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Allergan Inks \$30M Deal With Restasis Buyers In Antitrust Suit

By **Nadia Dreid**

Law360 (October 13, 2021, 4:55 PM EDT) -- Allergan has struck a \$30 million deal with buyers of dry-eye medication Restasis to end allegations that the pharmaceutical giant fought to keep a generic version of the medication off the shelves.

The end buyers told U.S. District Judge Nina Gershon on Friday that the deal had been reached "after nearly four years of hard-fought litigation" and asked her to preliminarily approve their \$30 million plan to put the claims to bed.

The settlement will encompass all the end-payer actions in the multidistrict litigation, according to the filing. It comes a year and a half after Allergan reached a similar deal to wind down the MDL's four direct purchase actions for \$51 million.

To take the case to trial would require significant cost and risk that the buyers have decided they'd rather avoid, according to the filing.

"In short, continuing to litigate would considerably delay relief and impose substantial costs, which weighs in favor of preliminary approval," the end payers said. With the settlement, "the class will obtain immediate relief and avoid the potential risks and delay of summary judgment, trial, and appeal."

Allergan has consistently denied the allegations made in the litigation and argued that they were far-fetched, but Judge Gershon disagreed, concluding in late 2019 that the allegations in the MDL were "highly plausible."

The claims have been winding their way through multidistrict litigation in New York federal court for two years, accusing Allergan of intentionally obtaining patents that it knew would be easily invalidated and then taking extraordinary measures to protect them.

While wielding the patent to fend off generic-drug makers, Allergan moved ownership of the patent over to the St. Regis Mohawk tribe so that it would be immune from inter partes review, according to the lawsuits.

Allergan also repeatedly petitioned the U.S. Food and Drug Administration to require Restasis generics to be tested on humans, which isn't normally required for generic drugs. Buyers point toward the serial petitions and their largely duplicative arguments as evidence that the pharmaceutical giant had shady intentions.

Restasis — an immunosuppressive drug that in eye drop form can treat chronic dry eye — made Allergan \$1.4 billion in 2017 alone, and still has no generic competition in the United States.

Representatives for the parties did not immediately return a request for comment.

The end payers are represented by Lieff Cabraser Heimann & Bernstein LLP, Girard Sharp LLP, Joseph Saveri Law Firm Inc. and Zwerling Schachter & Zwerling LLP.

Allergan is represented by Kirkland & Ellis LLP and Gibson Dunn & Crutcher LLP.

The case is In re: Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation, case number 1:18-md-02819, in the U.S. District Court for the Eastern District of New York.

--Editing by Kelly Duncan.

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