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APRx Wins Again as CVS-Caremark Loses Appeal in RICO Lawsuit

CORPUS CHRISTI — Texas-based American Pharmacies (APRx) yesterday moved one step closer to an open court trial in its landmark 2010 lawsuit against CVS Caremark that alleges RICO violations and trade secret misappropriation (RICO = Racketeer Influenced & Corrupt Organizations Act). **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 February 11 ruling by the three-judge panel means the lawsuit will now proceed on the merits of the case. CVS Caremark has continuously sought to send the entire case against it and its subsidiaries to arbitration to keep the suit out of the public eye.

The class-action suit was filed in September 2010 by six APRx board members on behalf of all non-CVS pharmacies. The plaintiffs are: Rogers Pharmacy in Victoria, TX; Brookshire Bros. Pharmacy in Kirbyville, TX; Hometown Pharmacy in Fairfield, TX; Hibbs Pharmacy in Bay City, TX; Kinsey's Pharmacy in Tyler, TX; and De La Rosa Pharmacy in Weslaco, TX. **The lawsuit is financially supported by American Pharmacies.**

The lawsuit alleges that CVS Caremark violates the firewall between its retail pharmacies and PBM as required by the Federal Trade Commission when it approved the merger in 2007. Instead, the lawsuit alleges, the combined 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. **About 20 pharmacy and consumer organizations have filed amicus curiae ("friend of the court") briefs with the court in support of the plaintiffs, and to oppose arbitration of the case. APRx has also received almost \$150,000 in supporting contributions to its Legal Defense Fund.**

The relief the plaintiff pharmacies seek on behalf of all non-CVS pharmacies includes:

1. That CVS Caremark refrain from violating patient privacy rights; and
2. That CVS Caremark refrain from using a pharmacy's own patient information against the pharmacy that supplied it (they allege that CVS Caremark uses this information to obtain new customers and to scout and acquire new pharmacy locations).

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On February 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.

APRx 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.

American Pharmacies is a multi-state member-owned buying cooperative for independent pharmacies that is based in Corpus Christi. Founded in 2002, APRx is a leading political and legal advocate for members in Texas, Arkansas, Louisiana, New Mexico and Oklahoma. The cooperative has also defended fair pharmacy competition and patient rights in a July 2011 lawsuit against the U.S. Department of Health & Human Services over anti-competitive pharmacy provider networks.

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