

Third Circuit Rules Reverse Payment Agreements Are Potentially Anticompetitive

Date: 07/27/12

On July 16, 2012, the United States Court of Appeals for the Third Circuit held that a "reverse payment" settlement agreement resolving an infringement claim brought by a pioneer drug manufacturer against a potential generic competitor could be anticompetitive and should be scrutinized under the "quick look" approach to rule of reason analysis. In "reverse payment" settlements, a patent holder pays the allegedly infringing generic drug company and the generic rival delays entering the market until a specified date. This avoids determination of whether the patent is invalid or would be infringed by the generic competitor. The Third Circuit's approach to "reverse payment" agreements is in stark contrast to the one taken by the Second, Eleventh and Federal Circuits that find such agreements are not prohibited by the antitrust laws, so long as competition is restrained only within the scope of the patent's coverage and there is no evidence that the patent was procured by fraud or that the underlying suit was a sham. The Third Circuit's opinion creates a clear circuit split and makes it more likely that this issue will be taken up by the Supreme Court.