

## Allergan, Generic Cos. Battle Over Restasis Launch Plans

By Dani Kass

*Law360 (October 31, 2018, 10:17 PM EDT)* -- Companies hoping to sell generic versions of Allergan's dry-eye medication Restasis have told a New York federal court overseeing multidistrict antitrust litigation that they'll only provide information about their launch dates to the branded-drug maker's outside counsel, but Allergan insists that its in-house attorneys can be trusted.

Mylan Pharmaceuticals Inc., Teva Pharmaceuticals USA Inc. and Akorn Inc. have filed a motion to quash subpoenas aimed at digging up information about their generics' approval status and possible launch dates, which they consider trade secrets. The generic-drug makers say they'll only provide them to Allergan PLC's outside counsel, according to filings made public Wednesday.

But Allergan said the information is vital to proving that it didn't illegally hog the market for Restasis and when generic versions would be ready to debut.

"It is no exaggeration to say that the documents Allergan has requested from the generic manufacturers could be among the most important documentary evidence produced in this case," the company wrote.

The company added that its attorneys are bound by a confidentiality order already, and that those who will be able to see the information "do not have any decision-making authority for Allergan's commercial eye-care business."

The generic-drug makers — which are not parties in the antitrust litigation — and plaintiffs didn't deny that the information is vital, but said it can easily be misused by a competitor, especially one accused of using anticompetitive means to keep a generic version of the drug off the market.

"Handing over such competitively sensitive information to a competitor creates risk and opportunity for misuse, such as preempting and/or jeopardizing non-party generics' efforts to launch generic Restasis, particularly when the central argument in this case is that Allergan may have delayed competitors from entering the market," the initial motion states. "As a result, non-party generics' competitive position would be permanently and irreversibly harmed."

Five briefs on the issue from Mylan, Teva, Akorn, Allergan and the plaintiffs in the antitrust litigation — proposed classes of end-payor and direct-purchaser plaintiffs, along with Walgreen Co., CVS Caremark Corp. and Rite Aid Corp. — were filed between Sept. 28 and Wednesday, but all were made public at once.

Allergan is accused of taking extraordinary actions to protect Restasis, which earned \$1.4 billion last year and still lacks generic competition. The litigation claims the drugmaker misused citizen petitions to delay generics, fraudulently obtained secondary patents, wrongly submitted those patents to the U.S. Food and Drug Administration to block generic approvals, filed blatantly flimsy patent infringement suits, and improperly transferred its weak patents to a Native American tribe in an effort to prevent their invalidation.

U.S. District Judge Nina Gershon on Sept. 18 denied Allergan's request to dismiss the litigation.

"Akorn has been working cooperatively with both plaintiffs and Allergan to resolve the disagreements over access and the scope of production raised by each party's subpoena," its attorney, Michael Dzwonczyk of Sughrue Mion PLLC, said in an email. "While most issues have been resolved, the motions were necessary because of an impasse on a single remaining issue. We are hopeful for a resolution soon."

Attorneys for Allergan and Mylan declined to comment. Counsel for each set of plaintiffs and Teva didn't immediately respond to requests for comment late Wednesday.

The end-payor plaintiffs are represented by Lieff Cabraser Heimann & Bernstein LLP, the Joseph Saveri Law Firm Inc., and Zwerling Schachter & Zwerling LLP.

The direct-purchaser plaintiffs are represented by Hagens Berman Sobol Shapiro LLP.

Walgreens is represented by Kenny Nachwalter PA.

CVS and Rite Aid are represented by Hanglely Aronchick Segal Pudlin & Schiller.

Mylan is represented by Wilson Sonsini Goodrich & Rosati PC.

Akorn is represented by Sughrue Mion PLLC.

Teva is represented by Sterne Kessler Goldstein & Fox PLLC.

Allergan is represented by 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.

--Additional reporting by Jeff Overley. Editing by Adam LoBelia.