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DEALMAKERS

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## CHEMICAL REACTION

Skadden's Lieberman helped Amylin through the most challenging experiment of all: a complicated sale.

By Amy Kolz



**S**OMETIMES THE MOST important prerequisite for a good marriage is a good divorce lawyer. That was certainly true for Amylin Pharmaceuticals Inc., which in 2011 found itself stuck in an unhappy partnership with pharma giant Eli Lilly and Company. Looking to get out of the relationship, the biotech turned to Nancy Lieberman and her team at Skadden, Arps, Slate, Meagher & Flom. Over the next 18 months, Skadden helped Amylin terminate its 10-year alliance with Lilly, navigate unsolicited bids for the company, and ultimately negotiate a \$7 billion sale to Bristol-Myers Squibb Company and AstraZeneca PLC, a \$3.5 billion premium over earlier offers.

The blockbuster combination, announced last June, never would have happened without Lieberman's deft counsel, say former Amylin executives. "There are many lawyers who could have helped us do the deal with Bristol-Myers once we were free of [Eli] Lilly, but what's unique about Nancy is that she got me the chance to do the deal," says Marcea Lloyd, Amylin's general counsel.

Amylin had teamed up with Eli Lilly in 2002 to jointly develop and market diabetes drugs, a deal that supplied the young biotech with funds to launch its first drug, Byetta, in 2005. But the collaboration agreement meant that Amylin was tied inextricably to Lilly—they shared all drug rights, and though both companies promoted Byetta in the United States, only Lilly had a sales force to market it overseas. Certain contractual provisions also encumbered any potential sale of Amylin to another company.

So when Amylin learned in early 2011 that Lilly had teamed up with German drugmaker Boehringer Ingelheim GmbH to market a rival diabetes drug, the biotech company appeared to be stuck with what it believed was an unfaithful partner. Amylin hired Lieberman, an M&A lawyer who had worked with Lloyd at the general counsel's prior company, VHA Inc.

With the help of Lieberman and a team of litigators at Skadden, led by Maura Grinalds, Amylin sued Lilly in federal district court in California that May, alleging that Lilly had engaged in anticompetitive activity and breached its agreement with Amylin. (Lilly responded in a statement saying the suit was without merit, and that the company "has been and remains fully committed to fulfilling its obligations under its exenatide collaboration agreement with Amylin, as well as complying with all laws and regulations.")

It was a risky, David vs. Goliath-type move for the small biotech company, but it paid off. The stick of litigation brought the pharma giant to the negotiating table in the fall of 2011, according to Lieberman. She and the team at Skadden were able to craft a separation agreement that allowed Amylin to buy back the worldwide rights of the two jointly developed drugs, a rare coup for a small biotech ending an alliance with a massive pharma company.

And Amylin won those rights on very favorable and novel terms. The

separation agreement minimized the initial costs for Amylin while it was awaiting FDA approval of its second drug, Bydureon. Amylin would pay Lilly up front \$250 million. Amylin would make another \$150 million payment when Bydureon received FDA approval and then make future revenue sharing payments to Lilly of up to \$1.2 billion, plus accrued interest. The size and timing of those payments would be contingent on the size of Amylin's future revenues from the drugs and FDA approval.

The Skadden team also ensured that the terms of the divorce, announced in November 2011, wouldn't thwart Amylin in any future relationships. "After all of the acrimony, it had to be a clean break," explains Lieberman. The revenue-sharing obligation could be transferred to another party, or prepaid without penalty. And Lilly would not be able to influence or participate in a future sale without Amylin's consent.

"These might sound like small things, but there was no intention of a sale at that point, and so having someone thinking through what might be a possible outcome [in the future] was really important," says Amylin's former CEO Daniel Bradbury.

That strategic thinking paid off when Bristol-Myers made an unsolicited \$3.5 billion bid for Amylin in February 2012, two weeks after the FDA approved Bydureon. Over the course of the next four months, Lieberman helped Amylin weigh its options, running what became a dual-track sales process: running an auction for the international licensing rights to market Amylin's drugs and an auction for the entire company.

On June 29 Amylin announced the sale to Bristol-Myers, a deal that included a full payback of the Lilly obligation. (Bristol-Myers reached a separate deal with AstraZeneca, which paid \$3.4 billion in cash and will share in the development of Amylin's products.) "It was a very reasonable negotiation," Lieberman says of the negotiations with Bristol-Myers. Sounds like the start of a beautiful new marriage.

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### DEAL IN BRIEF

#### AMYLIN SALE

DEAL VALUE

\$7 billion

FIRM'S ROLE

Seller's Counsel



PROP. STYLING BY JEFF STYLES

**DEAL TRIVIA** Lieberman used the iPhone No! button app to object to unfavorable deal terms.