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## GSK, Indirect Purchasers Plan To Settle Pay-For-Delay Suit

By Jeannie O'Sullivan

Law360, New York (July 15, 2016, 4:56 PM ET) -- The parties in a lawsuit challenging a pay-for-delay settlement between Teva Pharmaceuticals and GlaxoSmithKline over the latter's epilepsy drug Lamictal are planning to settle the complaint, according to a letter filed Friday in New Jersey federal court.

The indirect purchasers of Lamictal had alleged a 2005 settlement giving Teva exclusive license to eventually market the generic version of Lamictal violated federal law and competition laws in California, Michigan and New York. The deal included payments made by GlaxoSmithKline to Teva to put off the authorized generic — a "substantially cheaper" alternative — for more than two years, the indirect purchasers said.

The parties are working toward a resolution, attorney Michael DeBenedictis, representing the indirect purchasers, said in the letter.

"On behalf of the litigants therein, I write to alert the court that the parties have voluntarily entered into a Memorandum of Understanding to settle the litigation. Pursuant thereto, we will advise the court if, and when, a final settlement has been consummated," DeBenedictis told U.S. District Court Judge William H. Walls in his letter.

DeBenedictis declined to comment and attorneys for the drug companies didn't immediately respond to requests for comment Friday.

The drug companies involved in the closely watched antitrust litigation were dealt a blow July 6 when Judge Walls **denied their request for a stay** in the case while the U.S. Supreme Court decides whether to take up SmithKlineBeecham Corp. v. King Drug Co. of Florence Inc., another challenge to the settlement that could produce a new standard of review for what types of put-off payments could face antitrust scrutiny.

Judge Walls had tossed the King Drug Co. case in 2014, reasoning that the Supreme Court's landmark FTC v. Actavis ruling, which said brand-name drugmakers' payments to generics companies in patent settlements can raise antitrust concerns, only applied to cash payments. The Third Circuit **revived the claims** in June 2015, ruling that other kinds of noncash consideration that a brand maker offered a generics maker to settle a patent suit could come in for scrutiny, including the kind of no-authorized-generic agreement at issue in the Lamictal case. They drug companies **petitioned the high court** in February.

The drug companies in the instant suit renewed their request for a three-month stay in discovery

on June 27, telling Judge Walls that the justices had issued a June 6 order inviting the solicitor general to submit a brief on the merits of taking up the King Drug Co. case. The buyers had urged the judge to deny the request, saying it was unclear when the solicitor general would respond.

In the instant suit, Judge Walls **ruled in March** that the indirect purchasers' state law claims were time-barred, but upheld their claims for declaratory judgments that the drugmakers violated the Sherman Act by engaging in price-fixing, market allocation and monopolization.

The drug companies had **moved to toss the claims** in September 2013, saying their deal did not run afoul of antitrust laws because, contrary to the indirect purchasers' allegations, the settlement included no such monetary payoff and was therefore not against the law.

The indirect purchasers are represented by Michael J. DeBenedictis of DeBenedictis & DeBenedictis LLC, Christopher M. Burke, Walter W. Noss, David R. Scott, Joseph P. Guglielmo and Donald A. Broggi of Scott & Scott LLP, Joseph S. Tusa of Tusa PC, Todd M. Schneider, Jason H. Kim and Garrett W. Wotkyns of Schneider Wallace Cottrell Konecky Wotkyns LLP, and Aaron Kaufmann of Leonard Carder LLP.

Teva is represented by Michael E. Patunas and Mayra V. Tarantino of Patunas Tarantino LLC, and Jay P. Lefkowitz, Devora W. Allon and Karen N. Walker of Kirkland & Ellis LLP.

GSK is represented by Douglas S. Eakeley and Joseph A. Fischetti of Lowenstein Sandler LLP, and Barbara W. Mather, Robin P. Sumner and Melissa J. Hatch O'Donnell of Pepper Hamilton LLP.

The suit is In re: Lamictal Indirect Purchaser Antitrust Consumer Litigation, case number 2:12-cv-05120, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Melissa Lipman. Editing by Jack Karp.

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