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Annual Bias Awareness & Inclusion Reception

The Washtenaw County Bar Association (WCBA), Vanzetti M. Hamilton Bar Association (VHBA), and Women Lawyers Association of Michigan – Washtenaw Region came together on October 8 at Weber's to celebrate the 35th year of this special event. The reception featured a keynote address by the Hon. Cynthia D. Stephens (ret.) of the Michigan Court of Appeals.

The evening also honored two community leaders posthumously. The WCBA presented the Martin Luther King, Jr. "I Have a Dream" Award to Lorne L. Brown, former Washtenaw County Deputy Chief Public Defender. The VHBA presented the Frederick Douglass Racial Justice and Harmony Award to Melvin Parson, founder of We The People Opportunity Farm in Ypsilanti.

Additional photos of the event are available in the photo gallery at www.washbar.org

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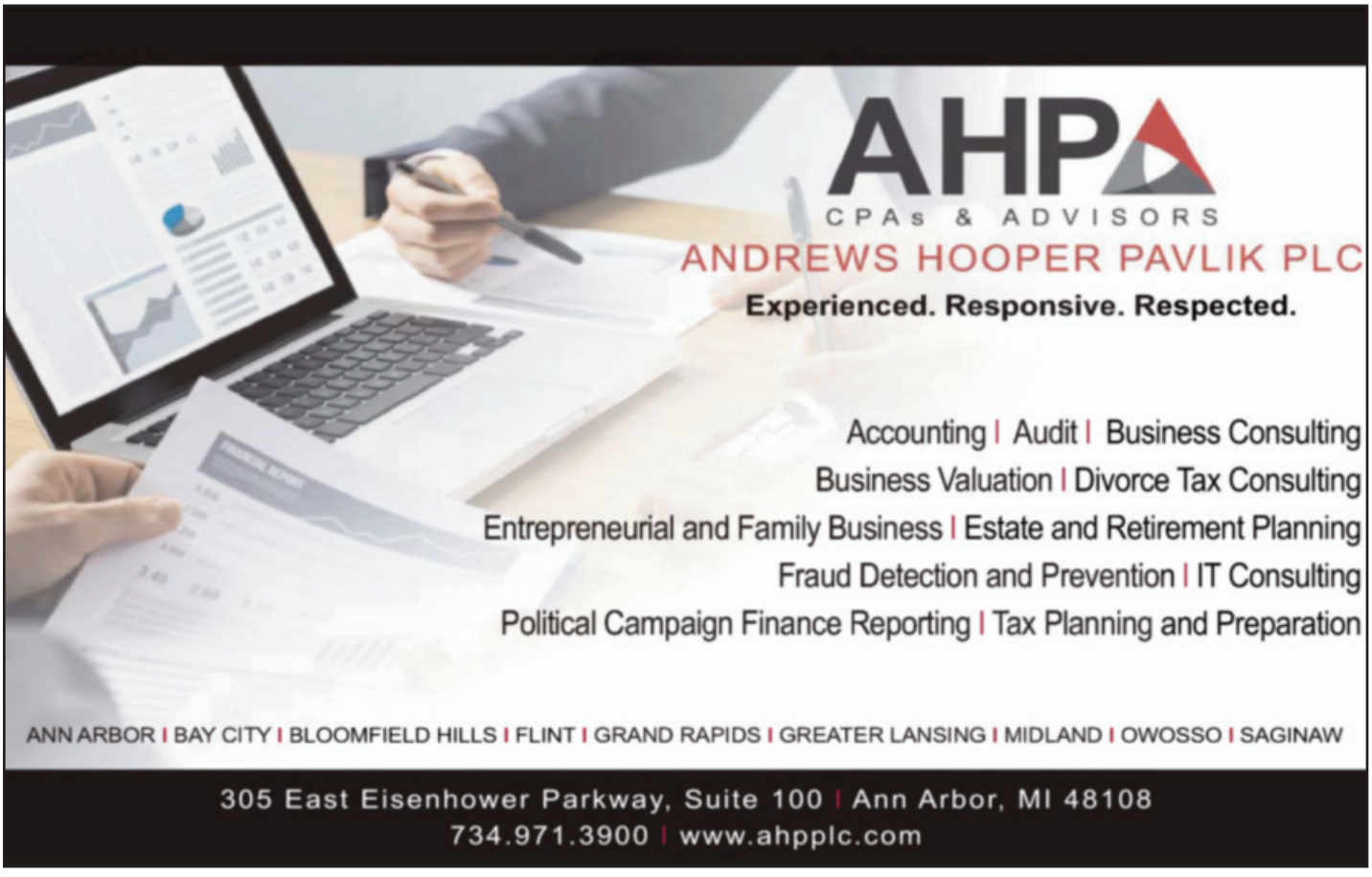

