

Robin Panovka and  
Adam Emmerich

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# ADAM EMMERICH AND ROBIN PANOVKA

BY KATRINA DEWEY

## ONE OF THE THINGS ABOUT LUNCHING

at a fab place like Le Bernardin is that it's mind blowing. The art, the elegance, the service, the fish, Eric Ripert. A person could swoon even without a glass of wine.

But that's not really how business is done now, is it? What's way more fun is to paw one's way through one dish after another trying to keep up with two of the most dynamic and smartest partners around - the impossibly suave Adam Emmerich and the elegant Robin Panovka. They rule the REIT practice at Wachtell Lipton, which means they are the Rulers of REIT M&A, which is really big business. They are also noted global dealmakers and leading real estate strategists. Together, they helped Silverstein Properties redevelop the World Trade Center site after 9/11, in addition to advising leading REITs on their biggest deals and most complex and sensitive matters. Since the early '90s, they have been key players and innovators helping to fuel the growth and consolidation of REITs.

REIT legislation was signed by President Dwight Eisenhower in 1960, creating a vehicle that combined the best attributes of real estate and stock investment. Since then REITs have grown into a \$2 trillion asset class, which is expected to continue its fast-paced growth in the next decade. In 2016, REITs were carved out as an 11th sector of the S&P 500.

If you're reading this sitting in an office building, it's likely owned by a REIT. If you're going to a shopping mall later, it's almost certainly owned by a REIT, and if it's less than full, it's probably being considered for a data center or an elder care facility. If you're talking on a cell phone, it's bouncing off a tower likely owned by a REIT. If you work in a big corporate headquarters, it's likely been sold to a REIT or is on its way. Real estate is so 1950s.

More salmon rilette, anyone? Yes, please.

**Lawdragon:** How did you get involved with REITs?

**Robin Panovka:** In the early '90s, REITs were starting to emerge, and it was clear to us that they were going to grow fast and consolidate into larger companies. That growth and consolidation - and the inevitable M&A and large-scale deal activity - seemed like an interesting opportunity for us at Wachtell Lipton. So

Adam and I, along with our tax partner David Einhorn, formed our REIT M&A task force to focus on the area.

**Adam O. Emmerich:** We realized quickly that REIT M&A deals are best handled by a multi-disciplinary team with expertise in REITs and real estate, corporate law and public company M&A, and of course tax. The deals are complex, and we've found that we can best add value if we bring to bear all of these areas of expertise in a cohesive, seamless way. Our firm is structured perfectly for this kind of approach; we're flexible and we work well in teams focused on achieving the best results for our clients.

**LD:** What made REITs grow so quickly?

**RP:** REITs brought to the real estate markets something they desperately needed - liquidity, transparency and good corporate governance. Real estate is a capital intensive industry, so the logic of moving the industry from Main Street, so to speak, to Wall Street, was just too compelling not to work. REITs are, in essence, liquid real estate that generates a steady flow of dividends, which, particularly in the yield-starved world we still live in, is a very compelling idea.

**LD:** And why the consolidation into bigger companies?

**AOE:** Well, when we got started, the industry was incredibly fragmented, like many emerging industries. Think automakers in 1920. There were a large number of very small REITs, and the advantages of scale quickly became evident. One of the most important advantages is the lower cost of capital and the financial flexibility enjoyed by larger REITs. REIT combinations also deliver synergies, and often result in better run, more transparent, efficient and liquid vehicles.

**LD:** So how did you get started developing Wachtell's REIT M&A practice?

**AOE:** At the beginning we didn't know much about the area - we weren't really involved in regular REIT work or IPOs, so we started reading and getting educated. Then, as we gained expertise, we got to know key players in the space and started getting involved in deals.

**RP:** We were fortunate in that one of our first key clients in the space hired us to help them buy significant stakes

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in a number of REITs in different sectors over a couple of years, so we had the opportunity to learn about how the target companies were structured, figure out how they should be restructured and recapitalized, and get to know their boards and management teams, as well as the investment bankers and others working in the space. It was a great introduction.

**LD:** How did the practice evolve?

**AOE:** After we established ourselves in the space and developed relationships with key players, deals followed deals at a very fast pace. It's been a very productive and rewarding practice area for the firm, and very interesting. In many cases, we represent the consolidator in a particular sector, and have handled many deals for them as they have grown over the years. The deals started out fairly small when the industry was small, but at this point they are quite sizeable. For example, we just completed a \$15 billion merger of two shopping center REITs, and over the last few years have handled many similarly sized mergers involving hundreds of billions of industrial, healthcare/senior housing, self-storage, office, mall, apartment, single-family homes and other real estate.

**RP:** In addition to mergers, we've also advised on several large REIT spin-offs - both REITs spinning off other REITs and regular businesses spinning out their real estate - as well as takeover and activist defenses, private equity buyouts, governance matters, and various strategic transactions. It's been busy.

