

Supreme Court's Drug-Patent Antitrust Ruling Analyzed by Wiley Rein's James Czaban, Brian Pandya and Christin Helms

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The U.S. Supreme Court's recent major ruling that certain drug-patent settlements are subject to antitrust scrutiny was analyzed by Wiley Rein attorneys in an article published in *Bloomberg BNA's Pharmaceutical Law and Industry Report*, and several other *Bloomberg BNA* publications. The analysis of *FTC v. Actavis* was written by James N. Czaban, who chairs the firm's Food & Drug Law Practice, Brian H. Pandya, a partner in the Intellectual Property and Litigation Practices, and Christin C. Helms, an associate in the Food & Drug Law Practice.

The case stemmed from the U.S. Federal Trade Commission's (FTC) challenge to patent settlement agreements under the Hatch-Waxman Amendments in which a brand-name drug company pays a generic-drug maker to drop its patent challenge and keep its competing version off the market for a specified time period. Ruling in the FTC's favor, the Supreme Court said on June 17 that these arrangements are subject to judicial antitrust scrutiny.

The Court's decision "will be a major topic of discussion, concern and future litigation for years to come," Mr. Czaban, Mr. Pandya and Ms. Helms said in their article, titled "Reverse Payments After *FTC v. Actavis*: Supreme Court Unsettles Hatch-Waxman Patent Settlements."

"Companies operating under existing reverse payment agreements must prepare for the strong possibility that they will be subject to either an FTC enforcement action, a private class action lawsuit, or in many cases both," the authors wrote.

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The ruling also “raised multiple new questions while providing little in the way of concrete rules for the lower courts to use in what will likely be a blizzard of new antitrust cases,” according to the article.

The *Bloomberg BNA* article by Mr. Czaban, Mr. Pandya and Ms. Helms, with valuable assistance from Summer Associate Claire Frezza.