

Holly O'Neil & How the Gardere—Foley Merger Went Down

The Texas Lawbook.

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April 4, 2018

From the day Holly O'Neil took over as the chair of Gardere Wynne Sewell in June 2013, she faced one mountain of a task: save the 109-year-old Texas law firm.

The Texas corporate legal market was in turmoil. National firms were opening offices in Dallas and Houston and stealing talent and clients from Texas-based law firms.

“Houston and Dallas have become super-heated and the battle for the best lawyers has become cutthroat,” O'Neil said in an exclusive interview this week with *The Texas Lawbook*. “The large national law firms have much deeper pockets to hire top talent and we just could not compete.

“There definitely has been a drumbeat about whether our law firm model could survive,” she said. “There has been a drumbeat to take steps or be left behind.”

On Sunday, Gardere officially merged with Foley & Lardner, a Milwaukee-based firm that is four times larger in terms of lawyer count and revenues.

By all accounts, the combination of the two firms – now called Foley Gardere here in Texas – is going quite smoothly. From new stationary and email addresses to coffee cups with the new logo, firm leaders predict a low-key transition.

But Gardere's path to the Foley deal was a five-year journey that started out of a fear for survival, followed by a year of internal soul-searching, then four years of starts, stops, stumbles and recoveries and finally an historic merger.

O'Neil, a successful bankruptcy lawyer who has spent her entire career at Gardere, worked 3,000 hours during the past year on the Foley merger. That's in addition to a few thousand hours of merger discussions during the prior three years.

“There have been no holidays or weekends,” she said. “My husband bought me a stationary bike to help relieve the stress.”

During the past week, *The Texas Lawbook* conducted hours of interviews with O'Neil and others involved in the merger. This is the story – actually O'Neil's story – of those five years and how the Gardere and Foley deal came to happen.

No interest in being a lawyer

Holland “Holly” O’Neil was born in West Texas in 1962. Her father was a cotton farmer and rancher. Her mother stayed home to raise their five children.

“I was the middle child and the constant peacemaker, always trying to get my siblings to compromise,” O’Neil said. “That learned skill certainly has been useful in my bankruptcy practice and in the merger discussions with Foley and my own partners.”

She went to college at the University of Texas in Austin, where she majored in finance and dreamed of being an investment banker. She graduated in 1983 and went to work for a real estate firm. Months later, the Texas real estate market crashed.

O’Neil went home to visit her parents for Christmas that year, and she told her dad that she didn’t think mortgage banking was going to work out for her.

“Why not go to law school?” her father asked. “If you go to Texas Tech, I’ll pay for it.”

O’Neil said she quickly rejected the idea of being a lawyer.

“I had not been exposed to any lawyers,” she said. “I had no idea what they did.”

A few months later, O’Neil read in the Austin American-Statesmen that an LSAT prep course was being offered that weekend. She remembered the conversation with her father and decided to attend.

“I did pretty well and so I secretly sent applications to law schools without telling my dad,” she said. “When Texas Tech accepted me, I called my dad to say, ‘Do you remember that promise to pay for me to go to law school.’”

“My dad was thrilled,” she said. “He could not have moved me to Lubbock any faster.”

During her second year at TTU, she was offered a summer clerkship at Gardere. There she met bankruptcy partners Deirdra Ruckman and Rosa Orenstein.

“Dee and Rosa were extremely influential in my life,” O’Neil said. “Two very strong women who were great lawyers and great leaders who taught me so much.”

O’Neil started at Gardere in 1987. Her compensation was \$54,000. Seven years later, the firm made her a partner.

“I was the only lawyer in my family,” she said. “Anytime someone got a traffic ticket or anything like that, I got a call.”

During her three decades at Gardere, O'Neil has been involved in some of the most important corporate bankruptcy and restructuring cases in Texas.

Corinth-based CoServ Electric, CoServ Telecom and several related entities hired O'Neil as its lead legal advisor when the companies filed for bankruptcy in 2001. She represented the second lien holders in the Texas Rangers bankruptcy case in 2010. She represented Pinnergy, which was a creditor in the Quicksilver Resources bankruptcy in 2015. And she represented Carrollton-based Interphase Corp. in its bankruptcy in 2015.

"The name of the game in bankruptcy is compromise," she said. "If everyone stands absolutely firm and unwilling to compromise, you can kill the company and creditors get nothing."

As a partner, O'Neil rose through the ranks of leadership at Gardere, taking on more and more important roles and responsibilities.

The key role before becoming the firm's chair, she said, was leading Gardere's lateral hiring of partners and associates.

"From that role, I saw where we had holes and needs and recognized the challenges that Gardere and other firms had in our market," she said.

'We needed to do something bigger'

Coming out of the Great Recession in 2010, partners at Gardere were divided on whether the firm needed to take any action at all. Many were satisfied being a Texas-focused upper-midsized corporate law firm. Others felt a merger – or at least major growth through the acquisition of a smaller firm – was needed.

But then, just weeks before O'Neil was set to take over as Gardere's chairwoman in June 2013, the firm suffered a significant loss. Several lawyers leading Gardere's construction law practice announced they were leaving the firm.

