JALBCA

JUDGES AND LAWYERS BREAST CANCER ALERT

Vol. 16 No. 2 | Editor: Martha L. Golar, Esq. | April 2012

ANNUAL INSTALLATION DINNER AND AWARDS PRESENTATION

DATE: **Monday, May 7, 2012**

TIME: **6:00 pm Cocktails**
7:00 pm Dinner

PLACE: **583 Park Avenue**
New York, NY

Honoring

HON. GAIL PRUDENTI
with the *Leadership Achievement Award*

and

SULLIVAN & CROMWELL, LLP
with the *Maite Aquino Memorial Grant Award*

Installing Co-Presidents

HON. JENNIFER G. SCHECTER

and

EDWARD S. KORNREICH, ESQ.

JALBCA Relaunches Breast Cancer Telephone Hotline

Lawyers, judges, law students, and other members of the legal community with questions or concerns about breast cancer now have a new resource: the ReLaunched JALBCA Breast Cancer Hotline. Call the SHARE Breast Cancer Hotline and ask to be referred to JALBCA: 212-382-2111

Available around the clock, the confidential Hotline, staffed by SHARE, will refer all callers from the legal community to a JALBCA survivor with the personal and professional experience to speak to callers about their concerns.

Since 1992, JALBCA has been dedicated to mobilizing the legal community of the New York City metropolitan area in the fight against breast cancer. Comprised of jurists and lawyers, JALBCA develops and implements programs to educate the legal community about medical research, treatment, legislation, ethical concerns, and financial and insurance issues of critical importance to breast cancer patients and their families. JALBCA also funds scan vans to provide life saving mammograms to those who cannot afford them.

Soy Consumption and Breast Cancer

The safety of soy food consumption for breast cancer survivors has been uncertain for years. A large new study – published in the December 9, 2011 issue of *JAMA* – found that eating soy foods did not increase the risk of cancer recurrence or death for this population. The study was presented at the American Association for Cancer Research (AACR) annual meeting in Orlando, Florida. The association between soy food intake and breast cancer outcomes was studied by researchers in the U.S. and China, using data from the After Breast Cancer Pooling Project, a multi-institution collaborative study, with the lead investigator being Xiao Ou Shu, professor of medicine, Vanderbilt-Ingram Cancer Center.

The basis for the concern has been that soy foods are rich in isoflavones that are known to bind to estrogen receptors in cells and have estrogen-like and anti-estrogenic effects. Patients with estrogen receptor positive tumors may be treated with the estrogen-blocking drug tamoxifen, which also binds to estrogen receptors. The concern has been that soy isoflavones might increase the risk of cancer recurrence by compromising the effect of tamoxifen given that they are both competing to bind with estrogen receptors.

To address these concerns, the investigators pooled data from three prospective cohorts of breast cancer patients: Life After Cancer Epidemiology (LACE); Women's Healthy Eating and Living Study (WHEL), both in the United States; and the Shanghai Breast Cancer Survival Study (SBCSS) in Shanghai, China. The study included 9,515 breast cancer patients who answered questionnaires as to their eating habits. The two major soy products that were common across all studies were tofu and soy milk. The average daily soy isoflavones intake among U.S. women was 3.2 mg; the intake was much higher in the Shanghai group, 45.9 mg. The average follow-up time was approximately 7.4 years after diagnosis. The associations of soy food intake with mortality and recurrence were observed for women with either ER-positive or ER-negative breast cancer. The association between soy food intake and overall mortality did not appear to vary by menopausal status. The public is cautioned against taking these study results relating to this soy food intake and generalizing them directly to soy supplements. This is because the latter may differ from soy foods in both the type and amount of isoflavones and soy capsules often contain only soy isoflavones while soy foods contain other nutrients (e.g., folate, protein protease inhibitors, calcium and fiber). The public should not infer that the isoflavones alone provide the same benefits.

The study was supported by grants from the U.S. Department of Defense Breast Cancer Research Program and the National Cancer Institute.

Medical Product Shortages

According to an October 2011 Food and Drug Administration (FDA) report, *A Review of FDA's Approach to Medical Product Shortages*, drug shortages have increased in frequency and severity in recent years and adversely affected patient care. For purposes of the FDA report, a "drug shortage" is defined as a shortage specifically pertaining to human drugs (specifically, "a situation in which the total supply of all clinically interchangeable versions of an FDA-regulated drug is inadequate to meet the current or projected demand at the patient level") whereas "medical product shortages" refers to all shortages, including human drugs, biologics (including vaccines), medical devices, and veterinary drugs. The number of annual drug shortages has tripled from 61 in 2005 to 178 in 2010. Most of those shortages – 80% – involved injection drugs including oncology drugs (28%), antibiotics (13%), and electrolyte/nutrition drugs (11%).

