

Pa. Bio Cos. End Gene Therapy Row In Deal Worth Up To \$75M

By **Craig Clough**

Law360 (March 15, 2022, 5:26 PM EDT) -- Pittsburgh biotech company PeriphaGen Inc. reached a settlement to end litigation alleging its former lab partner, Krystal Biotech Inc., copied its gene therapy technology, with the deal worth at least \$25 million and as high as \$75 million, Krystal announced Monday.

According to a filing in Pennsylvania federal court and a news release from Krystal, the companies signed a binding term sheet to resolve all claims in the litigation. Krystal said that under the deal it will pay \$25 million and receive "all of PeriphaGen's biological materials and skin assets" within 10 days of the completion of a final settlement agreement.

Upon approval of Krystal's first product by the U.S. Food and Drug Administration, the company will pay an additional \$12.5 million, which could be followed by three additional \$12.5 million dollar payments if it reaches \$100 million in total cumulative sales, \$200 million in total cumulative sales and \$300 million in total cumulative sales, according to Krystal.

"We are pleased with the outcome and with this distraction behind us, we look forward to continued operational progress with our proprietary redosable gene therapy platform and associated technologies," said Krish S. Krishnan, chairman & CEO of Krystal Biotech Inc., in a statement.

PeriphaGen said in a 2020 complaint that it shared information about its technology, which uses a modified version of the Herpes Simplex 1 virus to deliver genetic material to patients, with Krystal in 2016 so that Krystal could explore potential treatments. But Krystal used and patented that technology without notifying PeriphaGen, and it raised millions of dollars in investments in its product line, the suit claimed.

PeriphaGen made claims for misappropriation of trade secrets under state and federal law, breach of contract, unfair competition, false description of origin and correction of inventorship against Krystal, and aiding and abetting against Krystal executives Suma Krishnan and Krish Krishnan. The company sought an injunction against the use of its technology, credit for the technology Krystal had patented, and a share of the money that Krystal raised using the technology.

PeriphaGen said it had entered various "material transfer agreements" with Krystal's founders to share some of its information, different viruses and the cells needed to make more of them starting in 2016, along with other agreements to share laboratory space in Pittsburgh so that Krystal could explore applying the gene therapy to skin conditions.

Those agreements contained clauses that limited the extent of the work Krystal could do and said Krystal would share the results of its experiments with PeriphaGen, the suit said.

But without notifying PeriphaGen or licensing its technology, Krystal applied for and received a United States patent for using the technology to deliver gene therapy for certain skin conditions, PeriphaGen claimed. At the time it sought the patent, the only gene therapy technology Krystal had access to was PeriphaGen's, the suit said.

PeriphaGen did not immediately respond to a request for comment.

The patents-at-issue are U.S. Patent Nos. 9,877,990; 10,155,016; 10,441,614 and 10,525,090.

PeriphaGen is represented by Anthony J. Fitzpatrick of Duane Morris LLP.

Krystal is represented by Barbara A. Fiacco of Foley Hoag LLP.

The case is PeriphaGen Inc. v. Krystal Biotech Inc. et al., case number 2:20-cv-00646, in the U.S. District Court for the Western District of Pennsylvania.

--Additional reporting by Matthew Santoni. Editing by Ellen Johnson.