



Deal diary

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Apollo Rides Wachtell Again, Mirant Taps Maxwell's Smarts, Biomet Turns To Morgan Stanley and Lefkowitz Calls An Audible For Cadmus

Wachtell, Lipton, Rosen & Katz's representation of Apollo Management LP in its \$9 billion take-private of Realogy Corp., a national real estate brokerage, announced Dec. 18, continues Wachtell's longtime relationship with Apollo founders Leon Black and Josh Harris. That relationship has netted Wachtell some big buyout advisory business, including Apollo's recent acquisitions of Berry Plastics Corp. for \$2.25 billion, the advanced materials unit of General Electric Co. for \$3.8 billion and the much-hyped Dec. 20 acquisition of Harrah's Entertainment Inc. for \$27.8 billion.

According to sources close to the Realogy deal, timing was critical due to a concern about jeopardizing the tax-free nature of the company's recent spinoff from Cendant Corp. (Last summer, Cendant split itself into four different businesses: Wyndham Worldwide Corp., Travelport Inc., Avis Budget Group Inc. and Realogy.) Under Securities and Exchange Commission rules, to preserve the tax-free aspect of a spinoff, there cannot have been a "plan" - defined as an agreement or substantial negotiations to undertake the acquisition within the two years preceding the spinoff.

The timing of the deal may also have been influenced by Apollo's efforts to call a bottom in the slumping real estate market. "With residential real estate, Apollo is making an economic bet," a source says. "Some people think it'll get worse, and some think it'll stay where it is. But [Realogy] is the only real estate brokerage that's accumulated national coverage, so it's not like Apollo is betting on the Florida or New York market, per se. It's a nationwide bet." For the week ended Jan. 5, 2007, the Dow Jones index of homebuilding shares fell 4.3%.

Wachtell's deal team also included Steven Cohen, Benjamin Roth, David Adlerstein, Betty Gee, Jeannemarie O'Brien, Michael Krasnovsky, Joshua Miller, Jodi Schwartz and Joshua Holmes. David Cohen, Anwar Zakkour, Rob Sivitilli and John Sorice from J.P. Morgan were lead financial advisers to Apollo, while Credit Suisse Group also provided financial advice.

Apollo is contributing \$2 billion in equity, while J.P. Morgan Chase & Co., Credit Suisse Group and Bear, Stearns & Co. will provide the debt for the transaction.

On Realogy's side of the table, Evercore Partners Inc.'s Eduardo Mestre, John Honts, Gayle Turk, Rafael Polanco, Chris Fong and Donnie Phillips provided financial advice, while Skadden, Arps, Slate, Meagher & Flom LLP's David Fox, Thomas Greenberg, Katherine Bristor and Stuart Alperin served as legal counsel. - *Dan Slater*

When **Peter J. Solomon Co.** managing director **Anders Maxwell** represented shareholders in the bankruptcy of Atlanta power producer Mirant Corp. a few years back, he became intimately knowledgeable about its assets, including its power plants in the Philippines. "I spent three years of my life inside Mirant," he says.

So when Mirant decided to shed its crown jewels half a world away, he was a natural to represent one of the bidders. As it turned out, it was the winning bidder, Tokyo Electric Power Co., which agreed to buy the assets Dec. 11 along with Marubeni Corp. for \$3.4 billion. The deal was billed as Asia's largest-ever energy transaction and the Philippines' largest-ever takeover.

The consortium's offer was about 3 times what analysts initially thought the assets would fetch in a very crowded auction. In the final round, Tokyo Electric-Marubeni beat out at least two other groups led by OneEnergy Ltd. and Korea Electric Power Corp. So how did Tokyo Electric and Marubeni win their prize?

"The secret to our success was communicating effectively the seriousness for which we were taking the project and the degree of certainty that if we were awarded the mandate, we could close," Maxwell says. The buyer will receive senior financing backed by Japan Bank for International Cooperation, Japan's version of the U.S.' Export-Import Bank, which provides cheap long-term funding.

Early involvement also gave the winning bidders an edge. Tokyo Electric, advised by Maxwell, made an

unsolicited offer for the assets before the company decided to sell them. Mirant was under a lot of pressure from hedge funds to sell noncore assets, such as those in the Philippines and the Caribbean, and CEO **Ed Muller** eventually acquiesced, despite their stable cash flows. "On the one hand, it's very stable, but on the other hand, it's very flat, and the market is not going to give a high multiple for flat," Maxwell says.

