THE AM LAW DAILY
THE AM LAW LITIGATION DAILY
THE AMERICAN LAWYER
An incisivemedia publication
JANUARY 26, 2009

THE WORK

A Long Weekend for Cadwalader, Simpson and Wachtell

Posted by Zach Lowe

Dennis Block, an M&A partner at Cadwalader, Wickersham & Taft, first got the call in June: his longtime client, Pfizer, was interested in buying rival Wyeth in what would likely be the largest deal in the history of the pharmaceutical industry. The deal sputtered off and on for more than six months until Thursday, when Block says Pfizer indicated it was ready to get the deal done--and fast.

Block left his office for only a couple of hours a night over the next four days as he and Wyeth's attorneys at Simpson Thacher & Bartlett rushed to complete the $68 billion takeover before the markets opened today.

They succeeded, despite Wyeth's insistence that Pfizer agree to an unprecedented breakup fee of $4.5 billion should it back out of the deal; that's twice as large as a typical breakup fee in a deal this big, the New York Times reports. (The full $68.8 billion price represents a 29 percent premium on Wyeth's closing stock price Thursday.)

The breakup fee shows Pfizer has "a lot of confidence that this deal will get done," Block says, adding that the Pfizer board spent most of the weekend at Cadwalader's downtown New York City offices. (The Wyeth folks hung out at Simpson Thacher, he says.)

"From a lawyer's standpoint, this was one of the most difficult transactions I've ever worked on," Block says. He would not reveal the details of the back-and-forth over the breakup fee, saying the companies will gradually disclose more over time. The lead Simpson lawyer on the deal, M&A head Casey Cogut, was not immediately available for comment; he is still busy working on issues related to the deal.

The deal "is one of those deals" that involves every department, Block says. The Cadwalader team working on this includes: William Mills (M&A), Stewart Kagan (financing), Rick Rule and Jonathan Kanter (antitrust), Linda Swartz and Richard Nugent (tax), Jason Halper (litigation), Steven Herman (real estate), and Dorothy Auth (IP).

Block says the financing was not as big a problem as one might think given the current environment, in part because of Pfizer's solid credit rating. Several of the big banks (Goldman Sachs, Citigroup, Barclays, Bank of America, and JPMorgan Chase and Co.) have agreed to lend Pfizer about $22.5 billion for the acquisition; Pfizer, which has about $26 billion in cash on hand, will finance the rest itself via cash and stock, according to the Times and Bloomberg.

There also are various intellectual property issues involved: Pfizer's main impetus for the deal appears to be the impending expiration of its patents on the country's best-selling drug, the cholesterol-fighting pill Lipitor, which will face generic competition in 2011. Sales of Lipitor account for about $12 billion annually--one quarter of Pfizer's revenue.

Wyeth carries with it two popular drugs of its own: Effexor, an antidepressant, and Prevnar, a pneumonia vaccine. Those drugs had combined sales of about $6 billion last year, Bloomberg says.

As for antitrust issues, the deal will likely get through U.S. regulatory authorities without much of a problem, says Steven Newborn, cohead of the antitrust practice at Weil, Gotshal & Manges and former director of the Federal Trade Commission's Bureau of Competition.

"Almost all pharma deals go through if the parties are reasonable," says Newborn, who led the FTC's pharmaceutical group during his time at the agency.

It's not all good news. Pfizer is set to fire 15,000 of the combined company's 130,000 employees and cut its dividend, in part because of a $2.3 billion charge it is taking in anticipation of a settlement with government investigators over alleged off-label promotion of the painkiller Bextra. Cadwalader also advised Pfizer on that matter, Block says.

And Pfizer recently announced that its fourth quarter earnings were down 90 percent compared to last year. Wyeth, for its part, brings a host of legal problems. About 10,000 women have pending claims against the Madison, N.J.-based company over allegations that its hormone replacement drugs cause breast cancer, Bloomberg says. Wyeth recently set aside about $21 billion to resolve years of litigation over its fen-phen diet pill.

The deal starts 2009 on a good note for Cadwalader, which is coming off a year in which its profits per partner declined as much as 40 percent and it had to lay off more than 100 lawyers as the securities market collapsed.

Block insists the securities market, where Cadwalader bunched up 40 percent of its assets, will come back--"maybe in two years" or less. For now, though, this deal is proof that the firm is strong, he says.

"We are in a good position," Block says.

Some other details about the deal:

• Wachtell, Lipton, Rosen & Katz advised Wyeth's board of directors. Corporate partners Adam Emmerich and David Lam led a team that also included partners Michael Segal (executive compensation), Theodore Mirvis and William Savitt (litgation), Eric Rosof (restructuring and finance) and T. Elko Strange (tax). Wachtell has advised the Wyeth board for several years, a spokeswoman says.

• Wyeth has ended its recently announced merger talks with the Dutch drug company Crucell.

• The deal, if it closes, will be the largest completed deal since AT&T and Bell South combined in 2006 in a $70 billion merger, the NYT says.