

APRx Wins Again as CVS Fails to Keep RICO Suit Out of Court

Ruling Strengthens Position in Landmark Suit

The 5th U.S. Circuit Court of Appeals has rejected CVS-Caremark's appeal of an earlier federal court ruling that most of American Pharmacies' RICO lawsuit against CVS must be heard in open court.

The ruling today (February 11) by the three-judge panel means the lawsuit can proceed on the merits of the case.

In April 2012, U.S. Judge John Rainey overruled the objections of CVS Caremark to a ruling that keeps most of APRx's Racketeer Influenced & Corrupt Organizations lawsuit out of arbitration and in open court before a jury. **CVS Caremark had asked to send the entire case against it and its subsidiaries to arbitration to keep the suit out of the public eye, but Judge Rainey ruled that the plaintiffs' claims against CVS Pharmacy and parent company CVS Caremark should be heard in open court**, while claims against Caremark LLC, a subsidiary, should be heard in arbitration.

Last Wednesday (Feb. 6), a panel of three federal judges for the 5th Circuit heard CVS Caremark's appeal of the ruling. Miguel S. Rodriguez, APRx lead attorney on the lawsuit, argued against CVS Caremark's appeal.

"We are pleased that the Court of Appeals affirmed the lower court rulings and we look forward to proving the merits of our claims in an open trial," said Rodriguez, a partner at the Austin law firm of **Taylor Dunham LLP**.

The class-action suit was filed in September 2010 by six APRx board members on behalf of all non-CVS pharmacies. **The lawsuit alleges that CVS Caremark violates the firewall between the retail pharmacy and the PBM entities as required by the Federal Trade Commission when it approved the CVS-Caremark merger in 2007.** Instead, the suit alleges, the company built an information technology platform that straddles all of CVS Caremark's business segments, capturing in-depth patient data for marketing and other purposes in violation of HIPAA patient privacy laws.

American Pharmacies President Mike Gohlke said there is a lot of hard work behind the ruling and a lot of credit to be distributed for APRx's success so far.

"The courage of our plaintiffs and the outstanding work of our legal team made this great day possible for independent pharmacy," Gohlke said. "We all eagerly await our day in court to argue the merits of our case."

Gohlke also extended thanks to the APRx Board and membership and to other group purchasing organizations for their financial support and constant encouragement.

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APRx is proud to be the **PROVEN LEADER** of legislative, legal and regulatory action to defend independent pharmacy. **But we can't do it alone. Our lawsuits are critical to protect your business model, but they are costly and we need your help. Please support our efforts by contributing to the APRx Legal Defense Fund.**

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