

DEALMAKERS

Rick Climan

Tech M&A Maestro at Hogan Lovells

The M&A Journal



M&A guru Rick Climan speaking at an M&A conference in San Francisco

Rick Climan is the kind of M&A lawyer who not only knows his stuff but also knows how to teach it, practice it, publicize it, and improve it.

He is a tech M&A partner in a hot global law firm, a law professor, a chairman of large committees, a math and statistics whiz, a formidable deal negotiator, a gifted writer, an ardent sports fan and historian, an inventor of an M&A metric that helped transform deal negotiations, the co-creator of new tools to analyze futile and dynastic sports teams (which sparked a national tour of sports radio talk shows), a champion of women in the law and diversity, a mentor, a thought leader, a professional speaker and conference star, even a designer of popular animated M&A training cartoons.

What's more, he is the consummate "connector," in the sense popularized by Malcolm Gladwell in his book *The Tipping Point*—a person with a foot in so many worlds that he brings them all together. Mr. Gladwell might well have modeled the term after Mr. Climan, who certainly has a foot in every corner of the M&A universe and the dealmaking ecosystem.

As global head of the Firmwide Tech M&A Practice at Hogan Lovells operating out of Silicon Valley, the Harvard-educated Mr. Climan is one busy lawyer. One day he's coaching a negotiating team of law students at his alma mater. The night before he's directing and starring in mock deal negotiations at Columbia Law School. He can often be found as a guest lecturer at top law schools across the country.

Everywhere he goes, he teaches. Students, associates, clients, international lawyers and bankers, C-Suite corporate officers, law professors and practitioners have all heard him speak at major conferences and institutes around the world. He is considered one of the most prolific speakers on M&A-related legal topics in the country.

His team's list of clients is awe inspiring. They've included Meta, Oracle, Walmart, Marvell Technology Group, Synopsys, eBay, Intel, Adobe, PayPal, Splunk, Electronic Arts, Salesforce, Applied Materials, Atlassian, Sabre, Autodesk, and Jazz Pharmaceuticals.

Mr. Climan also organizes and chairs a regular live conference, known as the Silicon Valley M&A Forum, which he started while a partner at Cooley some 20+ years ago and which has built a large and loyal following across the country. Every spring, he leads the Hogan Lovells M&A Boot Camp training program, a basic virtual M&A course he developed that draws hundreds of students from over 50 U.S. law schools, as well as in-house counsel, investment bankers, and junior M&A professionals looking for an introduction to the legal aspects of M&A. He is also a founder and champion of the national "Women in M&A" initiative, now under the auspices of the American Bar Association's M&A Committee, which he actively promotes at his Silicon Valley M&A Forums and through his M&A Boot Camp.

So who is this guy?

Richard E. Climan grew up in New York City in Jackson Heights, Queens. He skipped eighth grade as part of the "special progress" program in New York City public schools and entered Stuyvesant High School, a math/science-focused magnet school in Manhattan, a year younger than most of his classmates. Stuyvesant was a long subway commute from his home in Queens. ("F train to the Canarsie line," he recalls.) One of his classmates at Stuyvesant was Steven Davis, who later became the chairman of the law firm Dewey & LeBoeuf before that firm fell apart in 2012, about which more later.

Mr. Climan entered Harvard College and got his A.B. in 1974 where he began as a physics major and later changed his concentration to economics. He was a regular player in the late-night, high-stakes poker games held at Currier House during his undergraduate years. A very young Bill Gates, later of Microsoft fame, was an occasional participant during his lone year at Harvard. (Mr. Climan is credited with bringing the term "sandbagging"—now part of the M&A lexicon—to the M&A field after hearing that term used in the Currier House poker room to describe a prohibited (check-raise) betting strategy.)

Mr. Climan was admitted to Harvard Law School and got his J.D. degree in 1977. His senior-year roommate at Harvard College has become one of the most respected legal scholars in the nation, Harvard Law School Professor Cass Sunstein.

As a born-and-raised New Yorker, Mr. Climan grew up rooting for New York's old-line professional sports teams: the Giants, Rangers, Yankees, and Knicks. He is an avid fan of all of them to this day. "Old loyalties die hard," he says. Later, he would negotiate the sale of the storied Los Angeles Dodgers baseball franchise to its current owners.

After law school, Mr. Climan did not take the traditional Wall Street career path and instead headed straight to the West Coast to build a career. He joined Pettit & Martin, a large law firm in San Francisco, where he made partner at age 30. A

decade later, in 1993, he made his first lateral move to Cooley in Silicon Valley, as a partner and head of the firm's M&A Group. His next stop was Dewey & LeBoeuf, followed by Weil Gotshal, which he left with his team in 2017 for Hogan Lovells, where they remain today.

