

## **GC Cheat Sheet: The Hottest Corporate News Of The Week**

By **Michele Gorman**

*Law360 (April 10, 2020, 4:05 PM EDT)* -- Capital-hungry life sciences companies are completing offerings despite volatility caused by the coronavirus pandemic, while Senate Democrats blocked a Republican attempt to approve another \$250 billion in forgivable loans to small businesses.

These are some of the stories in corporate legal news you may have missed in the past week.

### **Life Sciences Cos. Maneuver Path to Public Markets**

Public markets are showing signs of life for capital-hungry life sciences companies, which are completing offerings despite volatility caused by the coronavirus pandemic, creating challenges for lawyers charged with crafting up-to-date disclosures amid unprecedented uncertainty.

The initial public offerings market has been shut since early March for most industries, and follow-on offerings have also been reduced. But life sciences companies, particularly precommercial-stage startups developing new therapies, appear to be bucking the trend.

Zentalis Pharmaceuticals LLC and Keros Therapeutics Inc. went public this month, accounting for both of April's IPOs so far. Both companies priced their offerings at the top of their ranges and have seen shares rally in post-IPO trading, generating hope for more life sciences issuers. IPO research firm Renaissance Capital notes that at least four companies could follow suit.

"With successful public debuts from Keros Therapeutics and Zentalis Pharmaceuticals, the most likely IPO launches include several biotechs, such as oncology-focused Ayala Pharmaceuticals and ORIC Pharmaceuticals, [ear-nose-and-throat disease] biotech Lyra Therapeutics and [central nervous system] drug developer NLS [Pharmaceuticals]," Renaissance Capital said in an online brief published Thursday.

### **Senate Democrats Block Republican Effort to Boost Small-Biz COVID-19 Relief**

Senate Democrats on Thursday blocked a Republican attempt to approve another \$250 billion in forgivable loans to small businesses, seeking changes to the pandemic relief funding and demanding

greater consultation across party lines with unemployment claims reaching 17 million over the past four weeks.

A skeleton crew of four senators and a handful of staffers gathered for the pro forma session with a plentiful supply of hand sanitizer as Majority Leader Mitch McConnell, R-Ky., sought unanimous consent to supplement the \$350 billion already approved for the Paycheck Protection Program, an element of the massive Coronavirus Aid, Relief and Economic Security Act that covers forgivable loans for companies with fewer than 500 employees that continue paying workers during the pandemic.

Democrats had demanded changes to ensure access for small businesses that don't have established banking relationships and decried McConnell's effort as a stunt.

"I want to add more money to the only part of our bipartisan bill that is at risk of running out of money," McConnell said on the Senate floor. "I'm literally talking about deleting the number 350 and making the number 600. ... We're not making any policy changes."

### **COVID-19 Paid Leave Measure May Stop Short of Fully Helping Workers**

Although Congress and the U.S. Department of Labor moved fast to put in place an emergency paid leave law designed to help workers weather the coronavirus pandemic, plaintiff-side lawyers say they adopted a flawed approach that falls short of giving people all the help they'll need.

The Families First Coronavirus Response Act, which President Donald Trump signed into law in March, was enacted as part of lawmakers' broader effort to help millions of Americans cope with the COVID-19 pandemic. After the law's passage, the DOL issued a "temporary rule" and several rounds of guidance to help employers and workers understand the nuances of the law, which took effect April 1 and will expire at the end of the year.

While plaintiffs lawyers were happy to see Congress act quickly to lend workers a helping hand, Josh Van Kampen of Van Kampen Law PC said there are "some serious flaws" in the new statute and guidance that he believes "are going to jeopardize the good that they would do."

"If you listen to politicians, there's quite a bit of kumbaya about how we're all going to come together as a country," he said. "But in the workplace, just anecdotally from the calls we're getting, there seems to be quite a bit of desperation and unpreparedness on the part of employers. There's a lot of bad stuff happening."

### **Ex-Nokia Lawyer Pans 'Surreal' Attempt to Nix Her Bias Suit**

A former in-house lawyer for Nokia Corp. has told a federal judge that the company's attempt to scrap her suit alleging she was unjustly fired after being passed over for a younger man for a top compliance job was a "surreal" attempt to twist the facts.

