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Benefits Group Of The Year: Cravath

By **Emily Brill**

Law360 (February 15, 2019, 3:41 PM EST) -- Cravath Swaine & Moore LLP provided benefits advice to companies involved in top-dollar deals, such as Time Warner Inc. in its $109 billion sale to AT&T and Walt Disney Co. in its pending $85 billion acquisition of Twenty-First Century Fox Inc., placing it among Law360's Benefits Groups of the Year.

Cravath's 13-year-old executive compensation and benefits group is small but mighty. With just three partners and a rotating cast of associates, the practice regularly works on multibillion-dollar deals of great complexity, crafting executive compensation and benefits packages while navigating securities, tax, corporate governance, accounting and Employee Retirement Income Security Act issues, attorneys said.

In recent years, those deals have required Cravath partners to become well-versed in French and German employment laws, merge two companies with complex legacy compensation arrangements and work on transactions that undergo intense media and regulatory scrutiny.

Still, practice head Eric W. Hilfers described the group's work simply: "We try to do the exact same thing the other Cravath attorneys do in their practice areas: Our goal is to provide technical expertise and commercial, pragmatic advice and counsel to our clients."

Cravath partners worked on the $109 billion sale of Time Warner Inc., which closed in June, for nearly two years. The government's 2017 challenge of the deal presented benefit-related complications for Cravath's client, Time Warner, because the company wasn't sure if its executives would leave amid the uncertainty of whether the deal would go through.

"It was a real challenge, because first, we had the issue of: Are people going to leave? Will they believe the deal will close? And we had the need to keep executing on Time Warner's business strategy," said Jennifer S. Conway, a Cravath benefits partner who worked on the deal. "We worked very closely with the business team at Time Warner to make sure we designed something that would work in any case."

While the deal was pending, Cravath helped Time Warner encourage its executives to stay through incentives and a program combining retention payments, severance and special equity awards, attorneys said.

Another major transaction Cravath benefits attorneys have recently worked on is Walt Disney Co.'s pending $85 billion acquisition of Twenty-First Century Fox.

Attorneys in Cravath's mergers and acquisitions group represented Disney in a fierce battle with Comcast for Fox's film and TV studios. After boosting its cash-and-stock offer to $71.3 billion in June and assuming $13.8 billion of Fox's debt — bringing the total to roughly $85.1 billion — Disney walked away with the studios.

As part of that transaction, Fox is spinning off its news and sports business into another company, which presents issues from a benefits perspective, Cravath partner Jonathan J. Katz said.

The new company will receive an all-new benefit plan that will take on certain liabilities of Fox's plan, he said. And when Disney buys the remainder of Twenty-First Century Fox, the entertainment company will have to incorporate the mass media corporation's plan into its own plan, he said.

"Each part of the transaction has its own benefits complications and wrinkles," Katz said.

Because the pending deal has been a high-profile news item since its inception, attorneys working on the transaction operate with an extra level of awareness, Katz added.

"We had to be cognizant of the deal and its components being publicly reported very widely," Katz said.

Like the Disney deal, the $70 billion merger of the German company Linde AG and U.S. company Praxair Inc. proceeded under scrutiny — this time, by regulators.

The complex cross-border merger got the go-ahead to close from the Federal Trade Commission just two days before an October deadline. The uncertainty caused the companies to worry about employee retention, so Cravath helped Linde and Praxair design incentives to keep workers happy, Conway said.

The incentive program helped ease a great deal of stress for all parties involved, she said.

"If we hadn't closed when we did, they'd have to do an entirely new exchange offer in Germany, which would have basically killed the deal," Conway said. "Ultimately, there was a really good result, but the compensation programs we designed were key in making sure both companies remained intact while the transaction was pending."

Working under both German and U.S. laws added a special wrinkle to the transaction because Germany's legal structure for corporate sales is quite complicated, Conway said.

But Cravath frequently works on cross-border deals, including the French company AXA SA's $15.3 billion acquisition of XL Group Ltd., which closed in September.

This transaction posed challenges because AXA's compensation program was quite French in design, while XL's was quite American, Hilfers said. Merging the two companies involved attempting to find a middle ground, he said.

"Because XL was a traditional U.S. company, it had a corporate philosophy — at least as it relates to compensation — that was American, and our client had a French approach to compensation. Those are different," Hilfers said. "To bring those two management teams together required us to get very creative."

Under Hilfers' leadership, Cravath's benefits practice has grown from one partner to three partners, a number Hilfers describes as "critical mass."

"We are at full speed in that sense," Hilfers said.

Cravath, which works on deals across the globe, is based in New York City with another office in London.

--Additional reporting by Adam Rhodes. Editing by Marygrace Murphy.