

I. Victor Dauer v. Sandoz Pharmaceuticals Corp. and Caremark, Inc.

A. Pleadings

Plaintiff Dauer filed his Complaint on November 2, 1990. On November 8, 1990, he filed a First Amended Complaint. On December 17, 1990, Dauer served a Second Amended Complaint. After an extension of time in which to file responsive pleadings, Sandoz filed its Answer on January 25, 1991. As between Dauer and Sandoz, the initial pleadings are complete.

B. Motions

There are no pending motions involving Sandoz.

C. Discovery

Sandoz has produced some 10,800 pages of documents to counsel for plaintiff Dauer. Sandoz has also responded to Dauer's eight multi-part interrogatories. There is no outstanding formal discovery in this action, although counsel for Sandoz now have in their possession certain additional documents that became available after counsel for Dauer reviewed and received Sandoz' document production.

D. Preliminary Understanding of Facts Involved in the Litigation

Plaintiff Dauer had claimed that Sandoz tied the sale of its product, Clozaril, to various services related to blood monitoring for patients receiving the drug. Plaintiff claimed that this alleged tie was carried out through the Clozaril Patient Management System ("CPMS"), through which Clozaril was distributed by defendant Caremark.

In recent months, since the Second Amended Complaint was filed in this action, Sandoz has substantially revised and liberalized its system for distributing Clozaril. In so doing, Sandoz has eliminated the CPMS and all features of that system to which the plaintiffs in all of these actions object. Although Sandoz does not believe that it violated federal or state antitrust laws, or any other law that may apply to the marketing of Clozaril, Sandoz endeavored to alter the Clozaril distribution system so as to make the drug more widely available at a lower price. In this regard, Sandoz has renegotiated its distribution with defendant Caremark and announced substantially reduced pricing for Clozaril. These changes have mooted many, if not all, of the issues raised by this litigation.

The CPMS was a justified safeguard instituted for the protection of Clozaril patients. Studies have shown that 1-2% of Clozaril users develop a potentially-fatal side effect called agranulocytosis. Sandoz' desire for patient safety and Food and Drug Administration requirements led Sandoz to create the CPMS, which required weekly patient blood monitoring as a prerequisite to receiving Clozaril. The CPMS also provided for a nationwide database and nationwide Clozaril and monitoring availability, along with other patient-benefitting assurances. Many of these same attributes are now part of the new Clozaril treatment systems, which are being carried out by independent pharmacies, practitioners, and wholesale distributors, along with direct sales to governmental mental health care facilities.

E. Critical Factual and Legal Issues

As stated above, many, if not all, of the issues raised in the Complaint are now moot. Any remaining claims are subject to dismissal for failure to state a claim upon which relief can be granted, or will be subject to dismissal on motion for summary judgment. Sandoz believes that the plaintiff cannot plead or prove claims for violation of Section 1 or 2 of the Sherman Act. Sandoz also believes that class certification should be denied.

The full recitation of Sandoz' appears in its Answer to the Second Amended Complaint. In list form, those defenses are that the Court lacks subject matter jurisdiction, plaintiff lacks standing and/or has not sustained antitrust injury, Sandoz' actions are the permitted result of federal law, Sandoz' actions are immune from attack under federal antitrust law, Sandoz engaged in lawful petitioning activity under the Noerr-Pennington doctrine, Sandoz has not engaged in an illegal tying arrangement, Sandoz has not engaged in resale price fixing, Sandoz has not violated Section 2 of the Sherman Act, and Sandoz has not engaged in any restraint of trade in violation of Section 1 of the Sherman Act.

II. Richard Newell v. Sandoz Pharmaceuticals Corp. and Caremark, Inc.

A. Pleadings

Plaintiff Newell filed his action on December 3, 1990. After an extension of times, Sandoz answered the Complaint on

January 25, 1991. Sandoz has been informed that plaintiff Newell intends to file an Amended Complaint, in response to a motion to dismiss brought by defendant Caremark. Newell's Amended Complaint may necessitate further responsive pleading by Sandoz.

B. Motions

Plaintiff Newell has filed a motion for class certification under Fed. R. Civ. P. 23. That motion was stayed by the Southern District of New York prior to a response by either defendant. Sandoz will oppose the pending motion for class certification. There are no other pending motions involving Sandoz in the Newell action.

C. Discovery

Plaintiff Newell has served written discovery requests on Sandoz, including 10 interrogatories and 45 requests for production of documents. The interrogatories served by Newell have not been answered by Sandoz, but Sandoz has provided to counsel for Newell copies of documents produced by Sandoz to other plaintiffs and investigative agencies.

D.-E. Preliminary Understanding of Facts Involved in the Litigation; Factual and Legal Issues

The majority of Newell's claims are the same as those asserted by Dauer. Newell did not claim that the defendants violated Section 2 of the Sherman Act, thus that issue is not present in the Newell case. All other aspects of parts D and E, supra, apply here.

III. States and Commonwealths v. Sandoz Pharmaceuticals Corp. and Caremark, Inc.

A. Pleadings

On December 18, 1990, some 23 States and Commonwealths filed virtually identical actions against Sandoz and Caremark in the Southern District of New York. Sandoz has answered each of those Complaints separately, along with those subsequent actions filed in the Southern District of New York by 10 additional States and Commonwealths. Sandoz does not intend to amend its pleadings.

B. Motions

There are no pending motions involving Sandoz.

C. Discovery

In response to pre-suit administrative investigation, Sandoz produced to representative state attorneys general copies of documents. Sandoz also provided interrogatory responses to the State of Minnesota's Civil Investigative Demand. The States and Commonwealths, through their representatives, also took a pre-suit deposition of one Sandoz employee in August of 1990. On February 25, 1991, the States and Commonwealths served their Joint First Discovery Requests. Those Requests included 57 interrogatories to Sandoz, 47 requests for production of Sandoz documents, and 12 request for admissions. Pursuant to this Court's stay of proceedings, those discovery requests remain outstanding.

D.-E. Preliminary Understanding of Facts Involved in
the Litigation; Factual and Legal Issues

Like the private plaintiffs, the States and Commonwealths claimed that Sandoz and Caremark tied the sale of Clozaril to various services related to blood monitoring for patients receiving the drug, through the CPMS. In addition to claims under Sections 1 and 2 of the Sherman Act, some States and Commonwealths have alleged violations of state antitrust and unfair competition laws.

As stated above, many, if not all, of the issues raised are now moot. Any remaining claims are subject to dismissal, as the States and Commonwealths cannot plead or prove claims for violation of Section 1 or 2 of the Sherman Act; if the Sherman Act claims fail, the State antitrust claims fail as well.

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