Law360

2014 M&A MVPs

William Sorabella & David Feirstein

Kirkland & Ellis LLP partners William Sorabella and David Feirstein proved their deal-making prowess and creativity in several high-stakes transactions over the past year, including in a joint effort on Burger King Worldwide Inc.'s head-turning megamerger that cemented their spot on *Law360*'s list of M&A MVPs.

The attorneys have practiced together under the Kirkland banner for nearly a half-decade, during which they've nailed down a series of marquee transactions. One of their biggest efforts to date was this year's $11.4 billion union between Burger King and Canadian coffee chain Tim Hortons Inc., a game-changing deal structured to work around regulatory obstacles on both sides of the border.

It wasn't the first time Sorabella and Feirstein worked together on a pivotal transaction for Burger King as the fast-food giant reinvents itself. Like the deals that came before it — and other recent noteworthy deals the attorneys have handled separately — the Tim Hortons merger provided a platform for the attorneys to showcase their ability to work effectively under pressure, even under a bright spotlight.

"They're all complex deals that have unique elements to them and that prove we can work on very, very quick timelines," Feirstein said. "Our ability to get those transactions done as quickly as we were able to get them done is driven by our approach — to take a commercial perspective on practicing law and giving clients real-world advice."

Without styling their deals that way, he said, it would be impossible to parlay tough, complex negotiations into the headline-grabbing deals that dot the attorneys' resumes. The strategy came into sharper relief in the latest Burger King deal, announced in August.

To seal the deal, one of the most prominent mergers in an especially active year for deal makers, the attorneys, alongside Kirkland stalwart Stephen Fraidin, conquered a reluctant target, backlash over tax-motivated M&A and a tight timetable.

They devised a structure that allowed Burger King to pursue the combination by shifting its headquarters to Canada, Tim Hortons' home turf, to appease Canadian regulators. The arrangement also included a novel dual-company partnership framework that shielded Burger King's U.S. shareholders from having to recognize tax gains in the all-stock transaction.

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In addition, the attorneys revisited a strategy they pioneered in another team effort last year, when client 3G Capital Management LLC swallowed H.J. Heinz Co. in a blockbuster deal alongside Berkshire Hathaway. In both deals, the team wove in a provision giving the buyer a grace period to raise debt and force banks to finance a deal before the seller could enforce remedies against the buyer — an unusual twist in major M&A plays.

The creative maneuvering in the Burger King-Tim Hortons play fell against the backdrop of policymakers' concerns over the tax-inversion deal structure that allows Burger King to shift its legal home to Canada. Several other deal makers have tapped into the controversial strategy to redomicile in tax-friendly countries overseas.

But where other inversions have drawn backlash — in some cases dooming them to collapse — Burger King has mostly dodged criticism, thanks to a smart rationale, distinct nontax benefits and a carefully constructed agreement, Sorabella said. The specter of inversion blowback hovered over the deal, but, in keeping with their standard approach, the attorneys kept it in check.

"Both of us have a similar style in that we try to focus negotiations as much as we can on the most relevant items and make progress on them in a commercial manner, whether they're legal issues, social issues, process issues or something else, and not get bogged down in minor issues," Sorabella said. "Once we have resolved the items that are key to the deal, we can all make sure the rest of the details fall into shape."

In the case of Burger King, the attorneys also tapped into a well-developed relationship with their repeat client.

Back in 2010, Sorabella helped craft a novel way to ease Burger King into the hands of a private equity group led by 3G — a method made famous as the "Burger King structure" allowing buyers to launch a tender offer while also setting up a shareholder vote to guarantee a fast and complete takeover before a Delaware law tweak made that approach the norm.

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Feirstein hopped on board for the company's next major play in 2012, when it followed an unconventional path favoring 3G in its return to the public markets.

"For us, it's nice to see the progress of this company through these various transactions, and to be a part of each of them," Sorabella said. "Very much of the general approach that we take to our work is very consistent with the general approach that our client takes, and that results in a really good partnership with them."

Aside from his work on Burger King, Sorabella in the past year steered Exelon Corp. to a $6.8 billion acquisition of Pepco Holdings Corp., as well as a pair of heavyweight private equity deals. He guided Carlyle Group LP to its $3.2 billion Industrial Packaging Group buy, and represented Warburg Pincus LLC in the $2 billion merger between its Sterling Financial Corp. unit and Umpqua Holding Corp.

In the same stretch, Feirstein piloted Infineon Technologies to its $3 billion purchase of chipmaker International Rectifier Corp., in addition to mapping out Beechcraft parent Beech Holdings' $1.4 billion sale. He also represented Lazard as Reynolds American's financial adviser in the company's $27.4 billion acquisition of rival Lorillard.

In every deal they work on, together and apart, the attorneys said they mold their plan around what the client needs and what the external circumstances demand, from fast-tracking deal announcements to finding clever workarounds when potential hangups loom. But as their history shows, having both minds on a deal can bring about particularly impressive results.

"In addition to the fact that we get along and easily collaborate with each other, we are able to work collaboratively with the client as well as internally in the firm," Feirstein said. "It starts with doing good work and being a good lawyer, being hyper-responsive to clients and understanding their needs."