

# DEALMAKERS OF THE YEAR

Getting the best price for Quest Software meant looking beyond the founder's buy-out bid—and partially neutralizing his 38 percent stake in the company.

## CIRCUIT BREAKER

**L**ATHAM & WATKINS partner Charles Ruck first met Quest Software Inc. chief executive officer Vincent “Vinny” Smith about six years ago. That meeting, which had been arranged by a client of Ruck’s, took place in Smith’s backyard. Ruck remembers it well: Smith talked at length about his dislike of lawyers. Still, the two hit it off. Soon Quest and Smith were relying on Latham in connection with a Securities and Exchange Commission probe of the company’s stock option back-dating practices.

In the ensuing years, Quest called on Ruck to handle strategic licensing deals and acquisitions like that of BakBone Software Inc. in 2011. Last year, Ruck again played the key legal role for Quest in its biggest deal ever—one that began as a go-private attempt by Smith but ended with the company’s acquisition by Dell Inc. for \$2.4 billion.

For Ruck, the deal began when Smith, who controlled 38 percent of Aliso Viejo, California–based Quest, started to consider taking the company private. “I had over 50 conversations with Vinny—before he offered to acquire the company—going over the benefits of going private as well as the relative merits of different processes and partners,” Ruck says. In March 2012 it was announced that Smith and Insight Venture Partners intended to take Quest private in a \$1.9 billion transaction.

That put Ruck, as counsel to Quest, and Smith, as the buyer, on opposite sides of the deal. (Cadwalader, Wickersham & Taft was hired as Smith’s counsel, while Potter Anderson & Corroon advised the board on Delaware law and other fiduciary matters.) But the company’s and Smith’s interests weren’t completely divergent. Both thought that another bidder might top Smith’s offer. “The board wanted to make sure we had the right process to attract other bidders,” Ruck says.

And a bidder did emerge: Round Rock, Texas–based Dell, which countered Smith’s offer with a \$2.15 billion bid. In response, Smith brought in an additional private equity partner, Vector Capital, and increased his bid to \$2.17 billion. Dell came back at \$2.3 billion.

One stumbling block for outside bidders was that Smith’s 38 percent holding in Quest would give him a significant advantage in a proxy fight, Ruck says. To neutralize it, Ruck crafted terms that would give Dell, if its bid were accepted by Quest’s board, an option for 19.9 percent of the company, the maximum allowed under Nasdaq rules without a shareholder voter. “The shares could be used by the outside bidder to offset Vinny’s stake and make it more likely that the competing bid would get shareholder approval even if Smith opposed it,” says Ruck.

While the logic of the maneuver may be clear, its ability to withstand a court challenge was not. Ultimately, Dell’s final \$2.4 billion offer was rich enough to make Smith a seller, not a buyer, so the issue became moot. The deal closed in September 2012. (Last February, Dell announced its own effort to go private, in a deal valued at \$24.4 billion.)

“Charles was great at managing a process that took many twists and turns along the way,” says Scott Davidson, Quest’s chief financial officer. “He stayed

focused on making sure the company would be able to take advantage of the best situation, while making sure not to alienate any of the parties that were involved.”

For Ruck, it’s not the back-and-forth negotiating or the novel deal terms that stands out. “It’s amazing that this all started with a backyard interview where Vinny told me he hated lawyers,” he says. And while Smith likes Ruck, that doesn’t necessarily extend to the rest of the profession. On this deal, Smith wrote in an emailed statement, “Charles broke the mold of most lawyers with his business approach to this transaction.” High praise indeed.

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### DEAL IN BRIEF

#### DELL-QUEST

DEAL VALUE \$2.4 billion  
FIRM'S ROLE *Target's Counsel*