

Municipal Mega- Litigation Update

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WORKING TO FIGHT WATER CONTAMINATION

A Cost Recovery Program



LEADERSHIP

✓ **AFFF Products Litigation**

Named Co-Lead Counsel in the AFFF Products Liability Litigation by U.S. District Judge Richard Mark Gergel.

✓ **New York Opioid Litigation**

Named Co-Lead Counsel in the New York Opioid Cost Recovery Litigation by Justice Jerry Garguilo of the Supreme Court of the State of New York.

✓ **Flint Water Crisis**

Named Co-Liaison Counsel in the Flint Water Crisis by U.S. District Judge Judith E. Levy.

✓ **NRWA Class Action Suit**

The National Rural Water Association filed a class action lawsuit on behalf of its members now dealing with unregulated chemicals in their drinking water.

✓ **MTBE Litigation**

Member of the Plaintiffs' Discovery Committee in the MTBE Products Liability Litigation by U.S. District Judge Shira Scheindlin.

✓ **PFOA/PFOS Toxic Tort**

Named Liaison Counsel in the Colorado PFOA/PFOS Toxic Tort Litigation by U.S. District Judge R. Brooke Jackson.

RESULTS

\$1.1B

*New York Opioid
Jury Trial*

\$641.2M

*Flint Water Crisis
Litigation*

*pending court approval

\$1B+

*On behalf of 8
First Responders*

\$50M+

*MTBE Municipal
Water
Contamination*

\$17.5M

*PFAS, AFFF Class
Action Settlement
(Peshtigo, WI)*

SUCCESS

3

Monte Carlo Communications, Inc. For Opioid

YOUR TEAM



Marie Napoli
Partner



Paul J. Napoli
Of Counsel



Hunter J. Shkolnik
Partner

4

Attorney-Client Communications Are Privileged



PFAS Background

Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that includes PFOA, PFOS, GenX, and many other chemicals.

Manufacturers

PFOA/PFOS		AFFF	
Arkema	Daikin	Ansul	Chemguard
Dupont	Ciba	Dupont	Dynax
3M/Dyneon	Asahi	Kiddle	Solberg
Solvay Solexis	Clariant		

PFOS was solely produced by 3M in the U.S.

Status of Bellwether Process



- ✓ **February 2021**
10 Bellwether Water Provider Cases Selected
- ✓ **October 2021**
Deadline for Tier One Core Fact Discovery
3 Cases will be selected to move on to Tier Two Discovery
- ✓ **January 2022**
Tier Two Discovery to be completed
- ✓ **April 2022**
Expert Discovery
- ✓ **July 2022**
Dispositive Motions
- ✓ **September 2022**
Recommendations for First Bellwether Trial Due
- ✓ **January 2023**
First Bellwether Trial Scheduled

11

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Other Significant MDL Developments

Briefing on Government Contractor Defense scheduled for late 2021

- *U.S. government is close to completing document production and depositions of government witnesses are ongoing*
- *Lead on Plaintiffs' Executive Committee subcommittee focusing on U.S. government discovery*
- *Paul J. Napoli serves as primary liaison with lead DOJ attorney (Christina Falk) working on the MDL*

12

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Current State of Federal PFAS Legislation



✓ **Bipartisan Transportation Agreement**

The Senate passed this bill, which includes \$10 billion in grants to state and localities for PFAS Remediation.

✓ **The PFAS Protection Act**

The House passed H.R. 2467 which would require PFAS and related chemicals be classified as toxic under CERCLA.