Two of the law firms that hired Mr. Climan—Pettit & Martin and Dewey & LeBoeuf—no longer exist. Except for his brief stint at Dewey & LeBoeuf, which was cut short by that law firm's sudden and spectacular implosion in 2012, Mr. Climan has spent a long time at each of his firms between lateral moves.

Cooley had lured Mr. Climan from San Francisco to Silicon Valley in 1993, when the tech sector was still in its relative infancy, asking him to build a firmwide M&A group virtually from scratch. At the time, California law firms used corporate generalists to staff their M&A deals. But at Cooley, Mr. Climan pioneered the idea of building a highly sophisticated, stand-alone group of transactional lawyers dedicated exclusively to tech M&A, a model similar to the one favored by the large Wall Street law firms, but very different from the so-called Larry Sonsini "jack of all trades" model prevalent in California at the time. Mr. Climan rejected the "jack of all trades" model, which was built around corporate generalists who could claim to be all things to all people—lawyers who could run a small venture capital financing one day, a simple licensing deal the next day, an IPO the following day, and a mid-market M&A deal the day after that. But what they lacked was the sophistication and experience to handle the largest and most complex M&A deals.

Mr. Climan's first lateral associate hire for his M&A Group at Cooley was Keith Flaum, followed later by Jane Ross from a Canadian law firm as a junior associate and John Brockland, a tech-focused transactional associate, who came over to Cooley from a Chicago law firm around the same time as Ms. Ross. All three quickly advanced to partnership at Cooley as part of Mr. Climan's group. They all remain partners at Hogan Lovells today and are considered the pre-eminent tech M&A team in California, if not the nation. Mr. Climan remarks, "Our success at Cooley and beyond is attributable as much to the three of them as it is to me."

Mr. Climan's model for building his M&A group at Cooley proved to be a major success, with large, publicly traded companies looking to work with dedicated M&A specialists who lived and breathed M&A, rather than with general corporate lawyers who merely dabbled in it. By the end of his stint at Cooley, Mr. Climan and his M&A team had amassed a sizable following of powerful tech-focused M&A clients, giving the group a huge market share in the legal tech M&A world. The team also became known for its unusually high proportion of women associates, at a time when gender diversity was not being actively pursued by most other law firms.

The practice built by Mr. Climan at Cooley extended well beyond Northern California. While at Cooley, he was endorsed to global legal evaluation organization *Chambers and Partners* as a "national figure" and "one of the best M&A attorneys in the country," and was hailed by *Lawdragon* magazine, as part of its compilation of its annual list of the 500 leading lawyers in America, as "one of the few California corporate lawyers 'who are as good as any top New York lawyer'" and as an "M&A superstar [whose] stellar reputation extends far beyond Silicon Valley to the global stage." Mr. Climan's name was included on that list of top American lawyers so frequently that just last year he became one of the few M&A lawyers in the country to be enshrined in *Lawdragon's* exclusive Hall of Fame.

Also while at Cooley, Mr. Climan was appointed to a four-year term as Chair of the influential M&A Committee (then called the Committee on Negotiated Acquisitions), a large, global committee of the ABA's Business Law Section which now boasts a membership of over 5,000 transactional lawyers. It was as a member of that committee that Mr. Climan developed some of his most important and enduring connections. Climan credits his association with the M&A Committee, which he originally joined in 1989, for contributing to his development and maturation into a top-tier M&A practitioner. "I learned more about M&A from the other members of the M&A Committee than from just about any other source," he says. "Joining and then chairing that committee were career-transforming events for me." It was also through the M&A Committee that Climan and others on the committee perfected the use of the "mock negotiation" as a highly effective tool for teaching and training younger lawyers and law students.

In July 2009, after spending 16 years running the M&A practice at Cooley, Mr. Climan moved laterally to the Silicon Valley office of newly merged New York powerhouse Dewey & LeBoeuf. He made the move in part to accommodate his team's thriving cross-border practice, as Dewey & LeBoeuf boasted a dozen international offices around the globe, while Cooley had yet to open an office outside the U.S.

Mr. Climan brought with him the three other key partner members of his tech M&A team—Mr. Flaum, Ms. Ross, and Mr. Brockland—together with a fourth partner, MIT and Harvard Law School grad Eric Reifschneider, who ultimately decamped for tech behemoth Qualcomm. When news of the move to Dewey & LeBoeuf broke, the California legal community was stunned. The legal press likened the move to an “earthquake rocking Silicon Valley’s legal world.” Major buy-side clients Mr. Climan’s team represented at Cooley quickly sent their M&A work over to the team’s new home. Many have remained clients of Mr. Climan’s team to this day.

