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Firm Scores Big Victory for Vyera in Medicaid Drug Rebate Dispute

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October 6, 2017 — Hughes Hubbard led Vyera Pharmaceuticals to a big win when a Manhattan federal judge ruled that Impax Laboratories Inc. could not collect more than \$43 million from the Swiss-based company, formerly known as Turing Pharmaceuticals, in its breach of contract case over Medicaid rebates due on the drug Daraprim.

In August 2015, Impax sold Vyera the rights to Daraprim, a drug used to treat an infection that typically affects individuals with compromised immune systems. In its May 2016 lawsuit, Impax claimed that Vyera breached the parties' asset purchase agreement by failing to reimburse Impax for more than \$43 million in Medicaid rebates invoiced by state Medicaid agencies.

In response, Vyera argued that the amount of Medicaid rebate liability due on Daraprim was grossly overstated due to an error in pricing data that Vyera had provided to Impax and Impax submitted to the government in order to calculate that liability. Vyera identified that error and requested that Impax submit a restatement to the government, which Impax refused to do. Turing counterclaimed that Impax breached the parties' contract by failing to submit that restatement.

On Sept. 29, U.S. District Judge Edgardo Ramos agreed with Vyera that Impax could not prevail on any of its claims against Vyera because Impax had breached the parties' contract by refusing to submit the restatement. Judge Ramos found that Impax could not rely on its "subjective concerns" about the restatement in order to justify its refusal to submit that restatement to the government.

Instead, Impax was required to restate erroneous pricing data so long as the restatement was lawful and consistent with applicable regulations. Because Impax failed to show that the proposed restatement was objectively unlawful, its failure to submit that restatement was a violation of the parties' contract that barred Impax from recovering on any of its breach of contract claims.

The decision received coverage in Reuters, Yahoo Finance and other media outlets.

Dan Weiner, Hagit Elul, Ken Katz and Fara Tabatabai represented Vyera in this matter, with assistance from Brett Collings and Jennifer Suh.

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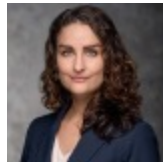
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