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INDUSTRY UPDATES



In-House Counsel Q&A with Eliot Cotton, Riverstone Holdings LLC, Credit and Decarbonization General Counsel

Interview by Parker Lee, McDermott Will & Emery LLP

PL: Please tell us a little bit about Riverstone and your role as General Counsel – Credit and Decarbonization at Riverstone.

EC: Riverstone is an energy and power-focused private investment firm founded in 2000 by David M. Leuschen and Pierre F. Lapeyre, Jr. with approximately \$43 billion of capital raised. With offices in New York, London, Houston, Mexico City, Amsterdam and Menlo Park, we have committed to more than 200 investments in North America, Latin America, Europe, Africa, Asia, and Australia. As the investment landscapes within energy have evolved, we believe we’re at the forefront of identifying and executing on opportunities to take advantage of the shifting paradigm. As climate change becomes increasingly important to governments, corporations, and consumers, we’ve positioned ourselves to take advantage, either by providing debt, equity, or some combination thereof, to help businesses grow and achieve their aims.

As General Counsel, my goal is to support my deal teams in everything that they do. Whether it’s fundraising, deal execution or coming up with creative solutions, I try to keep my finger on the pulse of where the industry is, where its headed and how we can stay two steps ahead.

PL: Riverstone has been a leader in the private equity space in going full speed toward investing in decarbonization businesses. Are there significant differences or unexpected similarities from a legal perspective in working with and investing in decarbonization businesses, as opposed to oil and gas?

EC: The biggest difference I’ve seen is in how our transaction structures have shifted. Instead of writing \$400 - \$500 million checks into an LLC, where we control the board and all primary governance decisions, because of the nascent nature of many decarbonization companies, we’re taking minority positions, allocating smaller amounts, and introducing these companies and their technologies into our broader portfolio. The hard work, the need for extensive diligence, and the importance of surrounding ourselves with excellent external advisors is certainly the same, but the paper is different.

PL: Where do you see the energy market going in the next decade?

EC: Our primary obligation is being exceptional stewards of our investors’ capital. That means finding and executing on opportunities that have the potential to deliver strong risk-adjusted returns. It also means listening to our investors and understanding where they want to allocate capital. In the energy space, that appears to be shifting towards decarbonization, clean energy and renewables. Every year, more governments, corporations, and financial institutions are making commitments to achieve net zero emissions by 2050 and that is presenting opportunities for the energy private equity space. While I think traditional energy projects will continue to hold a significant place in the investment conversation and landscape, I believe the next decade will see excellent opportunities for investments in people, technology and infrastructure designed to reduce carbon in the economy and mitigate the impact of climate change.

PL: One reason many lawyers give for wanting to move in-house is to get closer to the business side of things. Was that one of your motivations?

EC: Yes, absolutely. Wanting to be nearer to the investment decision making process and to better understand why we should or shouldn’t take certain actions was the primary catalyst in accepting my current role. And Riverstone, without a doubt, has afforded me that opportunity. I am simply a member of the team – and where one person may have an expertise in sustainable bio-based fertilizers, I have an expertise in the law. Everyone on the team needs

to know and fully absorb the organization's broader goals, but lawyers working in-house also need to think ahead, manage risk, and constantly offer up creative solutions.

PL: How has working on the in-house side helped you grow your skill set as a lawyer and a professional in ways you never expected?

EC: At a law firm you are really valued as an expert in a specific area – in fact, you need to be an expert in a specific area. Once you're in-house, while always helpful to be an expert in something, you really need to approach every day with your business hat on first. You have to understand the business as well as every other member of the team and constantly work to make sure your practice is aligned with the broader goals of your organization. My current role forces me to think about the end rather than just the beginning. I have to anticipate several potential outcomes, prepare myself and the rest of the firm for those possibilities, and always focus on controlling the things we have control over, but more importantly, create retention walls to protect us from the unforeseen.



Have some news to report (promotion, changing firm or company, receiving an award, etc.) or would like to submit an industry update, case comment or signature piece for our next issue?

Please email submissions for the next issue of the ELA in Word format to ELA Managing Editor [Kelly Ransom](#) and [Vickie Adams](#).

U.S. EPA Office of Land and Emergency Management Publishes Environmental Justice Action Plan

Samuel B. Boxerman and Nicole E. Noëlliste
Sidley Austin LLP

On September 30, 2022, the Office of Land and Emergency Management within the U.S. Environmental Protection Agency (EPA or the Agency) published an action plan, "EJ Action Plan: Building Up Environmental Justice in EPA's Land Protection and Cleanup Programs." EPA describes the EJ Action Plan as "a key component" of its implementation of President Joe Biden's Executive Orders 13985 and 14008 to promote environmental justice (EJ).

The EJ Action Plan outlines the following four main goals, as well as the projects, tools, and practices that it intends to use to achieve those goals and advance EJ in the Superfund, Brownfields, Emergency Response, Solid Waste Management, Resource Conservation and Recovery Act Corrective Action, and Underground Storage Tank programs across the Agency:

1. Strengthen compliance with cornerstone environmental statutes in communities overburdened by pollution. To accomplish this, EPA intends to focus on developing "good governance processes," enhancing accident prevention at facilities in or near communities with EJ concerns, reducing the frequency and severity of accidental releases, measuring compliance rates of facilities in EJ communities, and improving inspection rate of facilities.

- 2. Incorporate EJ considerations during the regulatory development process.** EPA plans to use EJ mapping tools to identify potentially vulnerable communities and areas that would benefit from increased funding and support and to strengthen community protections and enhance public participation, especially for communities with EJ concerns. EPA also will issue guidance to its regional offices with recommendations for incorporating community input and EJ considerations as part of remedial and non-time-critical removal action decisions.
- 3. Improve community engagement in rulemakings, permitting decisions, and policies.** As part of this effort, EPA intends to assess cumulative impacts of agency actions on communities as well as to identify communities with EJ concerns and provide those communities with more resources for effective engagement.
- 4. Implement the Justice40 Initiative.** The [Justice40](#) initiative seeks to drive investment to underserved communities. To help accomplish this goal, through this EJ Action Plan, EPA intends to provide direct and indirect benefits to underserved communities with direct grants as well as by elevating EJ focus and priorities into state grant agreements.