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President's Message

Alexander W. Hermanowski

Dear Friends and Colleagues,

We had a fun-packed summer for the WCBA, but Fall is finally here. We welcome back the students of The University of Michigan along with their family and friends. It is nice to see Ann Arbor alive with new energy and the start of the football season. It is also the start of the election season. We have many interesting and exciting races. The Fall also brings our new board together so we welcome back our previous board members and welcome our new ones. We are looking forward to a great year.

Over the summer we held our annual golf outing. The 32nd Annual Golf Outing at Lake Forest Golf Club was a large success with 71 participants. Congratulations to the winners from Conlin, McKenney & Philbrick, PC: Cody Black, Clyde Woods, Michael Crowley, and Theodore Darr. Thank you to Ed Drukis, Kyeena Slater, all our volunteers, sponsors, and participants - we couldn't have done it without you.

This past year, you heard me often ask you to come to just one more event. Many of the section meetings were very interesting and useful, and I encouraged you to attend those in addition to our big events. You are also always welcome to attend my Speakeasy events, with the first one held on Wednesday, September 30th at 5:30 p.m. at Lake Forest Golf Club.

We had several events this Fall, starting with our Annual Probate Training sponsored by the Estate Planning, Probate & Trust Law Section. This year's training was held on September 24th via Zoom. The event provided important training for those looking to accept probate court-appointed cases.

On October 8th, together with the Vanzetti Hamilton Bar Association and the Women Lawyers Association of Michigan, Washtenaw Region, we held the 35th Bias Awareness and Inclusion Reception. This year's keynote speaker was the Hon. Cynthia D. Stephens, whose impressive background and address were highlights of the event. We also presented the Martin Luther King, Jr. "I Have a Dream" Award posthumously to Lorne L. Brown.

On Sunday, October 11th, we participated in The Purple Run Ann Arbor, a fundraiser that raises awareness about domestic violence. The Purple Run is a collaboration among the SafeHouse Center, Washtenaw County Prosecuting Attorney's Office, Ann Arbor Police Department, and the Division of Public Safety and Security at the University of Michigan. Thank you to everyone who joined us in supporting this important cause.

On Wednesday, November 18th, we are holding our annual Holiday Membership Event at the Ann Arbor City Club. This event is a great time to come together as a bar association around the holidays.

Lastly, October is officially recognized as Pro Bono Month in Michigan. The State Bar of Michigan is promoting events statewide that connect attorneys with low-income individuals and families that need legal services. This is a great time to give back to our communities more than we already do.

I look forward to a great fall and hope to see you at our various WCBA events!

Best Regards,

Alex

Alexander W. Hermanowski
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Protecting Autonomy in Estate Planning

Beverly Griffor, J.D., PhD.

Proper estate planning depends on the fundamental principle that a person's plan should reflect their informed and voluntary wishes for their property. Making sure this happens in practice can sometimes be complicated, especially when faced with situations involving cognitive decline, family relationships, dependency, or outside pressure. Testamentary capacity and undue influence are distinct but closely related concerns for attorneys, families, and others involved in estate planning.

Testamentary capacity examines whether a person understands what they are doing when making or changing an estate document. Under Michigan's Estates and Protected Individuals Code (EPIC), an adult has sufficient mental capacity to make a will when several requirements are satisfied: (1) They must understand that a will provides for the disposition of their property after death, (2) know what property they have to distribute, (3) recognize their children and family members, and (4) reasonably understand the nature and effect of signing a will. Importantly, having testamentary capacity does not eliminate concerns of undue influence, which focuses on the process surrounding a decision.

