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Special Delivery

Brian McCarthy rides point for some of Skadden Arps's largest clients. His deep and shrewd financing know-how helped send FTD to United Online **BY MICHAEL MARTIN**

Legal maneuvering might well be encoded in Brian McCarthy's DNA: Someone in his family has either been studying or actively practicing law ever since his grandfather Maurice entered law school back in 1890.

At 54, McCarthy, a Bronx native, is a partner at Skadden, Arps, Slate, Meagher & Flom, and among the firm's more prominent attorneys. Working out of its Los Angeles office, he has helped close some hefty deals over the past three decades. Among his most noteworthy: He helped women's-apparel titan Linda Wachner orchestrate her famous hostile buyout of Warnaco in 1986.

This past year, McCarthy tapped his rich legal heritage to help shepherd budding retailer United Online through a thorny purchase of florist-to-the-masses FTD. The intriguing pairing aside, deal participants point to McCarthy's quarterbacking skills as crucial when the two parties racked their brains to figure out financing terms amid a tourniquet-tight credit environment. Stymied but still optimistic, McCarthy reverted to a tactic he had last seen in the credit-squeezed early '90s: publicly issued seller notes. Rarely used in the era of fast, easy credit, they proved clutch. "Both parties liked the deal; we just couldn't access the capital," he explains. "When we looked back at some deals from years ago, our game plan became clear."

McCarthy's own game plan as a child — he grew up the youngest of four — did not involve the family profession. He watched his father, Maurice McCarthy Jr., work long hours as an attorney at his own firm in Manhattan, litigating until the day he died in 1976 at age 65. By then, though, Brian was in his first year at Fordham Law School. Even a few years earlier, while an undergrad at Tufts, he remained certain that the family's penchant for the practice of law was ending with him. "If my dad had ever once told me that I had to go to law school," he says, "I never would have gone."

SCORECARD
Brian McCarthy

Age 54

City Los Angeles

Firm Skadden, Arps, Slate, Meagher & Flom

Education B.A. from Tufts University, 1975; J.D. from Fordham Law, 1978

Career Arc Joined Skadden in 1978; opened the firm's Los Angeles office in 1983; became partner in 1986.

Really Big Deal Helped Disney in its $7.4 billion buyout of Pixar.

He went, however, landing after graduation at Skadden Arps in the fall of 1978 by way of a part-time gig at the New York Power Authority. The former general counsel there, Tom Moore, knew Les Arps and had helped McCarthy get in the door at the then-30-year-old firm. "I was their 180th attorney," McCarthy recalls.

Marrying his wife, Shelley, just a year after landing his big job, McCarthy was on a roll and in good company. A quintet of mentors — Joe Flom, Morris Kramer, Edmund Duffy, Jerry Coben and Jim Freund — taught him time and again how to turn over all stones for a client. "Jim Freund was a master of getting down to brass tacks," he remembers.

In 1983, Skadden opened an office in Los Angeles to better serve the West Coast. McCarthy was offered the chance to help get it started. "Four of us made the move," he recalls. "Two litigators and two M&A guys. Now there are 180 lawyers in L.A. alone."

While it's likely Skadden's efforts out West would have panned out eventually no matter what, the group quickly gained traction, because Drexel Burnham Lambert had opened up shop in Beverly Hills. Michael Milken's paper was flying, and so were the deals.

One of McCarthy's memorable assignments came in 1984, when he helped Carter Hawley Hale (then the owner of Neiman Marcus) stave off a takeover attempt by The Limited. He recalls penning a victorious shareholder letter one night from 3 A.M. until sunrise.

McCarthy, who made partner at Skadden in 1986, pulled a few all-nighters this past spring working on behalf of Woodland Hills, California–based United Online. Created in 2001 with the merger of NetZero and Juno Online Services and led by CEO Mark Goldston, United Online had come to grips with the idea that providing dialup Internet service is a no-growth business relative to selling goods and services over the Web. Deciding to stop and smell the roses — not to

When it appeared that financing for the deal would be impossible to secure, McCarthy reached into his past and found a solution.

mention several dozen other varieties of deliverable flora — the company set its sights on FTD. It turned out that the famous florist, founded in 1910, was amenable to a deal. The first sit-down between United Online, its San Francisco-based JPMorgan bankers, FTD executives and their bankers (from Goldman Sachs) took place in the fall of 2007.

The deal they ultimately hammered out called for United Online to acquire FTD at $15.08 per share. But securing financing was proving extremely difficult. When it appeared that the deal might fall apart, McCarthy suggested a way to lock it in place while giving United some leeway with the financing. The idea: United would commit to issuing high-yield seller notes, an IOU commitment with a catch. If United could, prior to close, somehow secure normalized capital-markets financing by a specific date, the seller notes could be replaced by cash. Racing the clock, Goldston himself, using his contacts, set up the financing — Wells Fargo and Silicon Valley banks took fat pieces — meaning that in the end, the notes were converted. FTD got more cash per share up front, and United shareholders weren't strapped with burdensome seller-note obligations.

As a capper, the final price was $15 million less than what United originally intended to pay. The deal, totaling $800 million, was announced at the end of April. "Brian McCarthy is a tough adversary, but he came up with pragmatic solutions to complicated issues," says Latham Watkins's Howard Sobel, who represented FTD. Adds United's Goldston: "McCarthy is the best lawyer I've ever been associated with in my 30-year career."

Must be the genes. D