

LAW

Nephron to receive \$7.9 million in trade secrets case



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Nephron Pharmaceutical Corp. will receive \$7.9 million in the settlement of a lawsuit alleging theft of the West Columbia company's trade secrets. (Photo/File)

A three-year legal battle centered around allegations of trade secrets theft from Nephron Pharmaceuticals Corp. has been resolved in a \$7.9 million settlement that the case's lead attorney said sends a strong message.

Arkansas-based U.S. Compounding Inc. and parent company Adamis Pharmaceuticals Corp. agreed to pay the West Columbia-headquartered company that sum and are also permanently enjoined from using any of the confidential customer and pricing information two former Nephron employees were found to have provided its competitor.

"I think the rulings we obtained and then the fact that the settlement was so big is going to benefit not only Nephron and the protection of the sanctity of its trade secrets going forward but also any company who is trying to protect its trade secrets," said Nikole

Setzler Mergo, Nexsen Pruet's Columbia office managing partner and lead trial lawyer in the Nephron litigation.

The settlement, reached last month as the case was about to go to trial, involves final judgments and permanent injunctions in Florida, New Jersey and South Carolina.

According to court documents, the first former employee downloaded data including customer contacts, purchasing history and pricing details before leaving Nephron to work for U.S. Compounding.

"Her first week on that job was her last week on my job," Nephron owner and CEO Lou Kennedy said. "She was double-dipping, and the whole time, they were able to prove, she had four different devices plugged in downloading all my contractual terms, all manner of quality ideas. It was like giving the playbook to a competitor."

A second former Nephron employee was alleged to have used confidential information in her new sales territory in New Jersey. An individual breach of contract suit against that employee was transferred to South Carolina in December 2020.

Nephron relocated its operations to West Columbia from Orlando in April 2017.

"It was three separate federal court lawsuits all going on at the same time," Mergo said. "It was three years of very hard-fought litigation with a lot of very complicated issues. It was a trade secrets case, which is a complicated area of the law because you have to demonstrate that the information that was appropriated was a trade secret, first of all, which is a very high standard, and you have to demonstrate the company, Nephron, used reasonable methods to protect those trade secrets."

The settlement was reached April 9, 10 days before a trial was to begin.

Kennedy was prepared to see the cases through, having recently purchased a new accessory in the event the litigation dragged on.



"I had bought an Apple watch because you can't take phones into the court room, and if I was going to be subjected to potentially a 10-day trial, there's no way. I can't be that far away from technology," she said. "I wasn't concerned about not winning. I was concerned about how can I spare that much time away from Nephron?"

Mergo said several factors led to the settlement. On March 29, U.S. Compounding and California-headquartered Adamis were found in civil contempt for violating a Florida injunction against using Nephron's information while the case was being litigated.

"Once we found out about the second employee, we made a motion for a finding of contempt," Mergo said. A ruling in Nephron's favor reimbursed the company \$123,000 in legal fees and imposed daily fines, the amount of which was still pending at the time of the settlement.

In addition, Mergo said evidence related to the second employee in New Jersey was going to be allowed into the Florida case.

In an April 15 filing with the U.S. Securities and Exchange Commission, Adamis said Nephron's allegations of misappropriation of trade secrets were without merit, but cited factors including the outcome of pre-trial motions and ongoing legal expenses as well as "the uncertainties of litigation and jury trials, and the possibility of punitive damages and other adverse awards or sanctions" in agreeing to the settlement.

Mergo said that Kennedy's determination also sent a strong signal.

"She was ready to go to a jury," Mergo said. "It was that resolve that put a lot of pressure and I think ultimately resulted in the settlement."

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