



Mallinckrodt, Express Scripts Must Face Antitrust Suit In Illinois

By Matt Bernardini

Law360 (January 28, 2019, 6:16 PM EST) -- An Illinois federal judge on Friday allowed the city of Rockford to move ahead with its antitrust suit on behalf of a class of insurance payors accusing Mallinckrodt ARD Inc. and Express Scripts of monopolizing a therapeutic hormone drug, saying the city had demonstrated antitrust violations.

The city plausibly showed that U.K.-based pharmaceutical company Mallinckrodt and pharmacy benefit manager Express Scripts conspired to raise the price of the drug Acthar, and as a result charged Rockford much higher costs for the drug than it would have normally paid, according to U.S. District Judge Frederick J. Kapala.

"Rockford has plausibly alleged that, as a direct cause of defendants' purported conspiracy, it was injured by being forced to pay higher prices for Acthar than it would have but for the agreements of the defendants," Judge Kapala said. "Rockford has plausibly alleged that defendants had the specific intent to create anticompetitive effects through the conspiracy, thus establishing an improper motive."

Rockford initially filed the suit in April 2017 alleging that Mallinckrodt's purchase of Questcor Pharmaceuticals Inc. in 2014 makes it liable for a nearly 15-year-old scheme to control the price of adrenocorticotrophic hormone drug Acthar, raising it from \$40 a vial in 2001 to more than \$34,000 in 2017. The drug is used to treat a seizure condition in infants.

Questcor's tactics to maintain its monopoly, the subject of suits filed by both notorious pharma entrepreneur Martin Shkreli and the Federal Trade Commission in recent years, have defrauded Rockford and other government and private insurance payors out of millions, the city said.

Questcor's monopoly over Acthar is "a story of perhaps the most egregious monopolistic conduct and unfair trade practice in U.S. history," Rockford's suit claims.

The suit is just the latest legal trouble for Mallinckrodt since its acquisition of Questcor.

Mallinckrodt paid the FTC \$100 million in January 2017 to settle the regulator's claims Questcor's earlier purchase of a competitor, Synacthen, was anti-competitive, only to be hit with a proposed shareholder class action a few days later.

Mallinckrodt also reportedly paid \$15.5 million to settle a 2014 lawsuit filed by Retrophin — another pharmaceutical company, led by Shkreli — accusing Mallinckrodt of scuttling Retrophin's bid to purchase Synacthen.

Rockford's suit, filed on behalf of a putative class of government and private insurance providers, seeks treble damages and court costs.

"We are pleased with the court's ruling, allowing the antitrust claims of Rockford and the class to proceed against Mallinckrodt and Express Scripts," Donald E. Haviland Jr., of Haviland Hughes and representing the city of Rockford, said in a statement. "Now, we can start the process of discovering how a \$40 drug came to be priced at over \$40,000, costing patients, payors and the health care system billions in excess payments for a 67-year-old medication."

Representatives for Mallinckrodt and Express Scripts did not immediately respond to requests for comment.

The city of Rockford is represented by Donald E. Haviland Jr. and William H. Platt of Haviland Hughes, Peter J. Flowers and Jonathan P. Mincieli of Meyers & Flowers LLC and Kerry F. Partridge and Ifeanyi C. Mogbana of the Rockford Legal Department.

Mallinckrodt is represented by Scott Collins Sullivan of WilliamsMcCarthy LLP and G. Patrick Watson, Rebecca A. Nelson, Herbert R. Giorgio Jr., Philip D. Bartz and Lindsay Sklar Johnson of Bryan Cave Leighton Paisner LLP.

Express Scripts is represented by Matthew M. Martino, Robert A. Fumerton, Patrick G. Rideout, Michael H. Menitove, Evan R. Kreiner and Amy Van Gelder of Skadden Arps Slate Meagher & Flom LLP.

The case is City of Rockford et al. v. Mallinckrodt ARD Inc. et al., case number 3:17-cv-50107, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Diana Novak Jones. Editing by Bruce Goldman