

M&A Group Of The Year: Willkie Farr & Gallagher

By **Andrew McIntyre**



Law360, New York (February 10, 2015, 8:03 PM ET) -- Thanks to its "Pac-Man" defense and other sorts of counsel for The Men's Wearhouse Inc. and its work on several deals worth north of \$5 billion, Willkie Farr & Gallagher LLP has earned a spot among Law360's Mergers and Acquisitions Groups of the Year.

When Men's Wearhouse paid \$1.8 billion to acquire Jos. A. Bank Clothiers Inc. last summer, it represented the culmination of one of the wildest M&A rides in recent history.

A year earlier, in the fall of 2013, when Jos. A. Bank made a \$2.3 billion hostile takeover bid, Willkie counseled Men's Wearhouse in its rejection of that offer. Following that, Eminence Capital, which owned 10 percent of Men's Wearhouse shares, filed proxy solicitation papers in an attempt to place members on the Men's Wearhouse board.

Then in January 2014, in response to those events, Men's Wearhouse put in motion what Willkie would come to call its "Pac-Man" defense, ostensibly turning around and seeking to acquire the company that had recently tried to acquire it.

"I don't expect to see something like this for a long time. ... It will be one of those rare deals for me during my entire career," said Steven A. Seidman, a New York-based partner and co-chair of the firm's M&A and corporate and financial services groups. "People talk about it. They don't happen. It's rare to be able to flip the tables. ... It's hard to actually have circumstances where you can make it work."

In response to the "Pac-Man" turn of events, Jos. A. Bank announced it was acquiring Eddie Bauer, possibly upending Men's Wearhouse's acquisition bid. Men's Wearhouse later convinced Eminence Capital to drop the proxy attempt, and in March of last year, Jos. A. Bank agreed to be acquired for \$1.8 billion.

What was critical in successfully guiding Men's Wearhouse through the process was being able to work seamlessly with the firm's lawyers from various practice groups, Seidman said.

And the deal also involved significant antitrust work, he added.

"It really is hard to get all the circumstances lined up to be able to execute it," said David K. Boston, a New York-based partner who also co-chairs the firm's M&A group.

Willkie has more than 600 lawyers firmwide, and roughly 170 of those are corporate lawyers. About 50 of those 170 lawyers are partners.

Roughly 30 of the firm's corporate partners are in New York, a handful are in Houston, and the remaining partners are in Europe, where the firm has offices in London, Paris, Brussels, Frankfurt, Rome and Milan.

While the spotlight over the last year shone heavily on the firm's work for Men's Wearhouse, Willkie also grabbed work on plenty of other high-profile matters.

The firm represented Dai-ichi Life Insurance Co. Ltd. in its \$5.7 billion purchase of Protective Life Corp. and counseled Rockwood Holdings Inc. in its \$6.2 billion sale to fellow specialty chemical company Albemarle Corp.

Willkie also represented Level 3 Communications Inc. in its \$7.3 billion purchase of TW Telecom, a cash and stock deal that closed in October.

"It was a deal that made tremendous sense," Boston said, referring to the Level 3 Communications transaction. "We used a reverse breakup fee. We used some of the strategies that we know from representing PE funds in [leveraged buyouts]."

Indeed, the firm's ability to draw on strategies it has used in different types of matters particularly helped in the Level 3 Communications deal.

"If you're representing a strategic [company] that's selling to a PE fund, it's helpful to know what's important for the PE fund," Boston said.

Among the other major deals Willkie guided over the past year were representing Auxilium Pharmaceuticals Inc. in its \$2.6 billion sale to Endo International PLC and counseling Tornier NV in its \$3.3 billion merger with Wright Medical Group.

While perhaps not as complex as the Men's Wearhouse deal, deals such as those required Willkie lawyers to work closely with not only their M&A team but also with lawyers in various other practice groups, the firm leaders said.

"2014 was a terrific year if you are a law firm doing this type of complex work," Seidman said.

--Editing by Jeremy Barker.