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THE DEALS ISSUE

IT SEEMS NO ONE IS WILLING TO PUT UP WITH
A SLUMP IN DEALS FOR TOO LONG.

2023 DEALMAKERS OF THE YEAR

With the whole world watching, tweeting and scrutinizing, dealmakers from Simpson Thacher & Bartlett and Wilson Sonsini Goodrich & Rosati made sure Twitter and Elon Musk closed on the mogul's \$44 billion transaction to buy the social media giant.

Simpson's Alan Klein, Anthony Vernace and Katherine Krause advised Twitter's board, while Wilson Sonsini's Martin Korman, Douglas Schnell and Remi Korenblit represented the company, reporting to the board.

"This was literally night and day for seven days a week for seven months," Klein recalls, describing the high-pressure work, with Twitter's lawyers spending thousands of hours to close it. "The hours were extraordinary for what should have otherwise been a relatively straightforward sale of a company."

While the parties spent months making sure the deal closed, one of the first key moments was in late April, when Musk's advisers sent Twitter a draft merger agreement. Normally an agreement takes many days or months to negotiate, Korman notes, but Musk was looking for Twitter's signature in a day. "We decided to say yes, we were saying yes, but we need to make sure the contract worked for us," Korman says. "We had one shot to mark up that agreement. There wasn't time to go back-and-forth."

Korenblit says the financing structuring of the deals were important, including "all the ways where Mr. Musk would be personally on the hook."

"The entire transaction rose and fell on the terms of the contract, and this contract was by far the most seller-favorable contract of any major M&A transaction," Klein says. "The night we signed the contract, I said this would be the most well-read merger agreement in history. And that was before all hell broke loose."

After the parties signed, Musk, represented by Skadden, Arps, Slate, Meagher & Flom, continued to disparage Twitter and its executives and raised questions about the amount of fake or spam accounts on Twitter. "The bots are angry at being counted," Musk tweeted in May. His poop emoji in a tweet made international headlines, seen as condemnation of CEO Parag Agrawal's statements about addressing spam accounts.

After Musk sought to abandon the deal, Twitter brought suit against him in July to enforce it.

When Musk wanted to put the deal on hold, "we [spent] the next five and a half months getting him to do the things he had signed" in a definitive agreement to buy the company, Klein says, noting that there were only 18 days from March to October where things were "proceeding normally" in the deal.

Meanwhile, Musk's tweets and the court battle in Delaware were "all happening under the tsunami of press and world attention, every hour of the day," Klein recalls. "It's hard to fully appreciate what it felt like being in the middle of a hurricane."

Both law firms boasted of their close, cooperative relationship during the deal. "Our days would start and our days would end with calls," Klein says, noting that "everyone's ego was checked at the door."

"We would get on a Zoom call" daily with 20 to 30 people, Korman says, referring to a group of lawyers and investment bankers. "We ended up being highly efficient at discussing, debating and deciding and moving along," he says, adding that it was important to stay "focused on what was in the best interest of the company and the shareholders, not to let any of the public debate get in the way."

Schnell says that it was the team's "North Star" to close on the transactions with the price and terms that Musk agreed to.

The company's lawyers didn't miss a beat taking all the necessary steps to sell, such as getting regulatory clearance around the world and having a successful shareholder vote, despite all the theatrics after the deal signing.

As one example, Krause says, the day the company had a stockholder meeting to approve the transaction was the day a whistleblower was testifying in front of Congress about Twitter's privacy controls.

"The strategic decisions were to move with alacrity so there would be no cause for delay," Vernace says. "That was critical in keeping the pressure on the buyer so when they decided to ultimately capitulate and close the deal," Twitter was all ready to close, he adds.

The closing of the deal became critical to the functioning of the M&A system, Klein says. "If at the end of the day, this deal hadn't gone through on the terms we agreed to, it would have thrown into question the future functioning of the M&A ecosystem," Klein says. "We were at the precipice and we were fortunate that the right outcome took place."

—Christine Simmons



DOUG SCHNELL, MARTY KORMAN, AND REMI KORENBLIT

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