

UNITED STATES DISTRICT COURT DISTRICT OF MARYLAND

CHAMBERS OF
George Jarrod Hazel
UNITED STATES DISTRICT JUDGE

6500 Cherrywood Lane Greenbelt, MD 20770 (301) 344-0637

September 5, 2014

RE: Hospira Inc., et al. v. Sylvia Mathews Burwell, et al. GJH-14-02662

LETTER ORDER

Dear Counsel:

At the request of the parties, the Court held a telephone conference call at approximately 5:15 p.m. today to announce its rulings on pending cross-motions and discuss a request to stay its ruling. Midway through the call, the Court realized that arrangements to record the call had not been made. Given the Court's and the parties' continued desire to expedite these proceedings, the Court proceeded with the call without recording. The Court summarizes its rulings herein.

During the call, the Court announced its final Order to the parties. ECF No. 123. Plaintiff Hospira, Inc. ("Hospira") moved for a stay of the denial of the preliminary injunction pending appeal under Federal Rule of Civil Procedure 62(c). Under Rule 62(c), "[w]hile an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." In the Fourth Circuit, a party seeking a stay of an injunction pending appeal must show: "(1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay." *St. Agnes Hosp. of City of Balt., Inc. v. Riddick*, 751 F.Supp. 75, 76 (D. Md. 1990) (*citing Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970)).

Hospira argued that it has a likelihood of success on appeal given that this case raised serious and difficult issues. Hospira noted that this Court previously granted a temporary restraining order in favor of Hospira, which demonstrates that it has a chance of success on appeal. Hospira also argued that it would suffer irreparable harm if generic versions of its branded drug, Precedex®, were permitted to go back on the market. Hospira contended that the harm to Defendant FDA is non-existent, and Defendant-Intervenors Mylan Institutional, LLC ("Mylan") and Par Sterile Products, LLC ("Par Sterile") already benefitted by putting some of

their products on the market and should not further benefit until this case is finally resolved on appeal. Plaintiff-Intervenor Sandoz, Inc. ("Sandoz") argued that it would also be significantly harmed because its right to be the exclusive generic on the market beginning January 2015 would be lost.

As stated on the call, the Court agrees that this case presents complicated issues. However, the Court is not satisfied that Hospira will suffer irreparable harm absent a stay. In finding irreparable harm for purpose of the temporary restraining order, the Court relied heavily on the fact that 98.4% of Hospira's U.S. branded sales are of Precedex® but has since learned this is a relatively small portion of its overall company. However, Defendant-Intervenors Mylan and Par Sterile would suffer continued harm if they were forced to continue to turn away customers. Finally, the public interest would not be served by a stay as consumers benefit from safe and effective generic products on the market. Taken together, the relevant four factors weigh against granting a stay of the Court's denial of Hospira's motion for preliminary injunction. Hospira's motion for a stay of the Court's Order is DENIED.

Although informal, this is an Order of the Court and shall be docketed as such.

Sincerely,

/S/ George Jarrod Hazel United States District Judge