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29 August 2023

AFT Orphan Pharmaceuticals judgment

AFT Pharmaceuticals (NZX.AFT, ASX.AFP) advises of the release yesterday evening by the High Court at Auckland of its judgment upholding in part claims by PBL Solutions Limited (PBL) against AFT, and dismissing others.

The substance of the claims made by PBL was that AFT should have provided AFT Orphan Pharmaceuticals Limited (AFTO) the opportunity to pursue the drug development opportunity for the topical skin medicine Pascomer®.¹ PBL holds a 35% stake in AFTO and AFT owns 65%.

The High Court dismissed PBL's claim for a lump sum payment for an assessed present value of PBL's claimed 35% proportionate share of future profits attributable to the Pascomer opportunity.

The High Court also found that AFT had not acted dishonestly and that Managing Director Dr Hartley Atkinson genuinely believed the Pascomer opportunity was not within the scope of AFTO's business and had not breached his director's duties owed to AFTO.

However, the Court found that AFT owed PBL a fiduciary duty in the context of evaluating the Pascomer opportunity and that AFT breached that duty. The Court has held that PBL is entitled to an account of a 35% share of the profits which are in future made by AFT from Pascomer for orphan or orphan-like opportunities only. Any profit is to be assessed after making allowance for AFT's costs and expenses and direct labour costs in relation to development of the Pascomer opportunity and for use of AFT's proprietary Crystaderm® technology in Pascomer. AFT has always acknowledged an obligation for AFTO to account to PBL for its share of profits from the distribution of Pascomer for orphan applications in Asia Pacific. The judgment extends that obligation to any profits that may be earned from that orphan opportunity by AFT in markets outside Asia Pacific.

¹Pascomer is showing promise as a topical treatment for facial angiofibromas (FA) associated with Tuberous Sclerosis Complex (TSC), an orphan indication, and other non-orphan conditions such as Port Wine Stain (PWS) birthmarks. "Orphan" drugs are pharmaceutical products developed and prescribed for rare medical conditions.

AFT is not required to account to PBL for any profit which AFT may earn from the application of Pascomer for treatment of non-orphan conditions such as Port Wine Stain (PWS).²

AFT notes that no profits from the Pascomer opportunity have been earned to date or are expected to be earned in the near term. The timing and amount of any future earnings on the Pascomer opportunity remain uncertain and subject to several contingencies such as regulatory approvals.

AFT does not expect the judgment to have a material effect on AFT's FY2024 earnings guidance.

All parties now have four weeks to decide whether to appeal the judgment.

The Court's orders allow the result of the judgment, but not the judgment itself, to be published at this stage. As to the judgment itself, the parties have 5 working days to identify any parts of the judgment they seek to have redacted for confidentiality, following which a public version of the judgment will be released by the Court.

For and on behalf of AFT Pharmaceuticals Limited by Malcolm Tubby, Chief Financial Officer.

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Released for and on behalf of AFT Pharmaceuticals by Malcolm Tubby, Chief Financial Officer

About AFT Pharmaceuticals

AFT is a growing multinational pharmaceutical company that develops, markets and distributes a broad portfolio of pharmaceutical products across a wide range of therapeutic categories which are distributed across all major pharmaceutical distribution channels: over-the-counter (OTC), prescription and hospital. Our product portfolio comprises both proprietary and in-licensed products, and includes patented, branded and generic drugs. Our business model is to develop and in-license products for sale by our own dedicated sales teams in our home markets of Australia and New Zealand and in certain Southeast Asian markets, and to out-license our products to

² One of the most famous examples of PWS is that on the scalp of the former President of the Soviet Union, Mikhail Gorbachev.

local licensees and distributors to the rest of the world. For more information:
aftpharm.com