

Botox Maker Bloodied but Unbowed in Hostile Takeover Attempt

By Grace Meador, J.D. Candidate 2016 | October 14, 2014

In recent months, Valeant Pharmaceuticals has teamed up with Bill Ackman and his company, Pershing Square Capital Management, for an aggressive courtship of Allergan, the maker of Botox. This hostile takeover attempt has been particularly contentious, with ongoing litigation over multiple issues.

Ackman is a self-described “active investor” and is currently Allergan’s largest shareholder, with a roughly 10% ownership stake. He was recently able to prevent acquisition negotiations between Salix Pharmaceuticals and Allergan from proceeding by [threatening a lawsuit](#). Salix and Allergan could have potentially gone forward without shareholder support if the parties had been able to come to terms on a deal that included an all cash tender offer set to expire before Allergan’s special meeting on December 18.

Such a deal might have thwarted Valeant’s takeover attempts, so it is no surprise that Ackman promised a lawsuit for breach of fiduciary duty, should the deal go through. Salix is now in [negotiations](#) with Actavis as a direct result of Ackman’s public criticism of the possible Salix-Allergan deal.

Allergan is still fighting back, however. The company has consistently maintained its [stance](#) that Valeant’s bid is “grossly inadequate and substantially undervalues Allergan.” Despite [recent news](#) that Valeant and Pershing Square Capital dropped a lawsuit against Allergan in Delaware over the company’s bylaws, Allergan is still suing Pershing Square and Valeant in federal court in California.

Allergan claims that Ackman’s acquisition of 10% of Allergan’s shares, bought in such a way as to avoid FTC disclosure requirements, was actually [a product of insider information](#). According to Allergan’s complaint filed August 1, when Valeant announced its intentions to acquire Allergan, the value of the shares held by Pershing Square shot up by a billion dollars. Valeant and Pershing Square contend that the claims are “entirely without merit,” according to [statements](#) released in early September. A hearing on the matter is scheduled for October 28.

Finally, reports are circulating that Valeant may [up its bid](#) for a third time before the special meeting on December 18. This could even happen before October 30, which is the deadline for an acquirer to be able to vote at the December meeting. The current bid values Allergan at about \$176 per share. Whether this tactic will have any effect on Allergan’s stance remains to be seen.