

Q&A With Choate's Bill Asher

Law360, New York (May 03, 2012, 2:01 PM ET) – William B. Asher co-chairs Choate Hall & Stewart LLP's technology companies and life science groups in the firm's Boston office. He has more than 30 years of experience in corporate finance and securities law, venture capital, mergers and acquisitions, and corporate governance. He focuses his practice in technology and life sciences, including representation of private and public companies, entrepreneurs and senior management, underwriters and investors. Representative recent projects include handling a \$65 million initial public offering of an antibiotic drug development company, an \$80 million sale of a venture-backed orphan drug development company to a public company, and organization and \$20 million venture financing and in-licensing for a cancer therapeutics company.

Q: What is the most challenging case you have worked on and what made it challenging?

A: The most challenging matter I have worked on involving a life sciences client was the initial public offering of an antibiotics drug development company. The challenge was not because the particular transaction was unusual, but because IPOs for early-stage biotech companies are often fraught with challenges for security lawyers.

Unlike businesses with products on the market, a pre-NDA company is all about the future. My job as the securities lawyer was to help the company paint a picture for investors of the potential rewards and attendant risks of the future in a way that was both informative and balanced — and would not create fodder for a securities lawsuit. Translating my client's complex and esoteric information about the nature of technology, the statistical significance of clinical trials, and vagaries of the regulatory process into meaningful "plain English" required patience, insight and good judgment.

Q: What aspects of your practice area are in need of reform and why?

A: The entire funding pipeline for life sciences companies requires attention, if not reform. I am encouraged that the recently enacted JOBS Act may ease the burden on life sciences companies accessing the public markets by allowing communications with potential investors in advance of commencing an IPO, allowing research analysts to write about a company immediately following an IPO, and most importantly, lowering the cost of going public and being public by lessening a number of costly regulatory reporting requirements.

The ability to raise money at early stages of development depends upon the vibrancy of the IPO "exit" market, so if these public market reforms have their intended effect, they could strengthen the entire funding continuum.

Q: What is an important issue or case relevant to your practice area and why?

A: As my practice focus is primarily on the corporate aspects of representing life sciences businesses, topical issues relating to changes in patent law, the regulatory process and reimbursement policies are one step removed from my day-to-day practice. However, one important issue that the corporate life science attorneys are only beginning to come to grips with is the inevitable problem of dealing with milestone-driven collaboration or exit transactions that go bad. These deals are equivalent to more traditional “earn out” transactions where the value that ultimately comes to the seller/licensor is based on future results of the assets in the hands of the buyer/licensee, who may not have the interests of the prior owners of the assets many years later when, and if, a drug product clears the last regulatory hurdle and is ready for prime time.

As these agreements begin to play themselves out, I anticipate that there will be lessons learned that will be folded into future deals.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: My former partner and mentor the late Richard Testa, of Testa Hurwitz & Thibault, was instrumental in teaching that, as a corporate counselor, your highest goal is proactively to assist your client to make critical business judgments that lead to the right balance of risk and reward for its business.

Dick believed that even in as technical a field as life sciences, problems can be broken down into business challenges that share commonality with issues that many businesses face. The job of the lawyer is to look around corners and use his or her sound judgment and creativity to find practical solutions that will serve both the near-term and long-term interests of the company. Dick's philosophy is a good reminder to all of us in the life sciences industry — that although a one-of-a-kind domain, there are lessons from other fields that can in fact be relevant.

Q: What is a mistake you made early in your career and what did you learn from it?

A: When I was a young associate, I had a client that urgently needed me to attend a board of directors meeting on Halloween night. I had young children at the time who were disappointed that I spent the evening in a business meeting in New Hampshire instead of trick-or-treating with them. I realized that while it's important to be there when a client needs you, the time that you take outside the office is key to bringing balance and perspective to the service you perform for your clients. This is particularly true when serving life sciences clients who are working to improve the health of humanity at large.

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