



## **Supreme Court Says U.S. Courts Cannot Hear Claims Brought by Foreign Victims of Cartels**

**June 15, 2004**

The United States Supreme Court held unanimously yesterday that foreign victims of a cartel cannot sue the cartel members in U.S. courts for damages caused by transactions that occurred abroad. The Court effectively reversed the holdings of two courts of appeals that ruled in favor of such cases.

The case, *Hoffmann-LaRoche v. Empagran*, was just the latest chapter in the long-running litigation involving the vitamins industry. The series of cases began when the Justice Department announced plea agreements with vitamin manufacturers, including the largest criminal fine ever assessed in the United States. As a result of those guilty pleas, American purchasers of vitamins won large settlements and damage awards from the members of the cartel.

The *Empagran* case dealt with the claims of foreign consumers who purchased vitamins in overseas markets. They too brought claims in the U.S., but the district court dismissed them, concluding that if the transactions that caused the injury had no effect on U.S. commerce, U.S. courts had no business hearing the case. The D.C. Circuit Court of Appeals reversed based on a very narrow reading of the Foreign Trade Antitrust Improvements Act ("FTAIA"). When the case reached the Supreme Court, the United States government and several foreign governments argued that the appellate court's decision would hinder law enforcement efforts by reducing the incentive to apply for leniency by confessing to price-fixing, and would also offend foreign governments by attempting to regulate their economies. The Supreme Court unanimously agreed with that view, writing that Congress in enacting the FTAIA could not have intended such a result.

The Court, of course, did not decide all issues that could arise in such cases. For instance, the Court left open the question of whether a case could proceed when the foreign effects of the conspiracy are dependent on the U.S. effects. Nor did the Court consider whether, even if there is jurisdiction under the antitrust laws, a foreign plaintiff would have standing to sue in U.S. courts.

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