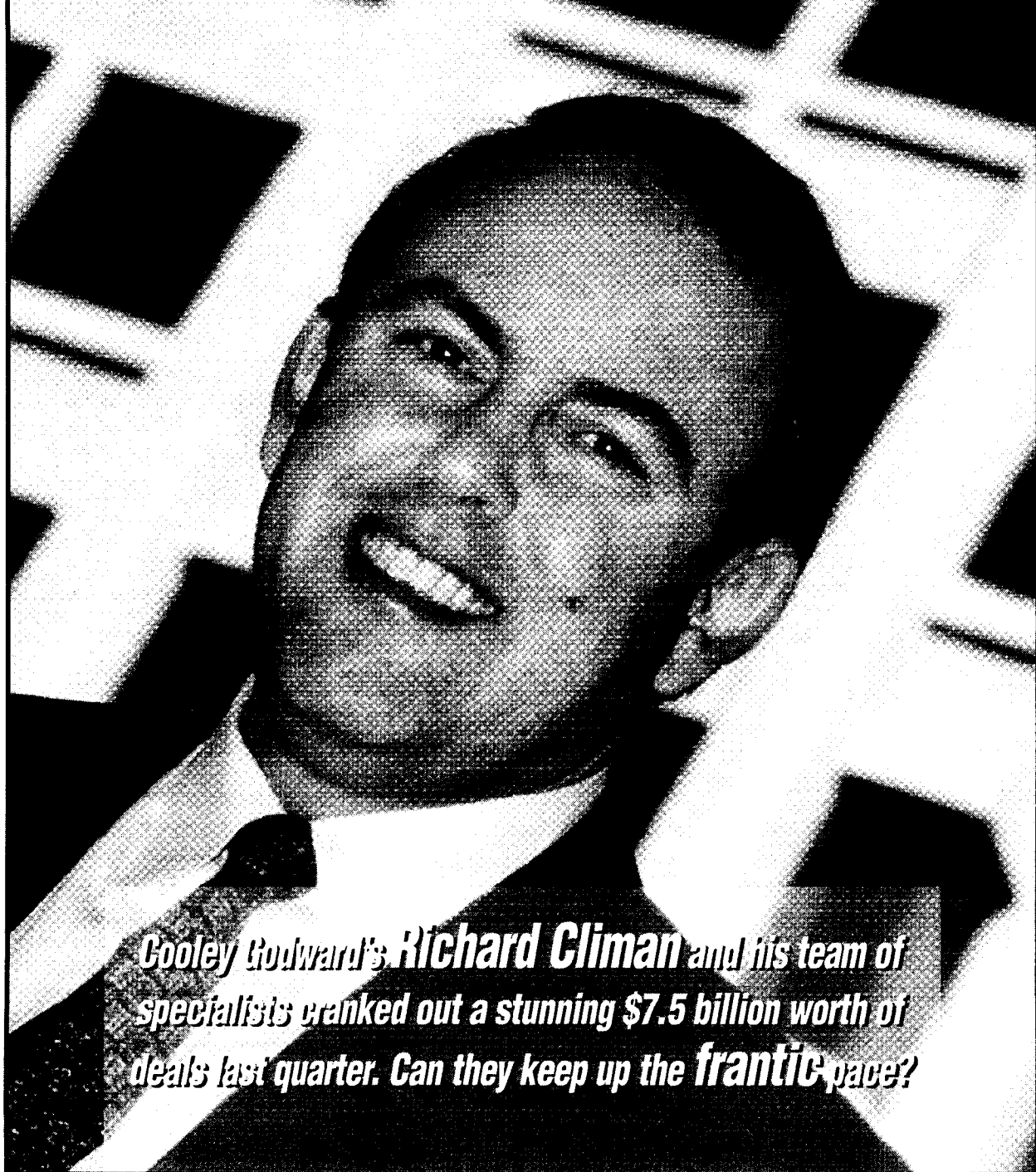


MERGER MACHINE



Cooley Godward's Richard Climan and his team of specialists cranked out a stunning \$7.5 billion worth of deals last quarter. Can they keep up the frantic pace?

Richard Climan and his team of M&A specialists cranked out an amazing \$7.5 billion worth of deals last quarter. Can they keep up the frantic pace?

By Tom Orewyler
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A good way to measure the volume of Cooley Godward's mergers and acquisitions activity is to count how many times its M&A team arrives for an early morning breakfast at the Duck Club at Stanford Park Hotel after an all-night work session. Such gatherings at the upscale Menlo Park Restaurant have become a ritualistic celebration of the signing of another deal, often coming on the heels of the pre-market-opening press release that tells the rest of the world what these lawyers already know.

While no one can say exactly how much business the group of attorneys has brought to the eating establishment lately, recently released statistics might give someone a pretty good idea. According to New Jersey-based Securities Data Co., Cooley was the lead outside counsel on 23 M&A transactions announced in the fourth quarter of 1998.

