

# FT NORTH AMERICA INNOVATIVE LAWYERS 2015



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## Methodology

Shortlists for the FT North America Innovative Lawyers 2015 cover the US, Canada and Mexico and comprise submissions in each section. Firms were invited to submit under three headings:

- **Legal expertise** covers how lawyers innovated to enable, protect, and expand clients' businesses.
- **Business of law** covers innovating in compliance and technology, new delivery models, forward-thinking firms and talent development.

• **Social Responsibility:** total score for entries in pro bono cases and projects.

Telephone interviews and feedback from clients and independent references were used to assess each submission. Each is scored out of 10 points for originality, rationale and impact for a maximum score of 30.

In-house lawyers rankings draw from nominations as well as submissions: all entries require third-party validation.

### FT 10: Law Firm Innovators 2015

The FT 10 ranking is a pure aggregate of each

law firm's performance across private practice categories.

For this report, 275 submissions and nominations were received, and RSG Consulting interviewed and sought feedback from clients, lawyers and experts. Submissions were received from 60 law firms, and 45 in-house teams were researched. Research was carried out by five RSG researchers between August and November 2015.

### Judges

A panel decides the winner for the Legal

Innovator of the Year award, from a list of 10:

- Michael Skapinker**, FT associate editor
- Rohit Jaggi**, editor, FT Innovative Lawyers
- Bob Gogel**, chief executive, Integreon
- Lindsay Fortado**, FT legal correspondent
- Reena SenGupta**, CEO, RSG Consulting

**RSG Consulting**  
Reena SenGupta, chief executive, helped launch the FT's Law & Business page in 2001, and has written on the legal profession for the FT for 14 years. The RSG Consulting research team was Reena SenGupta, Victoria Harris, Lucy Pearson, Joshua James, Katie O'Riordan.

# Poison pill proves to be a deal-breaker

**Expertise** Fending off hostile bids requires lawyers to use all manner of arcane delaying tactics, writes *Arash Massoudi*

**A** corporate raider, famed for bending the will of shareholders and forcing the hand of executives, secretly acquires nearly 10 per cent of your stock and strikes a deal with a controversial industry rival determined to buy your company. What do you do?

Botox-maker Allergan turned to lawyers at Latham & Watkins and Wachtell, Lipton, Rosen & Katz for help as it defended itself against a \$46bn hostile takeover attempt by Valeant Pharmaceuticals.

What made the situation unprecedented was that Valeant had shaped its takeover plan in secret with hedge mogul Bill Ackman. During March and April, he amassed a stake of almost 10 per cent in Allergan and then used his position to press for a deal.

The bid set in motion a months-long struggle that became one of the most vicious and high-profile battles during the current boom in corporate dealmaking. To frustrate Valeant and create time for a rival bid, Latham employed both boardroom and courtroom tactics to discredit and delay the hostile bid.

When Valeant scheduled a meeting to oust Allergan directors, the move was challenged by Latham, which drafted bylaws ahead of the hostile bid that required detailed disclosures about trading histories and stock positions before a meeting could occur. Later, when Valeant tried to take its offer directly to shareholders via a tender offer, Latham appealed to securities regulators about disclosure requirements, buying Allergan more time to find another suitor.

At the same time, Latham was fighting in court. It alleged that the secret accumulation of Allergan stock by Mr Ackman's

hedge fund Pershing Square violated insider trading prohibitions and disclosure requirements.

The battle ended with Allergan securing a huge premium from "white knight" bidder Actavis, the generics pharma company, which paid \$70.5bn to buy the company in a deal that closed in March.

The tie-up with Actavis also paved the way for further dealmaking. The combined company, which took the Allergan name, sold its generics business to Israeli pharmaceuticals group Teva for \$40.5bn in July and recently agreed to be acquired by US drugmaker Pfizer in a deal worth about \$160bn.

The saga was just one of the complicated puzzles that companies faced over the past year as mergers and acquisitions kept up a feverish pace.

Law firms able to help clients find solutions to these challenges – and lay the groundwork for companies to grow as well as for further dealmaking – are in high

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demand. Another hostile deal in the pharma sector was avoided thanks in part to early decisions taken by executives at US drugmaker Mylan and their advisers, including lawyers from Cravath, Swaine & Moore.

In February, Mylan closed a \$5.6bn deal to acquire certain non-US assets from Abbott Laboratories. The transaction was a so-called inversion, structured to allow Mylan to redomicile its tax base to the UK through the acquisition to escape US taxes.

