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TOP TRANSACTION LAWYERS | 2012

Energy deals, hostile takeovers,
and poison pills: Dealmaking in 2011

sometimes had a mid-eighties feel.

DEALMAKERS OF THE YEAR

EVEN BEFORE Meryl Streep's Oscar for reliving the Thatcher years, 2011 brought a sense of déjà vu. There was the outsize role of the energy sector, highlighted by the year's biggest deal, the Kinder Morgan–El Paso merger. And there were all those hostile takeovers: Many of the year's biggest deals, including Kinder Morgan–El Paso, began with an unsolicited offer. Even the poison pill was back in court. A lawyer who went into a coma in 1985, it seemed, could wake up one morning, dust off his Members Only jacket, and go back to work in the afternoon.

Or not. Dealmakers in 2011 worked on a global stage that would have been inconceivable in the eighties, handling work for buyers in South Korea and Israel, and mastering Luxembourg's law in Microsoft's biggest acquisition to date. Need more proof? Take another look at our cover subject—the lawyer from a U.S. firm who handled the biggest Internet IPO since 2004. It was for a search engine company. In Russia. Take that, Mr. Gorbachev.



JEFFREY SYMONS



DAVID FOX

Photography by Paul Godwin

A pair of laterals oversaw an Israeli generic drugmaker's latest venture into *the branded pharmaceuticals sector.*

FAST-ACTING DUO

By Victor Li

CLICHÉS ASIDE, sometimes law really is a relationship business. Consider Kirkland's role in Teva Pharmaceutical Industries Limited's \$6.8 billion acquisition of Cephalon, Inc., the biggest M&A deal of the year involving the United States and an emerging market.

Kirkland had long represented Teva, which is based in Petah Tikva, Israel, in litigation matters, but for transactions, Teva more commonly turned to Willkie Farr & Gallagher. For instance, when Teva acquired Montvale, New Jersey's Barr Pharmaceuticals, Inc., for \$7.5 billion in 2008, Willkie was Teva's primary outside counsel.

All that changed shortly after David Fox arrived at Kirkland as a lateral from Skadden, Arps, Slate, Meagher & Flom in 2009. Kirkland litigator Jay Lefkowitz "has done a tremendous amount of litigation work for Teva and is the one who is really responsible for the firm's relationship with Teva," says Fox, who, with M&A partner Jeffrey Symons, led Kirkland's seven-lawyer team on the Teva deal. "Jay introduced me to Teva's general counsel [Richard Egosi] shortly after I arrived from Skadden." The work soon followed. In March 2010, Teva tapped Kirkland for its \$5 billion acquisition of Ratiopharm International GmbH, a German generic drug manufacturer. (Teva continues to use Willkie for transactions too.)

Egosi says that when Teva set its sights on Malvern, Pennsylvania-based Cephalon, Fox immediately came to mind because of his work on the Ratiopharm acquisition, as well as his experience with Israeli companies. Fox, who lived in Israel from ages 9 to 25, represented Ramat Gan-based Fundtech Ltd. in its \$700 million merger with S1 Corporation last June. He also represented Israeli holding company Koor Industries Ltd, when it sold 60 percent of its stake in Airport City-based Makhteshim Agan Industries Ltd. to China National Chemical Corporation for \$2.4 billion in January 2011.

Symons, who joined the firm in 2006 as a lateral from Simpson Thacher & Bartlett, represented AuRico Gold Inc. in its \$1.6 billion acquisition of Northgate Minerals Corporation in August 2011, and its \$408 million purchase of Capital Gold Corporation in April 2011. "The basics in this deal were similar to any other deal, except there was more emphasis on IP issues here," Symons says.

While primarily known as a maker of generic drugs, Teva has a small but growing proprietary medication business. Teva had set a goal of nearly doubling its branded drug revenues from \$4.6 billion in 2010 to \$9 billion by 2015, and Cephalon

was vital to its plan. The Pennsylvania company had \$2.8 billion in revenue in 2010, \$1.12 billion of which came from its narcolepsy drug Provigil.

Even before Teva made its move, Cephalon—represented by Skadden's Eileen Nugent—was already the target of a \$5.7 billion unsolicited bid from Mississauga, Canada's Valeant Pharmaceuticals International, Inc. (Valeant was represented by Sullivan & Cromwell.) Cephalon's bylaws allowed shareholders to act unilaterally and without a shareholder meeting if enough of them signed off on a proposed action. A small number of shareholders could have come together and signed a written consent to remove Cephalon's board before Teva could make its bid. "A new board might have decided to engage with Valeant or terminate discussions with Teva," says Symons. "That put pressure on us to act quickly."

According to Symons, the Kirkland team condensed several months' worth of work into three to four weeks. To make sure that Teva was not overpaying, the team had to conduct due diligence and address a wide range of areas including employee benefits, tax issues, litigation exposure, and intellectual property issues. Fox says the fact that he'd worked alongside Nugent at Skadden helped. "The trust between us played a major role in the execution of this transaction," he says.

Even so, regulatory scrutiny threatened to hold up the deal last June. When the Federal Trade Commission issued a second request last June for information on the proposed deal, Teva ultimately agreed to supply rival generic drugmaker Par Pharmaceutical Companies, Inc., with Provigil for a year and to transfer, to Par, rights to and assets of two drugs developed by Cephalon.

Now that the Teva-Cephalon deal has closed, expect to see more action in the Israeli market. "Israel has a very strong economy right now," says Fox. "It's a liquid economy, and there's reform activity from the government [seeking to break up some of the country's conglomerates]. That will force a lot of activity." For a dealmaker, that's manna from heaven.

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DEAL IN BRIEF

TEVA-CEPHALON

VALUE	\$6.8 billion
FIRM'S ROLE	Acquiror's Counsel

