

ALM | LAW.COM

THE AMERICAN LAWYER

law.com/americanlawyer

APRIL 2023



THE DEALS ISSUE

IT SEEMS NO ONE IS WILLING TO PUT UP WITH
A SLUMP IN DEALS FOR TOO LONG.

2023 DEALMAKERS OF THE YEAR

Warren Buffett believes time is an enemy. So when Munger, Tolles & Olson received word of Buffett's proposal, on behalf of Berkshire Hathaway, to buy Alleghany Insurance for \$11.6 billion in cash last March, the team mobilized at lightning speed.

"We knew something was up but we didn't get the details until the 13 or 14 of March," recalled Munger partner Brett Rodda, who represented Berkshire along with fellow corporate partners Bob Denham, Jennifer Broder and Tyler Hilton.

"We buckled down and got the deal announced by March 21," Rodda said. "The real work was all done over the course of one week."

The timeframe was far from typical, but Munger was well-qualified for the task, having a longstanding relationship with Berkshire. The firm represented Berkshire in its landmark \$44 billion acquisition of Burlington Northern Santa Fe in 2009, among others.

Complicating the deal for Alleghany was the company's public listing. For most public company deals, the law requires the seller's board to hire bankers and "go shop" the company to get the best price. As a result, Munger's lawyers incorporated a three-week go-shop provision into the deal to enable the board to fulfill its fiduciary duty.

"Warren knew Alleghany wasn't for sale and hadn't sampled the market," Rodda said. "He knew they'd have to 'go shop' the company or have a fiduciary out. So he said go for it."

"They had the chance to find a better deal, and if they did, Berkshire would match it or walk away," he continued. "Presented that way, it felt like a package that Alleghany would accept."

Another unique element of the deal was an offer price inclusive of the bankers' fee paid to Goldman Sachs to search for other buyers. Munger's team structured a flat-fee arrangement so that the fee could be deducted from the amount Berkshire was otherwise willing to pay shareholders.

That level of transparency with respect to the bankers' fee is incredibly unusual, Rodda said. But it was coupled with an unusually simple deal when it came to other terms—there was no termination or reverse termination fee or fiduciary out because of the go-shop provision.

The deal was Berkshire's first major acquisition since 2016. After clearing numerous regulatory hurdles, the deal closed in October 2022.

—Jessie Yount



JENNIFER M. BRODER, ROBERT E. DENHAM, AND BRETT J. RODDA

MUNGER, TOLLES & OLSON