

25 Years in M&A: Spencer Klein of Morrison & Foerster LLP



Spencer Klein
Morrison & Foerster

All law firms looked alike on the notice boards of law schools, Morrison & Foerster's Spencer Klein recalls. But, like Tolstoy's insight into families, Mr. Klein discovered that each is different in its own way.

He never thought of the law as a profession until his undergraduate years at Penn State when courses in American government and history, political science and political theory absorbed him. After getting his B.A. in 1986, he set off for Hofstra Law School on a full academic scholarship where he became the editor-in-chief of the law review. He started his career at Cadwalader, Wickersham & Taft in the days when the firm had a strong general corporate practice and just enough M&A work to convince Mr. Klein that M&A deals should be his specialty.

He moved to Shearman & Sterling, which had a large M&A practice that was growing ever larger. Almost immediately he found himself immersed in the firm's representation of Viacom in its acquisition of Paramount—the first contested deal he ever worked on. By 1998, he was a partner at Shearman. Four years later, still in his early thirties, Mr. Klein jumped at an offer to head the M&A practice of McDermott Will & Emery. "They were growing, expanding into Europe, and they already had a good M&A practice, which I focused on turning into a great practice," Mr. Klein remembers. Then came O'Melveny & Myers and a partnership in the firm's New York office, and thence to co-chair of the M&A practice at Morrison & Foerster.

Now a veteran of some of the most high-powered law practices in the world, Mr. Klein looks back with satisfaction on those experiences. "You learn, as you grow in this business, that firms really do have different cultures. Because firms tend to use the same words in describ-

ing themselves, that is hard to perceive when you're a law student pouring over firm bios that all sound alike," Mr. Klein says. "But each firm has its own pulse, its own style and I've found it enriching to have been at more than one firm."

McDermott Will & Emery, Mr. Klein says, is "a very entrepreneurial place built around individual partners who grow their practices

on a platform that provides great profitability and serves the firm well." It is a firm with some unusual drivers of revenue, particularly the tax practice, an extraordinarily strong profit center for a major firm, he says. "I had grown up in an environment at Shearman & Sterling where the corporate practice was paramount. The M&A and corporate finance practices especially— that really drove the firm. And I discovered at McDermott that didn't need to be the case."

As co-head of the M&A practice at Morrison & Foerster, he helps coordinate more than 250 M&A lawyers in nine U.S. offices and eight others around the globe that advised on 131 M&A transactions in 2013 with a total disclosed value of more than \$112 billion, including 20 transactions each worth over \$1 billion. The firm won *Chambers USA's* 2014 Client Service Award for Corporate/M&A for its "quality and range of client service." It was awarded "International M&A Deal of the Year (Over \$5 Billion)" by *M&A Advisor* 2014 for its work on SoftBank/Sprint and SoftBank/Clearwire, and won American Lawyer's 2013 "Global Legal Award – Global M&A Deal of the Year" for its work on SoftBank/Sprint, which was the largest U.S. deal of 2012 and the biggest outbound investment ever from Asia.

Klein →

Klein

continued

Mr. Klein's firm is also active in middle market deals. "We have a very broad practice," he says. "This firm has had a great M&A practice for a long time but I think it's fair to say that it has really coalesced into a well-branded practice that is not only doing great deals but is also recognized for doing great deals. Our middle market work is very important to us. It helps us to smooth over the peaks and valleys that some other firms experience but even more importantly, since we do middle market work for serial acquirers who rely on us for a broad range of transactions, this helps us to build long-term relationships with clients. We know what's important to them and so we can efficiently deliver great service."

Mr. Klein does both middle market deals and transformational multi-billion-dollar transactions. "Over the last couple of years, I've represented a consumer products company that was owned by its two founders with a sale price in the tens of millions of dollars. Selling that business meant helping the founders sell something that they had built themselves, in which they took tremendous pride, that they cared about deeply and that represented the bulk of their family's wealth. I also represented DaVita Inc. in its \$4.42 billion acquisition of HealthCare Partners, a mega deal that represented an important evolution of the entire health care market in the United States."

