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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, )  
)  
) Civil Action  
) Number 1:17MD02804  
)  
)  
) **(Pages 1 - 21)**

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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 1:55 P.M.

2                   JUDICIAL ASSISTANT: Judge, this is Helen. I  
3 have the team on. I have everybody required on. I'll let  
4 people in as they're straggling.

14:03:33 5                   THE COURT: Do we have the Court Reporter?

6                   JUDICIAL ASSISTANT: We do have a Court  
7 Reporter, yes. We have a Court Reporter, Judge.

8                   THE COURT: All right.

9                   JUDICIAL ASSISTANT: Hey, Judge. You're  
14:04:03 10 breaking up a little. I think I'll kick you out and bring  
11 you back in.

12                   THE COURT: All right.

13                   JUDICIAL ASSISTANT: I'm just going to knock  
14 you off, remove you, and you have to rejoin.

14:04:11 15                   THE COURT: All right.

16                   (Pause.)

17                   THE COURT: Well, can everyone hear me? Can  
18 the Court Reporter?

19                   COURT REPORTER: Yes.

14:05:38 20                   THE COURT: All right. Do we have everyone?

21                   I'd like to have the client representatives identify  
22 yourselves because I probably have not met you. All right?

23                   Who do we have from the -- what law directors do we  
24 have? If you could identify yourself and what city and  
14:05:58 25 county.

1 MR. BEATH: Judge, this is Patrick Beath,  
2 corporation counsel for the City of Rochester, New York.

3 THE COURT: All right. Welcome, Patrick.

14:06:17

4 MR. CAMPOLIETO: Your Honor, John Campolieto,  
5 also from the City of Rochester.

6 THE COURT: All right.

7 Who do we have for the subdivisions?

8 MR. COVER: Jeremy Cover. I'm the City  
9 attorney for the City of Independence, Missouri.

14:06:37

10 THE COURT: All right. Good afternoon,  
11 Jeremy.

12 MR. COVER: Good afternoon. Thank you.

13 MR. GARVEY: Judge, this is Jack Garvey, the  
14 attorney for Lincoln County, and I'm waiting for their  
15 county counsel to get on line.

14:06:50

16 THE COURT: You broke up. What -- what  
17 subdivision?

18 MR. GARVEY: Lincoln County, Missouri.

19 THE COURT: Okay. All right. That's three.

14:07:05

20 Who's the fourth?

21 MR. BRATTON: Judge, this is Nathan Bratton  
22 with Webb County. I'm general counsel.

23 THE COURT: Okay. Good. All right.

24 And then who do we have for OptumRx?

14:07:28

25 MR. BOONE: Judge Polster, this is Brian Boone

1 for OptumRx and United. We have Kate Mihalevich, who is the  
2 General Counsel --

3 THE COURT: You're breaking up.

4 MR. BOONE: Sorry.

14:07:38 5 THE COURT: Who's that?

6 MR. BOONE: Can everybody else hear me?

7 THE COURT: Yeah, now.

8 Who's the General Counsel?

9 MR. BOONE: Kate Mihalevich.

14:07:53 10 MS. MIHALEVICH: Good afternoon, Judge. This

11 is Kate Mihalevich. Can you hear me okay?

12 THE COURT: Yes, yes.

13 MS. MIHALEVICH: My apologies. My camera's

14 not working.

14:08:03 15 THE COURT: That's okay.

16 MR. BOONE: And also John -- I'm sorry. John

17 Kokkinen, Senior Associate for OptumRx.

18 THE COURT: All right. Welcome, John. All

19 right.

14:08:14 20 And who do we have for Express Scripts?

21 MR. COOPER: Your Honor, for Express

22 Scripts -- and I'll have them introduce themselves as well

23 -- we have Urmila Baumann, who's the Chief Counsel for

24 Legal, as well as Ashley Rothe, who helps oversee this

14:08:30 25 matter.

1 MS. BAUMANN: Good afternoon, your Honor.

2 THE COURT: Who is the first person? I didn't  
3 get the last name?

14:08:41

4 MS. BAUMANN: Your Honor, my last name is  
5 Baumann, B-A-U-M-A-N-N.

6 THE COURT: All right. Thank you. Okay.

14:09:12

7 I had -- I requested that we get together because what  
8 I feared happening a few months ago has happened. And this  
9 litigation between the subdivisions and the PBMs is starting  
10 to degenerate into a hockey ball rather than a professional  
11 litigation. And that's different than the way things have  
12 gone in this MDL for six plus years.

14:09:38

13 And I had warned the parties I didn't think this was a  
14 good road to go down, this motion to, you know, recuse or  
15 disqualify Motley Rice. I said if the Defendants OptumRx  
16 persisted in this, things will degenerate. That seems to  
17 have happened. So it's my job to change the paradigm, and  
18 I'm changing it right now.