While Maxwell didn't venture to the Philippines on this deal, he spent countless nights on the phone with people there, given the time difference (his direct contact was **Toshiro Kudama**, Tokyo Electric's international development chief). "I'd go home and the day would start all over again," he says. For a two-week stretch, there were 25 people working day and night on the deal in Singapore, where it was negotiated.

Maxwell knows power plants. The 60-year-old University of California, Berkeley, and Wharton School graduate worked at **General Electric Co.** for 14 years in finance and managed its power assets in the late 1970s. He's also done stretches at Dean Witter Reynolds Inc., **Benedetto Gartland & Co.**, Kidder, Peabody & Co., Salomon Smith Barney and **Lazard**. He's involved in another power plant bankruptcy, **Calpine Corp.**, advising the collateral agent, **Wilmington Trust Corp.**, on \$2.6 billion in secured debt at Calpine Generating Co. LLC.

Ray Wood and **Jason Fisher** at **Credit Suisse Group** handled Mirant's Philippine sale. Legal counsel included **Skadden, Arps, Slate, Meagher & Flom LLP** partner **Mike Rogan** and **Sarah Ward** for Mirant and **Paul, Hastings, Janofsky & Walker LLP** partner **Raj Pande** and **Latham & Watkins LLP** partners **Joseph Bevash** and **Michael Yoshii** for the consortium. **Sumitomo Mitsui Banking Corp.** and **ING Bank NV** also advised the consortium on cash flow evaluation and financing. - *Claire Poole*

Warsaw, Ind.-based orthopedic devices maker **Biomet Inc.** announced its \$10.9 billion sale to **Blackstone Group LP**, **Goldman Sachs Capital Partners**, **Kohlberg Kravis Roberts & Co.** and **Texas Pacific Group** on Dec. 18. But sources say the company - ranked among the top five players in the increasingly competitive medical devices arena - started to brainstorm about its strategic plans long before then.

Sources close to the transaction say Biomet's former chief executive, **Dane A. Miller**, along with other senior executives, began talking to **Morgan Stanley** more than two years ago. Biomet hired the investment bank to review its strategic options in April; Miller stepped down from the company at the end of March.

In tagging Morgan Stanley as a financial adviser, Biomet diverged from its history of turning to boutique banks, including **Piper Jaffray & Co.** **Michael Boublik**, Morgan's New York-based co-head of mergers and acquisitions for the Americas and a lead banker on the Biomet team, has relationships with many of the private equity firms in the buyout consortium. He worked closely on the transaction with **Sandy Thompson**, the head of Morgan's Chicago office who looks at the medical devices sector, among others, and New York-based managing director **Charles Smith**.

Soon after Morgan Stanley was hired, the buyers' lead adviser, **Banc of America Securities LLC**, swung into action by contacting members of the consortium, all existing clients of the bank with the exception of Goldman Sachs Capital. "We saw Morgan's hire, and in our own opinion, concluded a take-private could be a possibility," says **Joseph Kohls**, a managing director at Banc of America Securities. Kohls knew Biomet's Miller and other Biomet top management through financings for previous deals. Kohls worked closely with **Michael Mcivor**, managing director and head of healthcare M&A

BofA is also financing the deal along with Goldman Sachs, which is advising the consortium as well. Miller will possibly invest in the buyout too.

Representing Biomet is **Kirkland & Ellis LLP's** **Richard Porter** and **Robert Hayward**. A source says that Kirkland succeeded in linking up with Biomet through **Ken Starr** of Whitewater fame, a former Kirkland partner who remains of counsel. The independent directors are represented by **Simpson Thacher & Bartlett LLP**.

A **Cleary Gottlieb Steen & Hamilton LLP** team led by attorneys **Robert Davis** and **Meme Stowers** is representing the buyout consortium. The firm has a long relationship with **TPG**. - *Amy Wu*

Hughes Hubbard & Reed LLP partner **Kenneth Lefkowitz** took one for the team when negotiating client **Cenveo Inc.'s** \$430 million acquisition of trade publisher **Cadmus Communications Corp.**

Lefkowitz spent the second quarter of the Dec. 10 football game between the New York Jets and Buffalo Bills in negotiations with Cadmus' adviser, **Deutsche Bank Securities Inc.**, depriving him of watching the game from his choice seat in a Meadowlands skybox. "It was freezing cold out, but I had to leave the box in order to keep the confidentiality of the deal," Lefkowitz explains.

