

DAILY BUSINESS REVIEW

DEALMAKER

Dealmaker: William G. McCullough

The Deal: The Shutts & Bowen lawyer helped a South Florida gas station owner-operator nearly double its portfolio of stations by negotiating the purchase with ExxonMobil and arranging for a \$36 million loan with Miami-based TotalBank. The deal closed May 26.

Details: Miami-based Victory Petroleum, led by chairman Carlos Fontecilla, acquired 38 stations owned by oil giant ExxonMobil. The deal was part of Exxon's ongoing plan to sell its U.S. stations while retaining the distribution rights.

McCullough declined to provide the value of the station purchase.

McCullough was retained to review the bid package and the purchase agreement. McCullough called the deal "about half a dozen transactions rolled into one."

Victory created a special purchase vehicle called Biscayne Petroleum, which is owned by executives and investors from Central and South America.

Environmental clean-up and future liability played a major role in negotiations.

The question isn't whether there will be environmental contamination. It's when and how much," McCullough said. "Just by virtue of all of the activity, there will be some degree of environmental contamination with any portfolio of stations."

State and federal laws hold past and current owners of stations liable for cleanups, McCullough said. The costs of removing contaminated soil can be high. For Biscayne, extremely high cleanup costs would threaten its return on investment. Exxon could face costly litigation over contamination. For the bank financing the deal, environment problems could taint the collateral.

"It goes to the heart of the investment," McCullough noted.

The attorney said Exxon hired consultants to analyze soil and water samples. Biscayne hired its own consultants to review the results.

After the degree of contamination was assessed, McCullough included contract provisions calling for Exxon to escrow funds for a future cleanup.

The deal hit a snag two months before closing when talks stalled between Biscayne and a lender McCullough declined to identify. He said issues centered over the debt-to-equity ratio of the proposed loan.

Five weeks before the closing, Biscayne decided to go with Miami-based TotalBank. The late switch delayed the closing as Shutts & Bowen lawyers began negotiations with the new lender. "It really was a major shifting of gears and made a big hiccup in the transaction," McCullough said.

After acquiring the 38 stations, Biscayne sold four, according to Biscayne chief executive Arturo Zibold.

"This is a great step forward," Zibold said. "Organically, this business has very little growth, so our main avenue for growth is acquisitions. There's no better portfolio than the one we purchased."

Fontecilla, who launched his business 20 years ago with one station, has a deal pending to acquire 38 stations in Broward and Palm Beach counties from 7-Eleven. The purchase is expected to close in November.

"With a deal this size and this complexity, there are so many different disciplines involved that it's critical to involve [experts] to build a team that you can trust and let them do their jobs," McCullough said.

Background: McCullough, a Shutts & Bowen partner in Miami, is a member of the firm's financial services practice group. Real estate matters were handled by Shutts partners Roland Gallor and Florentino Gonzalez, associates Ethan Wasserman and Benjamin Wilson, and of counsel Dana Goldman.

Partners Kimberly Prior, Alfred Smith and Bryan Wells dealt with corporate matters. Partner Frank Rodriguez focused on tax matters, and partner David Coviello worked on land-use and zoning. Associate Peter Franke addressed environmental concerns.

Ignacio G. del Valle, a partner with Weiss Serota Helfman Pastoriza Cole & Boniske, represented TotalBank.