Sharan Rene Boudreau said on April 6 that her discrimination claims withstand legal scrutiny despite the Finland-based multinational company's attempt to dismiss the suit based on a rewrite of the narrative.

Nokia argued in August that Boudreau didn't file a discrimination charge with the U.S. Equal Employment Opportunity Commission or the Texas Workforce Commission until August 2018 — more

than a year after she was passed over for a promotion ultimately given to current general counsel Jody Bishop and after a 300-day deadline to do so.

But Boudreau said the alleged discriminatory practice wasn't the company's failure to select her for the promotion, but rather that it tapped Bishop for the job six months later, among other actions.

### **Ex-Walmart Employee's Death Marks 'First' Ill. COVID Death Suit**

Lax safety and cleanliness standards at an Illinois Walmart store caused a worker to become fatally infected by the novel coronavirus, according to what the lawyer for the deceased worker's family called the "first known COVID-19 wrongful death lawsuit" filed on April 6 in the Land of Lincoln.

The estate of Wando Evans, who worked as an associate at a Walmart store in Evergreen Park for more than a decade, claimed in a state court case filed April 6 that he and other workers contracted the disease while working at the store, and that the retailer committed "willful and wanton misconduct" by not using workplace safety measures that had been recommended by public health officials to curb the spread of the disease.

Evans died on March 25 of complications caused by COVID-19, the disease caused by the novel coronavirus. He had been sent home from work two days earlier, according to the suit, which was filed in Cook County Circuit Court.

A second worker at the Evergreen Park store died from COVID-19 several days after Evans, and other workers at the store had exhibited symptoms of the disease around the same time, according to the suit, which says that Walmart didn't do anything to bar symptomatic workers from the store until after Evans died.

### **How GCs Are Coping With Firm Furloughs, Pay Cuts**

Most general counsel aren't overly concerned about potential disruptions to their outside counsel services, even as law firms impose pay cuts and furloughs to reduce the financial impact of COVID-19. But some say their feelings could change if the specific lawyers they trust become unavailable.

Pryor Cashman LLP and Womble Bond Dickinson are among a slew of firms that have made staff cuts in recent days, while Cadwalader Wickersham & Taft LLP is pausing partner compensation distributions and reducing associate and senior administrative staff pay by 25% in response to the novel coronavirus crisis.

The coronavirus has also halted litigation for attorneys, as state and federal courts remain closed to help stop the spread of the virus.

"It worries me, I guess, in the same sense that a slowdown in the economy generally worries anybody," said Eric Tuchmann, general counsel at the American Arbitration Association. "It's not welcome news that you see evidence of this diminished activity in the economy that's impacting individuals."

### **Pandemic Could Negatively Impact Firm Diversity Efforts**

The COVID-19 pandemic and resulting economic crisis pose a potential danger to efforts to improve diversity and inclusion in U.S. law firms, leading experts to caution firms to tread carefully when making staffing decisions during this uncertain time.

As law firms look for ways to cut costs to weather the economic downturn, financial investments in diversity and inclusion initiatives may suffer as a result. And as firms cut pay and even lay off some attorneys, the choices they make could have a disparately negative impact on attorneys of color and women, industry experts said.

"We are going to see whether diversity and inclusion initiatives are in the DNA of law firms or whether those firms view them as just discretionary," said Stephanie Scharf, name partner at Scharf Banks Marmor LLC and principal at law firm consultancy The Red Bee Group.

Many U.S. law firms dealt with the economic fallout of the recession in 2008 and 2009 by laying off associates. Data published by the National Association for Law Placement suggests that attorneys of color and female attorneys may have been disproportionately impacted by those cuts.

### **EEOC Coronavirus Guidance No Magic Solution For ADA Risks**

Although the U.S. Equal Employment Opportunity Commission recently issued guidance that gives employers leeway to respond aggressively to the novel coronavirus without violating the Americans with Disabilities Act, businesses will still have to tread carefully to avoid disability bias claims, experts say.

In the employment context, the ADA protects workers from disability bias and limits employers' ability to, among other things, ask medical questions of workers or mandate that they take medical examinations. However, the law includes certain exceptions for when an employee poses a "direct threat" to the health or safety of others.

