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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL) Judge Polster
PRESCRIPTION) Cleveland, Ohio
OPIATE LITIGATION,)
)
APPLIES TO ALL CASES) Civil Action
) Number 1:17MD02804
)
)
) **(Pages 1 - 32)**

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TRANSCRIPT OF PROCEEDINGS HAD BEFORE

THE HONORABLE DAN AARON POLSTER

JUDGE OF SAID COURT,

ON WEDNESDAY, MAY 22, 2024
- - - - -

Official Court Reporter: Shirle M. Perkins, RDR, CRR
U.S. District Court
801 West Superior, #7-189
Cleveland, OH 44113-1829
(216) 357-7106

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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1 WEDNESDAY SESSION, MAY 22, 2024, AT 12:51 P.M.

2 JUDICIAL ASSISTANT: Hi, Judge. This is
3 Helen.

13:04:54

4 You are on with your team. Shirle Perkins is the
5 Court Reporter today.

6 THE COURT: Okay. Thanks. All right.

7 Good afternoon, everyone. Thanks for being available.

13:05:15

8 I've, you know, reviewed the Plaintiffs' motion to
9 file amended complaints and the various options or comments
10 filed by the Defendants, and I've given this a lot of
11 thought. I have a proposal but I want to hear everyone,
12 anyone who wants to react to it, and then take that into
13 consideration.

13:05:35

14 I'm prepared to allow the Plaintiffs to file these
15 motions. I want it to be done in an orderly way, and my
16 intent is this is the last time we'll do this in the MDL.

13:06:04

17 And I think the way to do it is to have the PEC file a
18 motion for each Defendant for which it wants to amend
19 complaints, listing all the cases for that Defendant that
20 they want to add. And they'll have to show, you know,
21 particularized need in each case, show good cause for adding
22 Defendant X to each of the cases for which it proposes to
23 add Defendant X.

13:06:23

24 So just say it's Milan. All right. There will be one
25 motion for Milan listing all defenses for which the PEC

1 wants to add Milan and then the reason or reasons for each
2 case. And if it's the same reason for all or most of them,
3 you can say for Cases 1 through 30, this is the reason. And
4 I would expect that the most cited reason will be the new
13:06:50 5 ARCOS data because everyone knows that the original data was
6 cut off years ago. And it doesn't make sense to be
7 litigating in 2004 based on ten-year-old ARCOS data but
8 there may be other reasons.

9 And I would also hope that while there are motions to
13:07:09 10 add Defendants, there -- that motion should include cases
11 where the Plaintiffs are dismissing particular Defendants.
12 Again, based on the new ARCOS data which shows that that
13 Defendant has minimum or zero presence in a jurisdiction,
14 well, they shouldn't be named. And I don't want any motions
13:07:35 15 filed against Defendants who have settled or settled in
16 principle. There's no reason to do that.

17 There are settlements. And so I'm thinking there
18 should be, you know -- and there are many Defendants who
19 are, you know, -- whose assets are minimal. Their conduct
13:07:55 20 is probably minimal, quite frankly, they should be
21 dismissed.

22 So I'm thinking, you know, I'm thinking we may have
23 ten to 15, certainly no more than 15 motions. And then I'll
24 give the Defendants 30 days. Each Defendant will only have
13:08:15 25 to respond to the motion naming it. And then, you know, ten

1 days or so for reply.

2 And one thing I'm making clear, any subdivision that
3 is proposing to add a given Defendant may only do so if
4 they're prepared to litigate against that Defendant. This
13:08:37 5 isn't a little, you know, a show or a purpose pitch because
6 what's likely to result is any Defendant who doesn't settle,
7 I'm going to have to key up some bellwethers. And if a case
8 is picked and then the Plaintiff says, "Oh, well we really
9 didn't mean it. We want to dismiss this case," either I'm
13:08:58 10 not going to let, you know, I'm not going to let the
11 Plaintiff dismiss the case or if I do, I'm going to impose
12 very heavy sanctions on the lawyer and the subdivision for
13 really acting in bad faith.

14 So you only add someone, add a Defendant if, you know,
13:09:17 15 that -- that lawyer and that client is prepared to litigate
16 if necessary.

17 So that's -- that's my thought. And, you know, I
18 would just add that PEC to tell me when they're -- when
19 they're prepared to file those and that will be the date,
13:09:38 20 and I'll give the Defendants a month or so to respond and
21 then about ten days to reply. And then my team and I will
22 sort through it and make our rulings.