Undue influence raises a different question about whether the decision being made belongs to the testator. Ordinary discussion and persuasion are part of human relationships and do not, by themselves, constitute undue influence. The concern arises when leverage becomes sufficiently manipulative, coercive, or overpowering that a decision no longer represents the person's free will. Michigan case law describes undue influence as involving threats, misrepresentation, undue flattery, fraud, or physical coercion sufficient to overpower a person's own volition, destroy free agency, and cause the grantor to act against their free will. In some circumstances, a presumption of undue influence arises, such as when someone holding a fiduciary role has an opportunity to influence the decision. This person might be a formal holder of a power of attorney, but it could also be a day-to-day caregiver.

Although testamentary capacity and undue influence are legally distinct, they can overlap in practice. Conditions such as dementia, physical illness, circumstantial vulnerability, or other forms of diminished functioning may increase a person's susceptibility to influence. Such vulnerability can strengthen concerns about undue influence, but diminished capacity is not required for undue influence to occur. An individual may generally possess testamentary capacity while still being vulnerable to pressure from another.

Evaluating these concerns requires more than a single cognitive test. Psychologists examining testamentary capacity or potential undue influence use a multifactor approach involving data collection, hypothesis testing, and verification of information. Relevant evidence can include interviews with the individual; conversations with collateral sources, such as relatives, caregivers, attorneys, and financial advisors; and reviews of medical records, correspondence, financial information, and successive drafts of estate-planning documents.

Several factors are particularly important. First of these is the nature of the concern itself. Identify what conduct is being alleged, how long it has allegedly occurred, and what the parties believe may happen as a result. Second is the individual's functional and cognitive capacity, including the ability to understand and make legal or financial decisions. Finally, any complicating or situational circumstances should be considered.

The quality of available records is also critical. Wills, powers of attorney, bank records, and other documents can provide important evidence about both the individual's intentions and changes occurring over time. Medical records can help attorneys and courts understand a person's mental or physical ailments and circumstances. Even letters or emails written by the person to others may be helpful in coming to know their reasoning or thoughts around particular choices.

Relationship dynamics can provide another source of information. Evaluators may look for dependency, enmeshment, safety concerns, or significant power imbalances involving family members or other individuals. Social and behavioral patterns can be equally revealing. Isolation from family or friends, sudden behavior changes, unexpected financial decisions, or departures from longstanding beliefs or preferences may warrant closer attention.

For estate-planning attorneys, careful documentation can play an important preventive role. Maintaining a detailed file can help preserve evidence of the client's intentions and de-

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cision-making process if questions arise later. One useful practice is having the testator complete a questionnaire documenting family information and assets. Attorneys should also pay attention to how they interact with clients, the circumstances surrounding important decisions, and the information retained in the estate-planning file.

Ultimately, assessing testamentary capacity and undue influence requires protecting autonomy while recognizing genuine vulnerability. A person may appear capable in ordinary interactions yet remain susceptible to pressures that affect important decisions. For attorneys, the objective is to determine, as the available evidence permits, whether a person understands the decisions being made and whether those decisions genuinely reflect their choices and desires. Thoughtful evaluation and careful legal documentation can help ensure that an estate plan ultimately serves its most basic purpose: to preserve and carry out the client's own wishes.

Beverly M. Griffor, JD, PhD, is the Managing Attorney at Collis, Griffor & Hendra, PC, and a Licensed Psychologist. She focuses her legal practice on mental health and business law, as well as the integration of scientific research with legal practice. Griffor's psychological practice focuses on forensic work, including capacity evaluations and other court-related assessments. She has authored academic articles and book chapters in both law and psychology and has served as a mental health trainer for the State of Michigan. Beverly can be reached at (734) 827-1337 or at bgriffor@collisandgriffor.com.

Thank You to those that continue to support the WCBA by contributing to the WCBA Donations Fund. Your generosity helps support community service, member programs, technology improvements, and other initiatives that strengthen the WCBA!

