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Dealmakers of the Week: Cary Hyden and Paul Tosetti of Latham & Watkins

Paul Tosetti and Cary Hyden

By MP McQueen
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THE DEALMAKERS

Cary Hyden, 56, partner and chair of Latham & Watkins' corporate department in Orange County, and former global M&A chair Paul Tosetti, 60, corporate partner in Los Angeles.

THE CLIENT

Irvine, Calif.-based pharmaceutical company Allergan Inc., the maker of Botox, with $6.2 billion in revenue last year.

THE DEAL

Allergan announced on Nov. 17 that it would be sold to Actavis plc of Dublin for $66 billion, thus evading a seven-months-long hostile takeover bid by Canada's Valeant Pharmaceuticals Inc., along with activist investor William Ackman and his hedge fund Pershing Square Capital Management. The deal is one of the largest M&A transactions this year to date, and creates a top 10 pharmaceutical company with more than $23 billion in annual revenue.

THE DETAILS

Allergan agreed to sell itself to Actavis for the equivalent of $219 per share in cash and stock, representing a 54 percent premium over Allergan's share price in April, when Valeant launched its hostile takeover bid.

The boards of directors of Actavis and Allergan unanimously approved the deal, which is supported by both companies' management teams. Actavis is financing the acquisition with new equity and debt. The deal is expected to close in the second quarter of 2015.

Valeant initially bid $46 billion for Allergan and eventually raised the offer to about $53 billion. But Allergan president David Pyott charged that the Canadian company's offer was too low, and that it would slash research and development, hurting shareholders and patients.

Following Monday's announcement that Allergan would pair up with Activis, Valeant issued a statement indicating that it would not pursue Allergan further, and Ackman said he would withdraw his request for a special shareholders meeting.

Back in August, Allergan retained Latham to file a civil insider trading lawsuit against Valeant in federal district court in Santa Ana, Calif., alleging that the company colluded with Ackman in its unsolicited bid in violation of U.S. securities laws, as reported in sibling publication The Litigation Daily. That lawsuit is going forward with a trial date likely to be set for next year. In the meantime, Allergan has appealed some aspects of the district court's November order to the U.S. Court of Appeals for the Ninth Circuit.

In representing Allergan on its sale to Actavis, Latham teamed up with Wachtell, Lipton, Rosen & Katz to advise on corporate matters, along with Richards, Layton & Finger. (Wachtell was specifically was brought in by the Allergan board to help with its takeover defense.)

Cleary Gottlieb Steen & Hamilton provided legal advice to Actavis in the deal, along with Weil, Gotshal & Manges, which counseled the company on antitrust matters. Goldman Sachs and Bank of America Merrill Lynch were financial advisers to Allergan, with

Ropes & Gray advising Goldman Sachs.

THE BACKSTORY

Latham has been outside counsel to Allergan for M&A, capital markets, licensing, and general company representation since at least 2001, including on its spinoff of its medical device business Advanced Medical Optics Inc. in 2002 for an undisclosed sum, and its $370 million acquisition of New Jersey-based Esprit Pharma Holding Co. in 2007, Hyden says. He also was involved in Allergan's 2013 sale of its obesity intervention division to Apollo Endosurgery Inc. for $110 million, including $75 million cash.

In May 2013, Latham advised Allergan's white knight, then-Parsippany, N.J.-based Actavis, in its purchase of Dublin-based Warner Chilcott in an all-stock deal valued at $8.5 billion. That deal, known as a tax inversion, resulted in Actavis switching its headquarters to Ireland and allowing it to avoid most U.S. corporate taxes. It also earned Latham corporate partner R. Scott Shean a Dealmaker of the Week nod from The Am Law Daily. (In February, Shean also led a Latham team that advised Actavis on its $25 billion buy of Forest Laboratories.)

Hyden and Tosetti have been working on "scores" of M&A deals together since 1995, they say, advising clients such as Questcor Pharmaceuticals in April, which was purchased by Irish specialty drug manufacturer Mallinckrodt plc for $5.8 billion, and medical devices company Beckman Coulter Inc. in February 2011 in its $6.8 billion cash and debt acquisition by Danaher Corporation.

Hyden says the two partners have worked so closely together for so long that they can "complete each other's sentences."

ON CLOSING

Hyden and Tosetti say the fraught Valeant/Ackman takeover bid and Allergan's resistance to it was reminiscent of corporate raids of the 1980s and the Michael Milken era in which both attorneys cut their teeth.

Throughout the process, Latham worked closely with Allergan's board counsel from Wachtell, corporate partners David Katz and executive committee cochair Daniel Neff. The Wachtell and Latham litigation teams also are working together.

"Frankly, it was a team effort as Wachtell and Latham worked together extremely well for the benefit of the client," says Katz in a separate interview with The Am Law Daily.

"So much of this bore similarities to the transactions in the 1980s and there was a lot of accumulated experience at Wachtell and Latham in working in this area before," says Tosetti, noting that Wachtell's founding partner Martin Lipton pioneered the "poison pill" takeover defense that was being considered by Allergan against Valeant.

The drama over Allergan played out in headlines, broadcasts and tweets for months, but it began for the Latham partners on April 21, when Hyden returned sweaty and exhausted to his Copley Square Hotel room after running the Boston Marathon to find his BlackBerry lit up.

"I had just hobbled across the finish line and made my way to the hotel room in desperate need of a shower and a nap when Paul called and emailed that he had just read in the online Wall Street Journal that Valeant had launched a hostile takeover," Hyden recalls. "That launched another marathon of a sort. Calls and emails went on throughout the night. Paul and I got very little sleep. My shower was at 1:30 am."

Tosetti says he and the other attorneys on Latham's deal team as well as Allergan's in-house counsel were in constant contact plotting strategy via phone and email. Because the firm and its client are located in the Los Angeles area and the other companies and law firms are based in the Northeast and Ireland, Tosetti had to get to work very early each day to keep up with the action.

"I would start to get up at 4:45 am … Cary adopted the same schedule because we needed to be prepared when these things happened," Tosetti says. "You need to respond quickly, and stockholders are asking for guidance and input."

The frantic negotiations between Allergan and Actavis took place against a Dec. 18 shareholder special meeting deadline; Ackman said he would try to oust most of the Allergan board on that date. Outstanding issues weren't resolved until Sunday night, hours before the Allergan board of directors was asked to consider the merger with Actavis, Tosetti and Hyden say.

Looking back, Hyden says: "When I think about these last seven months, I view it as the most professionally fulfilling and rewarding opportunity I have had in my 31 years, though it was draining and exhausting and challenging and intense."