In analyzing the underlying economic factors that lead to periods of prescription drug shortages, the FDA report found that growth in demand occurred while the capacity of manufacturing facilities has remained stable. The primary reasons for shortages reported to the FDA were problems at the manufacturing facility, delays in manufacturing or shipping, and active pharmaceutical ingredient shortages. The manufacturing quality problems that resulted in shortages included such things as glass shards, metal filings, and fungal or other contaminants in products meant for injection into patients. Even though the majority of the active pharmaceutical ingredients are produced abroad and imported into the U.S., the manufacturing problems with shortages are mostly being detected in domestic facilities in which the final product is assembled.

Drug shortages also can lead to hoarding and price-gouging. A report from the House Committee on Oversight and Government Reforms pointed to a leukemia drug typically priced at $12 per vial being sold for $990 per vial. A White House press release claims that a Premier healthcare alliance report released in August 2011 estimated that the typical gray market vendor marks up prices by an averaged 650 percent.

Under the federal Food, Drug, and Cosmetic Act (FDCA), the FDA does not have the legal authority to require companies to continue manufacturing medications that are in short supply. However, manufacturers of certain drugs are required to provide advance notice to the FDA of a discontinuance in manufacture under section 506C of the FDCA (21 U.S.C. 356c) and in the implementing section of the CFR (21 C.F.R. 314.81(b)(3)(iii)). Sole-source manufacturers of certain drugs that are life-supporting, life-sustaining, or intended for use in the prevention of a debilitating disease or condition must notify the FDA at least six months prior to the date of discontinuation of the manufacture of such drugs. The advance notice provision in this section does not include explicit enforcement authority. And, many products are not the subject of the advance notice requirement, so that, for example, the reporting requirement does not apply to shortages of most products regulated by the Center for Biologics Evaluation and Research (e.g., allergenics, blood and blood products, gene therapies, cellular products, and vaccines) and those therapeutic biologics regulated by the Center for Drug Evaluation and Research (CDER) (e.g., monoclonal antibodies and therapeutic proteins), all devices, and all veterinary medications. The advance notice provision applies to products approved under a New Drug Application or an ANDA. The CDER estimates that it works on 30-40 ongoing medical product shortages at any point in time.

Manufacturers are not required to report information, such as reasons for shortages or the expected duration of shortages. However, many companies voluntarily provide shortage information that the FDA posts on its website. Shortage notifications and updates may be reported to the FDA at drugshortages@fda.hhs.gov.

Once the FDA is notified of an existing shortage, it has multiple options to prevent or mitigate the drug shortage. In the shortages studied, the FDA's three most common actions were as follows:

1) Asking other firms to increase production (31%);
2) Working with manufacturers to identi-

fy ways to mitigate quality issues, i.e., flexibility through regulatory discretion (28%); and
3) Expediting review of regulatory submissions (26%).

In another 5% of cases - indicative of its rarity - the FDA has exercised regulatory discretion regarding controlled importation of similar products approved abroad but not approved in the United States. (See below, regarding temporary importation for a shortage of Doxil.)

On October 31, 2011, President Obama signed an Executive Order directing the FDA to take action to help further prevent and reduce prescription drug shortages, protect consumers and prevent price gouging. The President's order directs the FDA to broaden reporting of potential shortages of certain prescription drugs and to further expedite regulatory reviews that can help prevent or respond to shortages. The FDA also was ordered to work with the Department of Justice, which will examine whether potential shortages have led to illegal price-gouging or stockpiling of life-saving medications. Additionally, the Administration announced its support for bipartisan legislation that would require all prescription drug shortages to be reported to the FDA and would give the FDA new authority to enforce these requirements – H.R. 2245 and S. 296, known as the "Preserving Access to Life-Saving Medications Act of 2011".

Industry Response

The Generic Pharmaceutical Association (GPhA), on December 15, 2011, announced a proposal to minimize drug shortages by enhancing communications between stakeholders in the generic drug area. They named it the Accelerated Recovery Initiative, a voluntary initiative that calls for manufacturers, wholesalers, group purchasing organizations and the FDA to collaborate to provide a better understanding of current and impending drug shortages.

The Accelerated Recovery Initiative calls for an independent third party that would track supply information for products deemed critical and identify probable shortages, focusing on products where a shortage is expected to last more than 90 days. Initially the "critical" criteria would mean a focus on generic injectable products. It would create a "high-level SWAT team" within the FDA, encompassing separate agency departments that could quickly respond to critical shortages. The program would be voluntary and would not address drug pricing information.

GPhA represents the manufacturers and distributors of finished generic pharmaceuticals, manufacturers and distributors of bulk pharmaceutical chemicals, and suppliers of other goods and services to the generic industry. Generic pharmaceuticals fill 78 percent of the prescriptions dispensed in the U.S. but consume just 25 percent of the total drug spending. Some would stress the importance of GPhA because shortages tend to happen as the products become genericized.

The GPhA initiative would require prior approval of the Federal Trade Commission and Department of Health and Human Services.

