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## WLF Urges Seventh Circuit to Promote Pharmaceutical Innovation

*(UFCW Local 1500 Welfare Fund v. AbbVie)*

**“Global patent settlements ‘increase consumer welfare—the goal of antitrust law. They do so while encouraging continued innovation—the goal of patent law.’”**

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief urging the U.S. Court of Appeals for the Seventh Circuit to safeguard innovation in the pharmaceutical industry. Rejecting the plaintiffs’ novel antitrust claims, the U.S. District Court for the Northern District of Illinois held that (1) global patent settlements do not violate Section 1 of the Sherman Act and (2) asserting valid patent claims does not violate Section 2 of the Sherman Act. WLF’s brief urges affirming that decision.

The appeal arises from a lawsuit against AbbVie and several biosimilar manufacturers. AbbVie sued the biosimilar manufacturers in the U.S. and Europe for infringing its Humira patents. The parties’ settlements allowed the biosimilar manufacturers to enter the market before AbbVie’s patents expired. They could enter the European market in 2018 and the U.S. market in 2023. The plaintiffs claim this constituted an illegal reverse payment under *Actavis*. They also claim that AbbVie engaged in monopolization by asserting its patent portfolio against the biosimilar manufacturers.

As WLF’s brief shows, a cash (or cash-equivalent) payment to a biosimilar manufacturer is needed to trigger antitrust scrutiny under *Actavis*. Two courts have persuasively explained why *Actavis* requires this rule. From a policy perspective, global patent settlements “increase consumer welfare—the goal of antitrust law. They do so while encouraging continued innovation—the goal of patent law.

The brief also warns of the effects adopting plaintiffs’ Section 2 theory would have. Imposing antitrust liability for enforcing valid patents would stifle innovation. WLF therefore urges the Seventh Circuit to promote innovation by affirming the District Court’s decision.

*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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