That figure, which amounted to more than \$7.5 billion in deals, placed Cooley—a firm that only five years ago didn't have a real M&A department—at No. 6 nationwide in total U.S. deals during that period, ahead of some of the New York powerhouses that claim to have invented the M&A specialty.

These days, Cooley's M&A lawyers aren't difficult to spot in their Palo Alto nerve center, particularly when a large client wants a deal to be signed by the Monday-morning opening of the stock market.

The weekend days leading up to these corporate combinations are a sight to see, with lawyers for the two sides sparring in a conference room in the middle of the night, feeding off of caffeine, carbohydrates and pure adrenaline.

Unless they live in the surrounding neighborhood, a couple of hours of sleep in their

own beds are hard to come by for young M&A associates. If they're lucky, they might be able to sneak into the office of a partner who has a sofa during the one- or two-hour respite that comes when opposing counsel are reviewing the latest draft of the acquisition agreement.

More often than not, though, the pressure and excitement of the high-stakes atmosphere

■ Essex International, in its \$1.3 billion merger with Superior TeleCom, which was announced in late October.

■ Boole & Babbage, in its \$900 million merger with BMC Software, which was announced in early November.

■ And, in the largest deal ever in the medical devices industry, AVE, in its mammoth \$3.7 billion merger with Medtronic Inc.,



are more than enough to keep them on their feet.

Such scenes of organized chaos have been frequent occurrences for Cooley's M&A team. While the firm's deals spanned the country, Cooley was a particular beneficiary of the host of Silicon Valley marriages between technology upstarts and larger, more established predators that defined the fourth quarter.

In the fourth quarter alone, the firm handled five deals valued at more than \$500 million and two that exceeded \$1 billion. Its clients for these large, buy and sell-side transactions included:

■ Arterial Vascular Engineering (AVE), in its \$500 million acquisition of C.R. Bard Inc., which closed in early October.

■ Sequus Pharmaceuticals, in its \$580 million merger with Alza Corp., which was announced in early October.

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While he might be reluctant to admit it, Richard E. Climan, the firmwide head of the group, doesn't mind the frantic pace that such a quarter demanded.

Just ask Keith Flaum, who recently completed his first year as a partner in the group. In late October, when Flaum was pulling a series of all-nighters in an effort to complete the Boole & Babbage/BMC deal, he wanted to discuss with Climan various provisions in a lock-up option. The only problem was that his boss was three time zones away at his alma mater, Harvard Law School, where he had traveled to interview prospective summer associates.

So, Flaum left a voice mail for Climan and continued to stay up as evening grew into night, toying with various provisions of the proposed lock-up option agreement—a complex pact under which the client grants

the buyer an option to purchase a chunk of newly issued stock in the event another party makes a bid to acquire the client. Not long after Flaum made the call, his phone rang.

"At 5 after 12 my time, he called me," Flaum says. "It's scary, actually but it's true."

The clauses in a lock-up agreement are not all that Climan is known to discuss in the wee hours of the morning. In 1995, when

acquisitions. Having taken a host of clients public and with other clients on the verge of going public, the firm made a strategic decision in 1993 to build an M&A department. Cooley's pursuit of a high-profile leader capable of building a team of lawyers devoted exclusively to mergers and acquisitions ended a year later when Climan came aboard.

Now, the firm counts a dozen full-time M&A lawyers among its ranks and over 40 attorneys firmwide who devote more than half their practices to the specialty. It wasn't all that long ago that a firm with a practice group focused solely on M&A work could only be found on Wall Street.

"You really get a lot of comfort dealing with a group that does this day in and day out," says William Barmeier, senior vice president and general counsel at VeriFone Inc., who turned to Climan when his company was acquired by Hewlett-Packard for more than \$1 billion in 1997.

The fact that Climan has a powerful command of his craft is not lost on lawyers within his firm either. Every month, between 75 and 100 Cooley attorneys, many from outside the group, attend an M&A meeting replete with mock negotiations and various topics aimed at keeping attorneys abreast of developments in the field. The gathering, which has attained an almost cult status in

the 400-plus attorney firm, is video-conferenced to all the firm's major offices.

"There's really no other group with an equivalent reach," Benton says.

As part of the individual reports and business plans submitted by partners at the end of the year to the firm's compensation committee, the partners are asked which of the other partners are the most valuable to the firm and its partners.

"Rick makes a lot of short lists, and so does Keith [Flaum]," says Deborah Marshall, head of the business department and a member of the firm's compensation committee.

Climan declines to disclose his compensation, but sources say he earned more than \$1 million in 1998 and had a book of business that approached \$5 million.

What seems to count more than money to Climan is an M&A group that realizes the importance of being available to clients around the clock coupled with a full understanding of the unpredictable nature of a transactional practice.