Subsequent Administration Action

On February 21, 2012, the FDA announced a series of steps to increase the supply of critically needed cancer drugs and build on President Obama's Executive Order. In response to the critical shortage of the cancer drug Doxil (doxorubicin hydrochloride liposome injection) and rapidly declining supplies of methotrexate, the FDA took these steps: for Doxil, the FDA announced there will be temporary importation of a replacement drug, Lipodox (from Sun Pharma of India). For methotrexate, the FDA approved a new manufacturer of preservative-free formulation of methotrexate. FDA expedited review of the application to help address this potential shortage.

Doxil is used in multiple treatment regimens, including treatment of ovarian cancer after failure of platinum-based chemotherapy. The drug is also indicated for use in AIDS-related Kaposi's sarcoma and multiple myeloma.

With regard to methotrexate, a drug that is needed for the treatment of many forms of cancer and other serious diseases, the FDA has successfully engaged many firms to assist in maintaining supplies to meet all patient needs. Preservative-free methotrexate is needed for the intrathecal (injection into the fluid surrounding the brain and spinal cord) treatment of children with acute lymphocytic leukemia and for the high-dose therapy of osteosarcoma. The genesis of the problem with the supply of methotrexate was that the largest manufacturer, Bedford/Ben Venue, voluntarily closed its plant.

Also, in response to the October 2011 Executive Order on prescription drug shortages, the FDA issued draft guidance to industry on detailed requirements for both mandatory and voluntary notifications to the agency of issues that could result in a drug shortage or supply disruption. This apparently did result in a substantial increase in the industry's voluntary notifications. In 2011, there were a total of 195 drug shortages prevented. Since the Executive Order, the FDA claims to have prevented 114 drug shortages.

Supreme Court Rules on Biotechnology Patents

A unanimous Supreme Court in Mayo Collaborative Services vs. Prometheus, 566 U.S., 2012 US LEXIS 2316 (March 20, 2012), held that the patent issued to Prometheus Labs was invalid because it covered a law of nature, not an innovative new process. Prometheus (a unit of Switzerland-based Nestle) had patented a blood test that helps doctors determine the proper dosage for a drug, thiopurine, to treat autoimmune illnesses. The Mayo Clinic had challenged the patent, which is keeping it from marketing its own test. The Court concluded that "the steps in the claimed processes (apart from the natural laws themselves) involve well-understood, routine conventional activity previously engaged in by researchers in the field" (Slip op. 4), and "that the patent claims at issue here effectively claim the underlying laws of nature themselves." (Slip op. 24).

Many believe that the decision will have a profound effect on personalized medicine because it will make it more difficult for diagnostic-test makers to claim that their new products are patent-eligible. Industry opponents of the ruling argue that this will stifle medical research because companies will not pursue new research and development if they are not incentivized with the availability of patent protection. Supporters argue that the ruling will be helpful in health care because it will enable physicians and other health care providers to offer and use tailored diagnostic tests to benefit patients. Over the past two decades, thousands of patents were issued for diagnostic tests, and these could be impacted by the Court's ruling. One such test was the subject of prior JALBCA Newsletter articles, i.e., Myriad Genetics' test for breast-cancer risk using information about the BRCA1 and BRCA2 genes, and a JALBCA Symposium. On March 26, 2012, the Supreme Court vacated the Myriad judgment and remanded it to the Second Circuit Court of Appeals for further consideration in light of the Prometheus case.

The Second Circuit Court of Appeals had ruled in favor of Prometheus – i.e., it backed the industry's patents. That court, perceived as being favorable to patent owners, has been reversed several times in recent years by the Supreme Court.

CALENDAR/CONTACTS

ADELPHI NY STATEWIDE BREAST CANCER
Hotline & Support Program
Adelphi University School
of Social Work
Garden City, NY 11530
www.breastcancerhotline@adelphi.edu

CancerCare
275 Seventh Avenue
New York, NY 10001
www.cancercare.org
1.800.813.HOPE (4673)

ELLEN's RUN
200 West End Avenue, Suite 12G
New York, NY 10023
www.ellensrun.org
212.840.0916

MEMORIAL SLOAN KETTERING CANCER CENTER
Post-Treatment Resource Program
Educational Forums
215 E. 68th St., Ground Fl.
New York, NY 10021
www.mskcc.org
212.717.3527

Bendheim Integrative Medicine Center
1429 First Avenue (at 74th Street)
New York, NY

SHARE *(Self-Help for Women with Breast or Ovarian Cancer)*
1501 Broadway, Ste. 704A
New York, NY
www.sharecancersupport.org
212.719.0364
Speak to a survivor toll-free:
1.866.891.2392

TO LIFE!
410 Kenwood Avenue
Delmar, NY 12054
518.439.5975

110 Spring Street
Saratoga Springs, NY 12866
518.587.3820
www.tolife.org

YOUNG SURVIVAL COALITION
61 Broadway
New York, NY
www.youngsurvival.org
646.257.3025

— SAVE THE DATE —
17th Annual Ellen's Run
August 19, 2012 • 9 a.m.
Parrish Memorial Hall
Southampton Hospital, Southampton, NY.

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