

THE TALENT

Dealmaker of the Week: Eileen Nugent of Skadden, Arps, Slate, Meagher & Flom

Posted by Julie Triedman

On Tuesday, Eileen Nugent, an M&A partner at Skadden, Arps, Slate, Meagher & Flom and cohead of the firm's private equity group, helped Endo Pharmaceuticals wrap up what she calls a "transformative" deal to buy Qualitest Pharmaceuticals, the nation's sixth-largest generics maker, for \$1.2 billion.

The announcement of the Qualitest acquisition capped a particularly busy period for Nugent. There were the months of due diligence and days of negotiations between Endo and Apax Partners, the private equity fund selling Qualitest. In that time, Nugent also led a Skadden team on behalf of Burger King Holdings in 3G Capital Partners' \$3.7 billion buyout of the fast-food company in early September. And she helped Endo complete a smaller acquisition in August.

Nugent's work for Endo dates back to the company's origins. She has been handling corporate matters for the Chadds Ford, Pa.-based drugmaker since it was spun off from DuPont Merck in 1997. At that time, Nugent represented the buy side in the Endo carve-out, acting for private equity shop Kelso & Company. She solidified her ties to Endo in 2000, when the company tapped her as it went public via a merger with Algos Pharmaceutical Corporation. (Endo's chief legal officer, Caroline Manogue, is a former Skadden associate who joined subsequent to that 2000 merger-going-public deal.)

As for why the deal is so transformative for Endo, Nugent says it marks the company's most significant strategic move yet toward expanding its focus beyond branded pain relief--and adding a lot of new product lines.

"It's about having a generic footprint and broadening the company's market position," she says. Endo has historically been known for its brand-name painkillers Percodan and Percoset. Another of its flagship drugs, the best-selling shingles medication, Licoderm, is due to lose patent protection in 2015.

In the other deals she's been juggling lately, Nugent helped Endo negotiate a \$160 million buyout of Penwest in a deal announced August 9. That tender offer closed on September 20, a week before the Qualitest agreement was reached.

Later in August, Burger King Holdings called on Nugent to advise on its negotiations with private equity firm 3G Capital,

which culminated in the \$3.7 billion deal announced on September 2 following a flurry of tender offer filings.

Burger King is a new Skadden client; Nugent first met the company's general counsel, Anne Chwat, in April when Burger King began to interview potential firms that specialize in M&A matters. In late summer, with Skadden now on board, Burger King's negotiations with 3G went into high gear.

Because both parties wanted to close the deal as quickly as possible, Nugent and her counterpart on the other side of the table, 3G counsel Stephen Fraidin, of Kirkland & Ellis, hammered out a unique agreement structured as a tender offer backstopped by a merger agreement, as described in this article from *The Deal*.

As structured, the deal--which raises virtually no antitrust issues--could close as soon as mid-October, Nugent says. (If 3G fails to reach the threshold of ownership needed to get a short-form merger, the deal would take a little longer to close, Nugent says. For more on the deal, see Burger King's preliminary proxy filing here.) "It's an interesting dual structure," Nugent says, "and I don't think it has ever been done before."

The toughest negotiations, however, surrounded Nugent's effort to provide security for her client. She was able to secure a promise from 3G that, if financing failed in November even after all of the other conditions were met, 3G would buy out the Burger King shareholders with its bridge loan, a much more expensive option. "That was one of the last items to fall into place," she notes.

As for her work on the Qualitest deal, Endo's Manogue says Nugent never let her juggling act show, even as the two negotiated side by side through the Monday night before the announcement of the deal Tuesday morning.

"She's among the top lawyers out there for responsiveness," says Manogue. "She's smart, and she's tough."



Eileen Nugent