"I've had every other weekend off," says new associate Jennifer Ulveling. "The hard part is not knowing which weekends those are going to be."

Such a reality is par for the course for M&A lawyers, who might call it a day at

6 p.m. one day and 6 a.m. the next.

"I don't think it's possible to practice M&A law or any kind of transactional law and expect to have a normal schedule where you work the same hours every day," says M&A partner Suzanne Sawochka Hooper, a rising star in the group who was elevated from associate status last year. "The challenge is to take advantage of the [down] time when you have the time, so when you don't, you don't feel like you have no life."

Still, sleep can be hard to come by in the middle of a merger between two corporate giants.

"Any time you have a sizable deal, you're going to suffer," Hooper says, "whether it's one all-nighter or three."

In late November, during the AVE/Medtronic deal, the group agreed to take most of Thanksgiving day off. During that time, Hooper and Climan, who left town for the day, reviewed the acquisition agreement they had received late Wednesday.

"Between midnight on Wednesday night and 6 in the morning on Thursday, I must have had 20 voice-mail messages from Rick with comments on the document," Hooper says.

Climan was previously the M&A head of the now-defunct Pettit & Martin, the San Francisco-based firm that became infamous as the setting of a 1993 massacre in which a gunman roamed Pettit's hallways, killing eight, including three Pettit employees.

His year-long courtship with Cooley began before the shooting, when Benton recruited him in early 1993, honing in on Climan in part because of the glowing recommendation given him by Barmeier, a former colleague of Climan's at Pettit.

"He told me that one of the things Rick enjoyed doing most is teaching," Benton says. "That's what you look for in anybody you're bringing in, particularly on a major partner level."

Even though Pettit was widely known to be having financial difficulties, Benton knew that prying Climan away from a firm where he had spent 16 years would be a difficult task.

"[Pettit] was on its way down," Benton recalls. "Still, I think it took us 11 months to convince him to leave there."

It wasn't an easy decision for Climan, who was being wooed by other law firms. While doing his due diligence on Cooley, Climan didn't stop at the partnership level.

"I did something unusual," he says. "I spent time talking not only to partners but also to associates, and that was critical to my decision."

According to Climan, the building blocks for a successful M&A practice—strong associates, a forward-thinking management team, a vibrant client base and a firm culture



Deal-irious—Team members, from left, Theresa Tao, Gregg Alton, Sandra Geiger, James Jones, Jennifer Ulveling, Paul Quinlan, Kathryn Walker, Keith Flaum, Janet Lee and Richard E. Climan.

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Flaum, then an associate at San Francisco's Bronson, Bronson & McKinnon, was

trying to decide if he should join Cooley or their Palo Alto neighbor, Fenwick & West, Climan was once again on the East Coast. Still, he made a point of keeping close tabs on Flaum's decision-making process.

"Looking back, it was typical of Rick to call me at 2 in the morning [East Coast time] and say, 'Let's talk about it,'" Flaum says of his job offer from Cooley, which he soon accepted. "That was eye opening."

Even by New York standards, Climan has a tireless work ethic, which many believe is a major reason for the success of his group—a group that was virtually nonexistent before Climan came to the firm.

"In some sense, [the M&A group] started from one and got to where it is now," managing partner Lee Benton says. Before Climan arrived, Benton was the leader of a loosely affiliated crew of Cooley lawyers who devoted a portion of their practice to mergers and

that emphasizes associate training and mentoring—were already in place when he arrived.

“As a result, my job here has actually been pretty easy,” he says.

By his own admission, Climan demands a lot from those who work with him.

“I don’t tolerate ‘fill-in-the-blank’ lawyering,” he says. “I won’t put up with pulling a form off the shelf, changing the names and dates, and voilà, a ‘ready-to-go’ work product.”

“The associates here know that no document goes out the door unless they understand completely the meaning and effect of every single provision. It’s important that they learn to be thoughtful, creative lawyers.”

Climan’s preparedness has not gone unnoticed by his counterparts.

“He’s a student of the game, by which I mean he knows the law, he reads every case, and he knows the norms in mergers and acquisitions,” says Gordon Davidson, managing partner at Palo Alto-based Fenwick & West who devotes a substantial portion of his time to M&A work. “He really knows his stuff when he goes into a negotiation.”

“On any transaction, I’d love to have him on my side. He’s got a quiet sort of confidence [and] the right combination of toughness and fairness, which is really important in getting a deal to conclusion.”

According to his clients, Climan supplements his substantive knowledge with formidable negotiation skills.

“Where you win on points [in a negotiation], there’s not really a right or a wrong,” says John Richard, executive vice president of business development for Sequus Pharmaceuticals, who recently retained Cooley in a sell-side merger valued at approximately \$580 million. “It’s who has the best reason for getting that specific issue and why the other side’s reason doesn’t make that much sense.”