While working in the cold on a Sunday may not have been ideal, Lefkowitz says the deal itself went quite smoothly, in part because of his relationship with Deutsche managing director **Glenn Crafford**. The two worked together when Hughes Hubbard & Reed represented a special committee of auto-parts manufacturer **Remy International Inc.** in a going-private transaction in 2001. The special committee hired Deutsche Bank to represent it in the deal.

"Obviously, everyone's trying to get the best for their client, but it's better when you have a relationship with somebody you trust," Lefkowitz says. "You can cut to the chase and not bullshit around because you know where you're going to end up at the end of the day. I knew his word was his bond and he would not go back on it, and you don't always have that if you don't have a prior relationship."

But what made the deal unique was how quickly it came together. With their offices just three blocks apart in New York, and the principals in different states, Crafford and Lefkowitz were given the task by their respective clients of finalizing the terms of the deal, albeit with substantial input from the principals.

"My client wanted to determine quickly and quietly whether there was a basis for a transaction, and that was facilitated by the fact that Ken and I had worked together in the past," Crafford says.

The negotiations began in November, soon after Stamford, Conn.-based Cenvo unsuccessfully attempted a hostile takeover of printing services company **Banta Corp.** Wanting to get something done before the end of the year, the negotiations concluded right around Christmas. A deal was announced Dec. 27.

While Cenvo eventually won over Cadmus with a \$430 million offer, Lefkowitz's beloved Jets didn't fare as well. They lost to Buffalo 31-13, and while they made it to the playoffs, the New England Patriots knocked them out in the first round.

Cenvo did not use a financial adviser in the acquisition. In addition to Lefkowitz, other Hughes Hubbard attorneys on the deal include **Charles Samuelson, Andrew Braiterman, Javier Hernandez, Susan Campbell, Ross Lipman, Marshall Babson, Matt O'Donnell** and **Unekujo Idachaba**.

Gregory Byrnes of Deutsche Bank worked with Crafford to advise Cadmus. **David Boston, Adam Turteltaub, Erika Shalette, Johanna Ferraro, David Rubinsky** and **Christopher Peters of Willkie Farr & Gallagher LLP** and **Jeffrey Gill, Haywood Thornton, John Owen Gwathmey, Mason Bayler, David Meyers** and **Mark Jones of Troutman Sanders LLP's** Richmond, Va., office were Cadmus' legal advisers.
- *David Shabe/man*

One deal will often get you more. That maxim seems to have worked out for **J.P. Morgan**, which is advising Dayton, Ohio-based **NCR Corp.** on the spinoff of its Teradata data storage unit, announced Jan. 8.

NCR chief executive **Bill Nuti** has known J.P. Morgan's technology deal team, led by **Ron Pillar** and **Karl Will**, since his days as CEO of **Symbol Technologies** Inc. In 2004 J.P. Morgan advised Symbol in its \$275 million acquisition of electronic-equipment manufacturer Matrics Inc. J.P. Morgan also acted as lead underwriter on a \$287 million stock offering to finance the Matrics deal.

NCR expects the Teradata spinoff, whose details have yet to be finalized, to be completed in some six to nine months. According to several sources, NCR had long considered the move because the unit's data warehousing business is almost entirely separate from the company's business manufacturing ATMs and other self-service technology. The company moved when it did because it was finally confident that the units were strong enough separately to be split, sources say.

The deal is J.P. Morgan's first for NCR, but it may not be the last time it deals with Teradata. Sources say part of the reason for the spinoff is to give Teradata shares currency in a consolidating industry, in the expectation that it will be an acquirer.

For legal advice, NCR turned to a **Wachtell, Lipton, Rosen & Katz** team comprising **Richard Katcher, Stephanie Seligman** and **Deborah Paul**. Katcher has known NCR since 1991, when AT&T Corp. acquired NCR for \$6.1 billion. The company was spun off from AT&T in 1997, and Katcher acted as adviser to AT&T on that deal as well - *Vipal Monga*