UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

CareFirst of Maryland, Inc., et al. v. Johnson & Johnson and Janssen Biotech, Inc.

CareFirst · No. 2:23cv629 · Decided December 23, 2025

SUMMARY

The United States District Court for the Eastern District of Virginia addresses CareFirst's motion to exclude portions of proposed antitrust expert Debbie Feinstein's testimony. The court holds that testimony concerning agency inaction is admissible to explain why a reasonable company might not perceive antitrust concerns, but inadmissible insofar as it treats agency inaction as evidence that J&J's conduct was reasonable or lawful. The court otherwise permits testimony concerning J&J's intent and the lack of competition between J&J and Momenta as relevant to willfulness and antitrust risk assessment.

CASE DETAILS

COURT	United States District Court for the Eastern District of Virginia, Norfolk Division
JURISDICTION	United States District Court for the Eastern District of Virginia, Norfolk Division
DECIDED	December 23, 2025
DOCKET	2:23cv629
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved to exclude in part the proposed expert testimony of Debbie Feinstein under Federal Rules of Evidence 702 and 403 in an antitrust action. The district court granted the motion in part and denied it in part.
STANDARD OF REVIEW	The district court applied its gatekeeping obligation under Federal Rule of Evidence 702 and evaluated the challenged testimony for relevance, reliability, and unfair prejudice under Rules 702 and 403.
PRECEDENTIAL VALUE	unknown

TOPICS

expert testimony · daubert standard · evidence · commercial litigation · commercial

PRACTICE AREAS

evidence | antitrust | commercial litigation | intellectual property | health law

QUESTIONS PRESENTED

1. Whether Feinstein could testify that the FTC's and DOJ's failure to challenge the Momenta acquisition supported the reasonableness of J&J's decision to acquire and retain the Momenta patents.
2. Whether Feinstein could testify that agency inaction would have given a reasonable company in J&J's position no reason to believe the acquisition was anticompetitive.
3. Whether Feinstein's opinions concerning J&J's intent, the absence of competition between J&J and Momenta, and the reasonableness of retaining the patents were relevant and reliable under Rule 702 and not unfairly prejudicial under Rule 403.

HOLDINGS

1. Expert testimony that the FTC's or DOJ's failure to challenge the Momenta acquisition, standing alone, established that J&J's decision to acquire or retain the patents was reasonable or that the transaction was lawful was inadmissible.
2. Feinstein could testify that agency inaction would have given a reasonable company in J&J's position no reason to believe that retaining the Momenta patents was anticompetitive or that divestiture was necessary, provided the testimony was not presented as proof that the transaction was lawful or affirmatively approved.
3. Feinstein's testimony concerning J&J's intent in acquiring Momenta, the extent of competition between J&J and Momenta at the time of acquisition, and how those facts informed a reasonable company's antitrust-risk assessment was admissible under Rule 702 and was not unfairly prejudicial under Rule 403.

KEY QUOTATIONS

> *"the Court is tasked with "a special gatekeeping obligation on the trial judge to ensure that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand.""* (at 2)

> *"agency inaction cannot be treated as affirmative evidence that a company's conduct was reasonable."* (at 5)

> *"CareFirst is correct that horizontal or vertical competition at the time of acquisition is not a prerequisite for liability, but the level of competition between merging parties is nonetheless a factor recognized in antitrust law as well as agencies' antitrust risk assessments."* (at 10)

FACTUAL BACKGROUND

CareFirst alleges that Johnson & Johnson and Janssen Biotech used monopoly power to delay biosimilar competition for ustekinumab, marketed as Stelara. One theory concerns J&J's acquisition and retention of four biosimilar manufacturing patents obtained from Momenta. J&J offered Debbie Feinstein, an experienced antitrust practitioner and former FTC Bureau of Competition director, to rebut testimony that a reasonable company could have carved out or divested those patents.

PROCEDURAL HISTORY

CareFirst brought an antitrust action alleging that Johnson & Johnson and Janssen Biotech unlawfully delayed biosimilar competition for Stelara through Walker Process fraud, acquisition of biosimilar manufacturing patents, and enforcement of those patents. CareFirst moved to exclude portions of J&J expert Debbie Feinstein's testimony. After briefing, the court ruled on the motion.

DISPOSITION

other

CASES CITED

- United States v. Wilson, 484 F.3d 267, 274-75 (4th Cir. 2007)
- Sardis v. Overhead Door Corp., 10 F.4th 268, 281, 283-84 (4th Cir. 2021)
- Kumho Tire Co. v. Carmichael, 526 U.S. 137, 141, 152 (1999)
- Cooper v. Smith & Nephew, Inc., 259 F.3d 194, 200 (4th Cir. 2001)
- In re Lipitor (Atorvastatin Calcium) Mktg., Sales Pracs. & Prods. Liab. Litig., 892 F.3d 624, 631 (4th Cir. 2018)
- United States v. Stanley, 533 F. App’x 325, 327 (4th Cir. 2013) (per curiam) (unpublished)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 596 (1993)
- Steves & Sons, Inc. v. JELD-WEN, Inc., 988 F.3d 690, 714 (4th Cir. 2021)
- Brown Shoe Co. v. United States, 370 U.S. 294, 317 (1962)