

Recap: “BCLB Law Firm Hot Topic Lunch Talk: Kirkland & Ellis LLP – The Huntsman Merger”

By Michael Homer, J.D. Candidate 2020 | February 16, 2018

On February 12th, 2018, the Berkeley Center for Law and Business welcomed attorneys Bill Sorabella and Shawn O’Hargan from Kirkland & Ellis LLP. Kirkland & Ellis LLP advised American chemical manufacturer Huntsman Corporation on its \$20 billion merger with Swiss chemical company Clariant. Then, in the final stages of negotiations, there was an unexpected twist, as activist investors abruptly blocked the merger. Sorabella and O’Hargan led the team that crafted the deal, before that deal suddenly fell through.

Huntsman is the 3rd largest petrochemical company in the United States, operating in over 30 countries with a market capitalization of roughly \$7 billion. Initially a family owned company, Huntsman was taken public in 2005. Peter Huntsman serves as President and CEO. Clariant is a Swiss specialty chemicals company. In 2012, Clariant purchased Sued Chemie, which now owns 14% of Clariant stock. Hariolf Kottmann serves as Clariant CEO.

The deal was a textbook merger of equals. A merger of equals is when two companies of approximately the same size come together to form a single company. Shareholders from both companies receive stock issued by the new company. There is no premium for shareholders, and the price is set at market value. A merger of equals is typically done for strategic reasons. The synergies and cost-saving created by the combined company results in greater efficiencies and economies of scale.

The new company would be called HuntsmanClariant, with a resulting stock split of Huntsman shareholders controlling 52% and Clariant shareholder’s controlling 48%.

Sorabella and O’Hargan stressed that culturally it was important for the Swiss company to be viewed as the company that was continuing, with Huntsman being bought as a subsidiary of Clariant. The stock percentage was not as important, but it was critical that the Swiss company be the surviving company. For Huntsman, it was important that Peter Huntsman remain CEO of the new company.

The deal was going well, and everything was relatively quiet, when on the 3rd of July, 2017, White Tail, an activist partnership between 40 North and Corvex Management, suddenly bought up 7% of Clariant shares. White Tail continued to buy up shares of Clariant throughout the summer and into the fall. By October, White Tail had committed over \$2 billion to this endeavor and had increased its holdings to 20%. Simultaneously, stock prices were going up, and yet White Tail was not asking for a higher price to be bought out. White Tail maintained that they were long-term shareholders and encouraged other shareholders to reject the deal.

Given the continued accumulation of Clariant shares by White Tail, it became clear that there was too much uncertainty as to whether Clariant would be able to secure the requisite

shareholder approval to approve the merger, and Clariant and Huntsman eventually decided to terminate the merger agreement.

In conclusion, Sorabella and O'Hargan said, "a merger of equals is ultimately successful only if we can get the deal closed and then drive the synergies that we want." This is a very unique situation, and there was probably not much that could have been done to deal with this issue.