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Pharma giant tried to keep UGA deal secret

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Pharmaceutical giant Allergan Inc. has tried to keep secret details of its deal with The University of Georgia Research Foundation Inc. for a drug that's earned it more than a billion dollars.

As recently as March 18, Allergan filed briefs in Athens-Clarke County Superior Court opposing the unsealing of what it calls "commercially-sensitive documents because the harm that Allergan would thereby suffer greatly outweighs any purported public interest in the contents of the documents."

However, Judge David Sweat, in an Aug. 12 interview with Atlanta Business Chronicle, said he would begin the process of unsealing almost all of the documents, saying his previous orders to seal "met criteria for conditions that no longer exist as to almost all of the material." That follows a July 14 hearing in which Sweat said "basically, I think we're about to unseal these records."

A transcript of an April 24, 2007, hearing refers to documents that describe how Allergan orchestrated what the judge referred to as "a bad deal" for the foundation — one in which it will gain \$72 million instead of a potential \$294 million, according to an analysis done by the plaintiff in the case, former UGA researcher Renee Kaswan.

Among those documents is the contract that governs the royalty agreement between Allergan, the foundation and Kaswan — a contract that one of Kaswan's lawyers said contained a "bribe" of \$1 million to the foundation to help it with legal expenses that Allergan knew it would incur with Kaswan by renegotiating its existing deal.

The nearly five-year-old legal battle centers on Kaswan's discovery of Restasis, a drug that treats the condition known as "dry

eye." Kaswan — a veterinary researcher whose find has received approval for both animal and human uses — claims that the foundation, a nonprofit group that controls the patents of researchers who work at the university, improperly re-negotiated the contract without her knowledge. The foundation's president is Michael Adams, who is also president of the university.

At the request of the parties — mainly Allergan (NYSE: AGN), which had sales of \$4 billion last year — at the outset of the trial Judge Sweat sealed the entire file.

An attempt by a reporter from Atlanta Business Chronicle to access the documents on Aug. 12 initially was unsuccessful, as he was informed the entire case file was "in the vault." In an interview, Judge Sweat said the issue was one of staffing and that the clerk's office "lacks the ability to know what's under seal."

However, he said he will begin the process of unsealing most of the documents and said with the exception of "one item I will keep confidential."

Attorney Emmet Bondurant, who is representing Kaswan, said he would not comment on why Allergan would want to seal certain documents, for fear of violating the judge's order.

He said personal financial information and trade secrets — he used the example of the formula for Coca-Cola — should be kept under seal. But, speaking generally on the topic, he said corporations often "overreach."

"That's like the Bush administration," he said. "A lot of stuff is classified under national security. ... The motivation is to avoid releasing material that is embarrassing rather than harmful. ... Corporations certainly err on the side of trying to keep things confidential."

Hollie Manheimer, executive director of the Georgia First Amendment Foundation, said "court records are public and available for public inspection."

"Only in rare instances may court records be sealed," she said. "This appears to be a case where the public interest far outweighs any interest in closing such records."

The court provided electronic copies of three of the judge's orders and a transcript of the July 14 hearing along with a copy of the docket sheet.

Atlanta Business Chronicle was unable to examine the remainder of the file, except for one brief and the transcript of an April 24, 2007, hearing on a motion for summary judgment.

In the transcript of the April 2007 hearing, one of Kaswan's attorneys, Foy Devine, describes a document that he said was evidence of a "side deal" between the foundation and Allergan.

"I would also refer you to the agreement paragraph below, paragraph 10, where it specifically says Allergan will provide reasonable assistance and cooperation in any legal dispute with third parties relating to this royalty agreement or current pending Georgia legal dispute between [the foundation] and KV Visions Inc." — one of Kaswan's companies. In an answer to a question by the judge, Devine says, "Because Allergan offered them [the foundation] a bribe in essence to do a deal in violation of their duty to her."

Devine said Allergan made it a condition of negotiations to keep out Kaswan and effectively remove the one person from the process who knew the most about the drug's potential.

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