

CORPORATE DEPARTMENTS OF THE YEAR

2017



Standing, left to right: Joseph Barbeau, Lisa A. Fontenot and Jonathan K. Layne. Sitting, left to right: Christopher D. Dillon, Candice Choh.

GIBSON, DUNN &
CRUTCHER LLP

WINNER, CROSS-BORDER
AND DOMESTIC M&A

OVERALL WINNER: GIBSON, DUNN & CRUTCHER

GIBSON, DUNN & CRUTCHER

BY ROSS TODD

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The firm displayed excellence in cross-border and domestic M&A work over the past year.

In a year that saw California lawyers working on megadeals of all sorts, shapes and sizes, Gibson, Dunn & Crutcher had a stellar stretch of M&A work on the buy- and sell-side.

The firm helped BWAY Corp. nab Germany's Mauser Group in a complex, cross-border acquisition completed just days before the target's scheduled initial public offering. The firm also handled two health care sales—St. Jude's \$30.7 billion acquisition by Abbott Labs and Group Health Cooperative's \$1.8 billion acquisition by Kaiser Permanente—completed during a year of great regulatory and economic uncertainty in the industry.

On the backs of these deals and the firm's overall domestic and international M&A record, Gibson Dunn landed overall honors in The Recorder's 2017 Corporate Departments of the Year competition. Jonathan K. Layne, a partner in the firm's Century City office and a member of its executive committee, recently answered our questions about the firm's transactions, the sorts of matters where clients turn to Gibson, and how the firm is training its next generation of dealmakers.

What were the unique challenges of the BWAY deal and how did your team manage them?

Mauser is a truly global business with operations across 18 countries, including in Europe, Asia, Africa and North America. Although our team was led out of Los Angeles, it involved attorneys from every international office in our firm as well as a number of other correspondent local firms we work with. It was a massive undertaking to coordinate items like due diligence and schedule review with such a large working group. In addition, Clayton, Dubilier & Rice, the private equity owners of Mauser, ran a dual-track IPO/sale process for Mauser and the IPO process was a very real alternative to our transaction. At the time we were negotiating the purchase agreement, Mauser had cleared the SEC review process for its F-1 registration statement and management was on its road show for the company's public listing.

This presented a significant timing challenge for us as we were coordinating a complex process with absolutely no ability to let timing slip. We ultimately signed the purchase agreement on the eve of the scheduled IPO pricing. Post-signing, our clients decided to take advantage of favorable market conditions to not only finance the Mauser acquisition, but also re-finance the entire BWAY debt structure which required additional coordination in the post-signing and pre-closing period. And last, but not least, due to the breadth and complexity of Mauser's international operations, we undertook a complicated internal reorganization prior to closing in order to structure the transaction in a tax-efficient manner that would also maximize the assets available as collateral to BWAY's lenders.

Gibson also represented sellers St. Jude Medical and Group Health Cooperative in a pair of blockbuster health care deals. Briefly explain the importance of those deals to your clients and how the deal-making climate in health care changed over the past year? The St. Jude Medical acquisition by Abbott Labs was significant in part because of its size—\$30.7 billion, at a substantial

premium. A special challenge arose from what was happening at the same time—just prior to the St. Jude deal getting under way, Abbott had some major negative surprises erupt between signing and closing on its pending deal to acquire Alere Inc. for \$6 billion. The surprises included the launch by the DOJ of a foreign bribery investigation against Alere and the revocation of Medicare reimbursement for an Alere product over alleged government billing fraud, which collectively led Abbott to sue Alere to get out of that deal over "material adverse events" (which eventually was settled with a \$500 million price reduction).

Such circumstances put extreme pressure on the due diligence process and special scrutiny on the applicable "deal protection" terms, and that backdrop shaped the atmosphere in which the parties were seeking to complete an even larger transaction. And all that got tested when Muddy Waters launched a short-selling attack against St. Jude's stock over alleged cybersecurity issues with a major line of St. Jude's products. Maturity and careful judgment were needed from both sides to get the deal signed up and through to a successful closing.

