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Calif. High Court Preserves $415M Verdict Against Actelion

By **Allissa Wickham**

Law360, New York (March 13, 2014, 2:45 PM ET) -- The California Supreme Court declined to review a $415 million jury verdict against Actelion Ltd. on Wednesday in a suit accusing the Swiss pharmaceutical company of purchasing CoTherix Inc. in order to preserve its monopoly in the hypertension drug market.

In an unanimous order, California's high court declined to take up Actelion's appeal of a $415 million million jury verdict in a suit brought by Japanese pharmaceutical maker Asahi Kasei Pharma Corp.

The verdict includes $30 million in punitive damages against three of Actelion's executives, and has been gathering $40 million of interest per year, according to attorneys in the suit, bringing the final judgment to approximately $523 million.

"This ruling was well-deserved and very accurate," Benjamin P. Smith, an attorney with Morgan Lewis & Bockius LLP who represented Asahi in the case, told Law360 on Thursday. "It was a great team effort between the client and Morgan Lewis, and I think we did a fantastic job representing Asahi's interest in the case."

Attorneys for Actelion declined to comment on the order, but the company said in a statement on Thursday that the California Supreme Court was wrong to turn down the case.

"Actelion is disappointed by the decision and strongly believe[s] there are significant reasons why the Supreme Court should have reviewed the case," the company said in a statement. "The judgment now stands."

Asahi brought the suit in 2008, alleging that Actelion had purchased CoTherix in order to derail a licensing agreement for the hypertension drug Fasudil, which would compete with a similar drug made by Actelion called Tracleer.

CoTherix and Asahi had entered into the Fasudil agreement in 2006, with the aim of developing the drug and securing regulatory approval in the United States. Soon after, Actelion acquired all of CoTherix's stock and discontinued Fasudil's development, according to a lower California appeals court.

In its suit, Asahi claimed that Actelion had damaged the company's financial prospects by intentionally interfering with the Fasudil agreement. Following a three-month trial, a California state jury awarded Asahi $577 million in compensatory and punitive damages, which included a $19.9 million award against Actelion CEO Jean-Paul Clozel.

A state judge **reduced the award** to $407.3 million, plus $8.3 million in prejudgment interest, in November 2011. The reduction was designed to take into account a $91 million arbitration award that Asahi had recovered from CoTherix in 2009.

Actelion appealed the $415 million verdict to a California state appeals court, arguing that its interference with the licensing agreement was privileged under California law. The appeals court disagreed and affirmed the award in full.

The Swiss pharmaceutical company presented similar arguments in its appeal to the California Supreme Court in its Jan. 27 appeal.

Benjamin Smith, who has represented Asahi since its arbitration with CoTherix, said Morgan Lewis litigated the case with a relatively lean group of attorneys, including a core team of three partners.

Asahi is represented by Franklin Brockway Gowdy, Benjamin P. Smith, Christopher Banks, Tera Heintz and Rollin Chippey of Morgan Lewis & Bockius LLP.

Actelion is represented by Donald Manwell Falk, Evan M. Tager and Lee N. Abrams of Mayer Brown LLP, as well as Nanci Eiko Nishimura of Cotchett Pitre & McCarthy LLP.

The individual defendants, including Jean Paul Clozel, are represented by Susan Heikkinen Handelman of Ropers Majeski Kohn Bentley PC and Kathleen M. Sullivan of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Asahi Kasei Pharma Corp. v. Actelion Ltd., case number CIV 478533, in the Superior Court of the State of California, County of San Mateo.

--Additional reporting by Ryan Davis. Editing by Katherine Rautenberg.