

06-1498 WARNER-LAMBERT CO. V. KENT

DECISION BELOW: 467 F3d 85

LOWER COURT CASE NUMBER: 05-1705, 05-1743, 05-1745

QUESTION PRESENTED:

1. Whether, under the conflict preemption principles in *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341 (2001), federal law preempts state law to the extent that it requires the fact-finder to determine whether the defendant committed fraud on a federal agency that impacted the agency's product approval, where the agency—which is authorized by Congress to investigate and determine fraud—has not found any such fraud, and thus—as in *Buckman*—the state requirement would interfere with the agency's critical functions.

2. Whether, under the conflict preemption principles in *Buckman*, federal law preempts the provision in a Michigan statute that allows a product liability claim to be maintained against a manufacturer of an FDA approved drug where, without an FDA finding of fraud on that agency, the fact-finder is required to make a finding under state law as to whether the manufacturer committed fraud-on-the-FDA and whether, in the absence of that fraud, the FDA would not have approved the drug.

**CHIEF JUSTICE ROBERTS TOOK NO PART EXPEDITED BRIEFING
SCHEDULE**

CERT. GRANTED 9/25/2007