Mr. Climan and his team thrived at Dewey & LeBoeuf, but they were forced to move yet again when, after less than three years there, the firm’s financial performance plummeted and the firm’s doors were shut for good after one of the largest and most closely followed law firm bankruptcies in history. Under exceptionally challenging circumstances, Mr. Climan and his team stuck together and continued doing major deals at Dewey & LeBoeuf until the very end. The last big transaction they handled at Dewey & LeBoeuf—indeed, the last major deal handled by anyone at Dewey & LeBoeuf before the firm’s demise—was the multi-billion-dollar sale of the iconic Los Angeles Dodgers baseball team in 2012, which, along with his successful hostile defense of Illumina earlier that year, Mr. Climan describes as among the most memorable deals of his career.

In the midst of Dewey & LeBoeuf’s highly publicized collapse, Mr. Climan and his team fielded aggressive overtures from the managing partners and senior leaders of dozens of law firms across the country looking to expand their reach in Silicon Valley. The suitors included major white-shoe Wall Street law firms that had never brought in lateral partners in their long histories but were prepared to make Mr. Climan and Mr. Flaum their first ever lateral partner hires.

Under extreme time pressure from clients that did not want their M&A work handled by a law firm on the verge of bankruptcy, Mr. Climan and his team finally chose to move to Weil Gotshal’s Silicon Valley office, where they continued to practice together for five years. While at Weil, the group handled extremely high-profile deals, including Facebook’s mammoth \$16 billion acquisition of WhatsApp.

The quartet made headlines again in 2017 with their move to Hogan Lovells from Weil Gotshal, helping to transform Hogan Lovells into a tech M&A powerhouse overnight. The group chose Hogan Lovells primarily because of its unparalleled international footprint, which could provide a significant leg up in a tech M&A marketplace that was seeing a major expansion in cross-border activity. Hogan Lovells also enjoyed a much vaunted culture of legal excellence, high performance and seamless cross-practice and cross-jurisdictional teamwork. Virtually all of the Climan team’s clients followed the team to Hogan Lovells, which now commands a sizable market share in the worldwide legal marketplace for strategic tech M&A transactions. The foursome has now worked together for almost 25 years.

Among all the hundreds of M&A deals and related matters he has worked on, a few stand out for Mr. Climan. Among those are two megadeals he ran at Hogan Lovells, two matters he handled at the end of his stint at Dewey & LeBoeuf and one matter he handled at Cooley.

In 2018, shortly after arriving at Hogan Lovells, Mr. Climan and his team acted as lead transactional counsel to retail giant Walmart in its approximately US \$16 billion cross-border purchase of a majority stake in Flipkart, a sizable Singapore e-commerce company based in India. This transaction, which transformed the Asian e-commerce marketplace, is by far the largest e-commerce M&A deal in history. It is also the largest M&A transaction ever completed by Walmart and is believed to be the largest or second-largest venture capital exit in history. In December 2019, Mr. Climan was recognized by the *Financial Times* as a U.S. “Innovative Lawyer” in the “Managing Scale and Complexity” category for leading this watershed transaction. It was the third innovation award received by Mr. Climan from the *Financial Times*.

Mr. Climan led the team that advised Marvell Technology Group, a large-cap, Nasdaq-listed leader in infrastructure semiconductor solutions, in its acquisition of publicly traded Inphi Corp., a high-speed data movement platform. This complex cash-and-stock megadeal, valued at approximately \$10 billion, closed in 2021. The transaction, with its complex “double-dummy” structure, entailed two shareholder votes, a multi-billion dollar debt financing, and the reincorporation of Marvell from Bermuda to the United States. The deal was negotiated at the height of the COVID pandemic, with the most important negotiations taking place face-to-face in a somewhat surreal outdoor setting, with Mr. Climan and the other negotiators fully masked.

In 2012, with Dewey & LeBoeuf collapsing around him and his team, Mr. Climan and Mr. Flaum led the successful defense of Illumina, the publicly traded developer of gene sequencing technologies, against a hostile takeover attack waged by biotech giant Roche. The matter was bitterly contested, with Roche launching a \$6+ billion hostile tender offer and proxy contest. Today, Illumina has a market capitalization of over \$20 billion.