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ASKED & ANSWERED

Guy T. Conti

Guy T. Conti has been practicing law since November of 2005. A magna cum laude graduate of law school, Mr. Conti has concentrated his practice on all types of litigation including, but not limited to, bankruptcy, intellectual property, domestic relations, consumer law, landlord-tenant, contract disputes and zoning issues. Conti has extensive municipal experience, having served as Assistant Belleville City Attorney, Assistant Lodi Township Attorney and Assistant Ypsilanti City Attorney for over 2 years. Conti currently serves as Leoni Township Attorney. He has appeared in the courts of Washtenaw, Wayne, Macomb, Oakland, Monroe, Genesee and Livingston Counties, as well as several federal district courts and bankruptcy courts. Conti has over 25 years of business experience and has studied Public Administration (Zoning and Land Use Planning) and Human Resources and Organizational Development at Eastern Michigan University. Conti has also been an Instructor at Concordia University in Ann Arbor, MI, and serves on the Advisory Board to the Washtenaw Community College School of Business and Entrepreneurial Studies.

What jobs did you have before you became an attorney?
I was a high school math teacher, and I spent many years in the New York City Taxi & Limousine industry as a technology and operations specialist.

What inspired you to pursue a career in law?
When someone asks me how long I have been a lawyer, I respond, "all my life but I have only been licensed since 2005." When I was in college a fraternity brother made up a board game and the characters were all brothers of the chapter. Each character had a special power. Mine was using the by-laws.

What area of the law do you like the best and why?
I love bankruptcy law because of the push and pull between the interests of the debtor, the creditors and public policy. It is a fascinating statutory field based, at its core, in equity.

Any words of wisdom to pass on to new lawyers?
If you can, without hurting your client's cause, always help other attorneys. When asked a question in court by a judge, don't try to wiggle your answer away from the truth. Everyone knows you should never, ever lie to a court but you should also never, ever give a court the wrong impression.

Who has been your greatest mentor?
When I started my bankruptcy practice in 2008, I had no idea what to do with Chapter 13 bankruptcies. I phoned Attorney Yuliy Osipov cold and asked him to be my mentor. He has always been there and is one of my dearest professional friends. A strong shout out goes to my law school bankruptcy professor Tom DeCarlo whom I had the pleasure of successfully litigating against.

Favorite part of your job?
I always say practicing law is like playing golf: you have 98 bad or average shots and 2 amazing shots in each round that keeps you coming back. It's those 2 shots that are the favorite part of my job.

What would your second career choice have been if you had not become a lawyer?
I am a nerd and a computer geek. When the COVID-19 shutdowns happened I just decided to create my own email server. So, I am pretty sure I would have done something with computers.

Tell us a little about your family.
My wife Kate and I currently have no children, but we do have six amazing dogs and four huge, wonderful horses!

What is your favorite movie or book?
I love "The Blues Brothers." It's funny, irreverent and, well, reverent at the same time. It has some great lines in it, too.

Can you share a fun fact or something most people don't know about you?
In my previous life as a technology person in the NYC Taxi Industry, I routinely went to the top of the Empire State Building, the Chrysler Building and the World Trade Center to work on our computers and radios just below those buildings' antennae. One time, I went with my colleague and one of us had to use a safety harness on the outside of the top of the Chrysler Building. My friend drew the short straw, thankfully.

What are some of your favorite places that you have visited?
Belize. Amazing people. Beautiful country. Oh, and Italy. The food, my goodness, the food!

What personal achievement are you most proud of, outside of your legal career?
From the time I was a little boy, I wanted to be an Eagle Scout. Earning that award after a decade of working towards it (Cub Scouts included) is something I am proud of because of the extended effort it required. I still try to live like the Eagle Scout I am.

Why do you choose to be a member of the WCBA?
I never considered otherwise and I will always be a member. It's important on so many levels: marketing, presence, and camaraderie are three of those levels.

What is the greatest benefit you have enjoyed as a member?
The golf outing. I know, I know, the referrals are great, too. But the golf outing!

