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Scientist says deal cost her, UGA millions

By John Manasso
STAFF WRITER

A former University of Georgia researcher is mired in a legal battle that she says cost her \$100 million and cost the university more than \$220 million.

The dispute involves the drug Restasis, which helps to treat the condition known as “dry eye.” The drug was discovered in the 1980s by Renee Kaswan, then a UGA veterinary researcher who found the drug worked on animals. In 1993, Allergan Inc. bought the rights to use Restasis to treat humans from The University of Georgia Research Foundation Inc. The pharmaceutical giant (NYSE: AGN) hoped the Food and Drug Administration would one day approve the drug for human use. It did in 2002.

Restasis is the first, and currently the only, prescription therapy for the treatment of chronic dry eye worldwide, according to Allergan. Restasis is the company’s second-largest-selling eye-care product. Allergan had sales last year of \$4 billion. The growth of Restasis’ sales has exceeded projections, going from \$191 million in 2005 to \$344 million last year.

“Faculty members need to understand if they do something that is commercially successful, they’ll be stripped of it or fighting it for years,” Kaswan said. “... It’s unthinkable that they would be this duplicitous.”

If true, such a practice could potentially undermine Georgia’s efforts to attract the world’s top researchers. The Georgia Research Alliance, for example, has brought 58 researchers to the state as part of its Eminent Scholars program, 15 of whom are at the University of Georgia.

In November 2003, the University of Georgia Research Foundation, whose head also is the president of the university, Michael Adams, renegotiated its royalty agreement with Allergan. The new agreement provided for a \$23 million up-front payment, a percentage of sales lower than in the original contract and also for a shorter time period.

Kaswan said she believes the foundation’s decision to renegotiate the original agreement without her knowledge — a move she says violates the university’s own policy on intellectual property as set by the Board of Regents of the University System of Georgia — might have been designed by Adams to quell the controversy surrounding his decision not to extend the contract of popular athletic director Vince Dooley around the same time period.

“The timing of these events suggests that,” Kas-



BYRON E. SMALL

Renee Kaswan: Claims UGA missed out on \$222 million in royalties on drug she discovered.

wan said. “His actions and motives are still obscure and confused to my mind.” Adams announced on June 5, 2003, his decision not to grant Dooley’s contract extension. Dooley’s supporters soon launched an ultimately unsuccessful movement to oust Adams.

By November 2003, the foundation had renegotiated its royalty deal with Allergan. The new agreement, with its \$23 million up-front payment or “buy-down,” as it is called in legal filings, came close to the University of Georgia alumni’s total giving in 2006, which was \$28.2 million, according to the Council for Aid to Education.

Tom Jackson, vice president for public affairs at the University of Georgia, said the university would not comment on pending litigation. Attorney Ed Tolley, who is representing the university, did not return a request for comment.

An analysis done for Kaswan by Barre A. Seibert, a former vice president with Washington Mutual Bank, estimates the amount passed up by the university at \$222 million. The 1993 agreement between the foundation and Allergan provided for her and the foundation to share 7 percent of the drug’s sales through 2009 and 5 percent through 2014. The foundation and Kaswan would split the royalties, with the foundation taking 65 percent and Kaswan 35 percent, she says.

However, the new agreement gave the foundation and Kaswan only 2 percent of the drug’s sales through 2009.

Seibert projects that the foundation ultimately

will earn \$72 million from the deal instead of \$294 million.

“It was taking candy from a baby for big pharma to come and talk UGA out of royalties,” Kaswan said.

State legislators have begun to notice. Rep. Alisha T. Morgan, who sits on the Education Committee, and Rep. Steve Davis, deputy majority whip who serves on the State Institutions & Property Committee, have both recently sent letters to Adams.

Davis’ May 12, 2008, letter, a copy of which was obtained by Atlanta Business Chronicle, states, “It appears the ‘buy-down’ agreement, which was entered into without the knowledge of the inventor, was done in violation of the rules and regulations stated in the UGA Patent Policy and Intellectual Property Policy.”

The policy on its Web site reads: “The rights and privileges, as well as the incentive, of the inventor or creator must be preserved so that his or her abilities and those of other faculty, staff or students of colleges and universities of the University System may be further encouraged and stimulated.”

That, and another provision, are what Kaswan said the university violated. The policy obligates the foundation to classify the invention as to whether the research was assisted by federal, corporate or university dollars. If the foundation had classified the invention, then she would have had the right to appeal, but she said it never did.

In addition, since she contends that her invention was financed by neither federal nor corporate dollars, she said the appropriate classification would have required “that they sign re-assignment documents to return ownership of the patents to the inventor” — herself.

Kaswan filed suit against the foundation in Clarke County Superior Court, and it has countersued her. Kaswan said she has received between \$1 million and \$2 million in royalties, but the university deducts its legal expenses from her royalty checks, she said.

On April 24, 2007, Athens-Clarke County Superior Court Judge David Sweat ruled in favor of the university on a motion for summary judgment, yet Kaswan hopes to overturn that.

“Because they’re so stubbornly litigious that any hope of resolving this is past,” she said. “... If everybody that is treated inappropriately at a university is quiet about it, [the system] will never get fixed.”

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