Pharma: Consumer Groups, States Support Reviving Generic Drugs Antitrust Case Against AbbVie

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Pro-consumer organizations — Consumer Action and U.S. Public Interest Research Group — and 20 states have filed *amicus curiae* briefs with the Seventh Circuit U.S. Court of Appeals in support of consumers who allege AbbVie Inc.’s anticompetitive conduct delayed the entry of generic drugs to market. The company’s conduct forced consumers and health systems to pay higher prices for AbbVie’s Humira, a biologic drug used to treat rheumatoid arthritis.

The case is on appeal from a June dismissal of the complaint in the Northern District of Illinois. The consumer groups are concerned that a “growing number of anti-biosimilar strategies employed in the pharmaceutical industry” are driving up costs and killing competition. They argue that AbbVie’s “pay for delay” or “reverse settlement” tactics helped make Humira one of the most profitable drugs in the world.

The consumer groups further argue that “[M]ost of Humira’s U.S. patents were set to expire in 2016, but AbbVie engaged in a patent thicket strategy that allowed the company to prolong its Humira monopoly for years beyond what Congress intended. And while biosimilar manufacturers challenged AbbVie’s patent estate, they all eventually agreed to delay their entry into the U.S. market until 2023 in exchange for entering the European market much sooner.”

A one-year supply of the drug is $72,000 in the U.S., the groups say, while it is discounted as much as 80% in Europe where biosimilars are “competing without barriers.”

The states argue that the district court’s analysis of a key precedent — FTC v. Actavis — was flawed. The lower court held that agreements granting market entry before a patent expires are automatically immune from antitrust scrutiny. “This directly contradicts the Supreme Court’s teaching that patent settlements enjoy no presumption of legality,” the states argue.

If affirmed, the decision will “embolden anticompetitive practices in the pharmaceutical industry and hamstring antitrust enforcers,” they say.

The brief was filed on behalf of Washington, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Mexico, New York, North Carolina, Oregon, Rhode Island, Virginia, and Wisconsin.

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