In several pieces of guidance issued over the past few weeks, the EEOC answered numerous questions about how employers can respond to COVID-19, the disease caused by the novel coronavirus. Those included questions like whether businesses can take workers' temperatures (yes) and whether employers can screen new hires for COVID-19 symptoms (also yes).

Former longtime EEOC Commissioner Chai Feldblum, who now practices at Morgan Lewis & Bockius LLP, said the EEOC's guidance gives businesses a good road map for navigating through the COVID-19 pandemic.

### **Zoom's Rise Offers Test For New Calif. Privacy Law**

The privacy backlash that has accompanied Zoom's meteoric rise since the onset of the COVID-19 pandemic has presented challenges that are poised to test the strength of California's new privacy law and fuel calls for other states to embrace robust data safeguards.

As the global coronavirus outbreak prompts people to flock to Zoom to conduct business and connect with friends and family, the suddenly ubiquitous video conferencing service is facing heightened scrutiny from consumer advocates, regulators and the plaintiffs' bar over the way it shares and secures personal data.

"For Zoom, where it's run into the biggest issues is in giving consumers notice at the time of collection about how it's using and disclosing their data," said Jason Johnson, a partner at Moses & Singer LLP.

Zoom Video Communications Inc. is facing at least two putative class actions centered on these alleged shortcomings. The complaints, filed in federal court during the past week by California residents Robert

Cullen and Samuel Taylor, accuse Zoom of violating several Golden State laws, including the state's new Consumer Privacy Act, by quietly gathering and sharing personal information with third parties like Facebook.

### **GCs Report Seamless Transition to Remote Work During Crisis**

A vast majority of general counsel said their legal departments were prepared for the transition to working from home during the COVID-19 outbreak, according to the results of a survey released April 3 by the Association of Corporate Counsel.

More than 68% of the 277 respondents said their department was "very well prepared" for the change, with another 27% saying their department was "somewhat prepared," the ACC said. Just over 3% of respondents said their legal department was "somewhat unprepared," with 1.5% saying they were "not prepared at all."

"Overall, in-house legal departments are holding up," the group said. "The results also show that legal departments are busy contributing to the development of contingency plans, assessing and advising business leaders on risk issues, and handling the [labor- and employment]-related effects of the pandemic."

Nearly 65% of respondents said they were assessing and advising business leaders on risks associated with new supplier relationships, while 63% said they were participating in contingency planning related to potential failures or gaps in the supply chain, the ACC said. Nearly half said they were renegotiating contracts with suppliers, while 41% said they were negotiating new contracts.

### **Legal Sector Jobs Drop in March Amid COVID-19 Fallout**

Employment in the legal industry dropped in March from a 10-year high in February, giving up the gains seen during the previous month as firms stare ahead at the potential impact of the novel coronavirus, according to U.S. Department of Labor data released April 3.

The number of legal sector jobs decreased from about 1,162,600 in February to 1,160,500, a decrease of nearly 0.15%, based on the seasonally adjusted numbers from the Bureau of Labor Statistics. It follows a period of increases in four of the previous five months, according to the data.

The larger category of professional and technical services, which includes the legal industry, gained a seasonally adjusted 255,400 jobs since last March, a nearly 2.7% increase for the period. From February to March, the sector gained approximately 6,500 jobs, according to the Bureau of Labor Statistics.

The March job numbers come as law firms are only beginning to announce layoffs, furloughs, cuts in pay and other measures to reduce costs as the economic upheaval caused by the spread of COVID-19 begins to impact the industry.

### **Q&A: 15 Minutes With Grubhub's General Counsel**

Amid the unprecedented COVID-19 outbreak, the main focus at Grubhub is prioritizing the health and safety of the company's diners, drivers, restaurant partners and employees, general counsel Maggie Drucker said.

"We have daily meetings that address health and safety issues and the business impact of COVID-19, including how we can best serve our diners and how we can help our restaurants, and much of the day is spent implementing the outcome of the daily meeting," she told Law360.

For example, the online and mobile food-ordering and delivery marketplace has implemented a program that defers the payment of restaurant commissions for small restaurants, Drucker said. It has also started a relief fund to raise money through its Donate the Change program to help drivers and restaurants.

Here, Drucker shares what she's learned about the general counsel role and discusses Grubhub's 2013 merger with Seamless.

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