

DAILY REPORT

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Kilpatrick lawyers seal acquisition

DIGITAL AD COMPANY EYEWONDER of Atlanta is sold to Arizona-based **Limelight Networks** for \$110 million

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KILPATRICK STOCKTON'S Ben Barkley got the first draft of the merger agreement memorializing a planned \$110 million acquisition of his client, **EyeWonder Inc.**, by **Limelight Networks Inc.**, at 6:30 a.m. on Thanksgiving Day.

"I thought this deal would go to Christmas Eve," he says now, recalling that he spent hours at his cabin in the North Georgia mountains looking over the 100-plus-page agreement. His team got lucky: The deal closed on Dec. 21—just in time to free up the lawyers for the holiday weekend.

EyeWonder is a privately held Atlanta-based provider of interactive digital advertising technology. The company helps Forbes 2000 companies and smaller advertisers and publishers deliver and track video and various types of interactive ads. One of its products, according to a filing with the Securities and Exchange Commission, is a "pre-game ad product" which offers viewers an interactive video ad while they wait to play online games available on the Cartoon Network and Adult Swim.

Limelight, a public company based in Tempe, Ariz., offers a global infrastructure that allows users to bypass public Internet pathways and gain faster access to content.

The deal, which is expected to close in the first half of 2010, involves a \$62 million cash payment, subject to EyeWonder's financial condition and closing, plus about 12.74 mil-



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Ben Barkley of Kilpatrick Stockton and his team nailed down the \$110 million EyeWonder acquisition agreement between Thanksgiving and Christmas.

lion shares of Limelight common stock. It also includes an earn out, Barkley said, which is increasingly common these days, providing that up to 4.86 million additional shares of Limelight common stock will be issuable in 2011 if EyeWonder achieves certain financial results in 2010.

Earn outs "have pretty much been in every M&A deal I've worked on in the last 12 months to two years," Barkley said. "There's just a lot more perceived value gap out there."

Barkley said one of the complicating factors of this deal was that EyeWonder had a handful of European subsidiaries that were not wholly owned. In order to move the deal along, he and his team spent a weekend rolling up the companies, working straight through from 9 a.m. on Sunday, Dec. 20, to 9 a.m. on Monday, Dec. 21. During that long day and night, he said, they held a shareholders' meeting at 10 a.m. German time—which was 4 a.m. for him in Atlanta, 2 a.m. for the

buyer in Arizona and 1 a.m. for the buyer's attorneys at Wilson Sonsini in California.

"Anytime you have a transaction across that many time zones, the logistics and the hours are a challenge," he said.

Barkley worked on the transaction with associate Jessica Nash, along with partners Lynn Fowler, Jerry Smith and Jennifer Schumacher.

Kilpatrick Stockton has represented EyeWonder since the company got start-up funding about a decade ago, Barkley said. A former Kilpatrick lawyer, Jerome F. "Romey" Connell Jr., is now EyeWonder's general counsel and chief operating officer, and he contacted Barkley for help with the deal.

"It was really kind of a high-energy deal," Barkley said, adding that even though his team clocked a lot of hours in difficult negotiations, the Wilson Sonsini lawyers were such a good group that "It makes doing a transaction like that a lot of fun, even if it is 4 o'clock in the morning." 