LGBTQ Rights Update

Charlotte Croson

Eighteen months into the second Trump administration, where do LGBTQ rights stand? In January 2026, I recall dire predictions for roll back of LGBTQ rights, including gay marriage, child custody, medical interventions for trans persons, and employment protections, to name some. Some concerns have come to pass as the Trump administration has specifically targeted transgender goals and initiatives previously enacted in public and private institutions. On other items, for example a feared rollback of gay marriage rights, there appears to have been little forward public movement. Whether the Administration has specifically targeted rights or not, there is also a concomitant fear that public support for LGBTQ equality has taken a serious hit, presaging future rollbacks.

The Trump Administration's tools have been non-legislative, including Executive Orders, Memorandums, Letters from Federal departments and agencies, rule changes, subpoenas, *amici* briefs, and priority changes for Federal departments and agencies. The Administration has issued dozens of non-legislative mandates[1] targeting medical interventions for transgender-identified minors, military enrollment, DEI programs, school curricula, Medicaid and Medicare funding, and data collection. Many of these efforts have faced litigation[2] from LGBTQ organizations, private individuals, States' Attorney Generals, and other interest organizations. In response to the litigation, the Department of Justice has taken positions and filed briefs to support the Trump Administration's priorities.[3] The Department of Justice has also issued subpoenas for the private medical records of transgender-identified children, with the stated goal of prosecuting doctors who provided hormonal and/or surgical interventions to minors.[4] The Department of Justice has brought its own lawsuits, including litigation against California which allows transgender-identified males to compete against females in female sports and on female sports teams.[5] And the DOJ has also launched investigations against medical providers who provide gender-related medical interventions to minors with the stated goal of legal prosecutions.[6]

It is not possible to provide a full overview. But seems clear that the Administration's primary goal in the LGBTQ arena is to roll back what it calls "gender ideology". Its efforts in this area have encompassed medical interventions for minors, military enlistment and retention, Title IX and sports teams, and prisoner housing, among others. In some cases, the Administration has been blocked – for example, private litigants have, thus far, prevented DOJ access to private medical files. The DOJ's lawsuit against California's sports team rules has been rejected by the District Court.[7] The DOJ's policy of dismissing transgender-identified persons from their active military service has been blocked by a U.S. District Court.[8]

But on other items, the Administration's priority against gender ideology has found purchase. In *West Virginia v. B.P.J.*, 225 L. Ed. 2d 1040 (2026),[9] the Supreme Court ruled that sex-defined sports teams are permissible under both Title IX and the Equal Protection Clause of the 14th Amendment. That is schools may define sports-team membership by the biological sex of the participant: biological males on male teams and biological females on female teams regardless of claimed gender identity. Importantly, while there were a number of concurring and dissenting-in-part opinions, all nine Justices concurred in the judgment. Further, it appears that some institutions are reversing course on previously adopted transgender movement goals and policies. The NCAA, the U.S. Olympic and Paralympic Committees, and the International Olympic Committee have all reversed their prior practices of relying upon claimed gender-identity to determine sports participation. Those organizations now limit participation in women's sports to biological females.[10] And Hospitals and other medical care providers – including University of Michigan Medicine and Michigan's Corewell health – have limited or ceased providing gender-identity-related medical intervention to minors.[11] And the DOJ's policy of non-enlistment for transgender-identified persons has been upheld by a U.S. District Court.[12]

The Trump Administration has made some gains in its focus on gender ideology both in the Courts and in affecting the behavior of public and private institutions. In the Courts, these gains are often accompanied by adjurations that that further debate, appeals, study, or scientific evidence is needed to re-

[1] https://www.kff.org/lgbtq/overview-of-president-trumps-executive-actions-impacting-lgbtq-health/

[2] https://lgbtqbar.org/programs/advocacy-resources/trump-executive-order-tracker/

[3] https://factually.co/fact-checks/justice/trump-administration-supreme-court-lgbtq-nondiscrimination-law-ab3678

[4] https://www.gladlaw.org/legal-challenges-to-trumps-anti-lgbtq-executive-orders/

[5] https://www.msn.com/en-us/news/other/judge-dismisses-justice-department-lawsuit-challenging-california-transgender-sports-policies/ar-AA2bnfAk

[6] https://healthjournalism.org/blog/2026/07/hospitals-cut-youth-gender-affirming-care/

[7] https://www.msn.com/en-us/news/other/judge-dismisses-justice-department-lawsuit-challenging-california-transgender-sports-policies/ar-AA2bnfAk

