Press Release

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WLF Urges Fourth Circuit to Reject Antitrust Theory That Would Punish Inadvertent Patent Acquisitions

(*CareFirst of Maryland, Inc. v. Johnson & Johnson*)

"Section 2 does not impose liability for accidental acquisitions of market power."

— Jay DeSanto, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Fourth Circuit to affirm a lower court's rejection of a monopoly claim challenging Johnson & Johnson's inadvertent acquisition of four patents that it did not know about when it bought another company. WLF argues that Section 2 of the Sherman Act imposes liability for willful aggrandizement of market power, not market power acquired through happenstance.

The case arises from J&J's 2020 acquisition of biotech company Momenta for its investigational drug "Imaavy." As part of the transaction, J&J acquired Momenta's portfolio of more than 500 patents. J&J discovered years later that four of those patents covered a manufacturing process that a competitor planned to use for a biosimilar version of "Stelara," a J&J prescription drug wholly unrelated to Imaavy. After J&J asserted the four patents in litigation, CareFirst sued, alleging that J&J's acquisition of those patents years earlier constituted unlawful monopolization of the Stelara market.

In its amicus brief, WLF argues that CareFirst's theory conflicts with Supreme Court and Fourth Circuit precedent distinguishing between the willful acquisition of monopoly power and market power obtained through serendipity. It contends that imposing liability without proof that J&J knew of the patents' competitive significance at the time of acquisition would improperly convert Section 2 into a strict-liability offense. It also warns that CareFirst's theory would undermine the federal merger-review process and chill M&A activity in the pharmaceutical industry, which could discourage innovation.

Celebrating its 49th 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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