

## Jury Hands AstraZeneca Win In Nexium Pay-For-Delay Case

By **Melissa Lipman**

*Law360, New York (December 05, 2014, 2:29 PM ET)* -- A Massachusetts federal jury sided with defendants AstraZeneca PLC and Ranbaxy Inc. in the first pay-for-delay class action trial since the U.S. Supreme Court agreed the patent settlements could face antitrust scrutiny, finding that AstraZeneca would never have allowed a generic Nexium to launch before its medicine patents expired.

After a six-week trial and less than two days of deliberations, an 11-person jury rejected claims made by two groups of Nexium buyers that AstraZeneca's Hatch Waxman Act settlement with Ranbaxy Inc. harmed competition. The plaintiffs had argued that AstraZeneca sought to hold on to billions of dollars in profits on Nexium by inking settlements with Ranbaxy and other generic-drug makers.

Because it was the first to begin seeking U.S. Food and Drug Administration approval for its generic, Ranbaxy and its settlement with AstraZeneca are at the case's core.

Even though U.S. District Judge William G. Young held as a matter of law that Ranbaxy could never have entered the market before its May 27, 2014, settlement date because of broader problems with a key production plant, Ranbaxy's role as the bottleneck still could have delayed other generics' entry, under the plaintiffs' theory.

The plaintiffs alleged that were it not for the entry date in the Ranbaxy deal — which they said results from AstraZeneca's valuable promise not to compete with Ranbaxy during its exclusivity period through an authorized generic — Ranbaxy and Teva Pharmaceutical Industries Ltd. would have each negotiated settlements with earlier entry dates. The two generics makers would then have eventually inked a deal to let Teva around Ranbaxy's exclusivity, according to the plaintiffs.

The jury agreed with the plaintiffs that AstraZeneca had market power with Nexium and that the Ranbaxy settlement amounted to a "large and unjustified" payment, a requirement the Supreme Court laid out in its 2013 ruling allowing antitrust challenges over pay-for-delay deals.

The jury also found that the anticompetitive harms of the deal outweighed its benefits under the rule-of-reason analysis. But the jurors concluded that AstraZeneca never would have granted Ranbaxy and Teva an earlier entry date even without the alleged reverse payment.

In his closing arguments AstraZeneca lawyer Dane Butswinkas of Williams & Connolly LLP told the jury that his client already gave the generics makers early entry — May 2014 marked the end of the

medicine patents for the drug, but AstraZeneca contends other patents would have still protected Nexium until 2018 — and would never have allowed any generics to launch before those medicine patents expired.

AstraZeneca applauded the verdict in a statement Friday, saying it had "always maintained that the plaintiffs' allegations were without merit."

Ranbaxy attorney Lisa Jose Fales of Venable LLP said, "The Venable team and Ranbaxy are gratified that our jury system worked effectively."

Attorneys for the plaintiffs — a class of drug stores and other direct purchasers and a class of consumers and other indirect purchasers — were not immediately available for comment Friday.

Ranbaxy is represented by J. Douglas Baldridge, Lisa Jose Fales, Danielle R. Foley and Sarah Choi of Venable LLP, and Leslie F. Su of Minerva Law PC.

AstraZeneca is represented by Dane H. Butswinkas and John E. Schmidlein of Williams & Connolly LLP, and William A. Zucker and Michael P. Kelly of McCarter & English LLP.

The direct-purchaser plaintiffs are represented by Hagens Berman Sobol Shapiro LLP, Berger & Montague PC and Garwin Gerstein & Fisher LLP.

The end-payor plaintiffs are represented by Berman DeValerio, Hilliard & Shadowen LLC, Pomerantz LLP, Wexler Wallace LLP, and Cohen Milstein Sellers & Toll PLLC.

The case is In re: Nexium (Esomeprazole Magnesium) Antitrust Litigation, case number 1:12-md-02409, in the U.S. District Court for the District of Massachusetts.

--Editing by Patricia K. Cole.