

Abbott Urges Judge To Keep RICO Claims In Test Strip Row

By Kurt Orzeck

Law360, Los Angeles (April 27, 2016, 10:09 PM ET) -- Abbott Laboratories on Wednesday urged a New York federal judge to preserve Racketeer Influenced and Corrupt Organizations Act claims in its suit accusing pharmacies and distributors of selling international versions of its diabetes test strips domestically.

In a letter to U.S. District Judge Carol Bagley Amon responding to pre-motion letters recently submitted by some of the defendants, Abbott said they participated in an illegal enterprise by selling international FreeStyle glucose test strips at lower, foreign prices and reselling them to U.S. customers.

Although the U.S. and international strips are identical, the health care company's suit said it sells the test strips outside the U.S. at markedly lower list prices. It maintains the defendants capitalized on these pricing differences and received undeserved reimbursement payments from insurance companies, costing it millions of dollars.

Defendants recently told Judge Amon that Abbott had alleged "a huge conspiracy" of 300 wholesalers, individuals and pharmacies without pushing the RICO claims "above the level of mere speculation."

Abbott replied on Wednesday, saying: "The fraudulent reimbursement claims that fuel the market for diverted international FreeStyle test strips are fundamental to this case and not merely an afterthought, as defendants suggest. Abbott's RICO claims seek to hold defendants accountable for these repeated acts of fraud and the harm to Abbott that flows from them."

Abbott sued a host of distributors and pharmacies, including Adelphia and Save Rite Medical.com LLC, seeking to stop the U.S. sale of FreeStyle blood glucose test strips that are intended to be used in other countries.

The complaint accuses the defendants of trademark infringement, fraud and racketeering, among other things, and also seeks an undisclosed amount of damages. The judge issued a temporary restraining order blocking the sale of international strips in the U.S. on Oct. 9.

In November, a judge **awarded Abbott** a preliminary injunction barring pharmacies and distributors from selling "gray market" versions of Abbott's diabetes test strips in the U.S., ruling the products were likely to confuse consumers.

Judge Amon in December **expanded** the preliminary injunction, rejecting some defendants' arguments

that English-language versions of the product pose little confusion risk.

Abbott on Wednesday used the court's findings to support its push to preserve the RICO claims. The letter said the defendants took part in a general scheme to defraud Abbott and insurers by selling diverted FreeStyle test strips that they knew or should have known were being fraudulently submitted for reimbursement.

Derrelle M. Janey of Gottlieb & Gordon LLP, which is representing the defendants, told Law360 on Wednesday, "On the law, Abbott cannot sustain its civil RICO claims; these claims have only been included in the complaint in the first instance to intimidate the defendants."

Attorneys for Abbott didn't immediately respond to requests for additional comment on Wednesday.

Abbott is represented by Geoffrey Potter, Aron Fischer, Jeremy A. Weinber, R. James Madigan III and Matthew Funk of Patterson Belknap Webb & Tyler LLP.

HMF Distributing Inc., Wholesale Diabetic Supplies Inc., Matthew Frank, Massalah Trading USA Ltd. and Saad Haddad are represented by Derrelle M. Janey of Gottlieb & Gordon LLP.

The case is Abbott Laboratories et al., v. Adelpia Supply USA et al., case number 1:15-cv-05826, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Bonnie Eslinger and Matthew Bultman. Editing by Catherine Sum.

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