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Henrietta Lacks' Family Still Seeks Justice For 'Immortal' Cells

By Dan McKay

Law360 (September 17, 2024, 5:06 PM EDT) -- Seven decades have passed since a doctor at a Baltimore hospital took, without permission, a sample of cells from a Black woman suffering from cervical cancer. While the durable strain of human cells known as "HeLa" has fueled a handful of lawsuits against drug companies accused of profiting from stolen genetic material, more are likely on the way.



A photo of Henrietta Lacks, sits in the living room of her grandson, Ron Lacks, 57, in Baltimore, Maryland, in 2017. (Photo by Jonathan Newton/The Washington Post via Getty Images)

But attorneys for the family of Henrietta Lacks family see more targets on the horizon as they pursue what they say is long overdue justice for the medical racism that allowed others to profit while Lacks' family had no say over the use of her living cells, much less compensation.

"There are definitely more targets out there," Christopher L. Ayers, an attorney for the family and a partner at Seeger Weiss LLP, said in a recent interview. "We anticipate filing additional lawsuits against other pharmaceutical defendants that have unjustly enriched themselves from use of Henrietta Lacks' cells, and our team is still investigating those potential targets and their business practices."

The expectation of more suits comes after Ron L. Lacks, Henrietta's grandson and personal representative of her estate, **sued** Thermo Fisher Scientific, Ultragenyx, Novartis and Viartis in Maryland federal court.

He has filed three suits – Novartis and Viatrix are named in the same complaint – since 2021.

The family reached an **undisclosed settlement** with Thermo Fisher last year.

Cases against the other companies are pending, and the Lacks estate won a crucial victory earlier this year when it defeated a motion to dismiss the Ultragenyx suit.

The litigation is entering a critical stage that could determine whether the Lacks family failed to start the litigation in time.

Maryland law has a three-year statute of limitations, but it bars out-of-state companies from using the statute as a defense if they aren't registered with the secretary of state's office to do business in the state.

Ultragenyx, a California company that specializes in developing treatments for rare and ultrarare diseases, contends the prohibition violates the commerce clause of the U.S. Constitution by discriminating against out-of-state corporations.

The company asked a Maryland federal judge this summer to allow the statute-of-limitations defense and dismiss Ron Lacks' suit for having been filed too late.

Earlier this month, Maryland Attorney General Anthony Brown sought to intervene to defend the constitutionality of the law, and Lacks likewise urged the judge to reject Ultragenyx's argument. U.S. District Judge Deborah L. Boardman later agreed to allow the AG to participate to defend the state statute.

The court's summary judgment decision could shape future challenges beyond the Ultragenyx case. Drugmakers and others are watching the outcome closely.

"The original Lacks lawsuit was groundbreaking, and I think these follow-on lawsuits are as well," said Caprice L. Roberts, a law professor at Louisiana State University.

They have forced corporations to at least consider what responsibility they might bear if they're benefiting from someone else's long-ago illegal act, she said.

"Anyone in this industry or related industries that might be utilizing things that were gained in an earlier way that was itself wrongful or unsavory," she said. "They need to think about that provenance."

'Incalculable' Scientific Impact

In 1951, a surgeon in Baltimore, Maryland, cut tissue samples from Henrietta Lacks, a Black woman, without her knowledge or consent – genetic material that became the foundation of an immortal human cell line still used in research today.

Lacks, then 30 years old, was at Johns Hopkins Hospital to receive treatment for cervical cancer. But white doctors there had been preying on Black women, collecting tissue samples without their permission for medical research, according to the **Lacks estate**.

As Lacks lay under anesthesia for cancer treatment, a doctor cut out two pieces of her cervix, even though it wasn't medically necessary, according to her family's lawsuits. She died of cervical cancer about eight months later.

Lacks' genetic material helped lead to a medical breakthrough: Her cells had rare properties that allowed them to reproduce indefinitely in laboratory conditions.

The so-called "HeLa" line of cells was shared broadly with researchers, playing a role in the polio vaccine and other scientific advances.

"Henrietta Lacks' contributions to medicine are incalculable," Judge Boardman said earlier this year as she **rejected the motion** to dismiss the Ultragenyx suit.

The family began its litigation in recent years, Ayers said, as public awareness grew of the injustices inflicted on Henrietta Lacks and other Black patients. And HeLa cells have only grown more valuable amid

recent advances in biotechnology.

"The family just feels that now is the time to seek accountability and justice after decades of being ignored by the medical establishment," Ayers told Law360.

Debate Over Unjust Enrichment

Whether the challenges will result in liability for drugmakers is unclear.

But Roberts, the LSU professor and expert in remedies law, said the Lacks case is an appropriate vehicle for an unjust enrichment claim.

Even if a pharmaceutical company wasn't the one that originally harmed Lacks by removing her tissue without consent, it still could face liability under the right circumstances, said Roberts, who has co-authored amicus briefs in the litigation focused on the law of unjust enrichment.

It's clear, she said, that the allegations in the complaints she's reviewed are sufficient to survive a motion to dismiss.

The facts alleged in the litigation "constitute an appropriate use of unjust enrichment," she said. "And it should lead to a remedy on those facts, if they are proven."

Ultragenyx, for its part, contends the Lacks family sued the wrong defendant. They say Johns Hopkins scientists gave the cells out for free all over the world, and the family didn't initiate legal action for decades – too late to sue the company.

Furthermore, Ultragenyx maintains it has never sold a consumer product made from HeLa cells, accordings to its legal filings.

Ayers said the case is about more than just money. It highlights the legacy of racial injustice in medical research, he said, and the family deserves some say over how Henrietta Lacks' genetic material is used.

"While Mrs. Lacks' estate is very proud of the good that has been done and the monumental breakthroughs that were made possible by the use of her cells," he said, "the way she was treated and the commercialization for profit of her living tissue has been deplorable – without her consent, without her family's consent, without any compensation."

A spokesperson for Novartis, a defendant in one of the suits, said the company "cannot comment on this matter because it is ongoing litigation." A counsel for Ultragenyx declined to comment.

Ultragenyx is set to file a reply in support of its motion for judgment on the pleadings on October 11.

In the Ultragenyx case, the Lacks estate is represented by Kim Parker of the Law Office of Kin Parker PA and Christopher A. Seeger, Christopher L. Ayers, Nigel P. Halliday and Hillary Fidler of Seeger Weiss LLP, and Ben Crump and Nabeha Shaer of Ben Crump Law PLLC.

Ultragenyx is represented by Tonya Kelly Cronin of Baker Donelson Bearman Caldwell & Berkowitz PC, Andrew T. George of Bourelly George + Brodey PLLC, and Nadira Clarke and JoAnn Tamila Sagar of Hogan Lovells US LLP.

The suit is Ron L. Lacks v. Ultragenyx Pharmaceutical Inc., case number 1:23-cv-02171, in the U.S. District Court for the District of Maryland.

–Additional reporting by Lauren Berg and Elliot Weld