23 So -- but I'm, you know -- obviously, I didn't want
24 to -- I think I've had a pretty firm policy in this MDL not
13:10:00 25 to make an important decision without at least seeking input

1 from all the fine lawyers on both sides. So that's what I'm
2 doing now. So the door is open.

3 MR. WEINBERGER: Your Honor, on behalf of PEC,
4 this is Pete Weinberger. Sorry. I'm in a somewhat public
13:10:18 5 place because of logistical issues that I've had to deal
6 with but I hope you can hear me.

7 THE COURT: Yes.

8 MR. WEINBERGER: So I think fundamentally --
9 obviously, I am speaking on behalf of the PEC, and we
13:10:35 10 haven't had a chance to digest what you've just said. But,
11 you know, we have been thinking a lot about how we would
12 approach this in the event that you were going to let them
13 lift the moratorium.

14 So I think fundamentally, this works for us. I would
13:11:00 15 suggest that we have about 60 days to file the motion for
16 leave. I -- there are several reasons for that time frame.

17 Number 1, obviously each of the Plaintiffs' counsel
18 has to have a conversation with their subdivision clients
19 without this matter. And secondly, we are in communications
13:11:38 20 with both the manufacturer and distributor pharmacy
21 defendants who are in the Tier 2, Tier 3 bucket. And I'd
22 like to have the opportunity to spend some time with them to
23 see how serious they are about potential resolution of their
24 cases. So I think -- I think 60 days would permit us to do
13:12:15 25 all of that.

1 I think with respect to some Defendants, we're
2 probably quicker than 60 days in terms of filing a motion
3 for leave. But if we have an outside limit of say 60 days,
4 I think that works for us.

13:12:33 5 Now, so let me just stop there and --

6 THE COURT: All right.

7 Well I, you know, I was thinking somewhere along
8 there. I mean Defendants are, you know -- you say we must
9 have these sooner. So 60 days seems okay to me.

13:12:53 10 MR. WEINBERGER: And let me just stop and ask
11 any of my colleagues if they have any reaction to what I've
12 said. I have no concerns about your contradicting anything
13 that I've said, but I may not have thought this through
14 completely. So if anybody else has any input, please
13:13:15 15 provide it.

16 MR. SKIKOS: I'm good.

17 MR. CONROY: I'm good as well with 60 days.
18 It's James Conroy. Sorry.

19 THE COURT: I think that was Steve Skikos who
13:13:29 20 said -- I think Steve said okay. All right.

21 Any of the other Plaintiffs want to weigh in? So
22 60 days, we're talking about somewhere around July 22nd.

23 MR. MOUGEY: Your Honor, this is Peter Mougey.

24 Our group represents about 750 cities and counties,
13:13:47 25 and the only caveat I have, I think 60 days is reasonable

1 but over the summer, a lot of cities and counties cancel
2 board and council meetings, and just with the caveat that I
3 think Pete is right, 60 days is sufficient, with the caveat
4 that a lot of cities and counties go dark over the summer.

13:14:08 5 And I just want to give that, like I said, a caveat
6 out there in the event --

7 THE COURT: All right.

8 Well, look. What you can do, I mean if -- Peter, if
9 you have a situation like that, say we come to July 20th and
13:14:27 10 a given subdivision doesn't have any meetings until August,
11 just say, you can include them in the motion and say that,
12 you know, that the officials want to add Defendant X. And
13 so you're adding to the list. But this has to be formally
14 done at the council meeting or whatever in August. So I
13:14:50 15 mean I think that's the way to do it.

16 MR. MOUGEY: Yes, sir.

17 THE COURT: Okay.

18 Any of the Defendants want to weigh in?

19 MS. MILLER: Judge, this is Gretchen Miller.

13:15:13 20 The only comment, and I would encourage -- obviously,
21 I haven't had an opportunity to confer with any other
22 Defendants. So if anyone on the Defendants' side has
23 comments, please speak up.

24 But the only comment that I wanted to offer was, you
13:15:27 25 know, you mentioned -- and you've mentioned several times

1 Defendants who have minimal to zero presence in a particular
2 jurisdiction should not be in the case; that, you know, we
3 remained -- there are a number of Defendants in,
4 particularly I know in the Tier 3 group who remain de
5 minimis to zero market share, and I guess I don't have any
6 specific requests, other than I hope that we can come to a
7 process that does resolve those cases. I think that that
8 would help the parties move forward a lot more quickly.

9 MR. WEINBERGER: So if I can respond to that,
10 your Honor. This is Pete Weinberger.

11 Gretchen, thanks for bringing that up. We have -- we
12 have a situation where we have the experience of the C23
13 trial where market share of one of the Defendants who ended
14 up with a jury verdict against them, and a judgment against
15 them was in the 2.3 percent range.

