

J&J Wins Settlement In Counterfeit Device Row

By Adam Lidgett

Law360 (February 5, 2021, 9:08 PM EST) -- Johnson & Johnson is set to get at least \$6 million as part of a deal to resolve its suit alleging a medical device company sold counterfeit J&J surgical clips and other products.

U.S. District Judge Robert M. Dow Jr. on Thursday dismissed a suit from Johnson & Johnson and Ethicon, its subsidiary, against Illinois company Advanced Inventory Management Inc., which does business as eSutures.com, after the parties filed a consent judgment in the case.

The consent judgment called for eSutures to be permanently barred from buying, selling or distributing any products made or marketed by Johnson & Johnson. ESutures will also be barred from mentioning Johnson & Johnson or Ethicon in its advertising and from using any marks or logos that may suggest eSutures products are authorized by Johnson & Johnson or Ethicon, according to court documents.

Additionally, the consent judgment calls for Johnson & Johnson to get at least \$6 million from an eSutures bank account that had been previously frozen by the court, according to court documents. Public court records, however, did not make it immediately clear if any more money will be paid.

Ethicon's suit, first filed in June, accused eSutures, its top officials and two employees of importing and selling dangerous counterfeit versions of Ethicon's Surgicel, LigaClip and SecureStrap products. The products include surgical clips and fixation devices that are meant to be left in a person's body after surgery, according to the company's amended complaint.

Ethicon also accused eSutures of obtaining noncounterfeit Ethicon products by bribing hospital employees at UChicago Medicine Ingalls Memorial Hospital, North Shore Surgical Center and Audubon Surgery Center, as well by purchasing devices stolen from hospitals, according to court documents.

ESutures responded that it's not a "fly-by-night counterfeiter" but rather a long-established business in the secondary market for surgical devices and that Ethicon is merely trying "to maim a competitor."

Last year, the court preliminarily enjoined eSutures from using Ethicon's trademark, saying "essentially un rebutted evidence" indicates up to 6,000 allegedly counterfeit — and potentially contaminated — medical devices imported by the company may have already been implanted in patients.



Geoffrey Potter

Counsel for Ethicon declined to comment to Law360 on Friday.

Counsel for eSutures did not immediately respond to requests for comment.

Ethicon is represented by Bradley J. Andreozzi and Matthew M. Morrissey of Faegre Drinker Biddle & Reath LLP and Geoffrey Potter, Aron Fischer, Timothy A. Waters, Joshua R. Stein and Jacqueline Lash of Patterson Belknap Webb & Tyler LLP.

ESutures and the individual defendants are represented by Alexander S. Vesselinovitch, Matthew T. Connelly and D. Richard Self of Freeborn & Peters LLP and Jack Selden, Greg Marshall, Scarlett Nokes, Erin Sullivan and Michael Denniston of Bradley Arant Boult Cummings LLP.

The case is Johnson & Johnson et al. v. Advanced Inventory Management Inc. et al., case number 1:20-cv-03471, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Hannah Albarazi, Celeste Bott, Kevin Penton and Dani Kass. Editing by Regan Estes.