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DEALMAKERS OF THE YEAR

Katrina, China, and pensions: Transactions work moves from the stock tables to the front page.

NO ONE WOULD CONFUSE A DEALS LAWYER WITH A social worker. But business transactions can resonate far beyond the financial markets. Mississippi lawyer John England rushed a bond issue to market to help recapitalize towns hit by Hurricane Katrina. Jeffrey Cohen's delicate balancing act at the Pension Benefit Guaranty Corporation affects the fates of bankrupt corporations and thousands of their pensioners.

Other times, deals place trends in sharp relief. Want proof of China's clout? The largest IPO since 2001, engineered by Skadden's Gregory Miao and Jon Christianson, was of a Chinese bank. Wondering about the impact of private equity funds? Debevoise buyout veteran Franci Blassberg has never been busier. And fund targets—such household names as Neiman Marcus and Toys "R" Us—are being advised by Simpson Thacher's John Finley and other M&A heavyweights.

Deals can even strike straight at the heart of the system. Wachtell's David Karp reversed a decline in the value of seats on the New York Stock Exchange by remaking the entire structure of the 213-year-old icon of capitalism. Social workers? No. But apparently, deals lawyers can sometimes be revolutionaries.

DEALS 'R' US

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JOHN FINLEY HAS BUILT A CAREER advising big corporations on mergers and acquisitions. In nearly 25 years at Simpson Thacher & Bartlett, he has advised a stable of public companies, including such household names as Seagram's and Paramount. Last year he ran five major transactions, four that closed, plus one that did not—nothing unusual there. What was unusual were the folks sitting across the table from Finley. Two of those transactions involved selling a company to private equity firms, and another had a significant hedge fund component.

Such was the nature of M&A work in 2005. Private equity funds became so active, and the amounts of money they were willing to pay became so large, that even well-known public company lawyers like Finley became protagonists in the private equity frenzy.

Finley began 2005 by putting the finishing touches on Kmart Holding Corporation's merger with Sears, Roebuck and Co. Finley represented Kmart, which was backed by hedge fund investor Edward Lampert. That merger, announced in late 2004, closed at a breakneck pace, with shareholder approval coming in March 2005. Finley then turned back to the sale of Toys "R" Us, Inc., and after that, segued into the sale of The Neiman Marcus Group, Inc., to private equity funds.

927 Hours Finley billed in the first four months of last year.

Toys "R" Us was the kind of deal inside a deal, wrapped in another deal, that can delight M&A lawyers—an 18-month saga of twists, turns, and a court battle. Toys "R" Us went from seeking to spin off one division or another, to, ultimately, selling the entire company to private equity funds Kohlberg Kravis Roberts & Co., Bain Capital LLC, and real estate firm Vornado Realty Trust. The $6.6 billion deal was announced March 17, 2005. (KKR is a Simpson Thacher client, although Finley says he has not worked on matters for it.)

Simpson Thacher began representing Toys "R" Us in 2000, when Christopher Kay, then the company's general counsel, hired the firm as its primary outside counsel. Simpson Thacher represented the company on such things as securities registration and litigation advice. Then, in January 2004, Toys "R" Us embarked on a strategic review. The company had been losing market share to Wal-Mart Stores, Inc., and other discount retailers, and its earnings were dismal. As it began the review, Kay called on Finley, with whom he had worked before while exploring a possible transaction.

By June 2004 the board decided to follow two tracks: selling its global toys division—which included the entire international and domestic toys business—and possibly spinning off its fast-growing Babies "R" Us division. (The Toys "R" Us board was represented by David Fox of Skadden, Arps, Slate, Meagher & Flom.) Investment bank Credit Suisse First Boston LLC invited 29 potential buyers to inspect the global toys division for a purchase. While overseeing the due diligence for the sale, Finley was also drafting initial documents for a Babies "R" Us spin-off. Finley never got as far as a Securities and Exchange Commision registration: The spin-off strategy was tabled in November 2004. Instead, as 2004 ended, Finley oversaw the drafting of more than a dozen agreements in preparation for the sale of the global toys division. They included a separation agreement, a purchase agreement, IP agreements, licensing agreements, and service agreements. Throughout the deal, Finley had a supporting cast of about 30 Simpson Thacher lawyers.

By early January 2005 the bidders for the global toys division were narrowed to four groups, and the final bidding process began. The auction process had a twist, of Finley's design: Each bidding group was required to submit a markup of a merger agreement but with no price bid attached. The reason was the deal's complexity. The division maintained an intricate set of licensing arrangements and inventory and warehouse deals with its own sibling companies and outside vendors, so, Finley says, it was best to clarify the terms of the deal before price entered the picture. "[Finley] and his team brought tremendous clarity so the board could truly analyze what the differences were between these contracts, putting aside price," says Blackstone Group senior managing director Arthur Newman, a former member of Toys "R" Us's board and executive committee. After receiving the initial terms, Finley sent the bidders a new agreement containing the best terms from each bidder, as assessed by Toys "R" Us. (Finley had used a similar process in the sale of client Grey Global Group Inc. to WPP Group plc in 2004.)

The auction process was well on its way when hedge fund Cerberus Capital Management, L.P., knocked the nearly completed bidding process off kilter by submitting a bid for all of Toys "R" Us. Kay says that Finley had already prepared a to-do list should such a bid materialize (more than six months earlier, a handful of potential buyers had casually discussed the possibility with Credit Suisse). "A wonderful hallmark of John is that we were not unprepared for this alternative," says Kay, who left Toys "R" Us as chief operations officer after the company's sale.

Toys "R" Us shunned the first Cerberus offer. Finley advised the company on how to craft its message to Cerberus—and then, after Cerberus upped its offer a month later, to inform other bidders that it would open up an auction for the whole company. Newman says that Finley helped the company devise strategy, not just draw up documents: "This is what Joe Flom and Marty Lipton became famous for—the strategic advice, not just the legal advice." Final bids were submitted on March 16, and the Toys "R" Us board worked into the early morning hours of March 17 to pick a winner. Finley negotiated the merger agreement with KKR in those final hours.

No sooner was the auction over than a group of shareholders, represented by lawyers from Lerach Coughlin Stoia Geller Rudman & Robbins, sued Toys "R" Us and its board in Delaware Chancery Court to stop the sale. They argued that the board did not get the best possible deal for the company and that it should have conducted a longer bidding process. In June, Vice Chancellor Leo Strine, Jr., ruled against the plaintiffs. In his 80-page opinion, Strine praised the board for "maximizing value" for shareholders throughout the sale. Says Finley: "The process was validated."

Finley barely had time to look back. By then, he was steeped in closing the sale of Neiman Marcus to Texas Pacific Group and Warburg Pincus LLC. Finley had represented the family partnerships that controlled Neiman since the late eighties, advising them on corporate governance and M&A matters. Like the Toys "R" Us sale, Neiman's auction was a scramble, with various private equity bidders coalescing into groups toward the end of the sale, and each consortium bidding in secrecy. "John did a great job handling the contract management process with each bidding party," says former Neiman vice-chairman Robert Smith.

Finley says he is growing accustomed to working across the table from private equity funds. One difference between the funds and public companies, he says, is dealing with a consortium of buyers, rather than a single strategic buyer. And he's observing that difference again this year: He represents VNU Business Media, Inc., in a possible sale to a private equity consortium.

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