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DEALMAKERS

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TOP TRANSACTIONS LAWYERS

DEALMAKERS OF THE YEAR

A FOOT IN THE DOOR

When shoemaker Collective Brands went on the market, three bidders wouldn't take no for an answer—even though it meant adding a carve-out to a buyout bid.



SORABELLA



FRAIDIN

By Claire Zillman

THEY REJECTED OUR FIRST BID quite forcefully.” Kirkland & Ellis partner William Sorabella doesn't mince words when describing how Collective Brands Inc. turned down his clients' initial bid to buy the Topeka-based footwear company in late April 2012.

The rejection wasn't a shock. What Sorabella and fellow Kirkland partner Stephen Fraidin were trying to pull off was unorthodox. Their clients, private equity firms Blum Capital Partners and Golden Gate Capital, wanted to partner with Wolverine World Wide Inc. (represented by Barnes & Thornburg) to take Collective private, and then split up the company's main assets. The private equity firms would take over Collective's Payless ShoeSource stores, and Wolverine, a public company, would snag Collective's footwear-manufacturing arm, which produces the Saucony, Sperry Top-Sider, and Keds brands.

Taking a public company private is not complicated, but a take-private deal with a carve-out is unusual, says Joshua Cohen, principal at Golden Gate. From the buyers' side, though, the arrangement was ideal: Collective had announced in August 2011 that it was considering a sale because its Payless stores were struggling. Though the company had two main arms—manufacturing and retail—it presented itself as a package deal. Collective didn't want to sell one arm of its business and not the other.

Blum Capital wanted to buy the retail unit, as did Golden Gate Capital. Wolverine, meanwhile, wanted to add Collective's women-focused footwear brands to its Merrell and Caterpillar lines. And none of the parties had the financial capacity to buy Collective outright, so they joined forces and, with the counsel of Sorabella and Stephen Oetgen, another Kirkland partner, engineered a plan to separate Collective's assets.

Forming the consortium cleared one hurdle for the prospective buyers, but it also presented another: They had to convince Collective, represented by Sullivan & Cromwell, that the arrangement was in its best interest, too.

The consortium's first attempts to do so, in late April 2012, failed; its offers of \$19.50 and \$21 per share were rejected as too low, and the Collective board voiced concern that the structure of the consortium and its planned carve-out transaction did not provide enough certainty that the deal would close. The consortium then upped its price to \$21.75 per share (which outbid competitor E-Land Group, a South Korean retailer) and earned Blum, Golden Gate, and Wolverine an exclusive negotiating

arrangement with Collective. But a critical issue for the buyers involved an unusual provision of the merger agreement: a double material adverse effect (MAE) standard that allowed the buyers to walk away from the deal if either of Collective's two business arms faltered prior to close, even if the company as a whole remained healthy. The provision safeguarded the carve-out, but “it made the deal riskier from the seller's point of view,” says Sorabella. To win the bid, the consortium had to “prevail on both price and certainty, and ultimately they were able to achieve that,” says Sullivan & Cromwell's Francis Aquila, who represented Collective.

For the prospective buyers and their counsel at Kirkland and Barnes & Thornburg, the MAE was a must. “We foresaw the MAE clause as a challenge, but we were reasonably confident that we could win the bid. We had a big advantage in that we had two separate groups interested in buying the entire Collective business, which created value for the seller,” Fraidin says.

That value ultimately won Collective over, as did an added sweetener to the bid: the buyers' promise to pay the seller's deal-related expenses if they exercised the double MAE clause. The buyers offered the payment as a way to address the risk that the MAE provision presented to the sellers, Fraidin says.

On May 1 Collective agreed to sell itself to Blum, Golden Gate, and Wolverine for \$2 billion. “When you know your client is the highest bidder, the worst thing that can happen is for some other challenge to interfere with closing the deal,” Sorabella says. “We made sure that didn't happen.”

Email: czillman@alm.com.

DEAL IN BRIEF

COLLECTIVE BRANDS BUYOUT

DEAL VALUE

\$2 billion

FIRM'S ROLE

Acquiror's Counsel



PROP STYLING BY JEFF STYLES

DEAL TRIVIA → *Fraidin refuses to use a cell phone to negotiate a deal. "I don't trust them," he says.*