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Firm Leads Vyera to Key Win in Breach-of-Contract Case

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February 13, 2020 - Hughes Hubbard scored a key victory for Vyera Pharmaceuticals after a Chicago federal judge refused to dismiss a \$35 million breach-of-contract lawsuit that Vyera filed last summer against Walgreens, one of the nation's largest drugstore chains.

On Jan. 28, U.S. District Judge Marvin Aspen ruled that Walgreens must face allegations that it breached a distribution agreement with Vyera by failing to make a contractually required payment known as a "shelf stock adjustment."

Pursuant to the distribution agreement, Walgreens agreed to purchase the drug Daraprim from Vyera and distribute it in the U.S. In August 2015, Vyera raised the price of Daraprim from \$17.63 per pill to \$750 per pill, a price increase that resulted in widespread condemnation of Vyera (then known as Turing) and a congressional investigation of its conduct.

Under the terms of the parties' agreement, Walgreens was required to pay Vyera a "shelf stock adjustment" equal to the difference between the drug's original and increased price for all inventory of Daraprim that Walgreens had on hand at the time of the increase. However, Vyera alleged that Walgreens ignored repeated requests for payment.

In August 2019, Vyera filed suit against Walgreens, claiming \$35 million in damages. Walgreens sought dismissal of the suit, contending that Vyera's price increase breached the covenant of good faith and fair dealing, and that Vyera failed to provide required notice of a pending price increase.

Judge Aspen denied Walgreens' motion in its entirety, finding that Vyera had properly pled its claims, and that Walgreens' arguments regarding Vyera's bad faith relied on speculation about issues of fact that the Court could not resolve on a motion to dismiss.

Judge Aspen also pointed to a key weakness in Walgreens' defense, noting Vyera's allegation that Walgreens

pocketed the profits from the increased price of Daraprim instead of passing them on to Vyera, as required under the parties' agreement.

"It is also unclear whether Walgreens' finger pointing over the [price increase] might prove to be crocodile tears," Judge Aspen wrote in his decision. "Vyera alleges that Walgreens, not Vyera, kept the profits from the 4000% price increase. If this proves true, Walgreens' accusations that [p]laintiff acted in bad faith may prove misplaced."

Hughes Hubbard has represented Vyera since 2016.

Dan Weiner and Fara Tabatabai are working on this matter.

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