✓ **EPA Announcement**

*Expected to issue a draft ruling PFAS as a toxic chemical under CERCLA before the end of 2021
A standard will be set by the EPA under **The Safe Drinking Water Act**, making it enforceable from the federal level.*

13

WHAT MAKES US DIFFERENT

Nationwide Representation




- *Experience Managing Large, Complex Litigation*
Dedicated Environmental Departments
- *Regular Communication*
- *Conflict Free*
- *Investigative Resources*
- *Customized Approach*
- *Personalized Attention*

A Cost Recovery Program

- *COST RECOVERY, NOT PUNITIVE*
- *DOES NOT IMPACT LOCAL COMPANIES*
- *NO UPFRONT COSTS BUT YOU MUST REGISTER*

14

THANK YOU

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Generic Antitrust Litigation Presentation

Napoli Shkolnik PLLC

Attorney Work Product
Privileged & Confidential



Experienced Pharma Attorneys



Paul Napoli & Salvatore Badala,
Opioids MDL – obtained landmark
\$320 million settlement for local
government clients



We currently represent over 30 local
governments in the Generics Antitrust
case



Costs of Generic Drug Price Increases

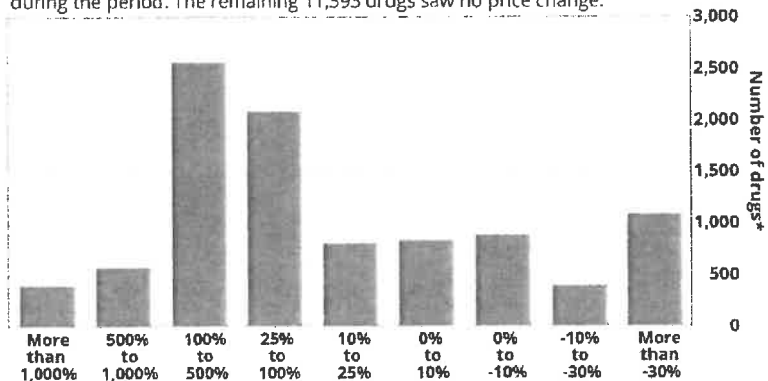
In the United States, \$333 billion on drug costs in 2017, 40+% increase from 2007.

- In 2016, generic drugs accounted for 89% of all drugs dispensed in the U.S.
- From 2009 to 2015, there was a substantial increase in some generic-drug prices that impacted national prescription-drug spending.

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More than 3,500 generic drugs saw prices at least double between 2008 and 2015

Of 21,006 generic drugs analyzed by Connecture, 9,613 saw price movement during the period. The remaining 11,393 drugs saw no price change.



*Individual drug/dosage/package combinations.

Source: DRX Drug Database

Generic Drug Price Increases

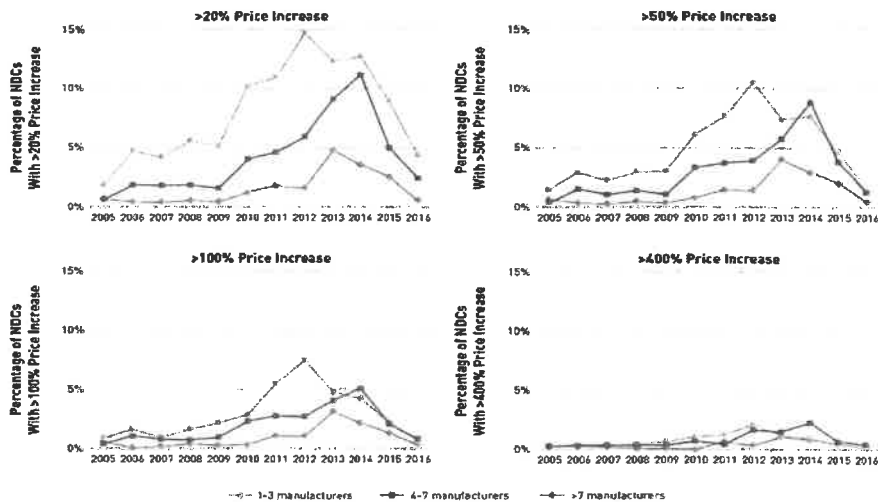
Examples of Substantial Increases on Specific Generic Drugs:

- Amitriptyline (Antidepressant and Nerve Pain) → 900%
- Baclofen (Muscle Relaxer) → 400%
- Benazepril (Blood Pressure Medication) → 300%
- Clobetasol (Treatment for Eczema, Dermatitis) → 800%
- Clomipramine (Antidepressant and Nerve Pain) → 2,700%
- Digoxin (Antiarrhythmic and Blood Pressure Support) → 630%
- Divalproex ER (Anticonvulsant) → 361%
- Propranolol (Treatment for High Blood Pressure, Chest Pain) → 1,700%
- Ursodiol (Treatment for Gallstones and Liver Disease) → 560%

- Each of these price increases were collusive, abrupt, and carried out by two or more Defendants subject to state or federal actions in the litigation.

