

OnPoint

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## Urging Supreme Court Review of Antitrust Challenges to Patent Settlements Between Pharmaceutical Companies

Dechert LLP submitted an [amicus brief](#) to the Supreme Court of the United States on behalf of the Washington Legal Foundation urging the Court to review the Third Circuit's decision in *In re K-Dur Antitrust Litigation*. *K-Dur* holds that reverse-payment settlement agreements between brand-name and generic drug manufacturers are presumptively unlawful under the antitrust laws. The legality of reverse-payment settlements is an issue of national significance, closely watched by the pharmaceutical industry and the Federal Trade Commission, which has long sought the position adopted by the Third Circuit. The Third Circuit's decision goes against the weight of appellate authority and creates an intolerable circuit split, making the issue ripe for Supreme Court review.

The amicus brief, drafted by Dechert partner [Steven G. Bradbury](#) with the assistance of associate [Irene Ayzenberg-Lyman](#), argues:

- The Third Circuit's decision deprives pharmaceutical patent holders of important legal rights under the patent laws by substantially reducing their ability to settle with generic drug makers.
- *K-Dur* will affect the majority of patent holders because the FTC has vowed to bring—whenever possible—all of its “reverse payment” antitrust actions in the Third Circuit, and the majority of U.S. drug makers are based within the Third Circuit.
- The Third Circuit's decision creates an intolerable circuit split—the settlement agreements at issue in *K-Dur* had been reviewed by two courts of appeals under conflicting legal standards, leading to inconsistent results.
- If left unreviewed, the Third Circuit's decision will distort innovation in the drug industry and will reduce competition by dampening the incentives of generic drug makers to challenge pioneer patents and compete with brand-name drug manufacturers.

[Click here to read full amicus brief \(PDF\)](#).

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