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Teva Exits Philly Reglan Mass Tort With Settlement

By **Dan Packel**

Law360 (February 13, 2018, 8:15 PM EST) -- A Pennsylvania state court judge has approved a confidential settlement that puts an end to all claims against Teva Pharmaceuticals and its subsidiaries in the mass tort proceeding over the digestion drug Reglan, substantially winnowing the number of overall outstanding claims.

In an order signed on Feb. 6 and docketed Monday, Philadelphia County Court of Common Pleas Judge Arnold New accepted a global dismissal order involving Teva and subsidiaries. The settlement affects roughly 1,700 of the more than 2,000 cases pending in the Reglan mass tort program in the Philadelphia County Court of Common Pleas.

The settlement breaks the affected plaintiffs into two groups: settling plaintiffs, who are entitled to a distribution of the confidential settlement, and "plaintiffs without product ingestion," who dropped claims against the companies on the basis of not identifying Teva products.

The former group is significantly larger, estimated at 1,450, while the latter group is estimated to contain 250.

According to the settlement document, Teva was slated to distribute the confidential sum into a qualified settlement fund by Jan. 19. Disbursements from the fund will be handled by BrownGreer PLC.

The settlement also ends all claims against Richmond Pharmaceuticals Inc.

Other generic manufacturers of Reglan and other metoclopramide-based drugs — including King Pharmaceuticals, Morton Grove Pharmaceuticals Inc. and Par Pharmaceuticals — have slowly exited the Philadelphia mass tort in recent months via settlements.

But the Teva agreement stands out because of the volume of names in the 127-page filing.

A single Reglan case has yet to be tried in Philadelphia, and the settlement trend suggests that one never will be.

The litigation had earlier been stalled for several years during an extended appeal of a decision that cases over generic versions of the drug weren't preempted by federal law.

A state appeals court ruled in July 2013 that most of the Reglan-related design defect, negligence, false advertising, breach of warranty and other claims in the cases were not preempted by federal law under the U.S. Supreme Court's landmark *Pliva v. Mensing* decision.

The *Mensing* decision found that state law failure-to-warn claims against generics manufacturers were preempted because the Hatch-Waxman Amendments require generics to have the same warning label as brand-name drugs. The Superior Court's decision, however, found that *Mensing* addressed only failure-to-warn claims on product labels that were brought before the Food and Drug Administration Amendments Act was passed in 2007.

The Pennsylvania Supreme Court rejected an appeal in the litigation in September 2014, leading to a trio of petitions before the U.S. Supreme Court. The last of those petitions was shot down in May

2015. At that point, there were roughly 2,300 cases pending in Philadelphia.

Attorneys for the plaintiffs steering committee and Teva both declined to comment Tuesday, citing the confidentiality of the settlement.

The plaintiff's steering committee is represented by Stewart Eisenberg of Eisenberg Rothweiler Winkler Eisenberg & Jeck.

Teva is represented by Patrick Lamb of Post & Schell PC, and Jonathan Price of Goodwin Procter LLP.

The case is In re: Reglan/Metoclopramide Litigation, case number 100101997, in the Court of Common Pleas of the State of Pennsylvania, County of Philadelphia.

--Editing by Adam LoBelia.

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