16 So to the extent that any Defendant is relying on, you
17 know, that 5 percent rule, because of some prior discussions
18 by the Court, prior to that verdict, they should be
19 dissuaded of that notion.

20 Now, that is not to say that the PEC is not cognizant,
21 and Plaintiffs' counsel in general, is not cognizant of the
22 fact that we have to look very carefully at any case or any
23 subdivision, let's say, where the Defendant has not done any
24 business or has not either distributed or dispensed opioids
25 into that particular jurisdiction.

1 Now that -- that's not a hard and fast rule either
2 because there are situations where you have adjoining
3 counties or cities within counties where they may not have a
4 particular door. They may not have been a distribution
13:17:50 5 specifically into that jurisdiction where, nonetheless,
6 there's a good reason to pursue the case.

7 So it's not a hard and fast rule but, Judge Polster,
8 you have our commitment that we will look at this history
9 very carefully, and we will follow the lead that you've set
13:18:13 10 in this hearing and that you've set throughout this case to
11 make sure we're not including Defendants that do not belong
12 in the case.

13 THE COURT: Thanks, Pete.

14 And again, I mean what I said is -- it also goes to
13:18:30 15 that. Any Plaintiff and their firm that's going to add it,
16 put a Defendant in the case, has to be prepared to litigate
17 because if there's a bellwether process, those cases are
18 open to be picked, and I don't want to have problems
19 afterwards. So okay.

13:18:46 20 Any other Defendant wants to weigh in? So again, each
21 Defendant would only -- you have one motion, and it would
22 list all the cases where the Plaintiffs are seeking to add
23 that Defendant and also hopefully some would be dropped.
24 You wouldn't oppose that. And I just need to respond to the
13:19:07 25 motion, that one motion.

1 MR. COOPER: Judge Polster, this is Jonathan
2 Cooper for the Express Scripts Group Defendants.

3 We just received this proposal and need to consider it
4 more, but I will say that we have at least some initial
13:19:22 5 concerns with this proposal.

6 One is that as, you know, the Sixth Circuit has said
7 you're supposed to grant motions for leave to amend based on
8 the record and individual case. And so a single motion
9 covering Express Scripts in more than one case, and my
13:19:39 10 understanding is there probably will be more than one case
11 covered by the motion you're contemplating, we don't think
12 it would comply with that.

13 THE COURT: Well, I'm saying that they have
14 got a reason for each case. All right? And, you know, the
13:19:53 15 reason is all right, the new ARCOS data shows, you know,
16 market share of 10 percent, then you know, Subdivision A,
17 12 percent, Subdivision B, et cetera. They'll have to put
18 that in for each case. So I'm dealing with that. They
19 can't just say, you know, here's 50 cases, we want to add
13:20:17 20 Express Scripts and just cite generally ARCOS data. And
21 that isn't going to cut it.

22 MR. COOPER: That is one concern and then the
23 second concern would be more practical.

24 Depending on the volume of cases that is covered by
13:20:32 25 the motion, there may be lots of different reasons why a

1 given case, there shouldn't be an amendment. And those are
2 going to be case specific. There may be different laws
3 applicable, different facts that apply to a given case. And
4 addressing all of these different cases in a single motion,
13:20:49 5 from our perspective, a single opposition brief I think
6 would be very complicated and challenging. Probably
7 significant time --

8 THE COURT: Well, I can give the 60 days --
9 you know, I've given Plaintiffs 60 days to respond. I can
13:21:04 10 give you 60 days to answer. And if -- and if a given
11 Defendant needs more, you know, that's fine.

12 So you say all right, we need -- we need additional
13 time to respond, then I can, you know, grant additional
14 time. I can start with 60 days. It doesn't make sense,
13:21:29 15 just say Plaintiffs want to add Express Scripts to 100
16 cases, just put it out there. It seems crazy to file a
17 hundred separate motions. File one motion for Express
18 Scripts, and they list each case, and each has to say all
19 right, why are we proposing to add Express Scripts and
13:21:52 20 County 1, City 3, and give a reason or reasons. And then
21 Express Scripts can file one response, and they address, you
22 know -- they may decide, you know, some of the cases that
23 there was good reason.

24 So we say all right, we're not opposing here, and in
13:22:08 25 this 75, we're opposing and here are our reasons. So I'll

1 propose giving the Defendants 60 days to respond.

