

## M&A Group Of The Year: Sullivan & Cromwell

By Tom Zanki

*Law360 (January 23, 2023, 2:02 PM EST)* -- Sullivan & Cromwell LLP's global team steered acquisitions, divestitures and spin-offs for a diverse mix of clients over the past year, highlighted by migraine-treatment developer Biohaven Pharmaceuticals Inc.'s \$11.6 billion sale to Pfizer Inc., earning the firm a spot among Law360's 2022 Mergers & Acquisitions Groups of the Year.

Buyers and sellers across a gamut of industries approached Sullivan & Cromwell to get their deals across the finish line, using myriad structures. The firm also helped clients overcome regulatory hurdles, as it did when representing UnitedHealth Group's Optum unit in its \$13.8 billion acquisition of Change HealthCare, which closed in October 2022 after defeating a U.S. Department of Justice objection.

"All of these deals were incredibly different and characteristic of our practice, which is reflected in the diversity of the transactions that we saw in the last year," Sullivan & Cromwell partner Melissa Sawyer said.

Life sciences startup Biohaven's \$11.6 billion deal with Pfizer posed challenges, according to Sullivan & Cromwell attorneys. Pfizer was mainly interested in Biohaven's anti-migraine treatment Nurtec, but the early-stage drug developer had other therapies in its pipeline, including one that would treat nervous-system disease ALS.

Biohaven executives wanted to preserve the ability to monetize such therapies without disrupting the Pfizer acquisition. Sullivan & Cromwell helped the company spin off a new entity, which now trades on the New York Stock Exchange under the name Biohaven Ltd., that retains the additional therapies and will continue developing them.

"The Biohaven board and others believe those assets have quite a bit of promise," Sullivan & Cromwell partner Frank Aquila said.

The deal was structured so that the new Biohaven spinoff was capitalized with \$275 million and gained certain rights to receive U.S. royalties on Nurtec sales. Original Biohaven shareholders, including Pfizer, also received shares of the spun-off company as part of the deal.

Sullivan & Cromwell also helped UnitedHealth Group's Optum business restructure its \$13.8 billion



acquisition of analytics firm Change Healthcare Inc. to overcome opposition from the DOJ, which sued to block the deal on antitrust grounds.

A key breakthrough occurred in April when UnitedHealth Group agreed to sell Change's claims adjudication unit ClaimsXten for \$2.2 billion to private equity firm TPG Capital. The divestiture helped persuade a D.C. federal judge in September to reject the government's objection. The DOJ is appealing the decision.

The Change Healthcare acquisition, first proposed in 2021, was finalized last October after the firm helped negotiate a deadline extension.

Regulatory agencies are also scrutinizing financial industry transactions. Sullivan & Cromwell is advising First Horizon Corp. in its pending \$13.4 billion sale to TD Bank Group. The firm represented First Horizon in hearings before the Office of the Comptroller of the Currency in August.

Sullivan & Cromwell has also negotiated terms to protect First Horizon in the event the merger is blocked by regulators, including requiring TD Bank Group to pay the Memphis, Tennessee-based First Horizon \$25 million to reimburse certain fees if the acquisition falls through. TD Bank would also be entitled reimbursement under certain circumstances if the merger fails.

Assuming the deal pans out, the combination would create one of the U.S.'s top six banks by assets.

Sullivan & Cromwell also guided consumer health care business Haleon PLC in its \$36 billion spin-off from GlaxoSmithKline Group, resulting in Haleon becoming a standalone company that trades on the London and New York stock exchanges. The July 2022 transaction amounted to a demerger of 80% GSK's interest in Haleon, a maker of household products including toothpaste Sensodyne and arthritis-pain reliever Voltaren, in which GSK shareholders received Haleon ordinary shares at a one-to-one ratio.

Aquila said the versatile talents of the firm's lawyers help Sullivan & Cromwell steer transactions across a wide range of sectors. The New York-headquartered firm has 13 offices globally spanning the United States, Europe, Asia and Australia, where it estimates more than 100 partners are working on M&A transactions at any given time.

Sullivan & Cromwell partners across various departments, including financial institutions, commercial real estate, and intellectual property transactions, also advise M&A work in their respective sectors, which Aquila and Sawyer said bolster the firm's agility. The firm plans to hone that nimble approach going forward.

"We have a very balanced, generalist practice approach where we cover a lot of ground and a lot of different practice areas," Sawyer said. "And we're not just an M&A shop by any means."

--Editing by Peter Rozovsky.