14:10:05

19 So I make it clear I do not want to be spending my  
20 time and the time of my valuable team dealing with motions  
21 for protective orders, motions for sanctions, all these  
22 motions to dismiss individual Defendants. All right? If  
23 the parties insist that I do, and I determine that anyone  
24 has, you know, needlessly complicated, protracted, whatever  
14:10:34 25 this MDL, I will impose very hefty sanctions on the lawyers

1 involved and the clients involved, both. And, you know,  
2 it's -- but if it's required, I've got as hard an edge as  
3 anyone and I know how to use it, and I will do it. I don't  
4 want to. But I don't want there to be any question in  
14:10:58 5 anyone's mind about my ability and willingness to use it.

6 We're also going to start having regular conferences,  
7 and this one would have been in person but there was no way  
8 to do it quickly in person. We will be meeting about once a  
9 month, and it will be in person in Cleveland, and I'm doing  
14:11:20 10 this for a number of reasons.

11 It's very easy to demonize people and weaponize things  
12 on Zoom. It's a lot harder when you're in person when you  
13 know each other. So I want the lawyers to get to know each  
14 other and, more importantly, I want the clients to get to  
14:11:36 15 know each other.

16 Clients think that the lawyers aren't proceeding in  
17 this litigation the way they want them to, although later  
18 they tell the lawyers to do things differently or make the  
19 change, that's how it works. The clients are driving the  
14:11:51 20 train. And I want the clients to get to know each other.

21 So we're going to start off with what should be simple  
22 in this -- you know, is where we just ended the last  
23 conference on. All right?

24 I had -- we have this motion. I think it's primarily  
14:12:13 25 OptumRx. I don't know, eight or ten different OptumRx

1 entities that have been named, and OptumRx filed a motion to  
2 dismiss some.

3 All right. There's some background so put yourself on  
4 mute, someone or everyone if you're not talking.

14:12:37 5 I asked Special Master Cohen to work with parties to  
6 just work this out. I didn't want to be spending my time.

7 For some reason, this didn't -- file -- involved  
8 Walgreen's, Wal-Mart, CVS. The Plaintiffs had sued a bunch  
9 of entities for each of those. I said look, no one's going  
14:13:02 10 to be dealing with all these separate entities in the trial.  
11 It's all things Wal-Mart, CVS. You work it out. All right?

12 They worked it out and the simple way to work it out  
13 is, I guess, either a number of those entities will dismiss,  
14 dismiss without prejudice, with the simple agreement that if  
14:13:19 15 there was a judgment, it would get paid. That's all the  
16 Plaintiffs care about. If they win, they get their judgment  
17 paid. If they lose, one entity or 20 entities for a given  
18 Defendant, they lose.

19 So no one's going to spend any time and I -- so I  
14:13:37 20 assume that if we have a trial for any of these four cases,  
21 we're not going to have the lawyers for the Plaintiffs or  
22 the Defendants spending the first half an hour or an hour of  
23 their opening statement trying to explain to the jury all of  
24 these and how the entities should --

14:14:04 25 MR. WEINBERGER: I'm sorry to interrupt.



1 MR. BOONE: This is Brian -- you keep cutting  
2 out for me. I can't hear what you're saying, your Honor.

3 THE COURT: Well, all right. I'll stop and  
4 reconvene tomorrow in Cleveland. All right?

14:14:22 5 DEPUTY CLERK: Your Honor, this is Corey. I  
6 can't -- he's -- it's hard for me, too.

7 THE COURT: Well, Helen, can you fix this?

8 JUDICIAL ASSISTANT: All I can do is -- hang  
9 on, hang on.

14:14:34 10 It's Helen. This is Helen, the assistant. Judge,  
11 please let me talk for one minute.

12 THE COURT: Yes.

13 JUDICIAL ASSISTANT: It's your computer. Your  
14 signal is a little low, I think. I'm going to kick you out  
14:14:46 15 again and have you rejoin.

16 I know it's a pain. It's about all I can do from  
17 here. So here we go.

18 THE COURT: Get IT on. They can help.

19 SPECIAL MASTER: Judge, let me suggest  
14:15:02 20 something.

21 Judge, if you turn your video off, it will often help  
22 the connection because it's just a bandwidth issue and  
23 everyone will still be able to hear what you say.

24 DEPUTY CLERK: Can we also ask anyone who's  
14:15:15 25 not planning on speaking to mute their video? That's the

1 point, David. That will help.

2 If you're NOT planning on speaking, and you don't  
3 mind, please turn your video off as well so we can lessen  
4 the blow here.

14:15:37 5 JUDICIAL ASSISTANT: Judge had actually  
6 dropped off and that wasn't me. He did it all on his own.  
7 So when he does that, we can tell him to turn off his video.

8 SPECIAL MASTER: Thank you, Helen.

9 JUDICIAL ASSISTANT: Judge, this is Helen.  
14:15:58 10 Can you hear me?

11 THE COURT: Yeah, I can hear you. I have a  
12 problem. Can people hear me?

13 JUDICIAL ASSISTANT: Judge, turn off your  
14 video if that if that helps. Let's see if that helps.

14:16:14 15 THE COURT: Okay. Just --

16 JUDICIAL ASSISTANT: You got it, Judge. Try  
17 talking.

18 THE COURT: All right.

19 JUDICIAL ASSISTANT: Okay.

14:16:25 20 THE COURT: Can people hear me now?