2 MR. BOONE: This is Brian Boone from Alston
3 and Bird.

4 I agree with everything Mr. Cooper just said. We
13:22:32 5 object to the proposal. What you're suggesting, I think,
6 would violate the rules and the Sixth Circuit (inaudible)
7 across the cases.

8 Each case, as Mr. Cooper said, is an individual case.
9 Each Plaintiff should file its own motion. And when you
13:22:47 10 have the right for each Plaintiff to propose based on the
11 unique facts of that Plaintiff --

12 THE COURT: Well, you know you have --
13 Mr. Boone, you do have the opportunity. All right? You
14 can just say, all right, the Plaintiffs are, you know,
13:23:06 15 filing a motion. They want to add OptumRx to 100 cases.
16 You can have a hundred oppositions and one -- you can oppose
17 each and every one. But you've got to give a reason why
18 you're opposing. You can't just say we oppose them all.

19 Since they have to give specific reasons why they're
13:23:28 20 adding OptumRx in Cases 1 through 100, specific cities and
21 counties, all right, they're going to give a reason for
22 County A and City B and County C, et cetera, et cetera. All
23 right? And you can -- you want to oppose all 100, you can
24 oppose all 100, and you just give your specific reasons.
13:23:47 25 City and County, by City and County. And then they'll give

1 their reply, City and County and then I'll make my decision.
2 And my decision will be for each Defendant. I'll have a
3 ruling for each contested, each contested City Or County.

4 There's no opposition, then I don't have to decide.
13:24:10 5 But if you want to -- they're seeking to add OptumRx to 100
6 and you're opposing all 100, I'll have to make a hundred
7 separate rulings with respect to OptumRx.

8 MR. BOONE: Judge Polster --

9 THE COURT: I'm not proposing like, you know,
13:24:26 10 not doing that.

11 So I'm just saying you don't need a hundred separate
12 -- you don't need a separate motion for each City and County
13 without a PEC. All right? And the advantage of that is
14 they can coordinate it. And so they can file one motion for
15 each Defendant, listing each and every case that they're --
16 any of the lawyers are seeking to add that Defendant and
17 give them the reason for each and every case.

18 So I believe I'm completely complying with the Civil
19 Rules and whatever the Sixth Circuit has said.

13:25:01 20 MR. BOONE: So, Judge Polster, I just want to
21 make sure I understand what you're suggesting.

22 Are you suggesting they will file one motion, say for
23 OptumRx, and then we would have to file 100 separate
24 oppositions?

13:25:12 25 THE COURT: No, no. You file -- no.

1 You file one motion, one response. Okay? But it will
2 be, you know, case -- one response addressing all 100 cases.
3 And for each case, you know, if you say no opposition, fine.
4 Then we move on. And if you say, you know, Case 1, no
13:25:31 5 opposition, Case 2 -- obviously it will be a number, it will
6 be a subdivision with a case number.

7 We'll say City of Rochester, we oppose, you know, and
8 here's why. Okay. And then City 3. And that will be your
9 response. And then they'll need to file a reply for any of
13:25:50 10 the ones where you've opposed. And then I'll make a
11 decision and I'll make a ruling for OptumRx and I will
12 address my ruling case by case, any case for which they're
13 seeking to add you and you're opposing. And I'll have a
14 specific ruling for each and every one of those cases.

13:26:12 15 MR. BOONE: I'm trying to understand what
16 you're suggesting because it sounds like -- so through your
17 proposal, this will be much easier for the PEC, which is not
18 a Plaintiff. They represent Plaintiffs in their individual
19 cases. They are not a Plaintiff.

13:26:26 20 And so we would -- it would cut short our right to
21 oppose, based on any fact of each case. If we have to put
22 all of that in a single opposition responding to the PECs,
23 single motion --

24 THE COURT: Well, the case will be filed --
13:26:41 25 hold it.

1 MR. BOONE: -- six months to work this out in
2 the context of a single motion. And we're still objecting
3 because I think this violates the rules.

4 THE COURT: Mr. Boone, with all due respect,
13:26:53 5 you're just objecting to everything.

6 MR. BOONE: I'm not. I'm stating my opinion.

7 THE COURT: You can respectfully disagree.

8 MR. BOONE: I do. I'll respectfully disagree.

9 THE COURT: Fine. We disagree with each
13:27:07 10 other. Not the first time.

11 So I'm not -- you have a right to object to each and
12 every one. You don't have to file a hundred separate pieces
13 of paper. You can do it in one motion.

14 If you think 60 days is, you know -- I'm giving you
13:27:25 15 60 days. When you see what they've got, you say we need
16 longer, I'll give you an extension. I'm not going to give
17 you six years but all right.

