



802 N. Carancahua Street, Suite 1830 ▪ Corpus Christi, TX 78401 ▪ 877-634-5445 ▪ [www.aprx.org](http://www.aprx.org)

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## **U.S. Judge Denies CVS-Caremark Arbitration Bid in APRx Lawsuit**

CORPUS CHRISTI — Texas-based American Pharmacies (APRx) has earned its first victory in its landmark 2010 lawsuit against CVS Caremark that alleges RICO violations and trade secret misappropriation (RICO = Racketeer Influenced & Corrupt Organizations Act). This week, **U.S. Magistrate Judge Nancy Johnson denied CVS Caremark's motion to compel arbitration in the case** and held that the plaintiffs' claims against CVS Pharmacy and parent company CVS Caremark should be heard in open court. According to Judge Johnson, only the claims against Caremark LLC, a subsidiary, should be heard in arbitration. 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.

**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. **In June, 16 pharmacy and consumer organizations 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 plaintiff pharmacies seek the following relief on behalf of all non-CVS pharmacies:**

1. That CVS Caremark refrain from violating patient privacy rights;
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); and
3. That the court enforce **Texas' Any Willing Provider law** — which requires that the state's pharmacy networks be open to any willing provider — and prohibit CVS Caremark from restricting patients' choice of pharmacy.

**MORE**

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, Oklahoma, Missouri, Mississippi and Tennessee. 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.

-- 30 --

**FOR INFORMATION, COMMENTS OR INTERVIEWS, PLEASE CONTACT APRx GENERAL COUNSEL AMANDA GOHLKE FIELDS AT 361-887-4882 or [afields@aprx.org](mailto:afields@aprx.org).**