



Mar 06, 2025

Categories:

[Antitrust](#)

Authors:

[Michael E. Hamburger](#)

California's Ban on Reverse Payment Settlements Held Not To Apply to Settlements Negotiated or Entered Outside of California

Chief Judge Troy L. Nunley of the U.S. District Court for the Eastern District of California entered an [order](#) on February 13, 2025, that dramatically limits the geographic scope of a California law attempting to ban "reverse payment" settlement agreements of patent infringement claims, but upheld the law as it relates to settlements that are "negotiated, completed, or entered into within California's borders."

A "reverse payment" settlement may result if a branded drug manufacturer sues a potential generic entrant for infringing its patents and then settles that litigation by making a payment to the generic defendant in exchange for that defendant agreeing to drop its challenges to the branded plaintiff's patents for some period of time (often until the patents expire). In such circumstances, the payment is said to be "reverse" because it flows from the plaintiff in the patent suit (the branded manufacturer) to the defendant (the generic manufacturer), rather than flowing from the defendant to the plaintiff as in most litigation. In 2013, the U.S. Supreme Court held in [FTC v. Actavis](#) that such settlements may violate the antitrust laws if they involve "large, unjustified" reverse payments rather than reflecting "traditional settlement considerations, such as avoided litigation costs or fair value for services."

In 2019, California's governor signed into law [Assembly Bill 824 \(AB 824\)](#), which adopted a presumption under California's antitrust statute, the Cartwright Act, that any patent litigation settlement between the manufacturer of a reference drug (*i.e.*, a branded small-molecule or biologic drug product) and the manufacturer of a nonreference drug (*i.e.*, a generic or biosimilar drug product) is anticompetitive if the nonreference drug filer receives "anything of value ... including, but not limited to, an exclusive license or a promise that the brand company will not launch an authorized

generic.” As with reverse payment claims asserted under federal law, AB 824 recognizes that certain reverse payments are not unlawful, including payments made for saved litigation costs. But AB 824 places the burden on settling defendants to persuade the court that any value given to the nonreference drug filer was reasonable compensation for other goods or services provided by that filer, or that the settlement nevertheless had procompetitive benefits that outweighed any anticompetitive effects of the deal. Moreover, AB 824 provides for automatic civil penalties of the greater of three times the amount of the value received by the nonreference drug filer or \$20 million.

Shortly after AB 824’s enactment, the Association for Accessible Medicines (AAM) sued to invalidate the law. In 2022, Judge Nunley preliminarily enjoined California from enforcing AB 824 as to any settlements that were negotiated, completed, and entered outside of California. And in his order of February 13, 2025, Judge Nunley granted summary judgment to AAM and permanently enjoined California from enforcing AB 824 outside California’s borders, holding that any attempt to do so would violate the dormant Commerce Clause by unduly burdening interstate commerce.

In light of this ruling, pharmaceutical manufacturers should take care to avoid negotiating, entering, or completing any patent litigation settlement agreements in California. Otherwise, those manufacturers will likely find themselves subject to the burden-shifting framework and automatic penalties imposed by AB 824, even where their settlement agreements are entered for legitimate purposes and would not violate federal antitrust law.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.