

Lab Supplier Says Wrong Co. Sued Over Faulty COVID Tests

By Jeannie O'Sullivan

Law360 (April 8, 2021, 3:43 PM EDT) -- Thermo Fisher Scientific Inc. urged a New Jersey federal court to toss TruGenX's \$1.5 million complaint over purportedly faulty COVID-19 testing supplies, arguing that the molecular laboratory is suing the wrong supplier.

In a motion to dismiss Wednesday, Thermo Fisher claimed that it never entered into any contracts to provide supplies to TruGenX for coronavirus testing, despite it being named as a defendant in TruGenX's lawsuit seeking reimbursement for equipment that allegedly caused inaccurate testing results during the height of the pandemic.

"Notwithstanding those allegations, the documents constituting the contracts demonstrate plaintiff entered into numerous sales transactions constituting individual contracts with Fisher HealthCare or other independent affiliates of Thermo Fisher Scientific Inc., and NOT Thermo Fisher Scientific Inc. itself," the dismissal motion said.

Thermo Fisher went on to tout the "impressive quality record" of the products at issue in the complaint and accused TruGenX of trying to dodge the more than \$3.75 million it owes for the supplies.

The supplier also alleged that TruGenX failed to identify the specific transactions at the heart of its breach of contract claims, saying its fraud claims should be tossed because they're duplicative of the breach claims.

The complaint "must be dismissed for a plethora of reasons," the motion said.

The Lyndhurst, New Jersey-based TruGenX is seeking punitive damages, along with attorney fees and court costs.

The company launched **its suit** in February, blaming Massachusetts-based Thermo Fisher's purportedly faulty supplies for generating false and invalid COVID-19 test results. TruGenX claimed that Thermo Fisher repeatedly promised to investigate and resolve the issues, only to keep charging TruGenX and ultimately blame the company for the unsolved problems when TruGenX sought reimbursement for the products.

The products at issue were the subject of a U.S. Food and Drug Administration product alert warning about false coronavirus test results, according to the complaint. TruGenX also claimed that a testing kit and related software were recalled by a Thermo Fisher subsidiary.

TruGenX said Thermo Fisher executives actually admitted to negligence regarding the testing equipment and promised to contact the lab with the results of an internal investigation, but never did.

The complaint includes breach of contract, breach of express warranty, fraud and negligent misrepresentation claims.

Representatives for the parties declined to comment on the motion.

Gene Tox Worldwide LLC is represented by Frank X. Wukovits and John W. Leardi of Buttaci Leardi & Werner LLC.

Thermo Fisher is represented by Christopher R. Carton of Bowman and Brooke LLP.

The case is Gene Tox Worldwide LLC d/b/a TruGenX v. Thermo Fisher Scientific Inc., case no. 2:21-cv-02854, in the U.S. District Court for the District of New Jersey.

--Editing by Steven Edelstone.