But while most companies move their tax base and incorporation to the same country in an inversion, Mylan, with the help of Cravath, elected to incorporate in the Netherlands, a move that would prove pivotal within several weeks of closing the Abbott deal.

## EXPANDING CLIENTS' BUSINESS

Firm	Originality	Rationale	Impact	Total innovation score
<b>Cravath, Swaine &amp; Moore</b>	9	9	9	<b>27</b>
Devised the structure for three transformative transactions worth \$80.5bn for Mylan, the pharmaceuticals company, while ensuring that the structure received shareholder approval. Commended: Mark Greene.				
<b>Latham &amp; Watkins and Wachtell, Lipton, Rosen &amp; Katz</b>	9	9	9	<b>27</b>
Representing Allergan, the firms combined boardroom and courtroom tactics to fight a \$46bn hostile takeover bid and later took the client into a \$70.5bn acquisition. Commended: Paul Tosetti, Cary Hyden, David Katz.				
<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>	8	9	9	<b>26</b>
Devised a novel auction structure for Hillshire Brands during the "meat wars" that required bidders to make unilateral and irrevocable binding offers. It resulted in Hillshire's sale for \$8.6bn.				
<b>Cooley</b>	9	8	8	<b>25</b>
The firm developed a legal template for applications for unmanned aerial vehicle (UAV) operators to act as commercial entities and secure exemption from national airspace rules.				
<b>Kirkland &amp; Ellis</b>	8	8	9	<b>25</b>
Provided strategic guidance for Burger King through its \$11.4bn merger with Tim Hortons to create the third largest fast-food chain in the world. Commended: William Sorabella.				
<b>Mayer Brown</b>	9	8	8	<b>25</b>
The firm responded to the poor performance of 401k retirement plans by helping to create alternative investment vehicles, giving access to high-performance funds.				
<b>Sullivan &amp; Cromwell</b>	7	9	9	<b>25</b>
The firm structured a \$55bn merger between Kraft and Heinz that ensured neither party had to refinance any outstanding notes and closed in three months without leaking.				
<b>Davies Ward Phillips &amp; Vineberg</b>	8	7	9	<b>24</b>
As Canadian counsel to Burger King in its acquisition of Tim Hortons, the firm helped reinvent the conventional Canadian exchangeable share structure.				
<b>Goodwin Procter</b>	7	9	8	<b>24</b>
Created a deal structure that enabled Roche to take a major shareholding in Foundation Medicine, a smaller oncology company, but give FM operational independence.				
<b>Paul, Weiss, Rifkind, Wharton &amp; Garrison</b>	8	8	8	<b>24</b>
Advised Dan Doctoroff, former deputy mayor of New York, on new ventures to modernise cities through three separate but simultaneous deals. Commended: Kenneth Schneider.				
<b>Weil, Gotshal &amp; Manges</b>	8	8	8	<b>24</b>
Helped Kinder Morgan to streamline its corporate structure for future acquisitions by engineering three deals worth \$76bn. Commended: Michael Aiello.				

Standout

Highly commended

In late April, Teva launched a \$40bn unsolicited bid to buy Mylan, which itself was pursuing a deal to buy Perrigo, another generics rival in the US, for \$35bn.

By reincorporating as a Dutch company, Mylan was entitled to protections including provisions that make it tricky to remove and replace sitting board members and that allow the establishment of a foundation, called a "stichting", which acts as a sort of poison pill defence. The foundation can exercise a call option agreement set up between it and the company that would dilute the voting rights of the company's ordinary shareholders.

The foundation has the right to exercise the option if it determines the move is in the best interests of the company. The combined impact of these protective measures meant a takeover of Mylan would have been extremely difficult, taking months if not years. As a result, Teva elected to buy Allergan's generic business and Mylan continued its pursuit of

Perrigo, which ultimately came to nothing in November.

Swift action by lawyers at Sullivan & Cromwell helped pave the way for a mega-merger between US condiments maker Heinz and US foods group Kraft.

For Sullivan, advising Kraft was complicated by the fact the company had only recently appointed a new chief executive and was in the process of changing its top financial officer. Also, a valuation of Heinz was problematic as it was not publicly traded.

Despite these obstacles, the two sides managed to keep the talks secret and reach an agreement within 10 weeks for a deal worth \$55bn.

Under the terms, Kraft shareholders would own just under half the combined company and receive a special cash dividend worth \$10bn. The companies were able to close the deal within three months of signing – a particularly speedy resolution.