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## Health Care Practice: Morgan Lewis

By **Jesse Greenspan**

Law360, New York (August 01, 2008) -- Health care costs around the developed world are skyrocketing as baby boomers age, thus bringing to light tremendous legal questions about who is going to pay for what, according to Stephen Paul Mahinka, chair of the life sciences practice at Morgan Lewis & Bockius LLP.

Mahinka said that 80% of health care expenditures come from people over the age of 65, and that the over 65 population will drastically increase over the next five to 15 years in the United States, Europe and Japan.

"That means you have a greater demand for this industries' products and services in the future than you do now," Mahinka said. "Great as it is now, it's going to get vastly bigger.

"This is a very exciting area to be in," he added. "It's an industry that's expanding, and it's an industry that will have tremendous cost pressures."

Mahinka further pointed out that it seems likely legislation will eventually be passed to insure the nearly 47 million Americans currently without health insurance.

"There are only two things I know with certainty: the uninsured are going to get covered somehow, and people are going to get older," Mahinka said. "But those are two pretty big things.

"People are going to sue like crazy, and it's all driven by demographics and the increasing demand for health care," he added.

He said that future battles over health care would be especially contentious because, like the military, it is an "unlimited expenditure."

“With health, you never want to say, 'My grandmother, she's 85, and I never really liked her that much anyway. I'm willing to spend \$100,000 on that old women, but \$110,000, that's too much,'” Mahinka said. “No, people don't think that way. Health care is very personal.”

In this type of environment, life sciences M&A activity will increase, companies will begin outsourcing a lot of their business to lower costs, and the number of government fraud and abuse investigations will go up, according to Mahinka.

He noted that the government, which already pays for over 30% of the drugs in the United States, will pay for an estimated 45% of drugs in the future. And although the government cannot negotiate directly with pharmaceutical companies, it will likely pressure them in other ways, he said.

“The Federal Trade Commission has devoted enormous resources to studying the pharmaceutical industry,” said Scott Stempel, head of the firm's antitrust practice.

For his part, Mahinka predicted that cost-effectiveness and comparative-effectiveness studies would begin coming into vogue.

“We have to be on top of the coming administrative cost-control mechanisms,” Mahinka said.

Mahinka defined a life sciences company as one regulated by the U.S. Food and Drug Administration or the Centers for Medicare & Medicaid Services.

Morgan Lewis' life sciences practice group was formed in October 2000, and it has grown every year since. It currently has about 160 attorneys and 60 professionals with advanced scientific degrees.

The firm has also signed a joint venture with TMI Associates, the fifth-largest law firm in Japan, with whom it does life sciences work.

In 2007, Morgan Lewis' life sciences group represented 759 clients and booked \$200.4 million in time charges, or 17% of the firm's total. By comparison, the group represented 525 clients and booked \$65.7 million in time charges its first full year of existence in 2001.

“We solidified our position and a lot of other firms are trying to play catch up now,” Mahinka said.

Morgan Lewis' clients include some of the world's largest pharmaceutical, medical device, food and nutrition, biotechnology, health care provider and health care distributor companies.

Among numerous other things, the practice group performs due diligence in M&A transactions; analyzes the effects of drug pricing and reimbursement; litigates patent, copyright and trademark suits; defends against product liability suits; and advises on how to avoid government lawsuits and penalties.

It also works with Morgan Lewis' global outsourcing group as clients increasingly move both their core and noncore operations overseas.

“When there's an economic downturn, outsourcing gets a jumpstart because a lot of companies are looking to save money,” said Michael Pillion, a partner in the outsourcing group.

Lately, life sciences companies have even been outsourcing parts of their drug development and clinical data services.

But although this helps them save money, it can become harder to find out whether clinical trials are being conducted properly, according to Mahinka.

“These are raising really new questions,” Mahinka said. “The language problems, the lack of inspections, all of those are going to be present.”

In perhaps the most well-known case, numerous heparin products were recalled this year after they were found to have caused dozens of deaths and allergic reactions. The heparin was allegedly contaminated in China and then shipped to the United States and 10 other countries.

Overall, Morgan Lewis has about 1,450 attorneys in 22 offices spread throughout the United States, Europe and Asia.