in Michigan
- Represented a leading audio and video technology solutions company with a strong presence in the health care space in the sale of the company to one of its largest suppliers; the exit transaction was delayed for a short period in order for the company to complete a strategic acquisition of one of its top competitors, adding significant value to the exit valuation
- Represented a company engaged in brokering scrap in the aerospace industry to a strategic competitor
- Represented a Cleveland-based private equity fund in the acquisition of a lumber and hardwoods company as a platform acquisition, and the subsequent divestiture to a strategic buyer
- Represented a manufacturer of pressure-sensitive film label stock and a custom label manufacturer in strategic acquisitions by 3M Co. as part of a tax-free reorganization
- Represented the shareholders of a national chemical and coatings company in the sale of the company and its foreign subsidiaries to Akzo Nobel NV, the largest coatings company in the world
- Represented a public company in connection with the acquisition of a medical device company
- Represented the management team of a Cleveland-based manufacturing company ($500MM+ revenue) in the sale of the company by one private equity firm to another private equity firm, including management retention agreements, bonus plans, equity rollover, employment agreements, and restricted stock
- Acted as local counsel to a major steel manufacturing company and its private equity owners in the acquisition of several public and private steel manufacturing companies in Ohio
- Represented a private equity firm in the acquisition of a motorcycle manufacturing company
- Represented a steel service center company in connection with corporate restructuring and recapitalization
- Represented a Florida-based surgical instrument repair company in a sale to a publicly held strategic buyer
- Represented a leading international provider of parts and service to the beverage bottling industry in its strategic acquisition by a subsidiary of a leading Japanese trading company
- Represented a company in the acquisition of multiple product lines and divisions being spun-off as part of the corporate reorganization of a Cleveland-based public company
- Represented an Ohio-based manufacturing company in the purchase of a large competitor through a Section 363 secured party sale
- Represented a French energy conglomerate in connection with several acquisitions in the U.S.
- Represented a private equity group in the acquisition of a public national franchise company in a going-private transaction and related financing
- Represented a private equity firm in the corporate reorganization of a platform company
- Represented an auto dealer in connection with the acquisition of a distressed dealership and a

joint venture with another dealership
- Represented a joint venture in the strategic acquisition of a Chinese import business and related debt and equity financing
- Represented a tier-two auto supplier in connection with the sale to 100%-owned ESOP
- Represented numerous clients in the creation and implementation of equity incentive plans for key executives and employees

Transportation and Logistics

- Represented a privately held U.S. transportation and logistics company in the divestiture of a major joint venture interest to its strategic partner, which was affiliated with the Chinese government; represented the same client in a number of other strategic acquisitions and divestitures
- Represented a family-owned logistics company in a corporate restructuring that resulted in the CEO family member gaining 100% control and repositioning the company for significant growth
- Represented a shipping and logistics company in the acquisition of several trucking companies
- Represented equity investors in SaaS company focused on transportation and logistics

Professional Services, Wealth Advisory and Financial Services

- Represented a leading regional CPA firm and its affiliates and partners in a merger with a national CPA firm to become a top 15 national firm; the transaction also involved the separate merger of the wealth advisory practices of both CPA firms
- Represented an investment advisory firm and its shareholders in a merger with another investment advisory and fund management firm to create a new company with over $4 billion in assets under management
- Represented a privately held, Cleveland-based investment management firm in its strategic acquisition by a nationwide provider of wealth management services
- Represented the shareholders of a high-profile wealth management and investment advisory firm in the sale/merger of the company into another investment advisory firm, including equity rollover, employment agreements, and restricted stock awards
- Represented one of the nation's leading online sources for public records data in its strategic acquisition by an affiliate of the insurance industry's leading supplier of statistical data

Environmental Services

- Represented a leading environmental remediation services company and its shareholders in the sale to a private equity firm, including management retention and employment agreements and equity rollover
- Represented an environmental transportation and services company and its shareholders in the strategic sale to a leading national environmental services firm
- Represented a Northeast Ohio waste disposal company in the sale of the company to the largest publicly held waste company in the U.S.
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Represented the owner of a major landfill operation in the sale to a large public company
- Represented a private equity firm in an add-on acquisition involving a secured party sale transaction and debt restructuring