[8] https://www.theguardian.com/us-news/2026/jun/01/transgender-troops-military-enlistment-ruling

[9] https://www.supremecourt.gov/opinions/25pdf/24-43_2b35.pdf

[10] West Virginia v. B.P.J., 225 L. Ed. 2d 1040 (2026)

[11] https://healthjournalism.org/blog/2026/07/hospitals-cut-youth-gender-affirming-care/ https://bridgemi.com/michigan-health-watch/corewell-health-drops-gender-affirming-care-for-minors-amid-federal-crackdown/ https://www.nbcnews.com/nbc-out/out-news/least-21-hospitals-ended-restricted-trans-care-minors-january-rcna226640

[12] https://www.theguardian.com/us-news/2026/jun/01/transgender-troops-military-enlistment-ruling

solve the remaining legal – and social – disputes. In blocking dismissal of transgender-identified troops from their military service, Judge Ana Reyes wrote that her opinion will "lead to heated public debate and appeals. In a healthy democracy, both are positive outcomes".[13] In *West Virginia v. B.P.J.*, the Supreme Court wrote that "Whether biological males may participate on women's and girls' sports teams may be a debated policy question. But the legal question for Title IX purposes is whether West Virginia may limit women's and girls' sports teams to biological females. As a matter of text and history, West Virginia may do so."[14] But, thus far, the political football game of Executive Orders and non-legislative actions at the Federal level has bypassed and stifled any real debate and has created more heat than light.

Charlotte Croson is a partner at Croson, Taub & Michaels, PLLC, specializing in representing employees who have experienced wrongful termination or discrimination. Her clients include workers from private companies, as well as State and Federal employees. With extensive experience in enforcing both state and federal civil rights laws, Croson handles cases involving race, national origin, sex, sexual orientation, disability, pregnancy, and age discrimination. In addition, Croson leads the firm's appellate practice, advocating for clients in appeals beforestate and federal agencies as well as in State and Federal courts. Charlotte can be contacted at ccroson@ctmlawyers.com

[13] https://www.theguardian.com/us-news/2025/mar/18/judge-blocks-trump-executive-order-trans-military-ban
[14] 225 L. Ed. 2d 1040 (2026).

Supreme Court Clarifies Requirements for 'Active Steps' in Induced Patent Infringement Claims

Christopher K. Van Deusen

The dispute in *Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc.* (Docket No. 24-889) concerned generic drug manufacturers' liability for induced patent infringement—that is, liability for knowingly encouraging others to infringe a patent, which is prohibited by 35 U.S.C. § 271(b). The law firm of Dinsmore & Shohl LLP (where this author is Of Counsel) filed an amicus brief in the case on behalf of the Licensing Executives Society (U.S.A. and Canada), Inc., and the Supreme Court's opinion aligns with the positions advanced in that brief.

On June 4, 2026, the Supreme Court made clear that "active steps" for induced patent infringement do not include actions required by law, standard industry practices, or omissions by the defendant. The Court applied well-settled law to reverse the court below and correct a recent "trend" of lower courts misapplying the pleading standards.

The Court granted *certiorari* on two questions: one specific to generic pharmaceuticals and the other applicable to induced patent infringement more broadly. And because the case was decided at the pleading stage (that is, based only on the sufficiency of Hikma's complaint), the case was closely watched for any suggestion that the Court might alter the pleading standards that apply to all federal civil suits. Instead, the opinion was tightly limited to the topic of induced patent infringement and did not claim to break any new legal ground.

This case emerged from the pharmaceutical industry, which involves the dual (but not equal) barriers patent rights and FDA approval requirements. When patents protect name-brand drugs' uses for specific medical issues, generics are often approved for other uses—which are not protected by a patent. These limited FDA approvals "carve out" the patented uses from the generic's label; they are sometimes called "skinny labels" and are permitted under the federal Hatch-Waxman Act. "Skinny label" generics are a compromise struck under federal law, permitting generics to enter the market while still respecting brand-name drugs' patent rights.

