

Procaps Wins Half Of Requested Atty Fees In Patheon Fight

By **Carolina Bolado**

Law360, Miami (June 3, 2014, 8:44 PM ET) -- Procaps SA on Monday won some of the attorneys' fees it requested against former joint venture partner Patheon Inc. and the pharmaceutical company's counsel, Cooley LLP, over a vendor with a conflict of interest in Procaps' suit, which claimed Patheon's \$255 million merger creates antitrust issues for its former partner.

U.S. Magistrate Judge Jonathan Goodman awarded Procaps \$10,000 of the \$20,372 it had requested for the extra time and expenses unnecessarily incurred in communicating and dealing with Kroll Ontrack Inc. for a court-ordered forensic analysis of its electronic media.

Procaps later learned that a Kroll affiliate, Kroll Associates Inc., had a pre-existing project with Patheon and objected to the use of the firm for the forensic analysis.

But the judge said that though hiring Kroll caused unnecessary delay and added costs in litigation, Patheon and Cooley should not have to shoulder all of the costs because Kroll is partly responsible and because not all of the work done by Kroll was thrown out once the firm was replaced.

"The court concludes that Patheon and Cooley are partially responsible (along with Kroll) for causing the financial consequences and should therefore be responsible for paying them," Judge Goodman said.

Procaps alleges in its suit, filed in December 2012, that Patheon's \$255 million purchase of Banner Pharmacaps Europe BV, a Procaps rival in the softgel market, might lead to an unlawful market allocation because of Procaps' joint venture deal with Patheon on development of a softgel capsule for pharmaceutical products.

Procaps is seeking a declaration that the acquisition effectively would turn the joint venture into a violation of the Sherman Act. Through the Banner acquisition, Procaps and Patheon would "become horizontally situated competitors in the softgel manufacturing and development services market," the complaint said.

The suit alleged further that, if the collaboration between Patheon and Procaps continued, the acquisition would force Patheon to remove certain Banner products in some regions, resulting in an unlawful allocation of the market.

Patheon asked for the suit to be dismissed, arguing, among other things, that Procaps would actually make out well from such market allocation, because it would reduce competition from Banner in certain

geographic regions. Because it stood to benefit, Procaps did not have standing to mount an antitrust challenge to the acquisition, according to Patheon.

In January, Judge Goodman denied Patheon's motion for judgment on the pleadings, ruling that Procaps had standing to bring suit. The judge rejected Patheon's assertion that Procaps was to blame for its own damages.

Representatives for the parties did not immediately respond to requests for comment late Wednesday.

Patheon is represented by Robert M. Brochin and Marisa Fortunati of Morgan Lewis & Bockius LLP and by M. Howard Morse, Marc G. Schildkraut, Douglas P. Lobel and David A. Vogel of Cooley LLP.

Procaps is represented by Alan Rosenthal, Natalie Carlos, Chris Coutroulis, Matthew Allen and Joanna Garcia of Carlton Fields Jordan Burt PA.

The case is Procaps SA v. Patheon Inc. et al., case No. 1:12-cv-24356, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Kat Greene. Editing by Rebecca Flanagan.

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