Allergan PLC Agrees To Pay $750 Million To Settle Namenda Antitrust Suit

In 2015, Plaintiffs filed a First Amended Class Action Complaint on behalf of a proposed class of direct purchasers of branded and generic Namenda, a drug used to treat moderate-to-severe Alzheimer's, alleging a two-pronged scheme on the part of Defendants to impair generic competition, including a "reverse payment" agreement to delay generic entry, and the announcement and implementation of a "product hop" or "hard switch" of the market from branded Namenda IR product to Namenda XR in order to undermine and impair generic competition when it belatedly began. On October 28, 2019, Allergan PLC announced that it had reached a settlement agreement with direct purchaser Plaintiffs for $750 million, thus precluding a trial that was set to begin the same day in New York.

Prior to this settlement agreement, Counsel for the Plaintiffs retained Dr. Russell Lamb to analyze whether it was possible to establish, using evidence common to the proposed class as a whole: the impact on prices paid by members of the proposed class that Plaintiffs allege arose from Defendants' allegedly anticompetitive conduct; that all or nearly all members of the proposed class were injured by Defendants' allegedly anticompetitive conduct; and that aggregate damages to the proposed class as a whole could be reliably calculated using standard economic methods and analyses, and, if so, to measure those damages. Dr. Lamb filed two expert reports, and testified once at deposition, concerning class certification and damages issues.

On August 2, 2018, the Court certified the proposed class of direct purchasers, citing to Dr. Lamb's analysis of class-wide issues and testimony. For instance, in its Memorandum Decision and Order granting Plaintiffs' motion for class certification, the Court noted that "Dr. Lamb independently reviewed and analyzed Forest's internal document[s] and testimony" as part of his analysis of the but-for world," which the Court held to be a "sound economic methodology." Further, the Court noted that the various forms of evidence Dr. Lamb cited in concluding that Defendants' alleged misconduct "increased conversion to Namenda XR" were "consistent with Plaintiffs' allegations."

The $750 million settlement reached by the parties represents one of the largest pharmaceutical antitrust settlements in history.

The Court's Memorandum Decision and Order can be read here.