



Steve Green (left), David Lam (center), Jake Kling (right)

Dealmakers of the Year

DAVID K. LAM, JACOB A. KLING AND STEVEN R. GREEN

Whatever entity that ended up buying obesity treatment-focused pharma company Metsera knew it wasn't coming cheap, or without competition.

Paul, Weiss, Rifkind, Wharton & Garrison, representing Metsera, wanted to make sure that Metsera's M&A offering got the "maximum value for its shareholders."

Meanwhile, a Wachtell, Lipton, Rosen & Katz team representing Pfizer, who ultimately acquired the company for as much as \$10 billion, was determined to fend off those competitors.

Paul Weiss's Ben Goodchild and Scott Barshay wanted to, as Goodchild put it,

"design a process that drove value and competitive tension as much as we could."

Early in the process, Pfizer believed it had come out on top, offering \$4.9 billion upfront and \$8.1 billion with milestone payments. That topped an unnamed bidder that was offering an all-stock option.

But about a month after Pfizer had entered into an agreement to acquire Metsera, another bid came in from Denmark-based pharma giant Novo Nordisk—a large player in the GLP-1 market for weight loss that was looking to expand its footprint.

Wachtell Lipton partners David Lam, Jacob Kling and Steven Green then went to work.

“It was one of the largest and most contentious public takeovers in recent memory,” Green said in an interview.

Green explained that Novo, again already a large player in the GLP-1 space, tried to structure a deal that would alleviate concerns about antitrust and regulatory enforcement.

“This transaction would create significant regulatory issues and hurdles,” he said.

“Novo tried to sidestep that with a novel deal structure where they would pay all the cash upfront, which is about 90% of the total. They would pay that at signing, and in exchange they would get a 50% stake in non-voting preferred stock in the company. Metsera would dividend that cash out right after signing and not require approvals.”

Novo would then acquire the remaining stock in a traditional merger.

“The [Novo] offer came in on a Saturday night, and we immediately convened the team and identified a number of legal issues in the structure,” Lam said in an interview. “We sent a letter from our firm to the Metsera board as well as Novo that highlighted the structure had serious concerns under U.S. and foreign trade law and was an end run around the HSR.”

“They are a sophisticated client, and that was critical for something like this,”

Lam was referencing the Hart-Scott-Rodino Act, which requires mergers of a certain size to have a 30-day wait period before closing.

He explained that the Novo offer couldn’t be considered a “superior” bid, even though the dollar amount was higher, because of these issues.

“A lot of lawyers would have sat back and watched the bidding war play out,” Lam said. “We took a very different approach and went on the offensive.”

That offense took the form of legal action in both Delaware’s Chancery Court and federal court.

Goodchild and Barshay, looking to keep the door open for the highest bidder, assisted Novo in creating the structure referenced above and prevailed in Delaware.

“The last thing you want to do is say no to an offer,” Goodchild said, referring to Novo’s bid. “We had to come up with something. What are all the creative options? We thought the Novo bid might work.”

Goodchild said that created a situation involving hundreds of Paul Weiss attorneys, from corporate to tax to regulatory to litigation.

“Pfizer had a great team,” he said. “It came down to what the contract said, what Delaware law said and how confident we were in our antitrust and litigation.”

The Novo structure was upheld in Delaware court, and it appeared that its higher overall bid would come out on top. But the FTC ended up having a say.

“The strategy worked,” Kling said. “The FTC issued a letter to Metsera expressing concerns that the [Novo] deal structure violated antitrust laws and that there were unacceptably high legal and regulatory risks.”

The Metsera board agreed, after Pfizer upped its offer. In the end, the two companies closed the merger at \$7 billion up front and up to \$10 billion, including milestone incentives.

The Wachtell trio credited their ability to reach each other easily, via the firm’s single office in New York, as a reason for their success, given the tight time frame.

“Once Metsera was going to pursue another transaction, we had three business days to match before they could terminate,” Lam said. “And they were very close to shareholders’ vote. That made the timetable tight. It would have made it difficult to pull off in such a short period if we weren’t joined at the hip.”

The lawyers also said the firm’s longstanding relationship with Pfizer and its previous work on larger deals provided a warm blanket of trust as things played out.

“They are a sophisticated client, and that was critical for something like this,” Kling said. “There is mutual respect and they trust our judgment.”

While Metsera, a newer company, didn’t have the long tenure working with Paul Weiss that Pfizer had with Wachtell, its founders had worked with Barshay on a previous matter.

When it came time to find legal counsel for a merger, they gave him a call.

By Patrick Smith

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