

Suit claims stores gave generic drugs against orders

By VAL WALTON
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A lawsuit filed on behalf of Alabama residents contends Wal-Mart Stores Inc., CVS Caremark Corp., Rite-Aid Corp. and Walgreen Co. Inc., illegally fill prescriptions for brand name drugs with generic drugs without the prescribing doctors' permission.

Jefferson County District Attorney Arthur Green, the district attorney for the Bessemer Division who filed the suit, asked that the suit be-

come class-action for district attorneys across the state and for Alabama residents.

Court documents entered in U.S. District Court at Birmingham on Monday show the drugstore companies are asking that the suit be moved to the federal court from Jefferson County Circuit Court.

The documents say the companies are seeking the move because, among other reasons, the claims of a

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potential class could exceed \$5 million based on the allegations. The plaintiff's lawyers said they plan to file a motion to keep the suit in state courts.

The drugstore companies deny the allegations.

The suit centers on the contention that Alabama law prohibits pharmacists from filling a "Dispense As Written" prescription with generic drugs instead of brand name without physician approval.

The suit said generic drugs are not approved or certified for use in the same manner as brand name medications and may vary in absorption and blood level kinetics.

"Plaintiff Class members did not receive the medications prescribed to them by their physicians and in that they paid for medications that were not prescribed to them by their physicians," the suit said.

W. Lee Gresham III, a Birmingham attorney who filed the suit with lawyer Clay Hornsby on behalf of Green, said many customers are not aware of the law. Pharmacists often inform customers the co-pay on generic drugs is cheaper, Gresham said.

"That's not what our Legislature has required of our pharmacists," Gresham said.

The suit says doctor approval is not needed, however, when filling brand name with generic if "Product Selec-

tion Permitted" is indicated on the prescription.

Efforts to reach Green were unsuccessful Monday. The suit said there are about 4.5 million Alabama residents, many of whom could be class members, and there are 42 district attorneys believed to have residents in their circuits who are members of the plaintiff class. The time period for the suit is from Sept. 14, 2004 through Sept. 14, 2008, documents show.

Efforts to reach attorneys for Wal-Mart were unsuccessful Monday.

Michael Polzin, a Walgreen spokesman, said the company denies the allegations and will vigorously contest them.

"Our policy is to follow the law when providing generic medication to our patients," Polzin said.

Rite-Aid denied the allegations in an answer filed Monday in response to the lawsuit. Charles Ferguson Jr., an attorney for CVS Caremark, said the company will file an answer denying the claims. He declined further comment.

The suit seeks penalties of up to \$1,000 for every violation under the state pharmacy statute and penalties of up to \$2,000 for every violation under the Alabama Deceptive Trade Practices Act to be paid upon judgment to the state treasurer. The suit contends the companies use of the generic brands is driven by profit and a dispensing fee from health insurance carriers based on the percentage of generic drugs filled. The suit also seeks to have the businesses' licenses suspended or revoked.

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