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FIGURE 2. Proportion of NDCs Experiencing Abrupt Price Increases, 2005-2016*



NDC indicates National Drug Code.

*The figure shows the proportion of NDCs that experienced price increases greater than 20%, 50%, 100%, and 400% between January of the given year and January of the following year. For instance, in 2005, the price of 1.8% of NDCs from drugs supplied by 1 to 3 manufacturers increased by more than 20%. As explained in the Methods section, this was measured using the relative difference in price between January 2006 and January 2005.

Unsuccessful Unconscionability Laws

- In 2017, the State of Maryland passed a law that would have prohibited generic drug manufacturers from raising prices in a manner deemed to be “unconscionable” by the state and applied to generic or off-patent drug makers that manufacture a medicine also made by at least three other firms.
- The Circuit Court of Appeals nullified the law, when the Fourth Circuit held that the law was unconstitutional or regulating commerce beyond the borders of Maryland.
- States such as Colorado, Illinois, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Rhode Island, Tennessee, Vermont, Virginia, Washington and Wisconsin have all failed, or have not successfully passed similar legislation in their states.



7

May Be Largest U.S. Antitrust Case

- In May of 2019, a wide-ranging lawsuit was filed in the US by 44 states, claiming price fixing for dozens of widely-used generic pharmaceuticals.
- Today, there are numerous complaints on file from various plaintiff-groups seeking damages from the increased prices of generic pharmaceuticals, including a now-50 state coalition.
- Today’s actions include over 400 drugs at issue and plead facts alleging an industry-wide conspiracy to continue to raise the price of generic pharmaceuticals.



Defendants

- Manufacturers and marketers of generic pharmaceuticals, including major companies such as Sandoz, Actavis/Allergan, Greenstone/Pfizer, Fougera, Impax, Endo/Par, Perrigo, and Teva, and includes smaller companies, like Heritage and Glenmark.



Factual Basis

- Generic drug manufacturers conspired to artificially inflate and manipulate prices, reduce competition, and unreasonably restrain trade for generic drugs sold across the United States.
- Generally, creating a false perception of the lowered-costs and availability of generic pharmaceuticals in the medical community.



Unjust Enrichment

- Because of the cartel formed by the generic-drug manufacturers, the Plaintiff has expended substantial amounts of money annually that it would not have otherwise expended on generic pharmaceuticals. Plaintiff remains responsible for costs of prescriptions, health care, and other medically-related costs, rehabilitation, and work-related programs, which costs have substantially increased as a result of the Defendants' conspiring acts. Plaintiff will continue to incur these increased costs in the future as a result of the Defendants' conduct.
- Defendants made substantial profits while fueling the increased prices of generic drugs.



Factual Support

1759 On March 25, 2013, M.S., a sales analyst at G&W, forwarded Vogel-Baylor updated sales data for Promethazine HCL. That same day, Orlowski of G&W sent a text message to Boothe, an executive at Perrigo. The next day, on March 26, 2013, Boothe called Orlowski back and they spoke for six (6) minutes. Similarly, Vogel-Baylor continued to communicate with T.P. of Perrigo through her conduit,

CW-6, about Promethazine HCL. These calls are detailed in the chart below:

