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Mudslinging After BioZone Settlement Stumps Judge

By **Cara Bayles**

Law360, San Francisco (March 2, 2017, 7:36 PM EST) -- A California federal judge said she couldn't think of a palatable solution to dueling allegations that the founder of BioZone Laboratories Inc. and the investors he sued for stripping him of his company violated their settlement's nondisparagement clause, saying she didn't want to pass out sanctions, since "everybody disparaged everybody."

BioZone founder Daniel Fisher sued investors Michael Brauser and Barry Honig, among others, in 2012, claiming that they'd left him without a promised role in newly created BioZone Pharmaceuticals Inc. The dispute was settled in September 2013. In January 2017, Fisher filed a motion to enforce that settlement, claiming a property ownership dispute with BioZone's successor, CoCrystal Pharma Inc., violated the deal. The next day, Brauser and Honig filed their own motion to enforce, alleging Fisher had **violated the agreement's nondisparagement clause**. He shot back, saying they, too, had defamed him in the press.

U.S. Magistrate Judge Laurel Beeler said at the hearing on dueling motions that she was "so disappointed to see you here" after their "rather spectacular" 2013 settlement conference, which she said, "was a little wild, but we were able to sort things out." But Judge Beeler didn't know how to handle the case's latest development.

"What am I supposed to do? Everybody disparaged everybody," she said. "Should we say everybody won? Do I need to tell you, 'Don't do that again'? Should I sanction everyone and it all goes to Legal Aid? ... I can yell at you, but it's not really in my nature."

Brauser and Honig alleged Fisher disparaged them in a state court property lawsuit accusing BioZone of fraud, encouraged defamatory coverage of Honig on the financial news site Seeking Alpha, fed information to independent journalist Teri Buhl about an FBI inquiry into the investors and enlisted former BioZone counsel Lee Pederson to launch a "malicious and prolonged" "smear campaign."

Fisher countered that he wasn't responsible for the press coverage or for Pederson's actions, and alleged Brauser had himself violated the non-disparagement clause in an interview with blogger Ezra Marbach, during which he accused Fisher of attempted blackmail.

That "toxic" relationship was further exacerbated by the fact that under the settlement, BioZone was leasing its laboratory from Fisher, Judge Beeler said. After the settlement agreement was finalized in 2013, BioZone's successor CoCrystal purchased the mortgage on the property. In Fisher's motion for enforcement, he said the purchase amounted to a "grand scheme to exact revenge ... and recover sums in excess of the amount paid to Mr. Fisher under the settlement agreement."

At Thursday's hearing, CoCrystal attorney Michael Sherman of Stubbs Alderton & Markiles LLP alleged Fisher and his wife hadn't made his payments on the lab, and that the property is now underwater. He said a day of negotiating with a mediator "at great expense" had been "a waste of time," and that his client was considering foreclosure. He urged the judge not to grant the Fishers a preliminary injunction on his loan, saying an alleged breach of settlement by not giving the Fishers notice of the debt purchase didn't give them the right to stop payments on the property.

"The Fishers have tried mightily to conflate a breach of the September 2013 settlement agreement your honor brought into the world with nonpayments of monies owing under a 2007 promissory note," he said. "We've tried to get them to pay it in all sorts of consensual, contextual ways. Granting their injunction would be disastrous. You would be telling a borrower, 'You can keep not making payments.'"

The Fishers' attorney, Wesley J. Paul of Paul Law Group LLP, called the fact that the property was underwater a "red herring" and said the Fishers had been trying to make their monthly payments but that CoCrystal asserted they owed an additional amount that didn't add up.

"When we walked away after the settlement, our expectation was that it would move smoothly. Literally the moment after we signed the settlement agreement, four weeks later, there were rumblings of another transaction," he said, adding later, "We are perfectly open and willing to try mediate our situation."

The judge didn't offer a tentative, but she did say, "I have an urge to fix this in a mediated model," adding that while she understood Sherman's frustrations, "I just can't believe we can't fix it that way."

Fisher is represented by Darcy Paul of the Law Offices of Darcy August Paul and by Wesley J. Paul of Paul Law Group LLP.

CoCrystal is represented by Michael A. Sherman of Stubbs Alderton & Markiles LLP.

Honig and Brauser are represented by Robert Volynsky and Harvey Kesner of Sichenzia Ross Ference Kesner LLP.

The case is Fisher v. BioZone Pharmaceuticals Inc. et al., case number 3:12-cv-03716, in the U.S. District Court for the Northern District of California.

--Additional reporting by John Kennedy. Editing by Brian Baresch.

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