



Arkansas Carpenters Health and Welfare Fund v. Bayer AG, 625 F.3d 779 (2nd Cir. 2010)

Topics Covered: Patents

Outcome: Unfavorable

Issue

The issue in this case was whether generic drug manufacturers could, under the antitrust laws, enter into exclusion payment agreements with companies that hold drug patents.

AMA Interest

The AMA believes that patents should not be used to hinder the development of improved medical treatment.

Case Summary

Under “exclusion payment” (or “pay for delay”) agreements, patent holders pay generic manufacturers not to challenge their patents’ validity. As a result, the introduction of generic medications is delayed.

In this case, Bayer AG, which held the patent on ciproflaxin hydrochloride, paid Barr Laboratories, a generic drug manufacturer, not to challenge its patent. A number of unions and drug stores sued to challenge the validity of the exclusion payment agreement under the antitrust laws.

A panel of the Second Circuit questioned whether it was sound public policy or consistent with Congressional intent to honor such exclusion payment agreements, but it found itself bound by existing precedent to do so. The plaintiffs petitioned for rehearing *en banc*, in order to change the court’s established precedent. However, the petition for rehearing was denied.

AMA Involvement

The AMA, along with the AARP, filed an *amicus curiae* brief in support of the rehearing petition.

United States Court of Appeals for the Second Circuit brief