

Mylan Hit With \$69.2M In Treble Damages

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Friday, Jan 25, 2008 --- Blue Cross Blue Shield of Massachusetts and three other health insurance firms that opted out of a \$35 million class-action settlement against Mylan Laboratories Inc. to pursue their own antitrust allegations have won a whopping \$69.2 million award in treble damages.

The insurers alleged that the generic drug maker tied up the market for two anti-anxiety drugs, lorazepam and clorazepate, and inflated the prices.

Judge Thomas F. Hogan of the U.S. District Court for the District of Columbia on Thursday granted the indirect purchasers' motions for leveling treble damages against Mylan and two drug ingredient supplier defendants, Gyma Laboratories of America and Cambrex Corp.

The court awarded BCBS of Massachusetts nearly \$58.5 million, BCBS of Minnesota more than \$5 million, Health Care Service Corp. more than \$4.3 million and Federated Mutual Insurance Co. more than \$1.2 million.

Mylan has faced a Federal Trade Commission probe and a number of lawsuits involving similar antitrust allegations related to the anti-anxiety medications. Mylan settled with the FTC, several state attorneys general and a group of indirect purchasers for \$147 million in 2000. A direct-purchaser case was later settled for \$35 million.

In July 2005, a federal jury handed BCBS Massachusetts, along with the other indirect purchasers that opted out of the earlier settlement agreement, some \$12 million in damages, finding that Mylan had willfully violated antitrust laws by overcharging for the medications after signing exclusive deals with drug chemical suppliers Gyma and Cambrex that effectively sewed up the market on the ingredients for the drugs.

The plaintiffs have since argued that the damages should be tripled, since the jury found the antitrust violations to be willful.

The plaintiffs contended that Mylan hiked up its drug prices about 2,000% for lorazepam and clorazepate following the exclusive agreements.

Judge Hogan on Thursday determined that the defendants had knowingly violated antitrust laws.

"Defendants' conduct evidences intent carefully designed to reach ends that amount to violations of the law, 'whether the defendants knew it or not,'" the

judge stated. “The court finds the degree of defendants’ willfulness deserving of treble damages.”

In the same order, the judge denied the defendants’ motion to dismiss the claims brought by BCBS Minnesota and Federated based on lack of standing.

“Because the plaintiffs were buyers from, and the customers of, defendants regardless of whether they paid for the drugs through an intermediary, they were participants in the market constrained and, consequently, are well within the outer limits of Minnesota antitrust standing,” Judge Hogan ruled.

A representative for Mylan did not return a call seeking comment.

W. Scott Simmer, the attorney representing BCBS Massachusetts and Minnesota and Federated, said his clients were pleased with the outcome.

“Trebled damages sends a strong message to Mylan that their violations were unacceptable,” said Simmer, a partner in Robins Kaplan Miller & Ciresi LLP’s Minneapolis office.

The case is In Re Lorazepam & Clorazepate Antitrust Litigation, case number 1:99-mc-00276, in the U.S. District Court for the District of Columbia.

--Additional reporting by Jacqueline Bell