“Rick’s just got a gravity to him in those situations. It’s just tough for the other side to argue with him.”

Of course, many clients demand that their lawyer not only have negotiating talents, but also a willingness to burn the midnight oil.

“I have to work seven days a week, and if it’s Saturday or Sunday at whatever hour, I know I can get a hold of someone there,” says Alec Meyer, senior director of business development at Fortune 500 client Applied Materials, who hired Climan after seeing him in action at a seminar sponsored by the Practising Law Institute, one of Climan’s many nationwide speaking engagements in his specialty area.

“I’ve found them to be the most attentive law firm I’ve ever dealt with,” says partner Chuck Frank of the Parkside Group, a San Francisco-based leveraged buyout company.

“They have achieved every goal we have set for them.”

But don’t call Climan a perfectionist, an ideal he believes is difficult to achieve in an environment that requires quick turnaround time.

“No question, my standards are exceptionally high,” he says. “But above all, M&A practitioners have to develop sound judgment and a practical understanding of what’s important and what’s not.”

“There’s simply not enough time to pursue perfection for its own sake.”

Even so, Climan and Flaum are known to scrutinize the deal documents produced by their group, repeatedly marking up a document until the nonpartner gets it right. Such a practice doesn’t seem to bother other members, who welcome the close supervision they were told they’d receive when they signed on to the group and who thrive in a learning environment many of them believe they couldn’t get elsewhere.

“When I first started working with Rick, I remember the first thing I turned into him,” says associate Gregg Alton. “It came back bloody red.”

According to Flaum, the heir apparent to head the group in the event Climan should ever leave, Climan’s approach has helped energize the members of the group, including Flaum himself.

“There are many people who will work hard, but there are fewer people who will work hard and get excited about what they do,” Flaum says. “For me, the reason I work hard is because I get excited about it.”

Attorneys at the firm, including Climan, say that Flaum works longer hours than anyone else in the group.

“My wife says I’m worse than Rick when it comes to checking voice mail on weekends and carrying my cell phone around, but I think it’s important because clients expect you to call them back as soon as you can,” Flaum says.

In his capacity as administrative head of the group, Flaum oversees nonpartners whose pedigrees would make most credential-conscious, East Coast counsel swoon with envy.

Two M&A attorneys have joint JD/MBAs—special counsel James Jones from Stanford and associate Jennifer Ulveling from New York University. Three other associates—Janet Lee, Gregg Alton and Kathryn Walker—attended Stanford Law School and another, Theresa Tao, earned her JD from Harvard.

Climan claims that he doesn’t place much emphasis on where an attorney attended law school. Being versatile, he says, is more important.

“To be an effective M&A lawyer, you have to be part corporate lawyer, part securities lawyer, part employee benefits lawyer, part

antitrust lawyer, part environmental lawyer, and yes, even part litigator,” Climan says, “not to mention part accountant and part investment banker.”

Wearing so many different hats might lead some partners to suffer from burnout, but not Climan.

“I’m never going to be a 9-to-5er,” he says. “But my goal in life isn’t to spend the next 10 years working around the clock either.”

“I have too many other interests, like music and sports,” says the 6-foot-2-inch, athletic Climan, counting himself as one of a small group of “late-shift” lawyers that hit the Pacific Athletic Club for a workout from 9:30 to 11 many evenings.

With a corner office adorned with a variety of deal mementos and sports memorabilia, including a baseball autographed by the 1961 New York Yankees, Climan, who grew up in Queens, follows his New York teams closely. About the only time he’s not accessible, associates joke, is when the New York Giants are playing football.

But his interest in sports doesn’t stop there. Climan and business associate Eric Reifschneider recently developed the Futility Index, a project that originally began as an effort to rank the most woeful sports teams of all time using a precise mathematical formula.

Their work was featured in the *Wan Street Journal* and on National Public Radio. The project’s latest endeavor was ranking the saddest sports cities in America (Cleveland came out on “top”), which once again propelled Climan onto sports pages and talk radio shows around the country.

Climan says he has no intention of leaving Cooley, even though opportunities to do so have been known to arise.

“If he doesn’t get multiple offers, he gets multiple hits per week from firms interested in him, ranging from New York to L.A. to firms around here,” Benton says.

Climan declined to disclose any firms that have courted him since he’s been at Cooley, but insiders say that over the past few years, he has been the darling of several large, East Coast law firms and investment banks looking to gain a toehold in the lucrative Silicon Valley marketplace, an environment that suits Climan to a tee.

“I’m still learning a lot and that’s what keeps things interesting,” he says. “I might feel differently if I were in a practice where the work was more of the cookie-cutter variety, but in the M&A arena, every new deal is a challenge.” ■

Cooley Godward LLP