18 So there's no reason for them to have -- and their
19 motion, it won't be just PEC. It will be by any -- include
13:27:45 20 any of the lawyers who are lead counsel for any of those
21 subdivisions.

22 I don't know how many, you know, how many of those
23 lawyers are. This may be the same lawyers who have 30
24 cases. I don't know, but it would be by all those lawyers.
13:27:58 25 All right? And they will have to make a case-by-case, you

1 know, good cause shown. So for each case, they'll have to
2 say specifically why we're proposing to add OptumRx now.
3 And then you'll be able to respond. All right?

4 So start out with 60 days but if it turns out you need
13:28:24 5 more time, all you have to do is -- if you can't work out an
6 agreement with the Plaintiffs for more time, just file a
7 one-paragraph motion saying why you need more time and I --
8 if it's a reasonable request, I'll grant it.

9 But the Sixth Circuit didn't say you had to have 100
13:28:46 10 different motions. They certainly didn't say you can't, you
11 know, ask for more than one thing in a motion. You filed a
12 lot of motions where you've asked for more than one thing or
13 covered more than one case. Okay? Do it all the time.

14 MR. BOONE: Respectfully, your Honor, the
13:29:05 15 Sixth Circuit did say that you have to decide any motions on
16 an individual case, based on the record in that case. And
17 what I'm saying is that if you put it all in one motion and
18 everything in one opposition, you're going to cut short our
19 opportunity, our ability to oppose, based on the unique
13:29:21 20 facts of each case.

21 THE COURT: Mr. Boone, that makes no sense.

22 You can say the same -- you can say the same thing
23 about five cases in one pleading that you would say in five
24 individual pleadings. The one pleading will be longer
13:29:41 25 because it will contain everything you were going to say in

1 five other ones, but you can say exactly the same thing.
2 It's just longer because you have -- let's say one page. I
3 mean it would be a 100-page pleading. You could have one
4 page for each plea if you want or a half page, whatever.

13:30:09 5 MR. BOONE: And what I'm suggesting, your
6 Honor --

7 THE COURT: You just --

8 MR. BOONE: More than one page. Your Honor,
9 more than one page for each Plaintiff. And by forcing us
13:30:21 10 into this box, it will cut short our right to oppose the way
11 the Rules allow us to oppose.

12 Your proposed amendment sounds like this is all in
13 name of efficiency, but the Sixth Circuit has made sure the
14 Rules don't bend in efficiency in an MDL.

13:30:40 15 THE COURT: All right.

16 Mr. Boone, I don't want to be argumentive. I think
17 you're just -- either I'm sick or you're just making an
18 argument for the sake of making an argument.

19 Can you please tell me what you would say differently
13:30:56 20 in your single response than you would say in a hundred
21 separate responses with respect to Subdivision A? All
22 right?

23 What would you say differently in your single response
24 with respect to Subdivision A that you couldn't and wouldn't
13:31:17 25 be able to say in a single response that covers a hundred

1 subdivisions?

2 MR. BOONE: So are you saying we would have
3 the same amount of space briefing-wise for each Plaintiff as
4 if they had filed a separate motion?

13:31:30 5 THE COURT: I'm not giving you any page
6 limits. Okay. I have no idea how many cases you've got.
7 Okay?

8 Obviously if they're asking -- their motion is going
9 to be pretty long with respect to OptumRx if they're going
13:31:50 10 to add in a hundred cases because they're going to have to,
11 you know, take a considerable period to explain each and
12 every case. All right?

13 And you're going to be able to respond to each and
14 every case. I don't care how long the thing is, I just
13:32:07 15 think it's a lot easier to keep track of one file from
16 OptumRx rather than hypothetically a hundred, and one
17 response for OptumRx rather than hypothetically a hundred.

18 MR. COOPER: Sorry. I didn't mean to cut you
19 off, sir. This is Jonathan Cooper for Express Scripts
13:32:30 20 again.

21 One further question about this proposal. Are you
22 contemplating the PEC motion will include proposed amended
23 complaints for each separate case? Because I guess one
24 question I have is how are we going to know what the new
13:32:43 25 alleged facts and the new claims being proposed against --

1 THE COURT: Well, I'm assuming the claims are
2 the same. Essentially the claims are the same as the ones
3 in the existing complaint that --

4 MR. COOPER: No new claims are allowed to be
13:33:01 5 added?

6 THE COURT: We have this public nuisance in
7 RICO. All right? I think that's what we're talking about.
8 Am I right from the PEC standpoint, public nuisance and/or
9 RICO, that's it?

