

## 7th Circ. Ends Insurer's RICO Suit In Testosterone MDL

By **Mike Curley**

*Law360 (November 13, 2019, 2:04 PM EST)* -- The Seventh Circuit has refused to give an Ohio insurer another shot at its claims that pharmaceutical companies enticed it into paying for unnecessary prescriptions by misrepresenting the safety of testosterone replacement drugs, ruling that no reasonable jury could find the insurer was affected by allegedly misleading statements.

In a brief order filed Tuesday, a three-judge panel ended a Racketeer Influenced and Corrupt Organizations Act suit brought by Medical Mutual of Ohio against AbbVie Inc. and other makers of testosterone replacement drugs, backing the Northern District of Illinois' summary judgment ruling against the insurer.

The appellate court said that it agreed with the assessment of the lower court, which "addressed at length" whether or not Medical Mutual was harmed by improper statements made directly to it or its pharmacy benefits manager, and found that they couldn't have relied on those statements when making policy.

In addition, whether Medical Mutual was indirectly affected by statements made to physicians or patients doesn't support the insurer's RICO claims under Seventh Circuit precedent for causation, the court said.

Medical Mutual first filed suit in 2014, claiming the pharmaceutical companies had pushed their testosterone drugs as a fountain of youth for aging men while downplaying the accompanying increased risk of heart attacks and other dangerous side effects. As a result, the company had been scammed into paying for thousands of medically unnecessary prescriptions, it said.

AbbVie, Abbott Laboratories, Actavis, Endo International PLC and Eli Lilly and Co. are named as defendants in the suit.

The claims stood out among thousands of suits over the testosterone drugs' alleged hidden risks — most of them brought by individuals — that are centralized in multidistrict litigation before U.S. District Judge Matthew Kennelly. But he granted the pharmaceutical companies' motions for **summary judgment** in February after finding the insurer hadn't shown it was deceived by false information they disseminated about the safety and efficacy of their testosterone products.

During June oral arguments, Medical Mutual urged the Seventh Circuit to revive its RICO suit against

AbbVie and other makers of testosterone replacement drugs.

But last week, U.S. Circuit Judge Amy Coney Barrett questioned Medical Mutual on why it waited until July 2016 to take steps to limit which testosterone replacement drugs the insurer would cover, two years after the U.S. Food and Drug Administration flagged potential cardiovascular risks associated with the drugs.

Attorneys for Medical Mutual declined to comment.

Representatives for the pharmaceutical companies could not immediately be reached for comment Wednesday.

Judges Frank H. Easterbrook, Daniel A. Manion and Amy Coney Barrett sat on the panel for the Seventh Circuit.

Medical Mutual is represented by W. Scott Simmer and Catherine H. Dorsey of Baron & Budd PC.

AbbVie and Abbott Laboratories are represented by William F. Cavanaugh Jr. and Jonah M. Knobler of Patterson Belknap Webb & Tyler LLP.

Actavis is represented by James W. Matthews, Katy E. Koski and David B. Goroff of Foley & Lardner LLP.

Endo is represented by Robert J. Katerberg and Andrew K. Solow of Arnold & Porter.

Eli Lilly is represented by David E. Stanley and Lisa M. Baird of Reed Smith LLP.

The case is Medical Mutual of Ohio v. AbbVie Inc. et al., case number 19-1500, in the U.S. Court of Appeals for the Seventh Circuit.

--Additional reporting by Diana Novak Jones and Celeste Bott. Editing by Orlando Lorenzo.