



Pay-to-Delay Settlements in the Wake of Actavis: Current, Former FTC Officials Offer Answers

Tuesday, Oct. 15, 2013 • 10:00 a.m. - 12:30 p.m. EDT

Agenda

10:00 a.m. – 10:15 a.m. **Introduction to the Virtual Conference by Chairperson Seth Silber, Partner, Wilson Sonsini Goodrich & Rosati; Former advisor to FTC commissioner (former chairman) Jon Leibowitz**

10:15 a.m. – 10:45 a.m. **What *FTC v. Actavis* Really Means for the Pharma Landscape**
On June 17, the Supreme Court, in a 5-3 decision, ruled for the FTC in its long-running battle with industry over pay-to-delay patent settlements. But the FTC didn't get all it asked for. In this presentation, noted attorney Jeff Brennan will detail what the *FTC v. Actavis* majority decision said — and what it didn't say — and whether the dissenting opinion can provide valuable legal strategies going forward.

Attendees will learn:

- What the five-judge majority focused on and what the determining factors were to their decision
- In light of the decision, cases must now be decided in the lower courts; how will the lower courts rule on pending cases and what the first case decided might be
- What you can glean from the dissenting opinion and the Court's refusal to allow presumptive illegality

Jeff Brennan, Partner, McDermott Will & Emery LLP; Former Head of FTC's Health Care Services and Products Division

10:45 a.m. – 11:15 a.m. **How to Structure Settlements to Minimize Risk of FTC Investigation and/or Private Plaintiff Suits**
In *Actavis* the Supreme Court stopped short of declaring reverse-payment arrangements presumptively illegal, but subjected them to further scrutiny subject to a “rule of reason” analysis. The FTC has said it will challenge more cases going forward. If you're currently involved in settlement talks or expect to be in the near future, what's your strategy? This presentation will teach attendees how to assess the risk of deals ending up in litigation and what factors the FTC is focusing on regarding future prosecutions.

Attendees will learn:

- What the *Actavis* decision means regarding options for settling Hatch-Waxman suits
- The importance of size of payment and size of market to evaluating risk of antitrust litigation
- Which “side deals” will face greatest scrutiny by the FTC
- The likelihood of challenge to “no-authorized generic” settlements in the wake of *Actavis*

Seth Silber, Partner, Wilson Sonsini Goodrich & Rosati; Former Advisor to FTC Commissioner (former chairman) Jon Leibowitz

11:15 a.m. – 11:30 a.m.

Break

11:30 a.m. – 12:00 p.m.

The Past is the Present – FTC Actions on Pay-to-Delay in the Post-*Actavis* World

The Federal Trade Commission has said that ending anticompetitive “pay- to-delay” agreements in the pharmaceutical industry is one of the agency’s top priorities. With the recent *Actavis* decision, the FTC can now investigate and prosecute deals that don’t measure up to the Supreme Court’s five-factor framework. In this presentation, the FTC’s point person for pharmaceutical and medical device antitrust issues, Markus Meier, will explain the FTC’s position regarding past, present and future deals.

Attendees will learn:

- How the FTC is re-examining agreements previously filed with the commission to determine whether they merit further investigation in light of *Actavis*
- How the FTC is pursuing pay-to-delay matters currently in litigation and seeking appropriate relief for consumers
- How the FTC is monitoring private pay-to-delay litigations and leveraging its experience and expertise by filing amicus briefs where appropriate
- How the FTC is examining new agreements that companies file with the commission pursuant to the Medicare Modernization Act of 2003 (“MMA”) to determine whether they merit investigation

Markus Meier, Assistant Director, Health Care Division, Bureau of Competition, FTC

12:00 p.m. – 12:30 p.m.

Questions and Answers and Closing Comments