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Jazz Overcharged For Narcolepsy Drug, Suit Alleges

By **Adam Lidgett**

Law360 (April 4, 2023, 10:26 PM EDT) -- Jazz Pharmaceuticals has been hit with a proposed class action in California federal court accusing it of taking part in a scheme to hike up the price of drugs on the narcolepsy and nonopioid painkiller markets, in turn causing health plans to shoulder those high costs.

MSP Recovery Claims Series LLC, a payment recovery company, filed the nationwide **class action** Monday on behalf of various health plans against Jazz, Express Scripts and other parties, saying they have found ways to wrongly increase the unit price of narcolepsy drug Xyrem and pain medication Prilact.

Medicare Advantage health plans and Medicaid plans then paid "supra-competitive prices for the subject Jazz drugs for tainted and unpayable claims and for artificially inflated quantities of dispensed subject Jazz drugs, directly to defendant Express Scripts, on behalf of beneficiaries enrolled in their health plans," the complaint said.

For one thing, the alleged scheme outlined in the complaint "caused the subject Jazz drugs to be over-prescribed and over-dispensed." For another, that alleged scheme "allowed Jazz to raise their prices to supra-competitive levels," the suit said.

Janpaul Portal, an attorney for MSP, said in a statement that "this case represents another instance of a pharmaceutical company conspiring with third parties to artificially bolster high drug prices to the financial detriment of consumers, Medicare Advantage health plans, and Medicaid health plans."

Portal added that "Jazz Pharmaceuticals, along with their other co-conspirator defendants, cloaked their scheme under the guise of charity work, when in fact Jazz was subsidizing its own drugs through a conduit," saying that "defendants made efforts to maximize profits by steering patients away from other free drug programs or co-payment assistance funds and into a ... fund which was funded exclusively by Jazz."

Jazz entered legal hot water over Xyrem when it **sued** over Avadel's competing sodium oxybate product Lumryz, claiming that the narcolepsy drug infringed the so-called Risk Evaluation and Mitigation Strategy, or REMS, program patent for Xyrem.

And in February, the Federal Circuit said Jazz had to **remove** a patent from the Orange Book listing for Xyrem, as it covered neither the drug itself nor a method of using it.

There, the Federal Circuit affirmed that a computer-implemented system of safely prescribing gamma-hydroxybutyrate wouldn't be entitled to a place in the database tied to when patent owners are eligible to delay potentially infringing drugs. The U.S. Food and Drug Administration database allows for composition and methods of use patents, but even when inextricably tied to the drug, it doesn't allow for system patents.

About a month ago, two members of the Senate health committee reintroduced a bill that would stop pharma companies from **using lawsuits** to block the sale of a competing generic drug over a REMS program patent.

Representatives for Jazz and Express Scripts did not immediately respond to requests for comment on Tuesday.

MSP is represented in-house by John W. Cleary and Janpaul Portal, and by Alex R. Straus of Milberg Coleman Bryson Phillips Grossman PLLC, and Shereef H. Akeel, Adam S. Akeel, Sam R. Simkins, Daniel W. Cermak and Hayden E. Pendergrass of Akeel & Valentine PLC.

Counsel information for the defendants was not immediately available on Tuesday.

The case is MSP Recovery Claims Series LLC v. Jazz Pharmaceuticals PLC et al., case number 5:23-cv-01591, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dani Kass and Kelly Lienhard. Editing by Adam LoBelia.

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