

December 9, 2024

[WBA, CVS] SCOTUS Sides with Arkansas Law; For Now, Contract Pharmacies Have Upper Hand vs. Pharma

This morning, the Supreme Court (SCOTUS) afforded a win to state laws protecting the use of **contract retail, mail-order and specialty pharmacies (WBA, CVS, WMT, UNH, CI, RAD)** that are hired by 340B hospitals and clinics to dispense discounted medication in its denial of the biopharma industry's petition to hear the appeal of *PhRMA v. McClain*. By not granting cert to the legal challenge of a state prohibition on drug makers restricting 340B hospitals/clinics' contract pharmacies, SCOTUS affirmed the lower court rulings.

While we thought such an outcome was likely and would be a short-term positive for the 340B contract pharmacies, this court action is insufficient to end the ongoing scrutiny, additional legal challenges (primarily brought by drug makers) and legislative reform efforts of the federal 340B drug-discount program. [As we wrote last week](#), we expect the various concerns involving 340B to be addressed during the next administration and Congress, ultimately settling in a legislative compromise that provides a mixed bag for the industry stakeholders (**contract pharmacies, hospitals, and drug makers**).

PhRMA v. McClain questioned whether an Arkansas state law, similar to those enacted by other states, that bars biopharma manufacturers from imposing conditions on 340B contract pharmacies is preempted by federal law or is simply unconstitutional. The federal district court and 8th Circuit Court of Appeals unanimously sided with Arkansas. Specifically, the appellate court concluded that federal statute did not preempt the state law, which was enacted in 2021 in response to drug makers implementing distribution policies that limited or barred 340B hospitals and clinics from contracting with outside pharmacies for dispensing to patients the medicines acquired under the 340B drug discount program.

Without providing any color, SCOTUS merely rejected to hear PhRMA's appeal from the 8th Circuit ruling. While the other lawsuits challenging similar state laws in seven states (KS, LA, MD, MN, MS, MO, WV) may proceed, we suspect that this denial is likely to lead to drug makers to withdraw this type of attack on the 340B program and result in potentially more states enact similar laws. Yet, we doubt the biopharma industry (JNJ, LLY, BMY, UTHR, SNY, NVO) will take their ball and go home or the 340B attacks in general will cease.

Rather, 340B will remain in the legal crosshairs until Congress injects itself more forcefully into the debate. For now, biopharma manufacturers are likely to continue pursuing challenges against HHS. The first type of attack involves their ability to impose limits on contract pharmacies (likely in states where the above laws have not been enacted by the local legislature), especially as we wait for the long overdue release of the federal 7th Circuit Court of Appeals' decision to see if it is in concert with other appellate courts that previously sided with drug industry.

Beth Steindecker

202-935-0946

beth.steindecker@capitolpolicypartners.com

Walgreens Boots Alliance Inc (WBA)

Price:	\$8.92
52-Week High:	\$27.05
52-Week Low:	\$8.08

CVS Health Corp (CVS)

Price:	\$55.69
52-Week High:	\$83.25
52-Week Low:	\$52.71

Walmart Inc (WMT)

Price:	\$93.88
52-Week High:	\$96.18
52-Week Low:	\$49.85

UnitedHealth Group Incorporated (UNH)

Price:	\$549.72
52-Week High:	\$630.73
52-Week Low:	\$436.38

Cigna Corp (CI)

Price:	\$315.96
52-Week High:	\$370.83
52-Week Low:	\$288.88

Johnson & Johnson (JNJ)

Price:	\$150.48
52-Week High:	\$168.85
52-Week Low:	\$143.13

Eli Lilly and Company (LLY)

Price:	\$806.82
52-Week High:	\$972.53
52-Week Low:	\$561.65

The second type is more recent and seeks to cement the availability of drug makers to implement a rebate or cash-replenishment model on 340B hospitals and clinics, instead of an upfront discount model, to fulfill participation in the 340B program. Even if the incoming Trump administration were to advance a different stance than during its prior term or the Biden administration and is more favorable to the drug makers – such as allowing limits on 340B contract pharmacies and use of a rebate model on 340B entities – the courts would likely still get involved as we suspect 340B hospitals and clinics would sue.

DISCLOSURES AND DISCLAIMERS

Analyst Certification

The analyst, Capitol Policy Partners, primarily responsible for the preparation of this research report attests to the following: (1) that the views and opinions rendered in this research report reflect his or her personal views about the subject companies or issuers; and (2) that no part of the research analyst's compensation was, is, or will be directly related to the specific recommendations or views in this research report.

Analyst Certifications and Independence of Research.

Each of the Capitol Policy Partners analysts whose names appear on the front page of this report hereby certify that all the views expressed in this Report accurately reflect our personal views about any and all of the subject securities or issuers and that no part of our compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views of in this Report. Capitol Policy Partners (the "Company") is an independent equity research provider. The Company is not a member of the FINRA or the SIPC and is not a registered broker dealer or investment adviser. Capitol Policy Partners has no other regulated or unregulated business activities which conflict with its provision of independent research.

Limitation Of Research And Information.

This Report has been prepared for distribution to only qualified institutional or professional clients of Capitol Policy Partners. The contents of this Report represent the views, opinions, and analyses of its authors. The information contained herein does not constitute financial, legal, tax or any other advice. All third-party data presented herein were obtained from publicly available sources which are believed to be reliable; however, the Company makes no warranty, express or implied, concerning the accuracy or completeness of such information. In no event shall the Company be responsible or liable for the correctness of, or update to, any such material or for any damage or lost opportunities resulting from use of this data. Nothing contained in this Report or any distribution by the Company should be construed as any offer to sell, or any solicitation of an offer to buy, any security or investment. Any research or other material received should not be construed as individualized investment advice. Investment decisions should be made as part of an overall portfolio strategy and you should consult with a professional financial advisor, legal and tax advisor prior to making any investment decision. Capitol Policy Partners shall not be liable for any direct or indirect, incidental or consequential loss or damage (including loss of profits, revenue or goodwill) arising from any investment decisions based on information or research obtained from Capitol Policy Partners.

Reproduction And Distribution Strictly Prohibited.

No user of this Report may reproduce, modify, copy, distribute, sell, resell, transmit, transfer, license, assign or publish the Report itself or any information contained therein. Notwithstanding the foregoing, clients with access to working models are permitted to alter or modify the information contained therein, provided that it is solely for such client's own use. This Report is not intended to be available or distributed for any purpose that would be deemed unlawful or otherwise prohibited by any local, state, national or international laws or regulations or would otherwise subject the Company to registration or regulation of any kind within such jurisdiction.

Copyrights, Trademarks, Intellectual Property.

Capitol Policy Partners, and any logos or marks included in this Report are proprietary materials. The use of such terms and logos and marks without the express written consent of Capitol Policy Partners is strictly prohibited. The copyright in the pages or in the screens of the Report, and in the information and material therein, is proprietary material owned by Capitol Policy Partners unless otherwise indicated. The unauthorized use of any material on this Report may violate numerous statutes, regulations and laws, including, but not limited to, copyright, trademark, trade secret or patent laws.