What about the Group Health deal? Group Health Cooperative saw its \$1.8 billion transaction with Kaiser Permanente as critical to the continuation of its mission and purpose. Founded in 1945 as a nonprofit health care organization, Group Health Cooperative operated as an integrated cooperative focused on providing high-quality health care services to its community of some 600,000 members. After the Affordable Care Act legislation passed in 2010, it became apparent that scale and efficiency of delivery of health care services would require a number of organizations to join forces through mergers, acquisitions or joint ventures.

Against this background, the board of trustees of Group Health Cooperative determined the best manner in which its mission and purpose could be carried out was through the sale to the larger Kaiser Permanente, also a nonprofit organization, which shared many of the same values held by the original founders of Group Health Cooperative. At closing, the approximate \$1.8 billion cash purchase price was paid by Kaiser Permanente to a new 501(c)(4) Group Health Community Foundation which operates entirely independently of Kaiser Permanente. Group Health Community Foundation was created to carry on Group Health Cooperative's legacy of social impact and is committed to reducing health disparities and promoting health for those in the communities it serves.

What would you say is the trait of your deal lawyers that keeps clients coming back? What is your department's calling card?

Our clients are sophisticated consumers of legal services and have very high expectations. We try to keep them happy by being responsive, getting to the right answer the first time, proving that we can marshal vast resources quickly and seamlessly and last, but not least, by our teamwork and ability to work collaboratively, both with our clients, each other and opposing counsel.

A prospective client with an urgent matter calls and asks why your team should be retained to handle it. What is your answer? In addition to

the reasons we've described above as to why our clients keep coming back, Gibson Dunn provides a depth of market knowledge and an ability to be reasonable when necessary and aggressive when the situation warrants it. We approach every transaction from a practical, business-minded perspective. In addition, we have unparalleled resources across a wide variety of regulatory practices.

What is the firm doing to train up the next generation of dealmakers in your ranks?

In addition to a thorough and formalized training program, we provide significant hands-on experience to our associates at a very early stage in their careers. Our firm is less leveraged than a number of our peers and that provides meaningful opportunities for associates to work directly with partners, get involved with complex drafting and negotiations and other deal leadership experiences. We have a lot of partner-associate collaboration in our offices.

How do you balance the need to cross every "t" and dot every "i" in a particular matter with demands to be efficient with client resources?

As mentioned above, through the pursuit of excellence, we strive to get the answer right the first time and as a result, we don't need to consistently go back and re-do things. In addition, as a result of our collaborative firm culture, we find that associates and partners communicate really well, which minimizes mistakes and misunderstandings. Also, because of our lower leverage, our clients receive more effective senior attention and supervision on their transactions.

How are your dealmakers using technology to help them work more efficiently?

Technology is a critical part of our practice, firmwide. Our approach to technology and information security is forward-looking, rather than merely reactive. Our information services and business intelligence groups include a team of developers for internet, intranet, extranet/Virtual Deal Rooms (VDRs), ShareFile (private data sharing platform) and software mobile development, as well as robust system and application deployment.

Our goal is to provide our attorneys with the tools to meet and exceed the demands of our clients in a 24/7 environment. Technological tools include advanced telephony systems, mobile and laptop-based time sheet entry, a modern VPN system to provide attorneys with round-the-clock document access in a secure environment, an intranet and customer relationship system that allows us to work seamlessly with one another firmwide, and of course, the necessities in mobile technology and document management/contract proofreading.

Attorneys work hand-in-hand with our information services and business intelligence groups to deploy a number of proprietary solutions as well, such as our deal study of M&A and private equity terms, tools that allow us to track attorney utilization (giving us the ability to more efficiently allocate resources among departments and offices) and attorney referral databases.

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