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WLF Asks High Court to Rein in Abusive Civil-RICO Suits

(Takeda Pharmaceutical Co. v. Painters Fund)

“The reflexive use of RICO by civil litigants in garden-variety consumer disputes does violence to the law’s purpose and unduly burdens our civil justice system.”

—Cory Andrews, WLF Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to review, and ultimately to overturn, a decision by the U.S. Court of Appeals for the Ninth Circuit that opens the door to abusive civil suits under the Racketeer Influenced and Corrupt Organizations Act (RICO). In its *amicus* brief in *Takeda Pharmaceutical Co. v. Painters & Allied Trades District Council 82 Health Care Fund*, WLF argues that the Ninth Circuit’s decision allowing the suit to proceed contravenes Supreme Court precedent by “virtually eliminating the case-or-controversy and proximate-cause requirements as meaningful checks on spurious RICO claims.”

The case arises from a civil-RICO suit by a third-party payer and others to recover treble their prescription costs for Actos, an FDA-approved diabetes drug. The plaintiffs do not allege any personal injury from Actos; nor do they claim that Actos failed to satisfactorily treat diabetes. Instead they contend that, due to Takeda’s alleged fraud, the FDA failed for a time to warn doctors of an increased risk of bladder cancer for certain Actos users. Had the true facts been known sooner, the plaintiffs claim, doctors would have written fewer Actos prescriptions and the plaintiffs would have incurred fewer costs for Actos.

In its brief urging certiorari, WLF argues that the plaintiffs cannot satisfy RICO’s proximate-cause element because they lack a direct relationship with the defendants. Any costs incurred by the plaintiffs, WLF contends, hinged on the intervening actions of doctors and pharmacy benefit managers. WLF’s brief also argues that the plaintiffs fail to allege a legally cognizable injury in fact under Article III. The individual plaintiffs, for example, admit to taking Actos as prescribed, receiving the bargained-for benefit, and suffering no ill effects. They lack the kind of real-world injury needed to have standing to sue. WLF goes on to explain why a civil-RICO action in which a plaintiff need not show actual harm or proximate cause would be a calamity.

Celebrating its 43rd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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