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# Hughes Hubbard & Reed

## Turing Defeats Impax's Bid for Emergency Injunction

### News & Events

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Hughes Hubbard won two victories for Turing Pharmaceuticals AG (Turing) on May 10 and May 18, successfully defending Turing against motions for a temporary restraining order and preliminary injunction.

Turing is a Swiss-headquartered pharmaceutical company that specializes in developing and commercializing treatments for serious diseases. On Aug. 7, 2015, Turing acquired the right to manufacture, market and sell the drug Daraprim -- a life-saving prescription medication used to treat toxoplasmosis -- from Impax Laboratories Inc. (Impax). A key component of the \$55 million purchase price that Turing paid was acquisition of Impax's existing inventory of Daraprim, which was labeled with the name of Impax's subsidiary Amedra Pharmaceuticals LLC (the Amedra-labeled Daraprim).

On May 9, 2016, Impax sought a temporary restraining order (TRO) to enjoin Turing from selling Amedra-labeled Daraprim and to require Turing to "recall" any bottles of Amedra-labeled Daraprim currently in distribution. Impax argued that Turing's sales of Amedra-labeled Daraprim for Medicare patients had generated a bill to Impax of more than \$30 million for Medicaid rebates, which Turing had not reimbursed. Impax asserted that emergency injunctive relief was necessary to prevent Turing from generating additional rebate liability that it was not in a financial position to reimburse, and to prevent Impax from suffering regulatory penalties and reputational harm.

Less than 24 hours after receiving Impax's motion papers, HHR appeared for Turing at a hearing in the Southern District of New York and defeated Impax's application for a TRO. Judge Edgardo Ramos then directed Turing to file opposition papers on Impax's preliminary injunction application on May 16, with Impax to file reply papers on May 17 and the hearing on the preliminary injunction set for May 18.

The HHR team worked around the clock for the next five days to prepare Turing's opposition papers. After nearly two hours of oral argument, the Court agreed with HHR that Impax was not entitled to a preliminary injunction because it had not demonstrated that it would suffer irreparable harm without one.

Judge Ramos noted that Turing had put forward sufficient evidence to establish that it could pay its share of the

rebate liability, and Impax had not presented evidence to the contrary. Moreover, Judge Ramos agreed that Impax's assertions regarding regulatory penalties it might suffer in the future were purely speculative and could not provide a basis for a preliminary injunction.

The victory earned headlines in Reuters and Law360.

The HHR team working on this matter includes Dan Weiner, Hagit Elul and Fara Tabatabai, with assistance from Diane Lifton, Ken Katz, Julia Zousmer and Kate Aufses. Weiner argued Turing's position before the Court.

## **Related People**



**Daniel H. Weiner**



**Hagit Muriel Elul**



**Fara Tabatabai**



**Diane E. Lifton**



**Kenneth M. Katz**