10 MR. WEINBERGER: That's pretty much the case,
11 your Honor, but I want to address something Mr. Cooper asked
12 about.

13 So I would anticipate that one of the grounds for our
14 motion for leave to amend will be that discovery in the
15 bellwether cases have revealed new information that we
16 didn't previously have which --

17 THE COURT: All right. Tell us what that
18 information is.

19 MR. WEINBERGER: We absolutely intend to do
13:33:47 20 that. And as you know, amended complaints to conform to the
21 evidence are routinely allowed as part of the motion for
22 leave.

23 So while I don't believe that the legal claims are
24 going to be any different than what we've pled in the
13:34:06 25 bellwether compliance, it is quite possible that we are

1 going to allege additional facts which we didn't previously
2 know and the subdivisions were not aware of as the grounds
3 for motion to leave. So I don't --

4 THE COURT: You're alleging the facts but I'm
13:34:27 5 just saying this.

6 The only claims that are going to be brought are RICO
7 and public nuisance. I'm just going to leave at that. We
8 don't need anything else. All right?

9 So I'll just say we're talking about RICO and public
13:34:42 10 nuisance, which we're talking about the PBMs. Those are the
11 only claims in the existing bellwethers. All right?

12 MR. COOPER: Your Honor, respectfully, that's
13 not correct. The bellwether complaint added various State
14 Court claims that are not public nuisance. So that's the
13:35:00 15 only reason I'm asking this because the four PBM
16 bellwethers, the amended complaints that were filed last
17 year included a bunch of claims that are state-specific or
18 jurisdiction-specific and there may be jurisdiction-specific
19 defenses to them.

13:35:15 20 MR. WEINBERGER: So Mr. Cooper is correct.

21 And to the extent that there are additional states
22 that we didn't previously have, the state law may be
23 implicated with respect to the state law claims. You know,
24 we will --

13:35:36 25 THE COURT: All right.

1 I guess you're going to have -- you know, the
2 Plaintiffs' motions are going to have to be identified by
3 subdivision. All right? What claim or claims you're
4 proposing to bring against the entity that you're adding.
13:35:59 5 All right?

6 So just say if we've got, you know, in the OptumRx
7 motion, for each and every subdivision you're going to have
8 to say what claim or claims that subdivision is proposing to
9 bring against OptumRx and what is your basis for adding, you
13:36:23 10 know, for filing those claims now against OptumRx. ARCOS
11 data, discovery that's revealed the following facts,
12 whatever you've got, put it in there, and then OptumRx will
13 respond.

14 MR. BOONE: Judge Polster, again, this is
13:36:50 15 Brian Boone for OptumRx and United.

16 Are you saying that they don't have to file with their
17 motion for leave the proposed amended complaint for each
18 Plaintiff; they can just do this in the bodies of the
19 motions, say either the claims we're going to bring for this
13:37:04 20 county as opposed to -- because we would be upheld to see
21 the proposed amendment and place our opposition on what
22 they're proposing to amend in the way of the complaint that
23 they want to grant.

24 MR. WEINBERGER: Your Honor, may I address
13:37:23 25 that?

1 There are -- there's no hard and fast rule that I'm
2 aware of that requires that we attach to the motion for
3 leave a copy of the actual amended complaint which we intend
4 to file.

13:37:39 5 Sometimes that occurs and sometimes it doesn't, but we
6 hear you loud and clear that with respect to the claims that
7 we intend to assert on behalf of the subdivisions, we will
8 be -- we will make it clear in our motion what it is that we
9 intend to allege.

13:38:02 10 THE COURT: All right.

11 In this case, because there's been so much litigation,
12 everyone sees and knows what the claims look like. All
13 right? We've got plenty of public nuisance claims, we've
14 got plenty of RICO claims. They want to make -- all right,
13:38:21 15 if there's a specific state law claim and, you know, I would
16 say you should -- I mean, quite frankly, it may already be
17 in the existing complaint because remember, this is amending
18 existing complaints that have already named other
19 defendants.

13:38:38 20 So you've got allegations. So if you just -- you
21 know, say all right, we're keeping the same allegation,
22 we're adding OptumRx, and see what it is. I don't need to
23 have the complaints filed. But you've got to -- there has
24 to be enough specificity so the Defendant knows exactly what
13:38:56 25 you are proposing to allege what they did or didn't do that

1 violated the law.

2 So, you know, there's no page limit on -- I'm not
3 putting a page limit on the Plaintiffs' motion and I'm not
4 putting any page limit on the Defendants' motion because I
13:39:21 5 have no idea how many cases are included and how much -- how
6 long it's going to take you, how much detail you're going to
7 include on each case. Obviously, it should include a lot of
8 details so the Defendants can see it and make the best
9 showing you can. So there's no page limits either way.

