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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

## In Victory for WLF, Second Circuit Rejects FTC's Flawed Reasoning in Antitrust Case

*(In re Bystolic Antitrust Litigation)*

**“The FTC continues to advance legal arguments that the Supreme Court rejected over a decade ago. The Second Circuit rightly rebuffed those arguments again.”**

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—The U.S. Court of Appeals for the Second Circuit today reaffirmed that plaintiffs must plead the existence of a large and unjustified reverse payment to state a claim under *FTC v. Actavis*. This outcome was a victory for Washington Legal Foundation, which filed an amicus curiae brief urging the Second Circuit to affirm a decision by the U.S. District Court for the Southern District of New York dismissing the plaintiffs' baseless claims.

The case arose from a settlement between Forest Pharmaceuticals and generic drug companies, who agreed to drop their challenges to a Bystolic patent and to delay launching competing generic versions of Bystolic. A group of direct purchasers, indirect purchasers, and retail drug stores sued, alleging that these agreements violate the antitrust laws. The District Court granted the defendants' motion to dismiss, finding that the operative complaint failed to state a claim under *Actavis*. The plaintiffs appealed, and the FTC filed an amicus brief supporting their position.

The Second Circuit's opinion clarifies what plaintiffs must plead to survive a motion to dismiss a complaint alleging that reverse payments are antitrust violations after *Actavis*. The opinion rejected the FTC's position that virtually any conclusory allegations are enough to proceed to discovery. As the Second Circuit correctly held, *Actavis* rejected the very arguments FTC advanced in its brief. The Second Circuit also held that the FTC's interpretation of Federal Rule of Civil Procedure 12 was wrong.

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