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## Celgene, BMS, Teva Can't Pause Cancer Drugs Antitrust Suit

By **Bryan Koenig**

Law360 (April 21, 2023, 9:57 PM EDT) -- A New Jersey federal magistrate judge refused Friday to pump the brakes on consolidated antitrust lawsuits accusing Celgene and parent Bristol-Myers Squibb of conspiring with generic drugmakers Teva and Natco to delay generic competition to blockbuster cancer treatments, preferring to get a move on with the years-old litigation.

In refusing to pause discovery until there's a ruling on pending and upcoming motions to dismiss, U.S. Magistrate Judge Michael A. Hammer noted that the oldest of the multiple consolidated **cases** kicked off by insurers including Humana, United HealthCare and Cigna is more than four years old and that the cases were already subject to a stay of discovery that ran from September 2019 to August of last year.

"In view of the age of the older of these cases, and the prior stay, this court has clearly indicated once the initial motion to dismiss was decided, fulsome discovery would proceed without further delay," Judge Hammer said in refusing to further stay discovery as sought in separate filings, one from Celgene Corp. and BMS, and one from Teva Pharmaceuticals USA, Inc. and Natco Pharma Ltd.

In a ruling that largely explained itself through page-filling footnotes, Judge Hammer said that pausing discovery in the newest lawsuits — filed separately in November by Walgreen Co., Kroger Specialty Pharmacy Inc. and CVS Pharmacy Inc. and by a group of employee health care funds lead by the Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund — would "result in piecemeal discovery, such that discovery would proceed in the insurer cases, but not in the Walgreen and FOP actions."

"Piecemeal discovery would significantly hamper the court's efficient administration of these matters. These actions are substantially similar, and it is reasonable to expect that discovery will ... overlap," the judge said. "A stay of discovery now as to the Walgreen and FOP matters would likely give rise to disputes regarding whether subsequent discovery requests made after the stay was lifted were duplicative, and whether requests and productions were made in a timely manner."

The judge rejected defense assertions of undue hardship if the cases went forward. While discovery is sure to be costly, Judge Hammer said the court is ready to manage the process "and will ensure that the parties' efforts are proportional, and that the cases proceed as efficiently as possible under the circumstances."

While Teva and Natco are new to the litigation, having only been named in the latest complaints, Judge Hammer said any "perceived hardship can and will be handled via their requests to modify the existing schedule."

The allegations over alleged anti-competitive conduct to protect Celgene cancer drugs Thalomid and Revlimid trace back years. The current versions spring from plaintiffs who **opted out** of a previously **settled class action**.

The allegations include assertions that Celgene prevented pharmacies and suppliers from providing drug samples to would-be generic competitors, fraudulently obtained patents for the drugs and their associated safety distribution protocols, and launched sham patent infringement litigation and filed "baseless" citizen petitions designed to delay regulatory approvals. The generic drugmakers were roped in by newer allegations asserting that Celgene illegally paid them off to delay entry of cheaper

generic competitors.

While the litigation still bears the name of both drugs, the latest suits focus on Celgene's alleged efforts to protect Revlimid's market dominance.

Counsel for the parties did not immediately respond late Friday to press inquiries.

The insurer plaintiffs are represented by Lowey Dannenberg PC, Hagens Berman Sobol Shapiro LLP, Schneider Wallace Cottrell Konecky Wotkyns LLP, Boies Schiller Flexner LLP, Zelle LLP, Santomassimo Davis LLP, MSP Recovery Law Firm, Akeel & Valentine PLC and Armas Bertran Zincone.

Celgene and BMS are represented by Pashman Stein Walder Hayden PC and Williams & Connolly LLP.

Teva and Natco are represented by Walsh Pizzi O'Reilly Falanga LLP and Kirkland & Ellis LLP

The employee benefit funds are represented by Miller Shah LLP, Hilliard & Shadowen LLP, Sperling & Slater PC, Glancy Prongay & Murray LLP, Spector Roseman & Kodroff PC and Wexler Boley & Elgersma LLP.

Walgreen and Kroger are represented by Kenny Nachwalter PA. CVS is represented by Hanglely Aronchick Segal Pudlin & Schiller.

The case is In Re Revlimid & Thalomid Purchaser Antitrust Litigation, case number 2:19-cv-07532, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Jeannie O'Sullivan. Editing by Rich Mills.

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