13:39:43 10 MR. BOONE: Again, this is Brian Boone for
11 OptumRX and United.

12 I can tell from you my experience, I don't think I
13 ever proposed an amended complaint without seeing a proposed
14 amended complaint. And it sounds like they don't have to
13:39:54 15 file proposed amended complaints so long as their motion --
16 that's highly irregular in my --

17 THE COURT: That's fine. I'm not going to --
18 I mean I want this to move forward. Okay? So you,
19 Mr. Boone, you know -- you know very well what a RICO
13:40:10 20 complaint against OptumRX looks like. You know very well
21 what a public nuisance claim against OptumRX looks like.
22 You've got them in the four bellwethers. Okay?

23 Any one they're proposing to say would say pretty much
24 of the same thing but it will include specific evidence or
13:40:29 25 allegations. And that's what they're going to have to

1 include in their motion as to why they're now in 2024
2 seeking to add OptumRx to any given case. So that's the
3 key, is the reason -- is the reason to, at this point, 2024
4 as opposed to say just 2019 when the original case was
13:40:52 5 filed.

6 So that's the focus on this. It's not, you know, the
7 specific allegations in the complaint. We're not addressing
8 a motion to dismiss any particular complaint or a defect in
9 any particular complaint. We're addressing what is the good
13:41:09 10 cause for adding a given Defendant in 2024 when the case has
11 been pending for four or five or six or more years. That's
12 the focus that I have to decide, and that's what we don't
13 need, to see the exact wording of the complaint.

14 So I'll -- if we're going 60 days -- just want to make
13:41:34 15 sure I'm not using a Saturday or a Sunday. Monday,
16 July 22nd is two months from today. So how about that for
17 the Plaintiffs' motion, motions? Monday, July 22nd?

18 And then 60 days for the Defendants, we're talking
19 about the latter part of September. Let's see. Well, why
13:42:23 20 don't we just say Monday, September 23rd, for the
21 Defendants, Defendants' response.

22 And, Pete, what do you want for the replies?

23 MR. WEINBERGER: I would say three days, your
24 Honor.

13:42:41 25 THE COURT: Well, I'm thinking 30. All right?

1 So --

2 MR. BOONE: So, Judge Polster, this is Brian
3 Boone again for OptumRx and United.

4 THE COURT: Let me just finish this.

13:42:56 5 So we'll say Monday, October 21st, for the Plaintiffs'
6 replies. So July 22nd, September 23rd, October 21st and
7 let's just say -- let's just say 4:00 P.M. We don't need to
8 have things, you know, people working until midnight.
9 4:00 P.M.

13:43:15 10 Yes, Mr. Boone?

11 MR. BOONE: This is Brian Boone again for
12 OptumRX and United.

13 We have ten different Defendant entities in the case.
14 Is this going to be the deadline for each of those
15 Defendants to respond?
13:43:25

16 THE COURT: Well, I'm going to be addressing
17 that in the next conference. All right.

18 It's time to end all that with all these different
19 entities per Defendant. All right. So I'm proposing to end
13:43:43 20 that. We're going to have -- I mean I'm going to address
21 that in the next conference but this is a big waste of time
22 to have multiple entities for any Defendant. We've got one
23 Defendant. All right. We did this in the Track 2 trial.

24 There are all sorts of Walgreen's entities and
13:44:02 25 Wal-Mart entities and CVS entities. Guess what? Every

1 reference to a Defendant in that trial by any lawyer on
2 either side, by the Court, in the jury instructions, in the
3 verdict forms, it was simply Walgreen's, Wal-Mart, CVS. All
4 right? We did that. And so we're going to do that with
13:44:28 5 everyone else.

6 So it's OptumRx. All right? It's Tru-Value. It's
7 Costco. All right? It's Pfizer. All right. Let's just
8 save a lot of time and effort. Okay?

9 So it's one corporate entity. That's what we're
13:44:50 10 talking about. So we'll just -- I think we got good
11 lawyers. You all know how to deal with that. If you don't,
12 trust me, I will just start doing it myself. All right?
13 And we'll leave it at that. Okay.

14 Anything from anyone else?

13:45:11 15 MR. McDONALD: This is John McDonald for Henry
16 Schein. I just have a quick question.

