

Jury Awards \$2.75 Million to New Jersey Inventors of Ophthalmic Surgical Product Against Harrow Health (HROW)

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Novel Drug Solutions, LLC and Eye Care Northwest, PA (NDS-ECNW), won a \$2.75 million jury verdict on November 5, 2021, against Harrow Health (HROW), in a case pending in the United States District Court for the District of Delaware since April 2018.

The dispute centered on NDS-ECNW's termination of the Asset Purchase Agreement ("APA") that they entered with Harrow Health in August 2013. In the APA, NDS/ECNW conveyed their assets and technology involving injectable and eye drop formulations used in ophthalmic surgical procedures and post-surgical care. Upon termination of the APA in May 2019, NDS/ECNW contended that Harrow Health was required to re-assign the assets and technology conveyed pursuant to the APA and cease manufacturing and selling products that contain their proprietary technology.

The jury determined that NDS-ECNW conveyed assets and technology in connection with both their injectable formulation (triamcinolone and moxifloxacin combined using poloxamer—Tri-Moxi) and eye drop formulation (prednisolone acetate and moxifloxacin combined using poloxamer). The jury also concluded that Harrow Health had breached the APA by continuing to manufacture and sell, through their subsidiary Imprimis Rx located in Ledgewood, New Jersey, products that used their technology, which include the Tri-Moxi triamcinolone moxifloxacin injectable formulation and the eye drop formulation. NDS/ECNW contended that they were entitled to restitution damages for the period of their continued sale subsequent to the date of termination. The jury awarded damages in the amount of \$2,750,000 and the jury verdict was entered on the Court's docket on November 5, 2021.

In the trial, NDS-ECNW contended that they had served Harrow Health with a Termination and Cease and Desist Notice on May 29, 2019, triggering a contractual obligation for Harrow Health to re-assign all of the intellectual property that had been previously conveyed. NDS/ECNW contended that despite Harrow's products generating more than \$100M in sales, NDS-ECNW did not receive any royalties payment. When the five-year anniversary of the APA passed, NDS/ECNW exercised its contractual right of termination and demanded the return of its intellectual property. While Harrow Health re-assigned certain patent applications that were pending after termination, NDS/ECNW contended that Harrow Health continued to make and sell products containing their proprietary technology entitling them to recover the value of their assets being utilized by Harrow Health after termination.

The jury unanimously determined that NDS/ECNW conveyed its assets and technology to Harrow and that Harrow breached its post-termination obligation to re-assign those assets and technology for both the Tri-Moxi injectable product as well as the eye drop formulation (prednisolone acetate and moxifloxacin combined using poloxamer).

Trial counsel for NDS/ECNW, [Charles Gormally](#), a Member of Brach Eichler LLC, Roseland, New Jersey noted, "The jury's verdict rendered after 5 hours of deliberation is a resounding victory for the inventors of the core technology that is embodied in suspension formulations of antibiotics and steroids combined with poloxamer. We believe that the jury's verdict in the amount of \$2,750,000 confirmed our clients' position that they had proven that Harrow Health received value and benefited after the date of termination of the APA. The jury also established that Harrow breached their contractual obligation to re-assign our clients' assets and technology which was the central goal of the litigation."

As the parties were preparing to submit a schedule for post-trial applications, for a new trial, additur, and injunctive relief, settlement discussions resulted in a resolution of all matters in dispute. On Monday, November 8, 2021, NDS/ECNW and Harrow entered into a mutually agreeable global settlement agreement. Pursuant to the agreement, the case was dismissed on

November 9, 2021, with prejudice, and all claims between the parties were released, after a payment of \$1,500,000 before December 8, 2021, and the payment over time of an additional \$1,000,000 upon the continued sales of Tri-Moxi containing poloxamer; along with other confidential consideration.

The Court action is *NOVEL DRUG SOLUTIONS, LLC, and EYE CARE NORTHWEST, PA, vs. HARROW HEALTH* CA No 1:18- cv-00539-MN.