

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ANDROGEL ANTITRUST  
LITIGATION (NO. II)

MDL DOCKET NO. 2084  
ALL CASES

1:09-MD-2084-TWT

ROCHESTER DRUG  
CO-OPERATIVE INC., on behalf of  
itself and all others similarly situated,

Plaintiff,

v.

CIVIL ACTION FILE  
NO. 1:09-CV-956-TWT

UNIMED PHARMACEUTICALS  
INC., et al.,

Defendants.

ORDER

This is a Multidistrict Litigation proceeding involving antitrust actions that are consolidated for pretrial proceedings. On February 22, 2010, the Court dismissed all claims except the sham litigation claims asserted by the Direct Purchasers. [MDL Doc. 50]. Defendants Par Pharmaceutical Companies, Inc. and Paddock Laboratories, Inc. now move for clarification to determine whether any sham litigation claim by the Direct Purchasers against the generic manufacturers remains.

In Schering-Plough Corp. v. F.T.C., 402 F.3d 1056 (11th Cir. 2005) , the Eleventh Circuit seemed to indicate that reverse payment patent infringement settlements may restrain trade if they are made in the context of sham litigation. See id. at 1068. Here, the Direct Purchasers alleged that the patent infringement litigation was a sham and that the generic Defendants knew or should have known that Solvay would not succeed on the merits. (Sec. Am. Compl. ¶ 107.) These allegations, coupled with the allegation in Count I that the generic Defendants conspired to restrain trade, are sufficient to survive the Defendants' Motions to Dismiss. Therefore, the Direct Purchasers' claim that the generic Defendants restrained or conspired to restrain trade by entering into settlements of the sham litigation in exchange for a portion of Solvay's monopoly profits remains.

SO ORDERED, this 16 day of September, 2010.

/s/Thomas W. Thrash  
THOMAS W. THRASH, JR.  
United States District Judge