In the decision on appeal to the Supreme Court in *Hikma*, the Court of Appeals for the Federal Circuit held that the generic drug's manufacturer, Hikma, could be liable for induced infringement based on its generic-drug advertising. It held that Amarin plausibly pleaded induced infringement of its name-brand drug Vascepa® by Hikma's broad statements that its drug was "generic Vascepa®" without limitation to the "skinny label" approved uses. Similarly, Hikma's investor materials included sales data for brand-name Vascepa® generally—again, not limited to the "skinny label" approved uses. The Federal Circuit also considered Hikma's statement of equivalence on the generic drug's label, which was required by the FDA, in concluding that physicians might plausibly read Hikma's statements as encouragement to infringe.

The Supreme Court reversed, finding insufficient "active steps" by Hikma to make induced infringement plausible. First, the Court excluded as an "active step" the legally required statement of equivalence on Hikma's generic-drug label, because following the law could not be considered an "active step" in inducement. Op. at 11. The Court similarly excluded the "normal industry practice" of describing a generic drug as "generic" even if a patent prevented the drug's approval for some uses. *Id.* The Court went on to exclude weighing any "omissions, inactions, or nonfeasance" as evidence of intentional inducement, as those are not "affirmative steps." *Id.* at 12. After removing those facts from consideration, the Court found that Amarin's remaining factual allegations of active inducement—the physicians' potential understanding (which, additionally, was not "active,"), and various vague or equivocal statements by Hikma were not sufficient. *Id.* at 12–13. The Court made clear that the pleading standards "[were] not up for debate in this case[,]" *id.* at 7, and it applied those standards faithfully in concluding that Amarin's factual allegations did not render the claim of induced infringement "plausible," as the standards require. *Id.* at 13.

Importantly, the Court also clarified that "plausibility" applies to the claims as a whole, not to the alleged impacts of Amarin's statements on physicians. In the decision below, the Federal Circuit had found it plausible that physicians would understand Amarin's statements as encouraging prescriptions of the generic drug for still-patented indications. 104 F.4th at 1378–80. The Supreme Court disagreed, expressly rejecting what it called a "trend" in misapplying the pleading standards. Op. at 9 n.3. As it clarified, "the key question is whether a defendant actively encouraged infringement through its statements, not merely how others may understand those statements." *Id.* Plausibility, then, must be satisfied as to the entire claim—not as to component conclusions or factual allegations. And the focus of "active steps" is a defendant's actions—not their impacts on others.

Induced infringement remains challenging to allege. Defendants who induce infringement can be liable for the follow-on infringing acts, the damages for which could be monumental. By reaffirming that need for "active steps" beyond standard industry practices, the Supreme Court has limited these suits to only those where a defendant has surely

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gone beyond legal requirements and standard industry practices to induce others to infringe. However, future cases may need to closely consider what acts of a defendant are "standard industry practices" in other situations.

Key Takeaways:

Induced infringement requires clear affirmative conduct. Actions required by law, standard industry practices and omissions do not count as "active steps."

The Court did not change the pleading standards but reinforced that the claim as a whole must be plausible, and that claim interpretation focuses on the defendant's actions, not how others might interpret them.

The decision clarifies the pleading bar for plaintiffs, especially in pharma, by excluding routine practices like skinny labels from liability unless conduct goes beyond ordinary industry behavior.

The case will be remanded to the Court of Appeals for the Federal Circuit and then to the District of Delaware, where it had previously been ordered dismissed.

About the author: Chris VanDeusen is an intellectual property attorney at Dinsmore & Shohl. He specializes in patent and trademark litigation, in federal courts and at the USPTO. VanDeusen's technological background is in chemical and mechanical engineering, and he was a primary patent examiner in the USPTO's Chemical Engineering Division. He is an alumnus of the University of Michigan College of Engineering and of Michigan Law.

In Memoriam

***Marlene J. Barr**, 91, wife of longtime WCBA attorney John M. Barr and mother to the Hon. Karl A. Barr, passed away peacefully on Sunday, August 23, 2026.*

***The Honorable Timothy P. Connors**, 72, passed away peacefully, surrounded by his family, on Thursday, October 8, 2026.*

Our deepest sympathies are with their family, friends, and colleagues.

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