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Charities Ensnared In NJ Antitrust Suit Over Cancer Drugs

By Jeannie O'Sullivan

Law360 (February 22, 2022, 4:29 PM EST) -- Two nonprofits have been added to a sweeping antitrust lawsuit accusing Celgene Corp. and parent Bristol-Myers Squibb Co. of stifling generic competition for two blockbuster cancer drugs and driving up prices for secondary payers of health care claims.

In amended class claims filed Monday in New Jersey federal court, assignees of organizations that provide health care to Medicare enrollees added the Chronic Disease Fund and Patient Access Network Foundation as defendants alongside the drug companies.

MSP Recovery Claims, Series LLC and related entities allege the drug companies funneled money through the charities to cover the cost of Thalomid and Revlimid for Medicare enrollees as part of a complex scheme to maintain their monopolies on the treatments. The move helped the drug companies circumvent congressionally mandated co-pays intended to create market price sensitivity among patients and discourage medically unnecessary drug treatments, according to the amended complaint.

"As a result of defendants eliminating the co-payment requirements for Medicare beneficiaries, plaintiffs' assignors and other class members paid for prescriptions for Celgene's Thalomid and Revlimid drug therapies, that otherwise would not have been made or would have been substituted for less expensive generic equivalents," in violation of federal anti-racketeering law, the amended complaint said.

The lawsuit, filed in December, adds to the antitrust litigation over the treatments brought by **consumers, insurers** and others.

Like the other suits, the MSP entities detailed a scheme devised to squeeze more profits out of Thalomid and Revlimid. The drug companies were the subject of a September 2020 congressional report revealing "anticompetitive and fraudulent conduct" that led to Medicare and Medicaid having to pay "supracompetitive" prices, according to the amended complaint.

Thalomid dates to the 1950s as an anti-nausea drug originally marketed as Thalidomide that led to catastrophic birth defects such as fetal deformation, according to the complaint. The drug later received U.S. Food and Drug Administration approval to be marketed as a treatment for leprosy complications, the complaint said.

Celgene developed Revlimid as a Thalidomide analog in 2005 and ultimately garnered FDA approval for its treatment for certain multiple myeloma and mantle cell lymphoma patients, according to the complaint.

"Unsatisfied with the profit realized from these products, Celgene chose to engage in an illegal, multi-prong, anticompetitive scheme" that entailed interfering with generic pharmaceutical companies' ability to obtain FDA approval for their own versions, the complaint said.

The scheme entailed preventing pharmacies and suppliers from providing drug samples to the would-be competitors, fraudulently obtaining patents for the drugs and their associated safety distribution protocols, and launching sham patent infringement litigation and filing "baseless" citizen petitions designed to delay FDA approvals, the complaint said.

In instances where the conduct failed to prevent generics from prosecuting abbreviated new drug applications, the complaint said, Celgene struck confidential settlements — known as "pay-for-delay" deals — with its competitors.

Thalomid cost about \$6 per capsule when it first entered the market and by 2014 had reached \$357 per capsule, while the cost of Revlimid has spiked from \$215 per pill in 2005 to \$719 per pill as of 2020, the complaint said.

Celgene's regulatory filings show Thalomid and Revlimid have respectively generated \$3.2 billion and \$35.3 billion in sales for Celgene between 2007 and 2016, according to the complaint.

An attorney for the plaintiffs, Robert Strongarone of MSP Recovery Law Firm, told Law360 the funding of the co-pays through the charities was "basically enabling Celgene to increase the prices supracompetitively."

In a statement emailed by a spokesperson on Tuesday, PAN Foundation President and CEO Kevin L. Hagan said the organization has received notice of the lawsuit and has no further comment.

Representatives for the other parties didn't immediately respond to requests for comment.

The plaintiffs are represented by Anthony J. Davis and Brian E. Moffitt of Santomassimo Davis LLP and by Robert Strongarone, John W. Cleary and Aida M. Landa of MSP Recovery Law Firm.

Celgene and BMS are represented by Daniel R. Guadalupe of Pashman Stein Walder Hayden PC.

Counsel information for the nonprofits is unknown.

The case is MSP Recovery Claims, Series LLC et al. v. Celgene Corp. et al., case number 2:21-cv-20451, in U.S. District Court for the District of New Jersey.

--Editing by Kelly Duncan.

Update: This article has been updated to add commentary from attorney Robert Strongarone of MSP Recovery Law Firm and to add the firm as counsel for the plaintiffs.