



2017 YEAR END REVIEW




2017 was another year of significant growth and successes for EG&S

- We added 6 new attorneys, bringing our total number of attorneys to nearly 80.
- In our Securities Practice, we act as counsel to more than 80 public companies.
- We expanded our Securities Litigation and Enforcement Defense Practice with the addition of 2 new members, David Gehn and Matthew Baum. Our Corporate & Securities and Labor & Employment Departments each grew as well.
- EG&S was honored with ringing the Opening Bell at NASDAQ in celebration of our **25th Anniversary** this past July.
- We have added another 20,000 square feet of office space, taking over another ½ floor at our current location.

Ellenoff Grossman & Schole LLP is regularly recognized by Chambers USA as a Highly Regarded law firm for Corporate and Securities. Chambers USA ranks leading firms and lawyers in an extensive range of practice areas throughout America. In particular, chambers noted the Firm's expertise in SPACs, IPOs, secondary offerings, PIPEs, venture financings and advisory work.

In 2017, the Firm was ranked #2 in the U.S. for number of IPOs among all U.S. law firms. The Firm handled 13 IPOs, for companies that raised more than \$2.5 billion. The Firm also retained the #1 ranking in number of SPAC issuance and PIPEs/RD financings on behalf of placement agents. In addition, the Firm handled numerous M&A transactions, including three worth more than \$1 billion each.



Their work was very good and they were also very responsive," says one client. Another adds: "They have done a great job assisting us with securities work."

BELOW ARE SOME HIGHLIGHTS (BY PRACTICE AREA) OF 2017:

Corporate and
Securities

Aggregate
financing activity
exceeded \$6
Billion

EG&S Completed:

- ❖ 37 Registered Directs
 - ❖ 21 Underwritten Public Offerings
 - ❖ 13 IPOs
 - ❖ 17 PIPEs
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REPRESENTATIVE CORPORATE TRANSACTIONS

Global Partner Acquisition Corp. and Purple Innovation, LLC announced that they entered into a definitive merger agreement pursuant to which Purple will become a subsidiary of GPAC, valued at approximately \$550 million. EG&S acted as counsel to GPAC.

Kayne Anderson Acquisition Corp. announced the closing of its initial public offering in the amount of \$350,000,000. EG&S acted as counsel to Kayne Anderson.

BioAmber Inc. announced the closing of their Underwritten offering in the amount of \$20,125,009. EG&S acted as counsel to the Underwriter.

Apollo Endosurgery Inc. announced the closing of their underwritten offering in the amount of \$35,983,491. EG&S acted as counsel to the Underwriter.

STRATA Skin Science Inc. announced the closing of their Registered Direct offering in the amount of \$40,652,594. EG&S acted as counsel to the Lead Investor.

Synthesis Energy Systems Inc. announced the closing of their PIPE offering in the amount of \$15,000,000. EG&S acted as counsel to the Lead Investor.

REPRESENTATIVE CORPORATE TRANSACTIONS

Forum Merger Corporation, announced the closing of its initial public offering in the amount of \$150,000,000. EG&S acted as counsel to Forum Merger.

Amyris Inc. announced the closing of their Registered Direct offering in the amount of \$87,343,875. EG&S acted as counsel to Rodman & Renshaw.

EG&S acted as counsel to MoviePass, Inc. in its sale of shares of common stock equal to 51.71% of the outstanding stock of MoviePass to Helios and Matheson Analytics Inc. for \$28,500,000. MoviePass has subsequently raised an additional \$20M and we acted as counsel.

China National Heavy Duty Truck Group Co. Ltd. announced that it has acquired 9.9% of UQM Technologies, Inc. for the amount of \$24,000,000 and has agreed to acquire an additional 24.1% of UQM. EG&S acted as counsel to CNHTC.

CytRx Corporation announced the closing of their Registered Direct in the amount of \$15,000,000. EG&S acted as counsel to H.C. Wainwright & Co.

REAL ESTATE

The EG&S real estate group continued its established practice with numerous leasing, acquisition and sale, development, joint venture and mortgage financing transactions. The Firm's real estate attorneys are always focused on providing a cost effective and pragmatic approach to assist our clients in reaching their goals. Our work is accomplished in a manner to meet clients' timing expectations and structuring requirements, efficiently negotiate and complete documentation, and thoroughly review and analyze due diligence items. The real estate group works hand-in-hand with other practice areas as the need arises including trademark licensing, employment matters, and corporate and tax structuring. The broad scope of the real estate group's practice is reflected in the types of transactions described below.

Counsel to landlords and tenants for leases and licensing arrangements in shopping and entertainment centers, retail condominium units, NYC storefronts, multi-occupant markets and office and medical complexes. The leasing transactions involved national, regional and local retailers, theaters, restaurants and grocery markets under store, office, net and ground leases.

