Press Release

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WLF Asks Seventh Circuit to Reject New Liability Theory that Would Drive Up Prescription Drug Costs

(Dolin v. GlaxoSmithKline LLC)

"Innovator liability marks a radical and unsound departure from traditional principles of tort law. If adopted by the Seventh Circuit, the theory would dramatically increase healthcare costs and devastate not only innovator drug makers but manufacturers in other industries as well."
—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation yesterday urged the U.S. Court of Appeals for the Seventh Circuit to reject a novel theory of liability that would hold pharmaceutical manufacturers liable for injuries caused by drugs they neither manufactured nor sold.

The case arises from a suit by Wendy Dolin, who alleges that her husband's 2010 suicide was caused by ingesting paroxetine, a selective serotonin reuptake inhibitor (SSRI) widely used to treat depression and anxiety. Although from 1992 to 2014 GlaxoSmithKline (GSK) manufactured and marketed a branded version of paroxetine named Paxil, it is undisputed that Mr. Dolin never took Paxil. Instead, he took only a generic version of paroxetine manufactured by Mylan Pharmaceuticals, a generic competitor of GSK. Nonetheless, simply because federal law requires paroxetine's generic label to be identical to that of Paxil, Ms. Dolin now seeks to hold GSK liable in tort under Illinois law for injuries caused by its competitor's drug.

In a brief filed in *Dolin v. GlaxoSmithKline LLC*, WLF argues that the plaintiff's theory of liability marks a sharp and unwarranted break from longstanding principles of tort law by conflating the "foreseeability" of an injury with the existence of a legal duty in the first place. WLF also rebuts the plaintiffs' suggestion that federal preemption of certain state-law tort claims against generic drug manufacturers somehow justifies shifting the liability burden to the copied drug's original manufacturer.

Because pre-empting state tort liability for generic manufacturers is necessary to accomplish the policy objectives Congress wrote into federal law, WLF contends that state courts are in no position to second guess Congress's carefully calibrated regulatory regime for generic and branded drugs. Instead, WLF urges the court to reject the plaintiffs' call to alter the delicate policy balance that Congress has watchfully maintained for many decades.

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.

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