

## Canadian Pharma Co.'s Units File \$61M Ch. 15 In Delaware

By **Aaron Keller**

Law360 (January 30, 2023, 7:22 PM EST) -- Citing \$61.5 million in total liabilities and a looming liquidity crisis, the American arm of Ontario-based Acerus Pharmaceuticals Corp. filed a Chapter 15 bankruptcy petition in Delaware on Sunday in connection with the parent company's Canadian insolvency.

The U.S. case came just three days after APC filed for bankruptcy in Canada and listed more than \$47 million in assets. The Ontario Superior Court of Justice allowed the company to access a debtor-in-possession facility of up to \$500,000 in the short term and \$7 million in the long term, according to court paperwork.

"On a balance sheet test, the debtors are insolvent," the company wrote in American filings. "There is also virtually no revenue stream at APC or any of the subsidiaries. Accordingly, the debtors cannot meet their obligations as they become due."

The debtors include subsidiaries Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA LLC, according to Delaware bankruptcy filings.

Without transnational bankruptcy protection, APC says additional clinical research and continued production of Natesto, its most valuable product, would be jeopardized. Natesto is a nasal testosterone gel that generated \$3 million in sales last year, according to court papers.

"Without significantly improving the debtors' liquidity situation and right-sizing its capital structure, APC will likely not be able to produce and sell the Natesto product and will be prevented from producing commercial batches of Noctiva and from launching the product in the market," the Delaware bankruptcy filings read.

The APC companies focus on "urology and men's health," according to Canadian filings. Noctiva is a nasal drug for patients who frequently wake up to urinate; it is not currently on the market in the United States. APC is also connected to the drugs Avanafil, an erectile dysfunction drug; Lidbree, a pain reliever intended for use during IUD placement; Tefina, another nasal testosterone drug that is designed to combat female sexual dysfunction; and TriVair, a nasal drug delivery device. None is currently available in the United States, the filings indicate, and the company's website says several remain in a research pipeline or are pending regulatory approval.

The companies also began researching nasal delivery systems for cannabinoids, but they were careful to note in U.S. filings that their research did not involve the marketing or distribution of any cannabis-related drugs themselves.

APC blames several factors for its inability to commercialize its products. Among them were the COVID-19 pandemic, which slowed demand for pharmaceuticals; the resignations of several managers; and the "significant costs" necessary to develop and market Natesto in the United States.

In a Canadian filing, APC says it employs or contracts with 10 people either directly or through its subsidiaries. Nine are in Canada; one is in the United States. The total monthly payroll is \$183,000.

The companies list First Generation Capital Inc. as their only secured creditor. FGC, which is controlled by Canadian investor Ian Ihnatowycz, gained control of about 89% of APC's shares via a

nearly \$48 million note. FGC provided another \$2 million via a non-revolving credit facility late last year. The debts are secured by patents, trademarks and share pledges.

APC's bankruptcy plan calls for FGC to continue financing the various debtors' operations as a debtor-in-possession lender.

Ihnatowycz is also chair of APC's board of directors.

The companies also cite \$4.91 million in unsecured debt connected to the acquisition of Serenity Pharmaceuticals LLC, but that amount increased to \$7.75 million late last year in principal and interest. The company owes \$7.9 million on general accounts payable, \$6 million in accounts payable related to Natesto, at least \$2.25 million on a buyback agreement, and a possible settlement of unknown amounts in a \$10 million lawsuit.

Plus, the filings say the law firm Jones Day is suing APC's U.S. subsidiary for \$5.3 million in unpaid legal bills surrounding a separate lawsuit. The underlying case involved Serenity Pharmaceuticals LLC, which APC's subsidiary acquired, the filings note. APC's subsidiary has countersued; the case remains pending in a New York state court.

APC is asking a U.S. bankruptcy judge to prevent individual creditors from "acting to frustrate the purpose" of the analogous bankruptcy proceedings in Canada. Its board of directors and managers are expected to remain in place under the supervision of a Canadian monitor.

Independent directors, along with consultants from Ernst & Young Inc., were unable to lift the firm financially, and it is "now insolvent," the filings indicate. Ernst & Young will be APC's bankruptcy monitor, a company press release indicated.

Attorneys for APC did not respond to Law360's requests for comment, and an email to a company spokesperson was similarly unanswered.

APC and its subsidiaries are represented by Michael Jason Barrie, Jennifer R. Hoover, and Steven Walsh of Benesch Friedlander Coplan & Aronoff LLP.

The case is In re: Acerus Pharmaceuticals Corp., et al., case number 23-10111, in the United States Bankruptcy Court for the District of Delaware.

--Editing by John C. Davenport.