IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UFCW LOCAL 1500 WELFARE FUND, *ET AL.*,
Plaintiffs-Appellants,

v.

ABBVIE, INC., *ET AL.*,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois
No. 1:19-cv-01873
Hon. Manish S. Shah

BRIEF OF AMICUS CURIAE THE FEDERAL TRADE COMMISSION IN SUPPORT OF NO PARTY

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INTRODUCTION AND SUMMARY

Generic drug competition saves consumers hundreds of billions of dollars each year. To encourage such competition, Congress has established mechanisms to enable generic manufacturers to challenge patents associated with a brand-name drug. But antitrust problems can arise when parties settle these patent disputes with the patentee paying its would-be competitor to drop its challenge and stay off the market. These agreements are known as "reverse-payment" settlements because "a party with no claim for damages … walks away with money simply so it will stay away from the patentee's market." *FTC v. Actavis, Inc.*, 570 U.S. 136, 152 (2013). The antitrust concern with these settlements is that the brand manufacturer and its potential competitors may have agreed to preserve and share the brand's monopoly profits rather than compete. The drugmakers come out ahead, but consumers suffer because they are forced to continue paying higher, non-competitive prices.

In *Actavis*, the Supreme Court held that reverse-payment settlements create a "risk of significant anticompetitive effects" and must be analyzed under the antitrust rule of reason. *Id.* at 158-59. The potential anticompetitive harm from this type of agreement is that the payment "prevent[s] the risk of competition" and may allow the parties to "maintain supracompetitive prices to be shared among the patentee and the challenger rather than face what might have been a competitive market." *Id.* at 157.

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