17 Does this process for the Plaintiff apply to all
18 Plaintiffs in the MDL or just the political subdivisions?

19 THE COURT: Well, I don't think we're going to
13:45:29 20 be having motions to amend by TPTs and hospitals, are we?

21 I'm not proposing that. I think we've been there and
22 done that.

23 MR. McDONALD: I don't know. That's why I'm
24 asking.

13:45:41 25 THE COURT: I'm just saying this. This is

1 just the subdivisions.

2 MS. CABRASER: Your Honor, Elizabeth Cabraser
3 in this case for Tribes and Third Party Payors.

4 That may be mostly right. However, neither the Third
13:45:57 5 Party Payors or the Tribes have had the opportunity to amend
6 complaints or to seek to amend complaints, I apologize,
7 against Defendants such as the PBMs, and they wish to do so
8 and --

9 THE COURT: Well, they haven't filed the
13:46:12 10 motion. So we're not -- we're only dealing with the
11 subdivisions.

12 The Tribes have settled. Okay. I'm not proposing
13 opening this up again. So I think we're just dealing with
14 the subdivisions at this point. All right?

13:46:31 15 MR. SKIKOS: Judge, if I could. This is Steve
16 Skikos on the Tribes.

17 The Tribes are part of the negotiations and
18 settlements that are ongoing with the remaining
19 manufacturers, and the remaining distributors and
13:46:45 20 pharmacies, regional.

21 There is no real reason to exclude the Tribes from the
22 amendment process because they're part of the litigation
23 efforts with respect to these other companies. So the
24 Tribes should be -- the Tribes are like the subdivisions in
13:47:03 25 that they have lawyers. They're just part of the process,

1 and they shouldn't be excluded from these remaining
2 manufacturers, distributors, PBMs from potentially being
3 part of any settlement there as well.

4 So we would like them to be included in the deadline.

13:47:20

5 THE COURT: Well, all right.

6 Well, look. One can be a single motion per Defendant.
7 All right? And that will include any Plaintiff in this MDL
8 who wants to add a given Defendant to any case. All right?
9 This is the last time I'm doing this so it's not going to
10 happen again. Anyone goes later, they're going to -- I'm
11 just going to simply set it denied and leave to amend.

13:47:38

12 So if someone wants to add Henry Schein to a case,
13 whether they're a city, a county, a tribe, a hospital, a
14 TPT, it's got to be in that motion.

13:48:05

15 MS. CABRASER: Thank you, your Honor. We
16 appreciate that.

17 MR. BOONE: Judge Polster --

18 THE COURT: We have to get specific --
19 specific reasons, it's going to have to give its specific
20 reason for adding. All right?

13:48:13

21 MR. BOONE: This is Brian Boone again for
22 OptumRX and United.

23 The fact that you're commenting about the ten
24 different entities, just to put this on the record, we're
25 opposing the effort to collapse the distinction across, the

13:48:24

1 different companies --

2 THE COURT: Mr. Boone, Mr. Boone. I've said
3 what I've said. Okay.

4 MR. BOONE: I just want to create a record.

13:48:36 5 THE COURT: You can create whatever record you
6 want, sir. I've said what I've said.

7 Those entities will be collapsed. If the parties
8 can't agree to do it, the Court will do it. Okay?

9 MR. BOONE: It's still a lot, your Honor.

13:48:55 10 THE COURT: I've said what I've said, sir.
11 Okay.

12 Anything further?

13 MS. MILLER: Your Honor, just one
14 clarification.

13:49:03 15 I think that you had commented that each Plaintiff
16 will need to be -- the counsel for each Plaintiff will need
17 to sign the pleadings. Is that --

18 THE COURT: Yes.

19 MS. MILLER: Okay.

13:49:15 20 THE COURT: That's right because you're
21 signing -- by signing, you're certifying you're prepared to
22 litigate that case. If you're not, you don't do it because
23 if that case gets picked for bellwether and then you want to
24 say, "Oh, I didn't mean it. I want TO dismiss this case,"
13:49:30 25 either I'll deny the motion to dismiss or impose heavy

1 sanctions on the lawyer and the subdivision who did that.

2 This is not just an exercise. Okay.

3 Anything further? Okay.

4 That's July 22nd, September 23rd, and October 21st.

13:50:00

5 And if anyone feels that based on what's filed, they need
6 more time, I'll be reasonable in granting extensions. All
7 right.

8 Thank you, everyone.

9 COUNSEL: Thanks, Judge.

13:50:15

10 (Proceedings adjourned at 1:50 p.m.)

11 C E R T I F I C A T E

12 I certify that the foregoing is a correct
13 transcript from the record of proceedings in the
14 above-entitled matter.

15

16

17

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