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Life Sciences Group Of The Year: Morgan Lewis

By **Michael Lipkin**

Law360, San Diego (January 14, 2015, 5:56 PM ET) -- Morgan Lewis & Bockius LLP's life sciences practice group helped Merck & Co. Inc. sell its consumer products division to Bayer AG for $14.2 billion and beat back a suit seeking Pfizer Inc. compliance records on file with the federal government, the first of its kind, earning the firm a spot among Law360's Life Sciences Groups of the Year.

The firm's interdisciplinary life sciences and health care group has about 200 partners and has grown since its founding in 2001 to make up nearly one-fifth of Morgan Lewis' revenue, the firm said. About 80 percent of the group's work comes from life sciences clients, including medical device makers, biopharmaceutical companies and consumer health care product manufacturers, according to chair Stephen Paul Mahinka.

Mahinka says the group's deep knowledge of the industry, bolstered by the dozens of lawyers with advanced degrees in fields from microbiology to mechanical engineering, will only be enhanced by the addition of 26 partners from Bingham McCutcheon LLP.

"It really adds a lot of strength on the transaction side, particularly in Boston and public company deals, competition litigation and intellectual property litigation in the biopharmaceutical area," Mahinka told Law360.

While the full impact of the substantial talent acquisition may not be felt until next year, Morgan Lewis has played a role in some of the biggest life sciences transactions of 2014, including the $14.2 billion sale of Merck's consumer products business to Bayer in May. The deal handed over Merck's over-the-counter business, including the trademark and prescription rights for Claritin and Afrin, as Marck said it was repositioning itself as a research-focused biopharmaceutical maker.

But the sale was also linked to a joint agreement between the companies to market and develop Bayer's portfolio of cardiovascular therapies, including its hypertension drug Adempas and heart failure medication vericiguat. That kind of coordinated, multi-pronged deal is becoming increasingly popular, according to Mahinka, as pricing pressures force large companies to consider becoming more strategic in their investments.

"They say, 'We're going to be spending so much time and effort trying to get a deal done, maybe we could work together on other things,'" Mahinka said. "They feel the need to be more creative and proactive in terms of trying to position themselves well in what is a rapidly evolving industry."

The move away from relatively straightforward M&A deals means Morgan Lewis' transactional lawyers need to be up to speed on a wide variety of legal trends and thoroughly understand the life sciences market more than ever before.

"That's one of the reasons we started the group in the first place: so our people know the latest in terms of creative structures," Mahinka said.

Another significant deal for the firm was client Eli Lilly and Co.'s license agreement in May with Sanofi for the over-the-counter rights to erectile dysfunction drug Cialis in the U.S., the European Union, Canada and Australia. Sanofi paid $25 million upfront and could give Eli Lilly up to $1.43 billion if benchmarks are met, along with a tiered double-digit royalty on Cialis sales. Under the agreement, Sanofi will seek regulatory approval for over-the-counter Cialis, which generated nearly $2.2 billion in worldwide prescription sales in 2013.

The agreement underscores how drug companies are reevaluating their approaches and deciding to focus on their strengths, according to Mahinka. Sanofi has more experience in over-the-counter clinical trials than Eli Lilly, he said.

"In a changing environment, one of the effects is that the older business models no longer are appropriate to follow," Mahinka said. "Some companies will say, 'We want to be just biopharma or just nutritional products. Maybe we don't want to spend the money to build [an over-the-counter business] up, because it's a consolidating business.' So they are looking to continue to get value but not have it be a drain on capital."

Morgan Lewis also represented Pfizer in consumer group Public Citizen's bid to get copies of business logs and other records related to legal settlements the drug company,Purdue Pharma LP and federal authorities entered over off-label marketing. Public Citizen initially requested the information in 2009, when it sought documents stemming from the companies' so-called corporate integrity agreements with the Department of Health and Human Services under the Freedom of Information Act.

The firm first successfully urged the department not to disclose most of the materials due to commercial confidentiality concerns and then intervened once Public Citizen sued HHS. A Washington, D.C., federal judge eventually ordered HHS to hand over limited categories of documents, but withheld paperwork that would have revealed details of Pfizer's compliance program along with specific violations the company identified.

The victory was crucial for the industry because companies would be less "enthusiastic" to disclose detailed information in the HHS documents if they knew they could be publicly released, according to Mahinka, who said this type of suit over corporate integrity agreements had never occurred before. The firm's trial team was tasked with explaining the novel public policy implications to the judge, he said.

"We distilled this expert knowledge and linked it to public policy consequences, and needed to creatively present them to the court," Mahinka said. "We couldn't get this wrong on the first case, because it would be cited the wrong way in all of the future cases."

--Additional reporting by Ed Beeson, Erica Teichert and Jeff Overley. Editing by Philip Shea.