

Corporate & Financial Weekly Digest

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Generic Drug "Sham" Litigation Claim Accrues on Date of Competitor Drug Approval

Medical Mutual of Ohio, Inc. ("MMOH"), a medical insurer, brought an antitrust class action on behalf of similarly situated indirect purchasers of a constipation drug produced by Braintree Laboratories ("Braintree") in Delaware federal court. The class action claim arose from a patent infringement case filed by Braintree against a generic drug maker, Schwartz Pharma, Inc. ("Schwartz"), in 2003. The patent case was dismissed and Schwartz's generic drug was approved soon after the dismissal. MMOH later asserted that Braintree's suit against Schwartz was a "sham litigation" designed to extend Braintree's monopoly over the constipation drug market. Braintree moved to dismiss, arguing that MMOH's claim was time-barred.

The court held that the accrual date for sham litigation claims is generally the date that the original "sham" litigation was filed. However, the court held that in cases where the sham litigation allegedly deprived plaintiff of competitive drug pricing, the statute of limitations should not begin to run until the new drug is approved. The court concluded that the damages to MMOH became ascertainable only on the date that Schwartz received tentative approval to sell its generic competitor drug. Using this accrual date, the court dismissed MMOH's claims as time-barred.

Medical Mutual of Ohio, Inc. v. Braintree Laboratories, Civ. No. 10-604-SLR, 2011 WL 2708818 (D. Del. July 12, 2011).

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