"The partners in this group were deeply involved in firm leadership," she said. "It was a major blow. There was a lot of anxiety about what it meant for us as a firm.

"Sometimes you need a catalyst like that to get you to just stop thinking about something and to finally take action," she said.

With O'Neil now at the helm, firm leaders started getting serious about taking action.

"We decided we wanted to take action when we were strong and not be forced to negotiate from a position of weakness or crisis or compromise," she said. "We realized that one or two lateral hires at a time were not going to make it.

“We needed to do something bigger.”

From July 2013 through the spring of 2014, O’Neil took dozens of phone calls and meetings with out-of-state law firms seeking a merger partner. There were so many, in fact, that the merger discussions were putting a strain on the firm’s resources.

“My phone was ringing off the wall,” she said. “None of it was a waste, but I wasted a lot of time meeting with firms that were never going to be match. We realized that we were being too reactive and that we needed to be proactive.

“There was by this point a groundswell of support that we should do something, but we did not have a consensus on what,” she said.

For guidance, Gardere turned to Kent Zimmerman, a principal at Zeughauser group and a law firm consultant.

No Texas firms on the list

O’Neil and Zimmerman had brunch across the street from the Ritz Carlton and discussed options. Together, they set up a process that they hoped would help the partnership develop a consensus on what should be done.

“I interviewed about 35 to 40 partners one-on-one about their priorities for Gardere and what they wanted the other firm to look like if there was a merger,” Zimmerman told The Texas Lawbook. “I took all their responses and put together a document that summarized Gardere’s priorities and painted a picture of the other firm.”

Zimmerman and O’Neil then presented the results to the partners to get their feedback. The partners agreed on a criteria or key requirements, including geographic specifications, partner compensation, billing rates, practice areas and clients.

“They wanted a firm with a culture similar to theirs, preferably from the Midwest or South, but that also had strengths in critical national markets, including New York, Chicago and Washington, D.C.,” Zimmerman said. “Holly asked me to develop a list of 15 law firms that met their criteria.”

O’Neil told Zimmerman that it was important to identify firms that wanted the whole firm, not just some of Gardere’s partners.

“No Texas law firm was a contender,” she said. “One attribute was that there be no market overlap. Inner-market mergers can be very difficult. We decided we just didn’t want to go down that path.”

In May 2015, Zimmerman told O'Neil he had the list and ranked them with the best match being at the top.

"Foley was number one on the list," Zimmerman said.

"Foley checked off nearly all of the boxes on our checklist," O'Neil said. "We never even talked to the runner-up."

'Foley had its own list'

O'Neil instructed Zimmerman to call Foley Chairman Jay Rothman.

Zimmerman called Rothman that day and left a voicemail.

Rothman got the message and decided to call O'Neil back directly. The firm leaders spent an hour on the phone.

"Would you be interested in learning more about us?" O'Neil asked.

Rothman said absolutely and the pair met the next week in Chicago.

"Come to find out, Foley had its own list of potential merger partners, and guess who was at the top of that list? Gardere," said Zimmerman, who also advised Andrews Kurth Kenyon on its merger with Hunton & Williams.

"Jay and I met for dinner in Chicago and then the next day at the office," O'Neil said. "We talked big picture. We had not met, so we were just getting to know each other and finding out his approach and view of the market."

O'Neil flew back to Dallas late that afternoon thinking Foley was a true contender.

"This was a monumental decision for us," she said. "This is not a decision that after 109 years that you should make quickly."

After 109 years, no hasty decisions

No one is going to criticize O'Neil and Gardere for moving too hastily with Foley.

For nearly two and a half years, leaders at the two firms met. They traded financials. They compared pension plans. They reviewed client lists. They met in groups with each other to get more comfortable.

And then they did it all over again.

O'Neil created two working groups – a deal team of six partners that negotiated the actual merger documents and an integration team of four partners that worked with lawyers and support staff to prepare for the combination.

“My firm is a very democratic place,” O'Neil said. “Lawyers, even when they agree change is necessary, they have a million different views on what the change should be or how it should be effectuated.

“It was critical that our lawyers got to know and truly trust the folks at Foley,” she said.

Multiple obstacles appeared that slowed or nearly stopped the merger – none of which had anything to do with the merger itself, according to lawyers close to the negotiations.

Gardere held its election for executive committee members. And then all discussions halted last summer when Hurricane Harvey hit Houston and caused major flooding.

“This process was much more deliberative than most law firm mergers,” Zimmerman said. “Keep in mind that most proposed mergers never happen. It is no small feat to get a law firm combination across the finish line.”

Gardere partners officially took a vote on the merger in October – a vote that gave the executive committee the authority to move forward to finalize the terms of the merger.

“Our partnership agreement requires a super majority approval and we were well over it,” O'Neil said.

The merger went final on April 1, which meant that O'Neil is no longer the law firm's chair. She serves on the management committee and plans to focus on recruiting lateral hires.

“I am really looking forward to getting back to practicing law,” she said. “I had two amazing mentors that helped me become the lawyer and leader that I am, and now it is my turn to be a mentor for others.”