

Cardiome hits potential \$1B home run

Merck pact could be Canada's largest of its kind



JIM MIDDLEMISS
Behind the Bar

Vancouver's Cardiome Pharma Corp. inked a licensing deal last week with Merck & Co., Inc., which has the potential to be worth \$1-billion if all the milestones are met, making it the largest licensing deal ever involving a Canadian life-sciences company, says **James Hatton**, the lawyer at Farris, Vaughan, Wills & Murphy, who helped negotiate the deal.

The Vancouver lawyer worked with **Anke Kramer**, an in-house lawyer for Merck, and **Barbara Kosacz** of Cooley Godward Kronish of Palo Alo, Calif., to get the job done.

The deal, which flew under the radar last week, will see Merck pay US\$60-million up front and provide a \$100-million line of credit. There's an additional \$300-million in clinical milestone payments

and \$340-million in commercial milestones along with tiered royalties if all goes well with the commercialization of the drug vernakalant, which is being investigated as a treatment for atrial fibrillation, an abnormal heart rhythm.

About 5.5 million patients are treated each year for atrial fibrillation in seven industrialized countries, according to documents supporting the licensing announcement.

Mr. Hatton is no stranger to biotech licensing deals. In fact, he uses the social networking site: www.delicious.com/JamesHatton/agreement to bookmark 820 biotech licensing agreements that are publicly disclosed in securities filings.

Simply click on the deal and users are taken to the page where the document can be viewed. He says his delicious site is a "pretty good resource" for those working on licensing deals and he often receives kudos from fellow professionals for his efforts.

"There used to be not that many available," he says. "They're not easy to find, even if you know they are out there."

Cardiome's deal with Merck, which took a scant seven weeks to structure, comes at a time when many Canadian life sciences companies are struggling. They're running low on cash and the capital markets are essentially closed. Fortunately, though, big pharma companies are looking to fill their pipelines



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as existing patents expire and they are stepping into the financing void.

"It's a tough time for companies like Cardiome to raise money," he says, and companies have to look for a "creative solution."

He said the line of credit Merck is providing is an example. "It's the first time a company like Merck has made a loan without strings attached," he says.

He adds the up-side potential of this deal, which is \$1-billion, is almost double the next largest licensing deal Canada has seen. That involved Merck

and Neuromed Inc., a 2006 deal that he says offered \$25-million up front and a possible upside of \$475-million.

He says even though big pharma companies have the money to do deals they are a "little more risk averse." Nonetheless, he says, "it's the busiest I have ever been in my practice."

"There's financial pressure" and everybody knows that smaller life-science companies "are starting to feel the pinch on cash flow. There's lots of deals in the pipeline."

Cheryl Reicin, a biotech lawyer at Torys, says "there's

this unquenchable need for cash," and "some of these companies are being forced to license earlier."

While that would normally lead to lower prices, it's not happening because big pharma companies are providing a buffer by competing for the deals that are out there, so "prices are still being kept at a healthy level."

It's also opening the doors to venture capital firms that are willing to take on the risk of developing a drug that may fizzle out. She says VCs can provide a viable alternative to biotechs that don't want to license till they have advanced their drug further, but who can't tap capital markets.

One of her clients, Zoticon Bioventures of Philadelphia, has stepped in to fill the void in a number of recent deals, including earlier this year, where it brought together some Canadian angel investors and provided \$55-million in series C financing to Sopherion Therapeutics LLC, which is developing Myocet, used in relation to cancer therapies. According to *BioWorld Today*, it's the largest biotech venture capital deal to close this year.

She says VC money is a viable option for biotechs. "A number of companies are saying we don't want to go to pharma, our preference is still to hold out."

"There are still deals getting done, they are just getting down a little more cleverly, and a little more judiciously,"

Ms. Reicin says. "You have to think a little bit outside the box. There was a formulaic way of raising money for biotechs in the past. Those traditional routes are now very, very limited. It requires a little more creativity."

COMPUTERIZING THE COURTS

OSCAR is coming to the Toronto branch of the Ontario Superior Court of Justice. No, not the grouch who lives in a garbage can on *Sesame Street*, but the Web-based court software scheduling system produced by CourtCanada Ltd.

The Ontario Ministry of the Attorney General has selected the Canadian technology vendor for the ministry. Currently, the company is involved in a pilot project using OSCAR to schedule estate cases in Toronto. It will now expand the use of that system to other civil cases in the Toronto court. That will allow registered users to book court time online.

The company claims the software streamlines and expedites the court scheduling process and improves access to justice. "OSCAR was developed after a great deal of research, including extensive consultation with industry stakeholders," said **Gregory Azeff**, president of the company.

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