**LD:** Are activists as much of a factor for REITs as other public companies?

**AOE:** Yes, increasingly so. REITs are increasingly being targeted, and it's important for REITs to be prepared, and to be in essence their own activists, generating ideas and considering alternatives. In most cases, activist attacks on REITs demonstrate short-term thinking and ideas that are already under consideration - like selling assets when the REIT is trading below the value of its assets - but once in a while the outsider's perspective can spotlight an interesting opportunity. So it has to be handled on a thoughtful, case by case basis.

**LD:** How are REIT mergers different than other mergers Wachtell handles?

**RP:** REITs have a number of unusual features that come into play in M&A deals, like the so-called UpREIT structure that utilizes an operating partnership, and so-called excess share ownership restrictions in REIT charters. And of course there are the REIT tax rules, which can have significant impacts and ripple effects on deals. REIT deals represent a marriage of real estate and corporate deal cultures, customs and technologies, as well as some different valuation and accounting metrics, so they can't be approached in a rigid corporate framework. And of course, the boards and CEOs often come from the entrepreneurial real estate world, which for me makes it a lot of fun.

**LD:** Are there hostile deals involving REITs?

**AOE:** Definitely. There are probably fewer hostile deals in REIT-land, largely because of the smaller takeover premiums that are typical of REIT transactions, but structurally REITs are no more takeover proof than any other public companies. The con-

ventional wisdom that REITs are takeover proof is, well, conventionally wrong.

**LD:** What about the real estate that's owned by regular corporations, like headquarters buildings? How does that fit in with REITs?

**RP:** You're touching on an interesting area. We've been involved in a number of transactions in which corporate real estate has been moved into REITs - for example the spin of a gaming REIT out of a gaming company and the creation of a REIT to own and lease back retail properties - and we expect these kinds of transactions to continue. Companies that own significant real estate assets which aren't adequately valued by the market sometimes want to consider strategies to "unlock" the real estate value. There are a number of strategies to be considered, and in some cases creation of a REIT or a sale-leaseback might make sense.

**LD:** Have there been bumps in the road as the REIT industry has grown, or has it been a straight line?

**AOE:** The financial crisis was quite a big bump. REIT stocks joined the rest of the market in losing tremendous value, and that made their debt loads look heavy. But only one REIT filed for bankruptcy, and the REIT market fared much better than the private real estate market. In the end, the financial crisis probably strengthened the REIT industry, in that it caused REITs to recapitalize and showed the advantages of the REIT structure. REITs have now been battle-tested and emerged with flying colors.

**LD:** How has technological disruption affected REITs?

**RP:** As in other areas of the economy, there's been a tremendous impact and my guess is that we're just getting started. The so-called "bricks versus clicks" disruption has been most evident in the retail/shopping center sector, but it's having an impact everywhere. Just think Airbnb (hotels), WeWork and the mobile work force (office), not to mention self-driving cars, drone deliveries, altered reality and technologies we haven't even dreamed about. Some of the biggest and fastest growing REITs today are driven by technology, like cell tower REITs, data center REITs, and industrial/warehouse REITs that facilitate online shopping. REIT boards need to be nimble and keep an eye on these trends, now more than ever.

**LD:** What do you enjoy about the REIT M&A work?

**AOE:** For one thing, the fast-paced growth and innovation. Also the relationships we've formed with the leaders of REITs who we've been working with for many years. These are often remarkable people who founded the company or took it from nothing to an S&P 500 company. REITs are often incredibly flat, lean organizations, and that's a nice thing to deal with. It's a very dynamic, interesting practice.

**RP:** In many cases, we've been working with companies for more than a decade or even two, since they got started and made their first acquisition, so we have a real personal interest in them and their success.

**LD:** So what comes next for the REIT industry?

**RP:** It seems almost inevitable that the strong flow of properties into REITs, both in the U.S. and abroad, will continue, which obviously involves lots of deal activity. The U.S. REIT market is already over \$1 trillion, and the European and Asian markets, which developed later, have already grown beyond \$200 billion each. There's tremendous room for growth abroad, but even in the U.S. significant growth is expected, part of it from continuing consolidation by the existing leading REITs, part of it from fast-growing tech-REITs, and part from the expansion of REITs into new property types and the movement of corporate real estate into REITs. There is still a tremendous amount of real estate outside of REITs that might be better positioned in a REIT solution.

**AOE:** No question, we expect a steady flow of M&A deals as REITs continue to get bigger and consolidate their sectors. The 30 REITs now in the S&P 500 - up from zero 16 years ago, by the way - already have an average market cap of about \$20 billion and represent 55% of the REIT market. The big are getting bigger, but still have tremendous runway.

**LD:** How does your work rebuilding the World Trade Center fit in with the REIT practice?

**RP:** It's really part of our broader strategic real estate practice. In addition to REIT M&A we advise on major development or city-building projects, joint ventures, private equity fund formations, and other high-stakes matters. Our firm spent many years working on the WTC rebuilding effort, starting days after 9/11, and we are proud of the role we played in this important effort and of course very gratified at the progress at the WTC and downtown.