Consumer Products

- Represented The Great Lakes Brewing Co., a top 20 national craft brewing company, in connection with the formation of its ESOP in 2018
- Represented a high-profile consumer brands company in connection with the sale of its flagship brands in North America to a worldwide consumer brands company; the transaction also involved worldwide (outside of North America) licensing arrangements for the flagship and other brands
- Represented a leading retail goods company in connection with an out-of-bankruptcy debt restructuring, mezzanine financing, and corporate restructuring, including acquisition of all foreign shareholders

Real Estate

- Represented a regional real estate brokerage firm in connection with a national franchise “roll-up”
- Represented the selling shareholders of the then seventh largest U.S. residential real estate brokerage company in the sale to a publicly held buyer as part of a tax-free brokerage reorganization
- Represented one of Northeast Ohio’s largest real estate brokerage firms in its sale to a national real estate brokerage franchise in a management-led buyout
- Represented the buyer in connection with the acquisition and restructuring of a construction company, including corporate and debt restructuring
- Acted as special counsel to a St. Louis-based ski resort operator in its acquisition of two of Northeast Ohio’s ski resorts and related financing matters
- Represented a Canadian private equity group as Ohio counsel in its acquisition of Boykin Lodging Co. (a hotel REIT) as part of a going-private transaction and related financing

REAL ESTATE

Corporate Real Estate

- Represented a leading insurance broker in connection with lease of corporate headquarters, including building naming rights and major amenities
- Represented a public company in connection with lease of corporate headquarters facilities
- Represented a high-profile Cleveland-based company on construction contracts for its new corporate headquarters facility
- Represented a privately held company in the development of its worldwide corporate headquarters facility in Cleveland, Ohio at a former brownfields site; project involved site

acquisition, construction, environmental, tax abatements, job credits, port authority bonds, and state and city loans
- Represented a national franchise company in the acquisition of its U.S. headquarters facility in Ohio
- Represented a private equity firm in connection with the sale/leaseback of the headquarters office and operating facilities for several of its portfolio companies
- Acted as lead counsel to an Ohio public company in a $100-million plant expansion; project involved fast-track design and construction, technology implementation, equipment procurement and installation, sale/leaseback structure for tax purposes, tax abatements, port authority financing, State of Ohio development loans, and various other governmental grants and loans
- Acted as special counsel to a steel manufacturing company in the acquisition of several major steel manufacturing companies and facilities in Ohio and various development process design and expansion projects at these facilities
- Acted as lead counsel to a public company in the relocation of its corporate headquarters facility to Strongsville, Ohio; also regularly represented this company in connection with the acquisition and development, disposition, and leasing of various manufacturing, distribution, and retail facilities throughout the United States
- Represented a national publicly held company in connection with the acquisition and privatization of a state-owned prison facility in Ohio
- Acted as lead counsel to a local community college in connection with $100-million construction/renovation projects at three campuses, technology procurement, and its entire energy conservation (guaranteed savings) program involving all of its facilities

Development and Investment

- Represented a real estate joint venture in the recent development of a new high-rise residential, commercial, and parking project in downtown Cleveland, including various tranches of private and public financing and TIF
- Represented equity investors in a proposed joint venture development of a high-rise office, residential, hotel, and commercial project in downtown Cleveland
- Represented the developer of the Flats East project in Cleveland in connection with an anchor lease for 150,000+ RSF with a Big Four accounting firm and other tenant leases
- Acted as project leader and counsel for a national law firm in the firm's relocation to its new 100,000+-square-foot headquarters offices; the project involved site selection, lease negotiation, design, construction, technology, and relocation
- Regularly represented one of the largest shopping centers REITs in the United States in connection with portfolio shopping center divestitures, outlot sales, site assemblage and acquisition/development projects, ECRs, joint ventures and unwinds, and various financing transactions
- Represented a non-profit school in the acquisition and site development for a new high school facility and related financing
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Represented an auto dealership in the acquisition of dealerships and campus properties in Akron, Ohio

- Represented a client in the acquisition and assemblage of a 90-acre parcel in Northern Ohio and a joint venture for the development of a new retail mall and medical office building
- Represented a high-profile Cleveland-based developer and property owner in the sale and liquidation of its entire real estate portfolio, including shopping centers, apartment buildings, a theater, and a prominent Cleveland office building
- Represented various Ohio country clubs in the sale of real estate to commercial and retail developers, including the negotiation of all easements and restrictive covenants
- Represented a private equity firm in the formation of a joint venture for the development of a 60-acre parcel in Northern Ohio as a lifestyle shopping center, including various 1031 exchange transactions
- Represented a REIT in connection with the disposition of a portfolio of industrial buildings throughout the United States

