IN THE SUPREME COURT OF THE UNITED STATES

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No. 17-290

MERCK SHARP & DOHME CORP., PETITIONER

v.

DORIS ALBRECHT, ET AL.

_____

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

_____

MOTION OF THE UNITED STATES AS AMICUS CURIAE
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 21, 28.4, and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioner and requests that the United States be allowed ten minutes of argument time. Petitioner has consented to cede ten minutes of its time to the United States.

This case addresses circumstances under which a decision of the Food and Drug Administration (FDA) rejecting proposed changes

to the labeling of a brand-name drug preempts failure-to-warn claims under state law. FDA is responsible for ensuring that each "drug is safe for use under the conditions prescribed, recommended, or suggested" in its "labeling." 21 U.S.C. 355(d). FDA accordingly approves the labeling for drugs in its evaluation of new drug applications and subsequent labeling supplements thereto. The government has a significant interest in the proper resolution of the case, which concerns the manner in which the scope and effect of an FDA labeling decision is determined in private tort litigation. The United States filed a brief as amicus curiae at the petition stage of this case at the Court's invitation, and it subsequently filed a brief as amicus curiae on the merits.

The United States would be able to offer the Court a distinct perspective on the legal and regulatory issues implicated by this case. The United States' participation in oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

> JEFFREY B. WALL[*]
> Acting Solicitor General
> Counsel of Record

OCTOBER 2018

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[*] Solicitor General Noel J. Francisco is recused from this matter.