

Life Sciences MVP: Morgan Lewis' Randy Sunberg

By **Andrew Westney**

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Morgan Lewis & Bockius LLP partner Randall B. Sunberg helped put together several big deals in the life sciences sector over the past year, including representing Merck & Co. Inc. in selling its consumer products business to Bayer AG, boosting him to a spot on Law360's list of Life Sciences MVPs.



Sunberg, the managing partner of Morgan Lewis' Princeton, New Jersey office and co-chair of the firm's life sciences transactions practice, represents clients ranging from biotechnology start-ups to global pharmaceutical companies in negotiating and structuring complex collaborations, mergers and acquisitions and licensing agreements, and also advises private equity firms, venture capital firms and investment banks that are focused on the life sciences industry.



Randall B. Sunberg

Sunberg joined Morgan Lewis in 1999 as just the fourth attorney in its Princeton office, helping over the years to build up the firm, which was named a Law360 New Jersey Powerhouse earlier this year. In that time, he's seen the firm's business center increasingly on biologics and biosimilars as pharmaceutical companies and venture capital firms have shifted their focus to that area.

"With that, there's been a big geographic expansion in the practice," Sunberg told Law360. "We represent companies not just in the Princeton area, but across the eastern corridor and the west coast, as well as companies in Europe that are doing worldwide deals."

Sunberg said Morgan Lewis' recent deal to add the bulk of Bingham McCutchen LLP's attorneys and staff has given the firm's life sciences group, which functions as a kind of boutique within the firm, even more experience to draw on.

In one of the major deals of 2014, Sunberg helped Merck to reach a May agreement to sell Bayer its over-the-counter business, including the global trademark and prescription rights for the allergy medicine Claritin, for \$14.2 billion.

Bayer stood out in the competition to buy Merck's business with a related agreement to jointly develop and market Bayer's portfolio of cardiovascular therapies, including its hypertension drug Adempas and heart failure medication vericiguat, Sunberg said.

There has been a resurgence in bidders offering so-called quids as sweeteners to deals, Sunberg said. Though these joint projects can be complicated, they give parties a chance to put their offer over the top, he said.

"Bidders are trying to distinguish themselves, and one way to do it is to make the deal even more strategic and have more value by adding a quid to it," Sunberg said. "There's a lot of competition for new molecules to in-license."

Companies of all sizes may find collaborative deals attractive, especially when grappling with the high cost of development programs, Sunberg said.

"Rather than going it alone, I think even big pharmas want to share the risk, and if it's successful, they're very willing to share the reward with their new partner," Sunberg said.

Sunberg also helped two smaller companies reach a collaborative deal this year, representing Emergent BioSolutions in its agreement with MorphoSys to co-develop and commercialize the ES414 antibody for the treatment of prostate cancer.

In the deal announced in August, MorphoSys will pay Emergent \$20 million up front and as much as \$163 million in milestone payments, with the parties sharing global development costs. Emergent will retain rights to the drug in the U.S. and Canada, while MorphoSys will receive an exclusive license to the drug in other countries.

The deal made sense for both companies as cancer studies can be particularly expensive, Sunberg noted.

"This was an example in that therapeutic area of companies pooling their resources to share the expense and risk of clinical development and sharing the rewards worldwide," he said.

Sunberg also represented Eli Lilly and Co. in its negotiation of a license agreement with Sanofi for the over-the-counter rights to Eli Lilly's erectile dysfunction drug Cialis in the U.S., European Union and other markets.

Under the deal completed in May, Eli Lilly received an upfront payment of \$25 million, but the deal could be worth as much as \$1.43 billion if all development, regulatory and sales milestones are reached, in addition to a tiered double-digit royalty on sales of the over-the-counter version of Cialis.

It's unusual for a product to switch from prescription to over-the-counter sales, but there were a lot of pharmaceutical companies bidding in this case as there could be a substantial market for over-the-counter Cialis, Sunberg said.

The arrangement with Sanofi helped Eli Lilly address the unique regulatory aspects of the Cialis switch, which focus less on safety than on providing consumers with information about an over-the-counter version of an existing prescription drug, Sunberg said.

“There’s kind of a special class of clinical trials that need to be done, and Sanofi as an OTC manufacturer had an expertise in this and Lilly did not,” Sunberg said.

Sunberg continues to keep busy working on transactions for Morgan Lewis, as the firm typically assigns one partner and one associate to work on most deals.

To complete one recent transaction, Sunberg spent two nights in meetings in New York working nearly around the clock, grabbing a few hours’ sleep when he could.

“If that’s what you’ve got to do, that’s what you’ve got to do,” Sunberg said. “It’s not the goal, but sometimes that’s what you’ve got to do to get the deal done.”

--Additional reporting by Ed Beeson, Natalie Rodriguez and Martin Bricketto. Editing by Emily Kokoll.
