



LAW360

2014 Rising Star

David B. Feirstein

Kirkland & Ellis LLP's David B. Feirstein has worked on some of the largest, most complex and most iconic mergers and acquisitions deals, and even had a hand in concocting a "ketchup" M&A provision, earning him a spot on *Law360's* list of top M&A attorneys under 40.

The 2014 Rising Star, praised by other lawyers for his creative deal making, advises public and private companies on M&A, corporate governance and securities law matters, and he counts 3G Capital Partners Ltd., Clearwire Corp. and Bristol-Myers Squibb Co. among his myriad clients.

He advised 3G Capital last year as it teamed up with Warren Buffett's Berkshire Hathaway Inc. for a whopping \$28 billion acquisition of H.J. Heinz Co., the largest-ever food industry acquisition and one that saw Feirstein come up with a creative deal clause.

In deals like the Heinz one, the buyer would typically lose the reverse breakup fee if financing were to fall through. But Feirstein and his team didn't want to subject 3G Capital and Berkshire to that risk, so they came up with a condition:

If financing collapsed, the buyer would have a period of time to try to cover it.

Kirkland called it the ketchup provision.

"Here, we wanted additional comfort that we wouldn't be stuck in that position," Feirstein said. "Doing that at 2 or 3 in the morning when you're trying to sign a nearly \$30 billion deal is exhilarating and challenging, and maybe a little bit tiring. ... It was an interesting way to deal with a complex issue."

Lawyers who worked alongside Feirstein on the Heinz deal pointed to his ability to think outside the box.

"What we're consistently impressed with is his ability to work through tough issues that we're faced with and come to creative and novel solutions, but also with a very practical sense," 3G Capital general counsel Bradley Brown told *Law360* in an interview. "He's been a valuable asset to our legal efforts."

"It was great to work alongside David on the Heinz transaction," Mary Ann

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Todd of Munger Tolles & Olson LLP, which represented Berkshire, wrote in an email. “He was on top of the issues, creative and quick to arrive at solutions.”

Feirstein also worked on one of the more complex and drawn-out recent telecommunications deals, advising Clearwire in Sprint Corp.’s purchase of the stake in Clearwire it didn’t already own.

least four different classes, a testament to the deal’s complexity.

“The journey from December to the summer was fascinating,” Feirstein said. “It had almost every element.”

Among Feirstein’s other recent deals are advising Bristol-Myers Squibb Co. in its \$7 billion purchase of Amylin Pharmaceuticals Inc. and representing Beech Holdings LLC

“I never would have thought I would know as much as I know today about tomatoes,” Feirstein said. “Working on telecom deals, you get to understand spectrum and what’s behind our cellular devices, and when you’re working on a deal involving ketchup, you get to learn a lot about tomatoes.”

And as to how much traction the ketchup provision will gain, only time will tell.

“We’ll see if people pick it up,” he said. “I think folks were surprised we were able to do that.”

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What started in late 2012 as a \$2.97-per-share agreement between Sprint and Clearwire was complicated by an unsolicited competing offer by Dish Network Corp. and ended the following summer with Sprint buying the Clearwire stake at \$5 a share, valuing Clearwire at \$14 billion.

Feirstein teaches an M&A class at New York University and says the Clearwire deal has come up in at

in its pending \$1.4 billion sale to Textron Inc.

Feirstein, who earned his law degree from New York University School of Law and holds a bachelor’s degree in political science from the University of Pennsylvania, is quick to point out that one of the most exciting things about his work is the opportunity to immerse himself in a variety of subjects of study.

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