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Dealmakers Q&A: Gibson Dunn's Jeffrey Chapman

Law360, New York (July 09, 2014, 12:45 PM ET) --

Jeffrey A. Chapman

Jeffrey A. Chapman is co-chairman of Gibson Dunn & Crutcher LLP's global mergers and acquisitions practice group. He maintains an active M&A and capital markets practice representing public and private companies in diverse cross-border and domestic transactions in a broad range of industries, including energy, retail, real estate, health care and technology.

Chapman is ranked as one of the top 50 corporate/M&A lawyers in the United States by Chambers Global 2014. Chapman is also one of 200 lawyers shortlisted by Chambers and Partners for The Chambers 100 USA, a ranking of the top 100 business lawyers in the United States.

Recognized for many years by Chambers USA in its most elite "Band 1" category as one of a handful of the leading corporate lawyers in Texas, Chapman was singled out by Chambers in 2013 and elevated to "Star Individual," a ranking that has never before been awarded to a corporate lawyer in Texas.

Q: What's the most challenging deal you've worked on, and why?

A: It was when I acted as lead transaction counsel to MetroPCS in negotiating and closing its complex $32 billion combination with T-Mobile USA Inc., a subsidiary of the German company Deutsche Telekom.

As part of the closing of the transaction, MetroPCS declared a one-for-two reverse stock split, made an aggregate $1.5 billion cash payment to its existing stockholders and issued 74 percent of the combined company's common stock to DT. DT rolled its existing intercompany debt with T-Mobile into an aggregate of $11.2 billion in principal amount of senior unsecured notes of the combined company and provided the combined company with a $500 million unsecured revolving credit facility.

The combination of MetroPCS and T-Mobile was one of the largest reverse mergers in history. Along with providing MetroPCS stockholders an immediate cash payment and a meaningful stake in the combined company, it provided a vehicle by which T-Mobile became a publicly traded company on the New York Stock Exchange.

The transaction also gave DT a 74 percent stake in the combined company, which added significant layers of complexity. Not only did this bring to bear the differences in German and American business and legal cultures, but it also increased the regulatory risk to the transaction in the already highly

regulated telecommunications space. Ultimately, in order to close the transaction, it had to be approved by the Federal Communications Commission, the Federal Trade Commission, the U.S. Department of Justice, the Committee on Foreign Investment in the United States, and other state public utility commissions and domestic regulatory authorities.

Approval of the transaction implicated subtle and complex principles of corporate governance. Along with the fairness issues typically encountered in mergers, the MetroPCS board and special committee dealt with the complexities necessarily related to the fact that the combined company would have a stockholder that would own a majority of the outstanding equity of the combined company and would be the combined company's most significant creditor.

Because the transaction was publicly challenged by dissident stockholders, I also advised MetroPCS in connection with a proxy contest that ultimately led to favorable revised deal terms for the combined company.

Ultimately, I was able to advise MetroPCS through a successful combination process that united two wireless innovators, each with a different corporate structure and corporate culture, into a single combined company.

Q: What aspects of regulation affecting your practice are in need of reform, and why?

A: In nearly every public merger transaction, there are a number of stockholder lawsuits filed that attack, among other things, the directors' compliance with their fiduciary duties, the process by which the merger is approved, and the disclosure to stockholders in seeking their approval for the transaction. Many such complaints are boilerplate allegations that are nearly ubiquitous from deal to deal. Ultimately, almost all such lawsuits are settled, with the expenses of such litigation being viewed as a cost of doing business in the state of incorporation (typically Delaware).

In fact, most such lawsuits are not triggered by breaches of fiduciary duty, a faulty process or inadequate disclosure, and the costs of such litigation, in terms of dollars expended and time incurred, is significant. At some point, legislative or judicial reform aimed at pleading standards, obligations to pay legal fees (as addressed in the Delaware Supreme Court's recent ATP Tour decision), and other means could benefit the stockholders of public corporations.

Q: What trends or under-the-radar areas of deal activity do you anticipate, and why?

A: One trend is the rise of stockholder activists. Ten years ago, nearly all stockholder votes to approve a merger sailed through. That is not the case today. Hedge funds and other activists frequently attack transactions they view as inadequate or as opportunities to drive higher prices to stockholders and have achieved great success in a number of significant transactions (including the MetroPCS/T-Mobile combination, in which dissident stockholders triggered an increase of $4 billion in value to the combined company).

Another trend is the increasing internationalization of M&A practice. I did very few cross-border deals during the first 25 years of my practice. Now it seems I do little else. Nearly every M&A transaction I have completed at Gibson Dunn during the past four years has involved an international counterparty (such as the German telecom Deutsche Telekom, the Belgian grocer Delhaize, and the French conglomerate Lafarge). The world has indeed become flat.

Q: What advice would you give an aspiring dealmaker?

A: Work with the finest attorneys you can find, study their strengths and weaknesses carefully, and develop your own style and manner of practice that incorporates lessons learned yet stays true to your own personality, strengths and integrity. Work hard on a variety of transactions early in your career — mergers, capital markets offerings and even reorganizations. Develop an insatiable appetite for knowledge. One of the best parts of practicing M&A law is that there is always something new to learn — which often means that the older you get, the better you get.

Q: Outside your firm, name a dealmaker who has impressed you, and tell us why.

A: The M&A bar is among the strongest in the country. I am consistently impressed with the quality of opposing counsel.

Two lawyers have particularly impressed me. One is Mike Wortley of Vinson & Elkins, with whom I practiced for nearly 30 years. Mike is a brilliant man with an incredible work ethic, an encyclopedic knowledge of corporate law, and impeccable judgment. He is also one of the most selfless individuals I have ever met.

Another is Adam Emmerich of Wachtell. Adam has all the traits of a great M&A lawyer — brilliance, knowledge, judgment, you name it. What separates Adam from many others, though, is his impeccable sense of what it takes to get a deal done. He is a great "dealmaker" in a classic sense.

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