

December 10, 2014

Development in Pharma Patent Settlement Lawsuit

In one of the first tests of the Supreme Court's 2013 ruling in *Federal Trade Commission v. Actavis, Inc.* addressing the antitrust treatment of pharmaceutical patent settlements, a recent jury on Dec. 5, 2014, returned a complicated verdict holding that the defendants in the case did not violate the antitrust laws.

The case involved a mix of purchasers (including consumers) of the branded drug Nexium suing the brand manufacturer AstraZeneca PLC and Ranbaxy Inc. (the generic drug maker), alleging that the defendants violated federal and state antitrust laws by entering into a settlement agreement that delayed Ranbaxy's entry into the Nexium market in exchange for a large payment. Nexium is an acid reflux medication, also known as "The Purple Pill™," with more than \$6 billion in worldwide sales in 2013.

The jury trial resulted in an ultimate verdict for the defendants, at least until a possible judicial review and likely appeal. The jury, however, did agree with the plaintiffs on issues of AstraZeneca's market power, and that the AstraZeneca-Ranbaxy patent settlement involved a large and unjustified payment by AstraZeneca to Ranbaxy satisfying the mandate laid out in the 2013 Supreme Court ruling in the so-called "pay-for-delay" antitrust challenge. It further found that the settlement with Ranbaxy was unreasonably anticompetitive. Ultimately, however, the jury did not agree with plaintiffs on the "but for" issue and therefore sided with the defendants, finding that irrespective of the settlement agreement, AstraZeneca would not have agreed with Ranbaxy on a launch date that would be any earlier than provided in the settlement agreement.

This area of the law, namely the treatment of pharmaceutical patent settlements under antitrust law, continues to develop. Even with the Supreme Court ruling that these cases can be scrutinized under a "rule of reason" standard, the specific facts and the "but for" elements surrounding such settlements will be very important in determining legal liability. We recommend any party involved with settlements to carefully examine the antitrust risks of the terms of the settlement.

This document is intended to provide you with general information regarding antitrust treatment of pharmaceutical patent settlements. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions

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