FINANCE

- Represented a publicly held company in a $450-million unsecured credit facility and subsequent renegotiation to collateralize loans
- Acted as local counsel to a manufacturing company in senior and subordinated acquisition debt financing transactions in excess of $500 million
- Represents numerous clients in project financing for headquarters and plant expansion projects, including construction loans; tax abatements; tax credits; public financing; state, county, and city development loans and grants; equipment leases; and various other governmental incentives, grants, and loans
- Represented a national bank as agent in a series of syndicated real estate loans to national developers totaling over $500 million for projects in Ohio and Florida
- Represented various national banks in real estate “conduit” loans ranging from $5 million to $150 million
- Represented a national bank as agent in a $100-million syndicated loan to a national logistics company
- Represented a national bank in numerous participations on syndicated large corporate loans ranging from $50 million to $500 million
- Regularly represented various banks in asset-based and commercial loan transactions ranging from $5 million to $250 million
- Regularly represents national banks in the negotiation of complex intercreditor and subordination agreements
- Represented a Cleveland manufacturer in a bond offering for plant expansion
- Represented various corporate borrowers in port authority and other bond financing transactions

Publications & Events

SPEAKING ENGAGEMENTS

- "The Sweet Science of M&A Disputes," 2023 Business Law Institute on Corporate Law and M&A, Tucker Ellis LLP (January 2023)
- "Challenges Facing Boards of Directors: Key Issues in SEC Disclosures & Enforcement," The Directors Roundtable & the National Leadership Institute
- "Everything You Ever Wanted to Know About M&A But Were Afraid to Ask," U&B Business Group Series
- "M&A: Strategies for Success," U&B Business Group Series
- "New SEC Executive Compensation Disclosure Rules," PriceWaterhouseCoopers General Counsel Forum
- Speaker at several CLE presentations on a variety of corporate, M&A, real estate, and finance topics
- Various presentations to private equity firms on M&A, corporate governance, equity incentives, and executive compensation topics

MEDIA

- "The Future Of Dealmaking Post-Pandemic Will Need Time To Take Shape," *Smart Business Dealmakers* (May 2020)

Honors

- Martindale-Hubbell® AV Preeminent® Peer Rating
- Ohio Super Lawyers® (2006–2024)
  - » Top 100 Ohio Super Lawyers® (2012, 2014, 2022)
  - » Top 50 Cleveland Ohio Super Lawyers® (2012–2014, 2022)
- The Best Lawyers in America® (2007–2024)
  - » 2020 Cleveland Lawyer of the Year (Real Estate Law)
  - » 2018 Cleveland Lawyer of the Year (Mergers and Acquisitions Law)
  - » 2014 Cleveland Lawyer of the Year (Mergers and Acquisitions Law)
  - » 2013 Cleveland Lawyer of the Year (Banking and Finance Law)
  - » Real Estate Law (2007-2020)
  - » Corporate Law (2009-2020)
  - » Banking and Finance Law (2010-2020)
  - » Mergers and Acquisitions Law (2013-2020)

In the Community

- Leadership Cleveland, Class of 2007
- MetroHealth Foundation
  - » Board Chair (2018-2021)
  - » Board of Trustees (2009-2021)
  - » Executive Committee (2011-2021)
- MetroHealth Children's Hospital, Vision Advocacy Council
- Cleveland Zoological Society
  - » Board of Trustees (2012-present)
  - » Executive Committee (2014-2020)
- United Way, Corporate Fundraising Cabinet (2008-2009)
- Camp Ho Mita Koda, Board of Trustees (2003-2009)
- Juvenile Diabetes Research Foundation, Northeast Ohio Chapter
  - » Board of Trustees (2001-2009)
  - » Executive Committee (2002-2009)
- Ohio State Bar Association
- Cleveland Metropolitan Bar Association
  - » Board of Trustees (2003-2006)
  - » Corporation, Banking and Business Law Section, Chair (2001-2003)
  - » Banking Law Section, Leadership Team (2003-2006)
- Florida Bar Association
- Becker CPA Review Course, Instructor (1988-1998)