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WLF Implores Supreme Court to Put an End to Expansive Use of Civil RICO Claims

(GlaxoSmithKline LLC v. Allied Services Division Welfare Fund)

“The reflexive invocation of RICO by civil litigants engaged in garden-variety commercial disputes does violence to the statute’s original purpose and burdens our federal judicial system. RICO was enacted to fight organized crime, not to enrich the plaintiffs’ bar. The Supreme Court needs to step in and halt the abuse.”
—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 authorizes plaintiffs to sue for damages under the federal anti-racketeering statute, even when they lack a direct relationship with the defendant. In a brief filed in *GlaxoSmithKline LLC v. Allied Services Division Welfare Fund*, WLF argues that a plaintiff cannot demonstrate the requisite “proximate cause” under the statute if his theory of causation is too attenuated (*e.g.*, if any damages are dependent on the actions of intermediaries not under the defendant’s control).

The case involves an effort by several third-party health insurance payers (TPPs) to recover payments they made to their customers as reimbursement for the cost of Avandia, an FDA-approved drug prescribed to those customers by their doctors. The TPPs contend that GlaxoSmithKline fraudulently concealed medical studies indicating that using Avandia increased heart attack risk. Had the true facts been known, they say doctors would have written fewer Avandia prescriptions and thus the TPPs’ reimbursement expenses would have decreased. Importantly, the TPPs do not allege that any customers were injured as a result of using Avandia.

Congress adopted the Racketeer Influenced and Corrupt Organizations Act (RICO) as a tool to fight organized crime. WLF’s *amicus* brief argues that TPPs are attempting to expand RICO’s scope well beyond anything envisioned by Congress. The TPPs cannot satisfy RICO’s proximate-cause requirement because they lack a direct relationship with the drug manufacturer. The brief contends that any damages suffered by the TPPs depended on the independent actions of doctors, who may or may not have relied on the manufacturer’s alleged misrepresentations when they chose to prescribe Avandia for their patients suffering from diabetes.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “The reflexive invocation of RICO by civil litigants engaged in garden-variety commercial disputes does violence to the statute’s original purpose and burdens our federal judicial system. RICO was enacted to fight organized crime, not to enrich the plaintiffs’ bar. The Supreme Court needs to step in and halt the abuse.”

WLF is a free-market, public-interest law firm and policy center that devotes substantial resources to advocating for limited government and fighting the scourge of excessive litigation.