



FOR IMMEDIATE RELEASE

December 21, 2017

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

WLF Urges Supreme Court to Overturn Decision That Prevents Settlement of Drug Patent Lawsuits

(Pfizer, Inc. v. Rite Aid Corp.)

“Settling lawsuits ought to be encouraged because it is more economically efficient than trials and saves judicial resources. Yet, the appeals court’s misguided application of antitrust law in this case will render it virtually impossible to settle drug patent litigation.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today called on the U.S. Supreme Court to review and overturn a decision by the U.S. Court of Appeals for the Third Circuit that requires exacting antitrust scrutiny for virtually any agreement between a brand-name drug company and a generic drug company to settle patent-infringement litigation. In a brief filed in *Pfizer, Inc. v. Rite Aid Corp.*, WLF argues that the appeals court decision expands antitrust law dramatically and makes it almost impossible for litigants to settle drug-patent disputes. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

As a reward for developing a new prescription drug, federal patent law grants a brand-name drug company the exclusive right to market the drug for several years. When the patent term expires, generic drug companies are permitted to produce copycat versions of the drug, and retail prices drop sharply. If a generic company initiates litigation and wins a judgment declaring the patent invalid, it can enter the market immediately—under conditions likely to produce significant profits. The parties often end up settling their patent dispute, with generic companies agreeing to drop their patent invalidity claim in return for some consideration.

The U.S. Supreme Court’s 2013 decision in *FTC v. Actavis* held that a patent-litigation settlement is subject to antitrust scrutiny if the settlement includes a large and unexplained cash payment from the brand-name company to the generic company. It held such payments may be an indication that the brand-name company is unreasonably restraining trade by paying a potential competitor to stay out of the market. The Third Circuit dramatically expanded that ruling by holding that *any* benefit provided by the brand-name company (even an agreement to compromise a damages claim asserted in pending litigation) triggers antitrust scrutiny. WLF argues that the appeals court’s decision conflicts with *Actavis* and will make it virtually impossible for parties to settle drug patent disputes.

Celebrating its 40th year as America’s premier public-interest law firm and policy center, WLF advocates for free-market principles, limited government, individual liberty, and the rule of law.

###