Date	Time	From	To	Duration	Cost
3/26/2013	Voice	Vogel-Baylor, M.S. (G&W)	Orlowski, M.S. (G&W)	13:30:51	0.00215
3/26/2013	Voice	Vogel-Baylor, M.S. (G&W)	CW-6 (Aurobindo)	13:21:57	0.06461
3/28/2013	Voice	CW-6 (Aurobindo)	Orlowski, T.P. (Perrigo)	13:28:00	0.01680
3/28/2013	Voice	CW-6 (Aurobindo)	Boothe, T.P. (Perrigo)	17:33:00	0.00000
3/28/2013	Voice	CW-6 (Aurobindo)	Vogel-Baylor, M.S. (G&W)	27:34:00	0.00000
3/27/2013	Voice	Vogel-Baylor, M.S. (G&W)	CW-6 (Aurobindo)	20:04:00	0.00000
3/27/2013	Voice	Vogel-Baylor, M.S. (G&W)	CW-6 (Aurobindo)	30:55:00	0.00000
3/28/2013	Voice	Vogel-Baylor, M.S. (G&W)	CW-6 (Aurobindo)	18:15:55	0.00000
3/28/2013	Voice				

1763. According to the plan, on April 17, 2013 G&W published new WAC pricing for Promethazine HCL, increasing WAC from \$38.99 to \$116.97 - an approximately 200% increase.



Factual Support

741. For example, on December 16, 2010, Perrigo held an internal meeting to discuss increasing pricing on Betamethasone Dipropionate lotion – the only product in this group in which they overlapped with Fougere (which, as alleged *supra*, was later acquired by Sandoz). That same day, T.P. at Perrigo and SW-6 at Fougere/Sandoz exchanged several calls. After hanging up with T.P., SW-6 called Kaczmarek to update him on their discussions. These calls are detailed in the chart below:²²

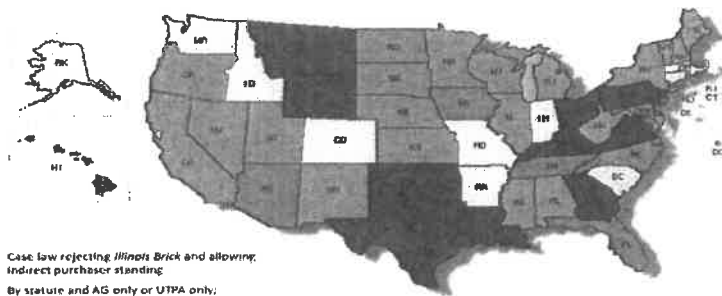
Date	Call Type	From/To	Direction	Contact Name	Time	Duration
12/16/2010	Voice	T.P. (Perrigo)	Outgoing	CW-6 (Fougere)	8:58:29	0:00:25
12/16/2010	Voice	CW-6 (Fougere)	Outgoing	T.P. (Perrigo)	9:12:49	0:05:32
12/16/2010	Voice	CW-6 (Fougere)	Outgoing	Kaczmarek, Walt (Fougere)	9:18:34	0:01:02
12/16/2010	Voice	CW-6 (Fougere)	Outgoing	T.P. (Perrigo)	9:20:00	0:01:51
12/16/2010	Voice	CW-6 (Fougere)	Outgoing	Kaczmarek, Walt (Fougere)	9:26:02	0:05:33
12/16/2010	Voice	CW-6 (Fougere)	Incoming	T.P. (Perrigo)	10:00:24	0:01:58
12/16/2010	Voice	CW-6 (Fougere)	Outgoing	Kaczmarek, Walt (Fougere)	10:14:12	0:01:04

742. After this series of phone calls, Perrigo raised its Betamethasone Dipropionate prices. On January 4, 2011, Perrigo's WAC price for the lotion formulation skyrocketed, from approximately \$6.50/unit to \$37.50/unit –

OVER 500%

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Illinois Claims?



- Case law rejecting *Illinois Brick* and allowing indirect purchaser standing
By statute and AG only or UTPA only; other limitations
- *Illinois Brick* repealer and private plaintiff standing
- No indirect purchaser standing

Prepared by the Connecticut Attorney General's Office (2017)

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Claims under Illinois Law

- Antitrust??
- Judge in this MDL found that claims under Illinois law can only be brought by State AG
- However, those were class-action claims, so still an open question for individuals
- Unjust Enrichment is clearly viable



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