

Fifth Circuit Affirms Summary Judgment for STB Client Express Scripts in Antitrust Case

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On April 22, 2009, the Court of Appeals for the Fifth Circuit affirmed summary judgment on behalf of STB client Express Scripts Inc. and two other pharmacy benefit managers in *Rx.com v. Medco*, an antitrust case. Pharmacy benefit managers ("PBMs") are third party administrators of prescription drug programs for health insurance plans, employers, unions, governmental entities, and others. The plaintiff in the case, Rx.com, an internet pharmacy, alleged that the PBM defendants conspired to prevent internet pharmacies, including Rx.com, from competing with Defendants' direct mail businesses.

After extensive discovery, the District Court (in Texarkana, Texas) granted summary judgment on the ground that Rx.com failed to file its claim within the applicable four-year statute of limitation and that neither the Defendant's fraudulent concealment nor the doctrine of equitable tolling was applicable. The Fifth Circuit affirmed, applying the rule that an antitrust plaintiff's cause of action accrues when the plaintiff discovers its injury and that Rx.com knew that it had been injured when the Defendants simultaneously denied Rx.com's request to participate in their pharmacy benefit networks. The STB lawyers who worked on this summary judgment motion and argument include Joe Wayland, Jayma Meyer and Chris Lucht. Ken Logan led the team before his retirement.

Team and Contacts

[Jayma Meyer](#)

Counsel

jmeyer@stblaw.com

[+1-212-455-3935](tel:+12124553935)