Mr. Climan says he had the most fun of all negotiating the sale of the Dodgers baseball franchise to a consortium led by Guggenheim Partners in 2012, under the watchful eye of Major League Baseball. This was the last major deal handled at Dewey & LeBoeuf before that law firm’s bankruptcy. At over \$2 billion, the purchase price paid for the Dodgers was, at the time, the largest dollar amount ever paid for a professional sports franchise.

Representing the Dodgers was a somewhat emotional experience for Mr. Climan. As a die-hard NY Yankees fan since his pre-teen years, Mr. Climan remembered all too well the Yankees’ depressing loss to the Dodgers in the 1963 World Series when he was just 10 years old. He also remembered the exhilarating Yankees’ World Series victories over the Dodgers in 1977 and 1978, and the Yankees’ disheartening World Series loss to the Dodgers in 1981.

Mr. Climan was invited by the Dodgers to be their special guest at their home opener in 2012 in the owner’s suite at Chavez Ravine, where Mr. Climan met the fabled Dodgers old-time greats he had only seen on television, a dream come true for any baseball fan. He treasures the closing gift he received, an authentic Dodgers jersey with his name and a special number, representing the amount of the record purchase price paid for the team, embroidered on the back.

In 2004, while at Cooley, Mr. Climan led the negotiation of the proposed acquisition by tech client Synopsys of publicly traded Monolithic System Technology (“MoSys”). After the signing and announcement of the acquisition agreement, Synopsys delivered a notice terminating the acquisition agreement, relying on the provisions that Mr. Climan had negotiated in the agreement. Shortly thereafter, MoSys brought suit in the Delaware Court of Chancery to try to have the termination declared invalid and to force Synopsys to proceed with the deal. The dispute was closely monitored by the legal press.

After three days of trial in Delaware, at which Mr. Climan’s provisions were closely scrutinized and where he was about to testify, MoSys agreed to dismiss its suit with prejudice. This was considered a great result for Synopsys. A Cleary Gottlieb M&A partner called the wording of the walk right negotiated by Mr. Climan “an amazing victory for the buyer.”

Over the past 25 years, Mr. Climan has built a reputation as a law pundit, educating the California legal and business communities on important M&A trends and developments through the Silicon Valley M&A Forums he organizes and runs. The origins of the M&A Forum trace back to Mr. Climan’s tenure as a partner at Cooley three decades ago. Cooley had recruited him to lead and build the firm’s M&A practice just as Silicon Valley was starting to take off as a major M&A hub. Silicon Valley has now surpassed New York as a center for tech M&A activity.

M&A Forums today typically attract a live audience of about 150, filling the main ballroom at the Four Seasons Hotel in Palo Alto to capacity. They are invitation-only events, attended by a Who’s Who of leading Silicon Valley players. The live audience consists of Hogan Lovells lawyers, general counsel and other lawyers from corporate clients and prospective clients, CEOs and financial and corporate development executives from major companies, top-tier investment bankers,

law students from leading law schools and members of the press. The Forums are also simulcast via livestream to a dozen Hogan Lovells office locations across the Americas.

The mock negotiations regularly conducted between Mr. Climan and Mr. Flaum at the M&A Forums provide the basis for the widely viewed M&A negotiating cartoons produced by the Hogan Lovells team. A number of corporate law professors across the country have built those entertaining cartoons into their course curricula and utilize them as practical training tools for their students.

Mr. Climan made headlines shortly after arriving at Hogan Lovells for inventing a new M&A metric, named the “Buyer Power Ratio,” or BPR, which changed the way M&A practitioners across the U.S.—particularly those representing large-cap strategic acquirers—negotiate their acquisitions of privately held companies. The BPR is used as a measure of the parties’ relative negotiating strength and ability to extract favorable deal terms. The influential BPR deal points study that Mr. Climan founded and co-chaired is particularly relevant to acquisitions of venture-backed tech start-ups by Silicon Valley’s serial tech acquirers. The study’s release received widespread media attention from the *Wall Street Journal* and other press outlets, and endeared Mr. Climan to his firm’s large-cap M&A clients.

While at Cooley, Mr. Climan and his fellow partner Eric Reifschneider, both avid professional sports fans and both avowed “numbers guys” with mathematical backgrounds, created the “Futility Index” (a sports metric which showed that the NY Rangers of 1941 to 1993 were the most futile professional sports franchise of all time) and the “Dynasty Index” (which showed that the NY Yankees were the most formidable professional sports dynasty of all time). Both the Futility Index and the Dynasty Index received extensive press coverage in the *Wall Street Journal* and other media outlets, and Climan and Reifschneider found themselves in great demand as guests on sports radio talk shows across the nation to discuss their findings. Climan was interviewed about the Futility Index on a nationwide broadcast by National Public Radio host Scott Simon, who defiantly claimed that his beloved Chicago Cubs, and not the NY Rangers, were the most futile professional sports team in history.