Loan origination counsel in connection with our lending clients' commercial mortgage loan closings for all types of real property including multi-family, office and retail properties.

Counsel to real estate developers, owners and investors in connection with joint ventures accomplished through various investment vehicles for a variety of projects including office buildings, hotels, multi-family and mixed use projects and complexes in New York City and the surrounding Tri-State area. Our participation in these transactions included limited liability company and other joint venture agreements, CMBS and portfolio mortgage loan and mezzanine loan financings, construction financings, access and easement agreements, and development agreements.

Counsel to institutional and closely held investors in connection with acquisitions and sales of commercial real estate. Asset classes included office buildings, hotels, multi-family properties, condominium units and retail shopping centers.

REPRESENTATIVE REAL ESTATE TRANSACTIONS

Counsel to borrowers in a \$40,000,000 refinancing of two commercial properties located in New York City.

Counsel to lender in a \$13,500,000 refinancing of a portfolio of three mixed use buildings located in New York City.

Counsel to seller in a transfer of retail/commercial condominium units located in the Borough of Manhattan.

Counsel to landlord in a lease agreement for office space in San Diego, California.

Counsel to landlord in a lease agreement with a national retail tenant for 22,480 square feet of retail space located in New York City.

LITIGATION

The Firm's Litigation expertise is extremely broad, including sophisticated corporate and securities-related litigation, complex commercial disputes, real estate litigation, securities arbitrations, consumer credit and banking law, construction matters, employment law and executive compensation disputes, accounting and other professional malpractice matters as well as art and intellectual property litigation. Members of the firm also have sub-specialties in defending securities enforcement actions and investigations.

REPRESENTATIVE LITIGATION RESULTS ACHIEVED DURING 2017 INCLUDE:

June, 2017 - After filing and prosecuting claims in an action filed in the U.S. District Court for the Eastern District of New York on behalf of a literary agent seeking commissions earned in connection with his representation of the author and publisher of an internationally best-selling non-fiction work, the Firm achieved a settlement favorable to the client during a mediation before a U.S. Magistrate Judge.

July, 2017 - Acting as litigation counsel to a Connecticut law firm representing the owner of a residential building in Manhattan in a sale of the property, attorneys of the Firm defended the seller in several state court actions filed by tenants seeking to block the transaction, and assisted in achieving the resolution of those lawsuits as well as associated issues with the purchaser, resulting in a successful closing for the seller.

August, 2017 - On behalf of the frustrated purchasers of a new build condominium unit in Manhattan whose demand for rescission and return of their contract deposit due to Sponsor's failure to complete the unit had been rejected despite the declaration of "time is of the essence" by purchasers' real estate counsel, the Firm achieved the immediate refund of the clients' entire \$287,500 contract deposit as the result of a highly effective pre-litigation letter setting forth the factual and legal basis for the clients' otherwise inevitable filing of a lawsuit.

December 2017 - The Firm represented a group of three physicians in a lawsuit in Supreme Court, Westchester County, arising out of their separation from a medical practice and, on the day of trial, achieved a favorable settlement of all claims and counterclaims enabling the clients to continue their successful practice.

2017 - On behalf of a number of restaurants and retail stores, the Firm defended Firm clients in a number of lawsuits filed in Federal court for claims under the Americans With Disabilities Act.

2017 - The Firm continued to represent a major national factoring company in commercial actions throughout the New York metropolitan area to enforce the client's payment rights under its account receivable financing agreements.

BROKER-DEALER REGULATION

Our Broker-Dealer Regulatory Department continues to work with the SEC, FINRA and state regulators on crowdfinance issues and with industry participants on multi-purpose platforms hosting offerings under Regulations D, A+ and/or Crowdfunding. The group is also working with industry and regulators on initial coin offering compliance and distributed ledger technology protocols.

EG&S was invited by FINRA's Advertising Regulation department to be a panelist on the first session dedicated to crowdfinance at its 2017 annual conference.

EG&S participated on two panels at the June 2017 NCS Regulatory Compliance Services annual client conference in Palm Beach: Anti Money Laundering Best Practices for BDS and RIAs; and Examination Best Practices.

In both 2016 and again in 2017 EG&S conducted a legal review of the adequacy of policies and procedures and their implementation for the US broker-dealer affiliate of a large global bank.

EG&S also advised a well-known US broker-dealer during its Rule 15c3-5 compliance review, including drafting of new electronic trading and algorithmic trading agreements.

