

Kaye Scholer Helps Pfizer Subsidiary Defeat Class Certification in Major Pharmaceutical Antitrust Litigation

NEW YORK (January 30, 2014)—The US District Court for the Eastern District of Tennessee ruled in favor of Kaye Scholer client King Pharmaceuticals LLC (King), an indirect subsidiary of Pfizer Inc., and co-defendant Mutual Pharmaceutical Company, Inc. (Mutual), denying motions to certify two classes as well as a motion for partial summary judgment concerning King's muscle relaxant Skelaxin.

Alleging that King and Mutual had colluded to delay the entry of the drug's generic version, the plaintiffs (which consisted of two proposed classes of "end payors" and "indirect purchasers for resale") sought damages based on the amount they allegedly overpaid for branded Skelaxin because of the unavailability of a generic counterpart.

"We are pleased that the Court took a close look at the parties' arguments, and the record, as required by recent Supreme Court precedent, and agreed with us that certification is not appropriate here. The issues raised by claims like these, in a market as complex as the resale of and reimbursement for pharmaceuticals, do not readily lend themselves to class treatment, and erroneous class certification places an unreasonable burden on both the judicial system and this vital industry," said Saul Morgenstern, Co-Head of Kaye Scholer's Antitrust Practice and head of the legal team representing Pfizer.

The court denied the end-payor plaintiffs' motions for class certification on a number of grounds, accepting defendants' arguments concerning the discrepancy between plaintiffs' expert testimony and the class definition, problems of typicality and issues concerning adequacy of representation, among others. The court also rejected the indirect purchasers argument in favor of a nationwide class under Tennessee antitrust law, holding that a full choice of law analysis would be required to determine what states' laws applied to the class members' claims, and noting that the laws of the various states "differ markedly." Finally, the court denied the end payors' motion for partial summary judgment and their motion to strike the defendants' expert reports and testimony.

King is represented by Saul P. Morgenstern, Andrew K. Solow, Karin E. Garvey, Robert Grass, Joseph Kohn, David Kerschner, and Paul Andrews of Kaye Scholer, as well as Aubrey B. Harwell, Jr., Gerald D. Neenan and Jeffrey H. Gibson of Neal & Harwell. Pfizer in-house counsel Malini Moorthy and Danielle Gentin Stock oversaw the matter.

About Kaye Scholer LLP

Founded in New York in 1917, Kaye Scholer combines the continuity and business acumen of a century-old law firm with a forward-looking, tech savvy, results-driven approach focused around lasting client relationships. With industry strengths in life sciences, financial services, technology, real estate and energy & infrastructure, Kaye Scholer offers strategic guidance and legal services to public and private entities facing litigation, transactional or governance challenges. Kaye Scholer's lawyers regularly advise on matters across multiple legal jurisdictions, including in the US, Canada, UK, EU, China and Japan.

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