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WLF Urges Ninth Circuit to Save Foundational Antitrust Principles ***(SIS v. Intuitive Surgical Inc.)***

“The district court saw the wolf under the wool of the plaintiff’s case and dispatched it. The Ninth Circuit should do the same.”

— Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit to uphold a lower court decision that found an antitrust complaint woefully insufficient.

The case arises from an antitrust claim Surgical Instrument Service Company (SIS) brought against Intuitive Surgical Inc. Intuitive makes top-of-the-line surgical robots. SIS does not compete in that space. Rather, it cracks Intuitive’s products so that they work beyond FDA-approved limits. In fashioning its complaint as an antitrust claim, SIS alleged that Intuitive’s refusal to allow this unauthorized use is an illegal “tie.” Tying typically occurs when a producer offers two items in a single sale. But as WLF’s brief explains, SIS isn’t alleging that—and that’s just the beginning of its bespoke and unfounded theory of liability.

Among other things, SIS claims that Intuitive has a “single-brand market” in its own products—a highly disfavored claim in antitrust law. WLF’s brief argues that adopting SIS’s theories would work real harm for antitrust jurisprudence and the economy by choking off innovation and inviting lawfare. As the brief says, “Nobody—not SIS, the FTC, amicus, or this Court—can know what life-saving, productivity-enhancing, or efficiency-maximizing goods, deals, or services will be strangled by expanding the coercive reach of antitrust on single-brand tie-ins.”

Celebrating its 48th 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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