ENFORCEMENT DEFENSE AND SECURITIES LITIGATION

Transitional Advice:

We advised over 20 individuals in connection with their successful transitions (both Protocol and non-Protocol) from one financial institution to another

RIA Counsel:

We modified and drafted written policies and procedures; drafted and/or advised on employment and/or independent contractor agreements; and prepared buy/sell agreements for clients

Securities Regulatory and Arbitration Matters:

We represented nine clients in connection with SEC subpoenas, including a publicly traded company, principals of privately held entities, and an investor relations firm

We represented a bond trader in connection with a Wells Submission to the SEC

We represented individuals and broker-dealers in connection with on-the-record testimony concerning nine different FINRA investigations

We represented clients in connection with more than 12 FINRA arbitrations including both industry and customer disputes

We successfully obtained the denial of a temporary restraining order for a broker-dealer client concerning an employment dispute

Vacatur of Arbitration Award:

Our attorneys successfully represented an individual in vacating over \$2.4 million in relief granted in an American Arbitration Association award

Internal Investigations:

We are leading a whistleblower investigation for a publicly traded company

Delaware Books and Records:

We represented a publicly traded company in connection with a Section 220 prospective books and records action in Delaware Chancery Court

LABOR AND EMPLOYMENT

Successfully handled almost 300 matters for over 175 different clients, including numerous harassment, discrimination and wage/hour litigations, employment contracts, compliance projects (including employee handbooks) and DOL audits. **Some highlights:**

- ❖ Represented clients in complex, nation-wide, wage/hour class action litigations
- ❖ Conducted sexual harassment investigations for numerous clients
- ❖ Prepared clients for New York Family Leave Law and New York Fair Workweek Law implementation
- ❖ Secured dismissal of every charge of discrimination, harassment and retaliation filed against our clients at the EEOC, State Division and City Commission
- ❖ Resolved numerous potentially devastating FLSA lawsuits against restaurants, retailers and other clients
- ❖ Advised clients regarding tip pooling, sharing and distribution programs across all restaurants/bars and locations and prepared written programs
- ❖ Advised clients regarding dozens of FMLA and/or disability leave management and reasonable accommodation issues
- ❖ Prevailed on a motion to dismiss claims of fraud, breach of fiduciary duty, and for an accounting, against a construction company and its principal
- ❖ Prepared numerous multi-state handbooks
- ❖ Advised several public companies and not-for-profits on employment agreements, and in mergers regarding executive employment terms and compensation issues
- ❖ Advised client through exempt classification audit for more than 1200 employees across numerous states

INTELLECTUAL PROPERTY

Agreements and Licenses:

Drafted and negotiated an enterprise license for services provided via online platform.

Analyzed and negotiated agreement for distribution of salt-based products.

Created contracts for wholesale purchasing on behalf of entertainment subscription service.

Advised clients in connection with negotiating and executing patent and intellectual property licenses and collaborative research agreements with universities related to pharmaceutical development.

Adversarial Matters:

Defended grocery chain against claims of copyright infringement arising from use of allegedly copyrighted photographs.

Represented clients in connection with patent enforcement and defense against patent infringement allegation relating to varied products and services, including software, mechanical, devices, and clothing.

INTELLECTUAL PROPERTY (CONTINUED)

Trademark Prosecution:

Assisted clients with obtaining over 40 U.S. trademark registrations and filing more than 30 new U.S. trademark applications.

Collaborated with foreign associates to secure trademark registrations in various jurisdictions around the world.

Patent Prosecution:

Prepared and prosecuted patent applications involving technologies including software, mobile applications, financial services, RFID tags, and agricultural systems.

Due Diligence and Strategic Advice:

Advised investment firm in connection with investment in patent litigation plaintiff.

Conducted IP due diligence in connection with securities offerings, mergers, and SPAC transactions involving a wide variety of products and technologies, including pillows and mattresses, pharmaceuticals, software, assays, biotechnology and consumer products.

TRUST & ESTATES

The Firm's Trusts and Estates practice continued to grow this year, with a return to uncertainty as a result of pending changes to the Federal tax code. Although it seems inevitable that some changes will be implemented, it is unclear what exact changes will be made. In addition, how New York State will respond to any Federal changes remains a mystery. Once the changes become clear, all existing estate plans should be reviewed to ensure that our clients' estate planning goals continue to be met.

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

Advised plan sponsors and fiduciary clients on Internal Revenue Code and ERISA compliance matters arising under qualified retirement plans and non-qualified deferred compensation arrangements.



Advised on and implemented corrections of operational defects under IRS's Employee Plans Compliance Resolution System.



Assisted clients on compliance with regulatory complexities under the Patient Protection and Affordable Care Act.



Advised individual clients in employment transitions regarding executive and equity compensation matters.



Assisted firm attorneys with employee benefit and executive compensation matters arising in M&A transactions, securities offerings, and employment matters.

We'd like to take this opportunity to thank our clients and friends for helping us to achieve these and other successes in the past year. We look forward to working with you in 2018. Also, we encourage you to visit our website (www.egsllp.com) to familiarize yourselves with the new faces in the Firm, access key resources and to learn more about our range of practice areas and expertise. If you have any questions or comments, please feel free to call us.

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