

THE AMERICAN LAWYER

2023 DEALMAKERS OF THE YEAR



GEORGE DAVIS AND JEFF BJORK

LATHAM & WATKINS

For Latham & Watkins client Mallinckrodt, the pharmaceutical company's existence was on the line. A successful Chapter 11 restructuring was essential to the multinational's survival.

The "dizzying" amount of moving elements included the trillions of dollars in asserted liability Mallinckrodt faced from public and private claimants, such as the \$5 billion in funded debt and contingent liabilities stemming from thousands of opioid-related litigations.

Latham's team, led by George Davis in New York and Jeff Bjork in Los Angeles, battled significant hurdles in organizing the plaintiffs' requests. Logistical challenges arose as the plaintiffs included multiple states, thousands of municipalities, Native American tribes and other organizations and individual claimants, Davis recalls.

Despite this, in February 2020, the firm managed to strike a deal in principle for Mallinckrodt, with the major governmental opioid claimants to consider a targeted bankruptcy filing by only particular Mallinckrodt subsidiaries.

"The company and plaintiffs would have preferred the elegance of a subsidiary restructuring as a solution," Davis says, but headwinds soon changed and a strategy shift was required following litigation outcomes surrounding the company's Acthar rebates, funded debt maturities and the backdrop of the pandemic.

Devising a broader-scope filing was then on the agenda, putting together a reorganization that allowed for emergence in just 20 months as the first company to permanently resolve global opioid litigation, including any future claims.

In a first for opioid bankruptcies, the claim involved filing with a restructuring support agreement with institutional creditors, which paved the pathway for private opioid claimants' support. Davis and Bjork encouraged all parties toward resolution without disrupting earlier settlements.

The case marked the first opioid bankruptcy where a future claims representative was named to look out for future claimants' interests, with the settlement proceeds being used by states, municipalities and tribes for abatement programs to address the opioid crisis.

"We wanted a clean break from opioids, so that's why we decided to include a future claims representative to achieve a comprehensive solution," Davis says.

With all of the restructuring's moving elements, including the vast array of plaintiffs, as well as an antitrust trial taking place in the middle of the proceedings, Davis says that "I don't think you can find a case like this."

By achieving a prenegotiated Chapter 11 to address mass tort claims stemming from both public and private claimants, as well as significant funded debt deleveraging, the case could potentially provide a guide for future mass tort cases.

"Negotiating the deal up front and having the plaintiffs' support to implement the deal through a bankruptcy to obtain a comprehensive channeling injunction rather than filing for bankruptcy without any agreement, that's the element that should be used for future cases," Davis says.

—Charlotte Johnstone