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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Medical Device Maker Wins \$645M In Rival Theft Case

By **Christopher Crosby**

Law360 (September 10, 2018, 10:58 PM EDT) -- An Ohio federal judge on Monday awarded medical device maker KCI USA \$645 million in trebled damages against Healthcare Essentials Inc. and its founders for stealing and rebranding the other company's products, saying their "flagrant discovery abuses" during the case obscured the actual amount of money KCI is owed.

U.S. District Judge Benita Y. Pearson said that amount was warranted given discovery abuse, which limited estimates of how much damage Healthcare Essentials and several related entities caused KCI to just a conservative estimate. Those abuses included filing false affidavits, refusing to produce relevant communications and documents, fabricating invoices and inventory spreadsheets, destroying digital and physical evidence, and intimidating at least two witnesses.

Regardless, certain defendants' failure to respond at all to the allegations coupled with misrepresentations of those who did appear in court indicate that Healthcare Essentials and its owners intentionally tried to disrupt the case, the judge said.

Moreover, the record that's available shows Healthcare Essentials, after stealing and rebranding KCI's products, spread false rumors about KCI and drove its customers away, Judge Pearson said. In addition to awarding base damages of \$215,005,546, the judge trebled the amount, concluding that "there is substantial evidence that the base damages figure ... would significantly undercompensate KCI for its losses."

The court also issued Healthcare Essentials a permanent injunction against selling, branding or misrepresenting the products and the company's connection to KCI.

KCI, which sells hospitals and nursing homes devices that use negative pressure to help heal wounds, had alleged that brothers Ryan and Colin Tennebar started Healthcare Essentials with former KCI employees and built an entire enterprise solely through the theft of KCI's devices.

In addition to failing to produce documents and other discovery abuses, the court said that the defendants failed to abide by an injunction against their activity.

KCI filed the complaint in March 2014, alleging it had spent millions developing its devices and paid company representatives to provide constant technical service around the clock. In October 2012, it discovered Healthcare Essentials, which isn't a distributor, was using its products without properly training its employees.

In June, the court entered a default judgment against the brothers, several businesses they controlled and three former KCI employees. Before entering the judgment, Ryan Tennebar and the corporate entities entered a proposed stipulation order as to damages under which they agreed to pay at least \$215 million in exchange for KCI not seeking punitive damages.

Colin Tennebar did not join the settlement and instead had argued that KCI had failed to state a claim against him. But the court said Monday that Colin Tennebar was mentioned numerous times, by name and in passing reference, in KCI's complaint. After piercing the company's corporate veil, it became obvious that Tennebar directly controlled the companies and used them to commit fraud, the court said.

Although the discovery abuses make it impossible to say how many devices were stolen and how many customers were lost, the court said the parties were able to extrapolate from the products surrendered by one supplier, and also by multiplying the PayPal receipts and canceled checks by the exchange rate Healthcare Essentials and its subsidiaries charged each other when buying and selling.

The court said trebling damages under the Racketeer Influenced and Corrupt Organizations Act was warranted given that the defendants, for at least nine years, "stole plaintiffs' property, rebranded it as their own, and sold and leased it to unwitting customers."

That activity resulting in Healthcare Essentials earning more than \$100,000 per month in leasing revenue, also costing KCI revenue over that time. In all, RICO claims directly related to \$196,763,000 over nine years, the court said.

Counsel for the parties did not immediately return a request for comment Monday.

Healthcare Essentials and the Tennebars are represented by Rhys B. Cartwright-Jones and Christopher Sammarone, and Eric J. Weiss, Komlavi Atsou and Michael R. Rasor of Cavitch Familo & Durkin Co. LPA. Colin Tennebar is also represented by John B. Gibbons and Orville E. Stifel.

KCI is represented by Thomas O. Crist, David A. Landman and Anthony C. Sallah of Benesch Friedlander Coplan & Aronoff LLP.

The case is KCI USA Inc. v. Healthcare Essentials Inc. et al., number 1:14-cv-00549, in U.S. District Court for the Northern District of Ohio.

--Editing by Nicole Bleier.

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