

Life Sciences Group Of The Year: Latham

By **Andrew Karpan**

Law360 (February 27, 2023, 2:03 PM EST) -- Latham & Watkins LLP lawyers over the past year were part of a legal team that made history by winning an in-house merger challenge at the Federal Trade Commission over an \$8 billion Illumina deal, and secured the approval of Mallinckrodt's Chapter 11 plan that trimmed more than \$1 billion in opioid-related claims, accomplishments that landed the firm among Law360's 2022 Life Sciences Groups of the Year.

"It was classic blocking and tackling," said Michael Egge, a former practice chair at Latham who spearheaded the firm's defense of a 2020 deal, which the firm, along with Cravath Swaine & Moore LLP, helped put together between Illumina and Grail, a publicly traded cancer detection company that Illumina spun off back in 2016.

The FTC, however, had stepped in to oppose the reacquisition, which the agency claimed would hinder potential Grail rivals that are also using Illumina's DNA sequencing technology to develop similar next-generation cancer tests.

In September, an FTC judge rejected the agency's arguments entirely, a decision that the firm says is the first time that an administrative law judge at the agency has ever ruled against the agency in a merger case, though the decision has since been appealed to the agency's five commissioners.

"In this case, marrying up the resources of Illumina to a small company that's made this fabulous discovery but needs to get to market, that efficiency, that integration, that cost savings, is very real," Egge said. The deal, however, was blocked by antitrust officials in the European Union days after Egge's team helped win the case at the FTC.

In December, Illumina told the agency's commissioners that the deal "will result in lives saved."

Latham's health care and life sciences industry group has 602 total attorneys located in the U.S., Europe and Asia, according to the firm.

The amount of work that a firm like Latham has been able to pull from major companies in the life sciences space is not insignificant. In 2019, the firm handled the \$250 million sale of Mallinckrodt's BioVectra brand. Last year, the firm's restructuring group took care of Mallinckrodt's Chapter 11 filing, succeeding in reducing the company's total debt by approximately \$1.3 billion.



"By the time we got engaged, the company had over 3,500 opioid-related lawsuits pending against them," said George Davis, who runs Latham's bankruptcy practice. The lawsuits had accused Mallinckrodt of heavily marketing opioids and contributing to a national addiction crisis over the past decade.

"It became clear that the opioid claimants, ... their claims amounted to trillions of dollars. Obviously, the company disputed that," said Davis, who noted that it wasn't the only massive debt holding the company down. The company was also facing mounting antitrust litigation related to the company's marketing of its Acthar gel product.

"From a contingent liability perspective," the deal that Latham's lawyers helped cut had let Mallinckrodt "come out clean," he added, calling it "the most difficult stand-alone, mass-tort restructuring that's been done in a couple of decades."

"The key to a good bankruptcy is cutting deals," said Chris Harris, who runs the litigation side of the firm's bankruptcy practice. However, he noted that the firm's lawyers faced "a huge amount of people objecting to the plan."

"We had a mess of people objecting, and educating the judge on the industry and how to help a company survive through all this is sort of the overall goal," Harris said about the firm's strategy to force those debtors to take what the deal had given them. "With the company facing these many issues, the alternative is not pretty."

He noted that it was important to convey to a Delaware federal court that there basically weren't any better choices than the terms of the deal that the firm had put together, which wiped away more than \$1 billion in potential claims against the company for its alleged misdeeds.

If those objectors didn't take the deal, Harris said the company would "have to sell the company piecemeal or liquidate, all of which means there's a much smaller pie. And once you figure out how it's going to get cut up, it's crumbs."

It wasn't the only legal effort to save pharmaceutical companies billions of dollars that the firm has backed over the past year. Latham is currently working on one of the ongoing challenges to a U.S. Department of Health and Human Services policy covering the prices of the drugs that those companies sell to certain pharmacies under the Public Health Service Act's 340B program.

Latham had backed a challenge to that rule mounted by United Therapeutics, which resulted in a legal win from a Washington, D.C., federal judge, though the ruling remains on appeal at the D.C. Circuit, which heard oral arguments in the case last month. If the win stands, the drugmakers could make some stiff savings by not having to sell their drugs at reduced rates.

"For the industry as a whole, it's certainly in the billions," estimated Philip Perry, a Latham partner who used to work as general counsel for various federal agencies during the George W. Bush administration.

"Enterprising people are claiming drug discounts in a way that the data suggests [they] are not actually entitled to them," Perry warned. He hopes the decision will help his client "get to the bottom of what's going on."