HealthCare Partners was a new business for DaVita. "It involves a system of delivering health care services that is considered to be quite forward-thinking, a model of the way in which the market is moving, but because of that, the deal had many complexities. I enjoy the range of activities here. Different deals require different skills. Different clients have different needs that their counsel must fulfill. I think that kind of diversity and that kind of practice is a real challenge. One of my pet peeves has always been the thinking that a deal should be done a certain way just because the last deal was done that way. I think in this market in particular, clients understand that they are more likely to get the best results by having advisers who help them create customized solutions to specific problems."

This is the philosophy that Mr. Klein brings to his teaching as an adjunct professor at Hofstra Law School, where he leads the seminar in mergers and acquisitions. Nothing lends perspective to life like teaching the young, Mr. Klein has found.

"The students are generally between twenty-two and twenty-six years old. They weren't around when we called Carl Icahn and those like him 'corporate raiders.' They think of him as a 'hedge fund activist'. And take Boone Pickens, whom we read about when we study the Unocal case. They think of him as this grandfatherly guy they've seen on TV touting the benefits of natural gas and alternative energy. They don't think about these guys as the swaggering corporate raiders people in my generation knew them to be. They think of the Bill Ackmans of the world as being in a different category from the corporate raiders, but I try to show them the clear connection, the historical lineage between the two groups, including the progression of Icahn himself. M&A law originally grew largely from companies defending themselves against corporate raiders in the mid to late 1980s, then the law was made by corporations making hostile bids for other corporations, and now the law largely emerges from the confrontations between hedge fund activists and their targets. An interesting evolution."

Mr. Klein notes certain behavior among shareholder activists that closely resembles the strategies of the greenmailers of yesteryear, particularly the activist practice of agreeing to abandon a proxy contest only if their shares are bought back at a premium by the target. He sees the power of activists accelerating rapidly. "The number of funds that employ activist tactics has increased and the size of those funds has also grown. Institutional shareholders are also much more interested in creating corporate change through activism than they were a decade ago. Activism is now an issue for every company to consider, to plan for, to think about. No company is immune, even the largest of corporations."

Mr. Klein sees the recent partnership between Bill Ackman's Pershing Square and the pharmaceutical giant Valeant in their joint pursuit of Allergan as an interesting development but not one that necessarily portends a trend. "I think the circumstances in that battle are unique. I don't think most companies will be inclined to partner with an activist. They tend to have different perspectives, different ways of doing things, different investment horizons and different costs of capital. I think many companies will resist letting the fox into the henhouse."

Mr. Klein notes the higher level of M&A activity than has been seen for several years and believes it will continue. He sees waves of consolidation on their way in the life sciences and health care, in technology, and the energy sector, which he predicts will be a far more interesting

sector over the next 10 years than it has been in the last decade. "The world's consumption of fuel will drive a desire to do things in a more sustainable and environmentally conscious way, while also being cost-effective and this will drive a lot of M&A activity in coming years."

Cross-border work will also increase, Mr. Klein says. His own firm has been "the leading cross-border M&A franchise in Japan for a long time." Morrison & Foerster has also grown its practices significantly in China and Singapore, and recently established a major presence in Germany by acquiring the entire Berlin office of Hogan Lovells.

One particularly good portent for the business is the fact that Mr. Klein's M&A seminar, which he limits to twenty students, has been dramatically over-subscribed in the past two years. Says Mr. Klein: "That's a good barometer for the future."

MA

COPYRIGHT POLICY: The Copyright Act of 1976 prohibits the reproduction by photocopy machine, or any other means, of any portion of this issue except with permission of *The M&A Journal*. This prohibition applies to copies made for internal distribution, general distribution, or advertising or promotional purposes.

WEBSITE: www.themandajournal.com

E-MAIL: info@themandajournal.com

EDITORIAL OFFICE: 914.476.5455

ORDERS & SUBSCRIPTIONS: For individual subscriptions, discounted multi-copy institutional subscription rates, or additional copies, please call 914.476.5455 or FAX 914.476.4111.

THE M&A JOURNAL

the independent report on deals and dealmakers

Editor/Publisher **John Close**

Design and Production **John Boudreau**

Senior Writers **Gay Jervey, R. L. Weiner**

Writing/Research **Frank Coffee, Jeff Gurner, Terry Lefton**

Circulation **Dan Matisa**

Printing **AlphaGraphics, Greenwich, CT**

Web Production **John Boudreau**

The M&A Journal, 25 Prospect Drive, Yonkers, NY 10705