

## THE TALENT

### Dealmaker of the Week: Simpson Thacher's Gary Sellers

Posted by Julie Triedman

Not many proposed mergers prompt several Congressional hearings and set off year-long regulatory hurdles. But the proposed \$13 billion merger of Sirius Satellite Radio and XM Satellite Radio Consumer did both, recalls Gary Sellers, the Simpson Thacher & Bartlett M&A partner who led Sirius's merger effort: On-air radio lobbyists and various public interest groups protested so loudly after the deal was announced in February 2007 that regulatory and antitrust scrutiny was long-lasting and intense.

Finally, on July 28, 2008, after obtaining approval from the Federal Communications Commission, the two companies became one, instantly creating the second-largest radio broadcaster in the U.S.

But the drama of this M&A epic didn't end there. Still unresolved was the combined company's roughly \$3.3 billion in debt, much of which would come due starting in and going through 2009. Sellers, along with his deputy on the deal, senior associate Peter Martelli, and Sirius XM general counsel Pat Donnelly, a former Simpson associate, immediately got to work to solve this.

What happened next most people know--Lehman's collapse, bank failures, a nearly extinct credit market, and a recession, officially, that we'd been living in for some time. It all complicated Sirius XM's plans for a refinancing. Plus, the decline in sales of American-made cars, upon which satellite radio sales depend, did some damage. For months, the company and its bankers reached out to potential investors, with little success.

By February 11, with a February 17 deadline looming on a repayment of \$172 million of notes held by EchoStar Communications, The New York Times reported that the company was preparing for bankruptcy. Behind the scenes, however, Sirius XM's CEO Mel Karmazin, assisted by a team of advisers, pushed to find a liquidity solution.

They believed they had found one in Liberty Media, the

owner of DirecTV. Between late Friday morning and late Monday night, Liberty's and Sirius's lawyers worked nonstop, negotiating and drafting three separate transaction agreements.

Sellers "only focuses on what he really wants and he focuses on [what he wants] like a laser beam," says Baker Botts corporate partner Marc

Leaf, who was brought in only a few weeks ago when Liberty entered the scene. "He's second to none in doing that."

The result: Liberty agreed to loan Sirius \$280 million to pay off EchoStar immediately; it would loan up to another \$250 million to help pay off other debt due in the fall. In return, Sirius would give Liberty a 40 percent equity stake in the company upon completion of the second loan.

Liberty encouraged Sirius XM's management team to stay intact; Liberty will get a proportionate number of board seats.

The agreements were signed in the wee hours of Tuesday morning, recalls Leaf, just in time to wire the money to EchoStar.

Market observers mostly greeted the news with enthusiasm. "If Sirius XM can solve its debt problem," wrote Andrew Ross Sorkin in the New York Times's DealBook, "the company's value is likely to jump sharply."

But for Sellers, this is only the beginning of the next chapter of rolling out a longer term relationship with Liberty and helping clear the way for his client to return to financial health. "I'm excited to watch the long-term benefits of the Sirius-XM merger finally materialize," Sellers says. And Sellers is optimistic about the future for the little radio company he began working with over a decade ago.

With its short-term liquidity problems solved, the company, with \$2 billion in annual sales, may be able to finally turn to melding its businesses and seeing the benefits of its union.

