



Adam Mortara (left), who represents Big Pharma, grapples with the likes of Richard Ruzich, who represents generics.

LAW PRACTICE

PICK A SIDE

IN BRAND-NAME VS. GENERIC DRUG WAR, FIRMS MUST CHOOSE **By Rachel M. Zahorsky**

While conflict checks and client waivers are a way of life at large multipractice law firms, asking for a waiver from a pharmaceutical client could make you persona non grata in an instant.

The legal battles between generic and brand-name drug companies are akin to the legendary back-country feud between the Hatfields and the McCoys, says Duane Morris partner Richard T. Ruzich, who in 2008 founded the firm's Hatch-Waxman IP practice group that specializes in representing generic pharmaceutical companies.

"It is very rare to get those waivers for unrelated conflicts," Ruzich says, "because for these companies, this litigation is their lifeblood."

This reality can be particularly painful for firm partners with long-term clients in practice areas that may someday end up opposing Chicago-based Ruzich and his team. At Duane Morris, the Hatch-Waxman group is a top revenue generator, and the firm's partners agreed from the outset not to pursue work for brand companies across all practices to preserve the integrity of the group.

In some instances that meant shedding existing clients, adds Kerry B. McTigue, co-chair of the firm's Hatch-Waxman group. "There are some firms that still try to straddle the fence, but that is becoming increasingly rare."

PRESSURE TO FILE FIRST

Consolidation within the pharmaceutical industry has reduced the number of clients while adding to the competitive pressure.

The Drug Price Competition and Patent Term Restoration Act (informally known as the Hatch-Waxman

Act after its congressional sponsors), governs when would-be marketers of generic drugs can seek FDA approval of the generic. It also grants 180-day market exclusivity to "first-to-file" companies against holders of the patents for branded counterparts. It's an enormous coup potentially worth millions (and sometimes billions) to the generic marketer that files first as that company can corner the market practically overnight.

"When generics launch, they full-on flood all channels with the product," says Adam K. Mortara, a Chicago-based partner at Bartlit Beck Herman Palenchar & Scott who exclusively represents brand-name companies in Hatch-Waxman litigation.

The asymmetry in hiring practices of outside counsel between brand and generics also affects law firms' decisions to ban all work for the opposing side. Brands often hire outside counsel before the generics challenge the drug patent in question. It isn't uncommon for filings against a brand client by multiple generics to be spaced out by years.

"Nobody wants to get one year into litigation and then be faced with a client conflict of direct adversity and have to go hat in hand to long-term clients to ask for a waiver," Mortara says. "I wouldn't even think about it."

And although many large-brand companies also have their own generic offshoots, that doesn't erase the litigation line in the sand.

"Those companies with both a branded and a generic business would be happy to use one firm for both types of cases if it were a realistic option," Mortara says. "But that is not a realistic option." ■