

News & Announcements

Weil Secures Three Decisive Wins in Two Business Days for United Therapeutics in RICO Actions

March 27, 2024

A Weil team led by Complex Commercial Litigation Co-Head [Drew Tulumello](#) secured a series of major victories for long-time client United Therapeutics Corporation (UT), earning three dismissals with prejudice in three separate RICO cases brought against the company in the span of just two business days. The suits faced by UT are part of a trend in which numerous pharmaceutical manufacturers have been hit with RICO lawsuits brought by health insurers on a theory that the manufacturers failed to comply with federal law in connection with alleged donations to charities that provided copayment assistance to patients with certain conditions. As a result, these suits allege that health insurers are forced to cover claims by patients that were not reimburseable and inflated the price of medications.

On Friday, March 22, Weil won a dismissal from Chief Magistrate Judge Edwin G. Torres in the United States District Court for the Southern District of Florida in a RICO/antitrust class action brought by MSP Recovery Claims, LLC. MSP had filed RICO and antitrust claims against UT based on assignment agreements it had allegedly received from various health insurers. Judge Torres dismissed these claims for the second time, holding that MSP had failed to plead the requisite proximate cause to support its RICO claims where physicians' independent decisions to prescribe the medications break the chain of causation and had failed to allege a cognizable RICO injury suffered by the assignors. This case has been pending since July of 2020, and was originally filed in Massachusetts, but Drew's team persuaded the original court to transfer the case to Florida, which has favorable law on these issues.

The very next business day, on Monday, March 26, the Weil team secured two additional dismissals in RICO cases brought by insurers Humana and United Healthcare, two giants in the managed care space. Weil's briefing persuaded Judge Deborah L. Boardman in the U.S. District Court for the District of Maryland to dismiss both cases with prejudice based in part on an argument that the Weil team had helped pioneer in these copayment assistance cases. Pointing to the indirect purchaser rule established in antitrust law, Drew and team argued that the same rule applied to RICO actions because RICO's civil-action provision is modeled on those of the federal antitrust statutes. Because Humana and UHC were not direct purchasers of therapies from UT, they lacked statutory standing to bring RICO claims. Judge Boardman agreed, observing that the Fourth Circuit had signaled that the indirect purchaser rule is incorporated into RICO and that other circuits and district courts had reached the same conclusion. Like Judge Torres a day earlier, Judge Boardman also held that Humana and United Healthcare had failed to plead proximate cause, which was an independent basis of dismissal. Judge Boardman's strong endorsement of these principles may protect life science and biotech companies from future suits by big third-party payors.

The Weil team was led by Complex Commercial Litigation Co-Head [Drew Tulumello](#) and Complex Commercial Litigation partner [Luna Barrington](#), and included counsel [Aaron Curtis](#) and associates [Jason Kleinwaks](#), [Sydney Hargrove](#), [Krystal Delauney](#), [Camilla Brandfield-Harvey](#) and [Sebastian Laguna](#).

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