Mr. Climan is also in demand among law schools around the country. From 2010 to 2012 at UCLA Law School, and then from 2013 to 2016 at Berkeley Law School, Mr. Climan teamed with Leo Strine, Jr., then a sitting Delaware judge, to teach a class they called “Real World M&A.” The course was oversubscribed and extremely popular. According to one Berkeley student, “This course is probably the best approach that a law student might have to...understanding what M&A is all about, and how it’s dealt with by the world’s most important players.”

Every year from 2009 through 2019, Mr. Climan gave a guest lecture at then judge Strine’s Harvard Law School M&A class on the merger agreement as a contract. Mr. Climan originally got to know judge Strine shortly after Strine’s appointment to the Delaware Court of Chancery in the late 1990’s, as they were both frequent speakers on the M&A conference circuit.

Mr. Climan calls Strine an “absolutely brilliant” jurist and notes that “lecturing and teaching with Leo helped give me a nuanced understanding of Delaware law and jurisprudence as well as invaluable insights into the way Delaware judges approach and think about the issues they face.” That understanding, he says, has proven critical to his own ability to successfully navigate the fast-moving, multi-billion dollar public company acquisitions he regularly runs—acquisitions which often culminate in high-stakes litigation in Delaware. Mr. Climan readily acknowledges that his connections with former Chief Justice Strine and with other members of the Delaware bench (such as former Chief Justice Myron Steele) “had an enormous impact on my career—I learned so much from them.” Strine retired as Delaware Chief Justice in 2019, moving on to a private sector position at leading M&A law firm Wachtell Lipton. He and Climan have remained good friends throughout.

Mr. Climan’s lecturing activities extend far beyond his law school teaching with Leo Strine. From 2012 through 2019, Mr. Climan and his long-time colleague Keith Flaum staged an annual three-hour M&A negotiation workshop, featuring a mock negotiation of a hypothetical stock purchase agreement, at Columbia Law School. They rebooted their presentation

of that workshop just this year, after a COVID-induced hiatus. Mr. Climan has also spoken at the University of Virginia Law School, Stanford Law School, and other law schools across the country.

Mr. Climan is the former chair of the prestigious Securities Regulation Institute, sponsored by Northwestern Pritzker School of Law and now in its 51st year. He sits on the Institute's Steering Committee and chaired the Institute's high-profile M&A panel for more than 15 years. His closely watched and often humorous exchanges with then judge Strine on that panel often received national attention as they guided deal practitioners through the process of negotiating the tricky Delaware aspects of big-ticket M&A deals. This year, Mr. Climan arranged for team member Jane Ross to take over his slot on that panel.

During his time at Cooley and Dewey & LeBoeuf, Mr. Climan was also a regular speaker and panel chair at the Annual Institute on Corporate, Securities, and Related Aspects of Mergers and Acquisitions in New York, co-chaired by Professor Samuel C. Thompson, Jr. Transcripts of two of his panel presentations at that conference have been published in major law reviews.

Mr. Climan is the Co-Chair of the American Bar Association's annual National M&A Institute, now in its 27th year. He has spoken at this conference every year since its inception.

Mr. Climan is considered one of the most prolific and insightful speakers on both basic and advanced M&A-related legal topics in the country. He does everything, everywhere, all at once to spread the M&A gospel. He is the consummate connector.

What does he love best about his work? "The big-ticket deals and high-stakes negotiations have been intellectually stimulating and a lot of fun; and the continual globe-trotting, while sometimes exhausting, has been exhilarating and a wonderful cultural learning experience for me. But in truth, I've derived far greater satisfaction from teaching and mentoring the next generation of legal M&A dealmakers. I welcome the opportunity to help shape their legal careers and positively influence their professional development."

His greatest disappointment, professionally or otherwise? "You're asking me at a very delicate time," he says. Right now I'd have to say the Yankees' loss to the Dodgers in last month's Fall Classic, 61 years after the 1963 World Series defeat that broke the heart and shattered the spirit of a hopeful 10-year-old boy." This year's losing effort resurfaced painful images of Mickey Mantle striking out against Sandy Koufax all those decades ago. "The wound is still fresh," Mr. Climan says, "but I suppose I'll get over it eventually." Old loyalties die hard indeed.

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