Brand-Name, Generic Reglan Makers Beat Injury Suit

By Greg Ryan

Law360, New York (September 28, 2012, 7:51 PM ET) — An Ohio federal judge ruled Thursday that neither brand-name nor generic makers of the anti-heartburn medication Reglan can be held liable in a woman's suit linking her neurological disorder to generic Reglan, since brand-name companies did not make the products and claims against the generics companies are preempted by federal law.

U.S. District Judge Michael Watson granted summary judgment motions from brand-name defendants Pfizer Inc., Pfizer unit Wyeth LLC and Schwarz Pharma, now known as UCB Inc., and a motion for judgment on the pleadings from generic defendants Pliva Inc., Teva Pharmaceuticals USA Inc. and Qualitest Pharmaceuticals Inc.

Plaintiff Donna Hogue, an Ohio resident, claimed she developed the movement disorder tardive dyskinesia after taking generic Reglan, known as metaclopramide, from 2000 to 2009. She alleged that both the brand-name and generic defendants failed to warn that long-term use of the drug was associated with tardive dyskinesia risks.

Hogue put forward a theory known as innovator liability to the court, in an attempt to overcome the fact she never ingested a product manufactured by the brand-name defendants. Even if they did not make the specific drugs at issue in the suit, they still spread false information about Reglan, Hogue argued.

Judge Watson found that Hogue's claims fail under the Ohio Product Liability Act. The allegations are abrogated by the OPLA because they are based on an alleged failure to warn, not on active deception, he said.

"[T]he OPLA precludes Ms. Hogue's argument that the brand manufacturers are subject to liability as inventors or primary manufacturers of metoclopramide as neither theory is an exception to the rule that a plaintiff must prove her injuries were caused by the actual product the defendant manufactured," the judge said.

Judge Watson also rejected Hogue's argument that the brand-name defendants relied on law that no longer controlled the case in light of the U.S. Supreme Court's Mensing decision, which held that state law failure-to-warn allegations against generics manufacturers are preempted by federal law because generic drugs are required to bear the same warning label as brand-name drugs.

"The Mensing decision has no bearing whatsoever on the issue [of] whether the brand defendants may be held liable under Ohio product liability law for injuries arising from the ingestion of generic metoclopramide they did not manufacture," he said.

The judge relied on Mensing in finding in favor of the generic defendants. Hogue asserted, among other things, that some of her claims were based on the allegedly defective nature of the drugs, not their warning labels, and that the companies still could have sent so-called dear doctor letters to physicians about the drug's risks, even if they could not change the label.

But, "regardless of how the claims are labeled by plaintiff in her complaint, Mensing preempts any claim that 'hinges on the warnings the drug manufacturers gave, or from plaintiff's perspective, failed to give' because those claims are, in essence, failure to warn claims," Judge Watson said.

An attorney for Hogue, Terrence Donahue Jr. of McGlynn Glisson & Mouton, said the district courts were misinterpreting Mensing as a blanket preemption of personal injury claims against generics makers.

"Unfortunately it's not uncommon, the result that we got," Donahue said. "It's very difficult for these courts to accept our argument in light of Mensing, basically."

Attorneys for the defendants could not be immediately reached for comment on the ruling.

Hogue is represented by Daniel McGlynn and Terrence Donahue Jr. of McGlynn Glisson & Mouton, William Curtis of The Curtis Law Group, and Robert McLaughlin of Elk & Elk Co. Ltd.

Pfizer, Schwarz and Wyeth are represented by Charna Sherman of Charna E. Sherman Law Offices Co. LPA. Pfizer and Wyeth is also represented by Quentin Urquhart of Irwin Fritchie Urquhart & Moore LLC. Schwarz is also represented by Henninger Bullock, Andrew Calica and Joel Richard of Mayer Brown LLP.

Teva is represented by Richard Oetheimer and Sarah Frederick of Goodwin Procter LLP and Brian Lucot of Marks O'Neill O'Brien & Courtney PC.

Pliva is represented by Rex Littrell and Lisa Marlo Kuhnell of Ulmer & Berne LLP.

Qualitest is represented by Brian David Goldwasser and Robert Hojnoski of Reminger & Reminger Co. LPA.

The case is Hogue v. Pfizer Inc. et al., case number 2:10-cv-00805, in the U.S. District Court for the Southern District of Ohio.

Editing by Andrew Park.