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Dealmakers Q&A: Dechert's Daniel O'Donnell

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Daniel O'Donnell

Daniel O'Donnell is chief executive officer of Dechert LLP and, together with the firm's chairman, heads the firm's policy committee. He is a nationally recognized adviser to private equity fund sponsors, corporations and financial institutions as well as company managements, boards of directors, and special committees. He represents clients on public and private mergers and acquisitions — both domestically and internationally — as well as corporate restructurings and corporate governance matters.

Over the last 30 years, O'Donnell has been involved in some of the major acquisition activities of the period, including the sale of Getty Oil to Texaco, the sale of Pennwalt Corp. to Elf Aquitaine, and the sale of Reliance Electric by Exxon Corp. In addition, he has headed Dechert teams for private equity clients in more than 125 leveraged buyout and leveraged recapitalization transactions, including those involving Flender AG, American Microsystems, California Pizza Kitchen, J&L Specialty Steel, MagnaChip Semiconductor, nTelos, Fairchild Semiconductor Corp. and Mohawk Industries Inc. He has also handled many significant restructurings of both public and private companies, including Long John Silver's, O'Sullivan Industries, International Knife & Saw Inc., Mediq and Galey & Lord.

As a participant in Law360's Q&A series with dealmaking movers and shakers, Daniel O'Donnell shared his perspective on five questions:

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

A: Over the last 38 years, I've spent the better part of my professional life working both on public company mergers and on what is now called private equity (formerly leveraged buyouts). Sometimes, the latter involve public targets, but the buyers are private investment funds, albeit frequently very large ones. In terms of the most challenging deals on which I've worked, I would choose one from each category.

On the public company side, the deal would have to be the sale of the Getty Oil Company to Texaco. I was a brand-new partner when the events leading up to this transaction began in 1982. It was not completed until 1984. With a transaction value of $10.1 billion, it was at the time the largest corporate merger in history. Transactions of that size and larger seem almost commonplace today, but in the early '80s, the signing of the deal was the page 1 headline of the New York Times.

There has been a lot written about this deal, some of it accurate and some not, but all of it colorful and filled with high drama. First of all, the cast of characters was a who's who of corporate takeovers: Marty Lipton, former SEC Chairman Harold Williams, Boone Pickens, Arthur Fleischer, my partner Bart Winokur, Geoff Boisi of Goldman Sachs, Ivan Boesky, Hugh Liedtke of Pennzoil, Marty Siegel of Kidder Peabody, and many others. There were internal disputes among the members of the Getty family (who were the controlling stockholders), differences among various factions on Getty's board of directors, multiple litigations in many different forums, including probate court in California, Texas state court, federal courts in New York and, eventually, a bankruptcy court.

Although the deal took place before the adoption of the first stockholder rights plan (aka "poison pill"), many of the strategies and tactics that were devised in the deal became a big part of the playbook for public company M&A activity in the following decades. Despite all of the twists and turns, the stockholders of Getty ended up receiving a very full price for their shares. And the board of directors of Getty, despite all of the internal differences and external attempts to derail the deal, came together and performed a tremendous service for those stockholders. I am very proud I played a small part in all of that. What I learned in that deal about the importance of keeping your eye on the ball has helped to shape the rest of my career.

On the private equity side, my choice would be the acquisition of Fairchild Semiconductor Corporation from National Semiconductor Corporation in 1997. Although the cast of characters was not nearly as colorful as those involved in the Getty-Pennzoil-Texaco battles, the deal represented a number of important firsts for private equity.

It was the first significant acquisition of a semiconductor company by a private equity firm and it was followed by many more transactions in this space. Second, it was one of the earliest, if not the earliest, private equity transaction of any size that took place without a standard "financing out" for the buyer. This has become routine today, but at the time it was unheard of. We acted for the buyer, which was then an affiliate of Citigroup. When the deal folks from the private equity group and I were summoned to meet with the top management of Citigroup to explain why this novel structure did not present an unreasonable risk to the bank, I knew that reputations and careers were on the line. Fortunately for everyone, the transaction turned out to be extremely successful for all of the parties involved. This deal taught me the importance of being willing to take a position and to live with the consequences.

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

A: Public company M&A is inextricably bound up with corporate governance. I think the evolution of judge-made law in these areas, especially in Delaware, and the increasing sophistication of state corporate statutes in many jurisdictions, have both been positive developments for M&A activity and corporate governance in general.

Reforms at the federal level have produced more mixed results. I think the U.S. Securities and Exchange Commission and major stock exchanges may have gone too far in mandating technical "independence" for directors to the point where the importance of good business judgment and strength of character — which I believe should be the most important criteria for board membership — are in danger of being overshadowed. The board of directors of Enron was almost wholly "independent" in a technical sense, but it is very clear that the right questions were not being asked by them. I think the ability to ask the right questions, and to follow up on the answers, is an essential characteristic for good directors. It may be my private equity mindset, but I generally feel that directors who have meaningful skin in the game perform better than those who do not.

As for the regulation of private equity, due to the size and sophistication of the limited partner institutional investor community, in my opinion the market has done a very effective job policing this industry. I think the trend toward more transparency and consistency in reporting across private equity firms is a positive one which should be supported by the industry. Industry groups like the Private Equity Growth Capital Council are playing a very constructive role. Whether the increased degree of SEC oversight resulting from the latest round of post-recession reforms will accelerate or derail these positive trends remains to be seen.

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

A: In terms of industry sectors, it is hard to believe anything except that energy and health care (especially life sciences) will continue to be very strong areas for merger activity. It is also likely that more investment funds will flow in the direction of Africa and that the secondary market for the transfer of limited partnership interests in private equity firms will continue to grow. The largest "private equity firms" will move rapidly in the direction of broader-based investment managers who will offer a diversified portfolio of targeted investment alternatives and seek to exercise investment discretion over how committed funds are allocated among these alternatives. So-called "permanent capital vehicles" are also here to stay, unless and until someone figures out a better way for private fund managers to access the wealth that has moved out of corporate-defined benefit pension plans into individually managed retirement accounts.

Q: What advice would you give an aspiring dealmaker?

A: Ignore anyone who tells you not to sweat the small stuff. Small mistakes can lead to big problems, so you need to be thorough and diligent. At the same time, you have to be aggressive, especially early on in your career, about demanding that the people you work with take the time to help you understand how the "small stuff" fits into the bigger picture. Resist the temptation to become task-oriented. And finally, as a longtime client put it for me many years ago, you want to be known within your firm, by your clients, and by the other parties you deal with as someone "who says what he does and does what he says."

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

A: I have been privileged to work with some of the very best, but my first choice would be Herb Galant, now retired from Fried Frank. Apart from his technical mastery of all of the areas of law relevant to M&A work, Herb had an instinctive feel for how deals come together or fall apart. He never let his point of view on particular issues blind him to the other parties' needs. He treated everyone with respect, especially those with whom he disagreed. He was a true professional who was always as good as his word.

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