

M&A MVP: Cleary Gottlieb's Ethan Klingsberg

By **Linda Chiem**

Law360, New York (November 26, 2014, 1:22 PM ET) --



Cleary Gottlieb Steen & Hamilton LLP's Ethan Klingsberg's prowess in crafting deals and advising corporate boards helped Family Dollar Stores Inc. fend off years of activist-led takeover campaigns to snag a proposed \$8.5 billion merger with Dollar Tree Inc., earning him a spot on Law360's list of M&A MVPs.

The proposed \$8.5 billion tie-up between discount retailers Family Dollar and Dollar Tree, which comes amid a still-robust climate for deal-making, follows a five-year period during which Klingsberg, as Family Dollar's lead outside counsel, advised the board on adopting poison pill plans to thwart an unsolicited takeover proposal and to address pressures from activist shareholders such as Carl Icahn, Trian Group, Bill Ackman's Pershing Square Capital Management LP and John Paulson's Paulson & Co. calling for the company to sell itself.



Ethan Klingsberg

New York-based Klingsberg told Law360 that it's an exciting time for the field right now, especially given all the pressures coming from shareholders and the openness by management to engage in M&A.

"This makes for a perfect time to serve as a balanced lawyer in the sense of advising clients on how to be appropriately measured in their responses to the demands of activist shareholders and assuring that clients are able to navigate effectively and with agility the risks and costs of pursuing M&A as a strategic alternative," he said.

With Family Dollar, Klingsberg instilled confidence in the board to stick to the company's stand-alone strategic plan, and ultimately helped the company come out on top with a favorable buyout offer from fellow discount retailer Dollar Tree worth \$74.50 per share to create the largest discount retail chain in the U.S.

"When you're engaged in high profile M&A transactions where they're throwing tomatoes at you — whether it's coming from activist shareholders, competing bidders, or the press — the key is to assure

the directors really are well-informed every step of the way, understand their choices and their fiduciary duties and are always confident that they are doing the right thing for shareholders,” Klingsberg said.

While hedge funds were calling for a fire sale of the company, Klingsberg led a Cleary Gottlieb team that stayed focus to make sure they had a “bird in the hand” deal by excluding any deal-limiting provisions that might’ve thrown it into flux.

“It’s a great assignment,” Klingsberg said. “Constant choices, important legal standards to take into account, a number of technical rules to get right and integrate and a need to be creative to assure that, at the end of the day, the best interests of shareholders are always what wins out.”

Klingsberg has been behind other headline-grabbing deals this year, including representing longtime client Kindred Healthcare Inc. in what started out as a hostile takeover offer in May for Gentiva Health Services Inc. that turned into a mutually accepted tie-up by the fall.

Even though Kindred knew that taking its offer public wouldn’t actually succeed because Gentiva had a poison pill in place, Klingsberg worked with Kindred to fashion the offer to serve as a referendum by stockholders that drove momentum and publicity that then led to Gentiva being put into play.

The companies signed confidentiality agreements to explore the possibility of a friendly, negotiated agreement. Ultimately, Kindred managed to win over Gentiva in October with a \$719.6 million cash-and-stock deal to combine the two into a health care services powerhouse.

“When you run a hostile tender offer, it takes a lot of energy, and it’s a big distraction for the management team that’s going hostile where you can get so into the momentum that there’s a risk that you miss the window where everything can become friendly,” Klingsberg said. “That’s one of the things the team at Kindred did well — making sure they didn’t miss that window.”

Paul Tiger, a New York-based Cleary Gottlieb partner who has worked closely with Klingsberg on the Family Dollar deal, as well as Stanley Black & Decker Inc.’s \$1.4 billion sale of its hardware and home improvement business to Spectrum Brands Holdings Inc. in 2012, said that younger partners like himself benefit tremendously from working alongside skilled M&A pros such as Klingsberg.

“Ethan is, of course, an extremely skilled lawyer technically, but where he really excels is in being a top-notch counselor to clients, whether that is crafting the right response to a counterparty, being measured in dealings with activists or simply walking a client through the various hypotheticals of a particular situation,” Tiger said.

“I have found the experience invaluable, and there’s no doubt our clients value his insight in the same way,” Tiger said.

Cultivating relationships with clients has kept Klingsberg busy where he’s being sought out for deal after deal.

After steering Google Inc.’s \$12.5 billion acquisition of Motorola Mobility Holdings Inc. in 2011 and the \$2.35 billion divestiture of Motorola’s cable equipment business to Arris Group Inc. in 2012, Klingsberg took on yet another big challenge for Motorola this year. In January, he guided the \$2.91 billion sale of Motorola’s handset business to Chinese computer maker Lenovo Group Ltd.

Klingsberg said the actively changing M&A landscape has shareholders more thoroughly evaluating high-profile M&A.

“It used to be just a question, from the buy side, of whether the transaction is accretive and, from the sell side, of whether the transaction is at a premium or a nice multiple,” he said. “Now, especially with the power of proxy advisory firms, issues of process are in the forefront of market reaction to the announcement of an M&A deal.”

But that’s where M&A lawyers add value, he said.

“This puts a direct burden on the M&A lawyer to assure that the deal’s process and the messaging of that process effectively support the client’s election to engage in a bold transaction,” he said.

--Editing by Christine Chun.