

Health Group Of The Year: Covington & Burling

By **Derek Hawkins**

Law360, New York (January 20, 2012, 8:37 PM ET) -- Attorneys from Covington & Burling LLP's life sciences group helped Eli Lilly & Co. unravel a long-standing marketing partnership with Amylin Pharmaceuticals Inc. in an arrangement that could net Eli Lilly some \$1.6 billion, one of several victories that earned the firm a spot among Law360's Health Groups of 2011.

Eli Lilly and Amylin had entered into a joint marketing agreement in 2002 to bring the Type 2 diabetes drug exenatide to market. They rolled out the brand name drug Byetta in 2005, and were planning to introduce another variation called Bydureon.

In 2011, Eli Lilly announced it had partnered with Boehringer Ingelheim GmbH to sell the rival drug Tradjenta. Amylin responded with a lawsuit against Eli Lilly in May, accusing it of violating their marketing agreement and alleging the move was anti-competitive.

Covington stepped in to help Eli Lilly handle the litigation and restructure the relationship between the companies. After making its way through federal court in California and the Ninth Circuit, the case settled in November, with Eli Lilly coming out largely on top.

"The victory for Lilly in the litigation provided an opportunity to negotiate an unwinding of that relationship on terms that were favorable to it," said John Hurvitz, co-chair of the life sciences group.

"The unwinding itself was complicated because you needed to surgically disentangle a decade long relationship and had to provide for a transition over a period of years," he added. "This required a sophisticated understanding of the business and the various legal issues involved."

Amylin agreed to pay Eli Lilly \$250 million upfront, as well as 15 percent of exenatide global net sales up to \$1.2 billion, plus interest. Under the agreement, Amylin will also take responsibility for worldwide development and marketing of exenatide, with all markets covered by the end of 2013.

Covington's life sciences group has its roots in the founding of the firm, its attorneys said. Formally created about 15 years ago, it's now a large, integrated outfit that draws on cross-disciplined attorneys with experience advising the full spectrum of life science companies across numerous practices.

“The idea of founding the group was bringing together attorneys that did work for life sciences companies in a range of areas to focus specifically on the industry and the types of multidisciplinary issues the industry faces,” Richard Kingham, the group’s co-chair, said. “The group is deeply capable of handling all the major needs of pharmaceutical and biotech companies.”

The group’s attorneys work in the firm’s transactional, regulatory, intellectual property, litigation and competition practices, among others, and are spread across Covington offices in Beijing; Brussels; London; New York; San Diego, Calif.; San Francisco; Silicon Valley, Calif.; and Washington.

“Our objective has been to be extremely capable in all those areas,” Kingham said. “One of the big things we emphasize is that our offices are all integrated with one another. [Attorneys in] our life sciences group all know one another and have worked together for years.”

In another demonstration of the firm’s core strengths, Covington advised King Pharmaceuticals Inc. in its acquisition by drug industry titan Pfizer Inc.

The companies announced in October 2010 that Pfizer would acquire all King’s outstanding stock at \$14.25 per share — a 40 percent premium — for a total of \$3.6 billion in cash. The deal, which closed in March 2011, marked Pfizer’s largest acquisition since it took on Wyeth Inc. for some \$68 billion in 2009.

Hurvitz said Covington’s previous work with King on a range of its legal needs set the stage for the firm to represent the company during its sale to Pfizer.

“The King deal was a fairly standard [mergers and acquisitions] deal, but in a highly regulated industry,” he said. “Here, the combination of our broad industry expertise and our strong life sciences M&A practice enabled us to provide an industry-specific response and to assist King to ultimately achieve a terrific outcome.”

In other important transactional work last year, Covington represented Salix Pharmaceuticals Ltd. in its \$300 million cash acquisition of Oceana Therapeutics Inc., a private gastroenterology and urology company, and began advising Axis Shield PLC on a roughly \$365 million public takeover offer from Alere Inc.

In another matter on Salix’s behalf, Covington represented the company in striking a collaboration agreement with Indian anti-tuberculosis drug maker Lupin Ltd. The \$10 million deal, secured in November, gives Salix exclusive rights to use Lupin technology and technology developed between the companies on a worldwide basis, except in India.

Covington has also done extensive work on behalf of Merck & Co. Inc. over the past year, helping the company land a major litigation victory in the final weeks of 2010. Led by product liability and mass torts practice group chair Mike Brock, a Covington team represented Merck in a bellwether case in multidistrict litigation over alleged safety issues involving the osteoporosis drug Fosamax.

The plaintiffs brought in more than a dozen witnesses to testify that Fosamax caused osteonecrosis of the jaw in some patients. Arguing that Merck had properly tested the drug and that the plaintiffs’ injuries hadn’t resulted from Fosamax, Covington attorneys secured a jury verdict in Merck’s favor.

The case was the third bellwether case in the MDL to go to trial, and the victory is likely to influence the litigation as it continues, Covington attorneys said.

The firm’s historical focus on regulatory issues combined with the inherently complex nature of the pharmaceutical industry has forced the firm’s life sciences group to grow into a versatile and diverse operation — a factor in Covington’s successes over the past year, Hurvitz said.

“Because of our collaborative culture at Covington, we have been able to develop a unique, integrated approach where our lawyers work across a range of disciplines,” he said. “Because we are able to approach matters from a range of perspectives, we are able to provide sophisticated, value-added advice efficiently and quickly. It also helps us anticipate, and helps our client avoid, problems that you might miss if you were only approaching the industry from a single legal perspective.”

--Editing by Elizabeth Bowen.

All Content © 2003-2012, Portfolio Media, Inc.