21 SPECIAL MASTER: Judge, it's a little choppy,  
22 but I think you should go ahead.

23 THE COURT: Well, folks -- we'll have to  
24 reconvene in person or somewhere else.

14:16:44 25 Helen, could someone in the office, can they get IT to

1 help with this?

2 JUDICIAL ASSISTANT: We can try, Judge. I  
3 just don't think that anyone --

14:16:56

4 THE COURT: Who on my staff is in the office  
5 here?

6 SPECIAL MASTER: Judge, this is David. I can  
7 help this way.

14:17:10

8 If you hang up, I will call you, and you can run it  
9 through my cellphone and that will work. Obviously you  
10 won't have video but it will work.

11 THE COURT: I don't.

12 SPECIAL MASTER: So --

13 THE COURT: I'd rather see people but all  
14 right.

14:17:25

15 SPECIAL MASTER: Okay.

16 You can even leave it running, Judge, but if you run  
17 it through -- you can leave your Zoom running and see  
18 people, and I'll call you on your phone, your cellphone, and  
19 you can run it that way.

14:17:38

20 JUDICIAL ASSISTANT: That's a great idea,  
21 David. Thank you.

22 THE COURT: All right.

23 JUDICIAL ASSISTANT: Judge, you can turn your  
24 camera on if you want and I can mute you.

14:17:52

25 THE COURT: Well, it says you disabled my

1 video, so.

2 JUDICIAL ASSISTANT: Okay. That was --

3 DEPUTY CLERK: That was me, not Helen, Judge.

4 I can hear you fine now.

14:18:05 5 THE COURT: All right.

6 SPECIAL MASTER: Can you hear me?

7 THE COURT: Yes. The question is whether I  
8 should turn the sound off on my computer.

9 SPECIAL MASTER: You should. Turn it off on  
14:18:19 10 your computer.

11 THE COURT: All right.

12 JUDICIAL ASSISTANT: David, we cannot hear the  
13 Judge.

14 SPECIAL MASTER: Parties, can you hold just a  
14:18:48 15 moment? I'm going to give the phone number to call.

16 JUDICIAL ASSISTANT: David, can you tell him  
17 I'll fax him a phone number to call?

18 MR. FARRELL: This is Paul Farrell.

19 If he's on a laptop or fixed station, he might be able  
14:19:18 20 to move where he has better reception.

21 JUDICIAL ASSISTANT: Yeah. I just don't know  
22 if he knows where that is in his house but he always works  
23 from where he is right now. So I don't know if it will get  
24 better anywhere else.

14:19:50 25 THE COURT: All right. I just did it. Can

1 people -- well, I'm just going to go ahead. If not, we'll  
2 do these in person.

3 So we were talking about all these various entities.  
4 Okay. I mean we -- everyone knows that there is a trial.  
14:20:24 5 We're not going to be worrying about all these different  
6 entities for OptumRx and Express Scripts. It's going to be  
7 OptumRx or OptumRx RX and Express group. And that's how the  
8 witnesses will refer to the corporation, that's how the  
9 Judge will, that's how the lawyers will, and the jury  
14:20:41 10 instructions, and the verdict forms. All right?

11 And so why -- we worked this out very easily in Track  
12 3. Why are we still wasting time on this now? Can someone  
13 explain to me?

14 MR. WEINBERGER: Well, your Honor, I'll be  
14:21:09 15 happy -- on behalf of the Plaintiffs, in response to the --  
16 in response to our motion, jurisdictional motion to dismiss,  
17 the very last exhibit, which I think is Exhibit F, contains  
18 our proposed stipulations and I think would have solved this  
19 issue entirely. And we put that proposal --

14:21:37 20 THE COURT: What is -- what is the proposed  
21 stipulation?

22 MR. WEINBERGER: So it's -- actually we filed  
23 it as a separate supplemental pleading shortly after our  
24 response to file the motion to -- response to motion to  
14:21:57 25 dismiss.

1           So it's on the docket. We don't have a docket number  
2 for it but --

3           THE COURT: Well, all right.

4           MR. WEINBERGER: -- I filed.

14:22:07 5           But the fact is we proposed a stipulation that does  
6 exactly what it is that you want, and what it is that we  
7 need, and it's been out there for about three weeks or more.

8           The Defendants said they intended to respond to it but  
9 they haven't.

14:22:31 10           THE COURT: All right. Well why haven't the  
11 Defendants responded?

12           MR. COOPER: Judge Polster, this is Jonathan  
13 Cooper for the Express Scripts Defendants.

14           We have a counter proposal we've been vetting with our  
14:22:47 15 client and expect to be able to send it this week. There  
16 are certain issues about why certain Express Scripts  
17 entities cannot be collapsed into one another. A key one,  
18 just as an example -- there are others, but just as an  
19 example, there are certain Express Scripts entities that are  
14:23:03 20 dispensers and subject to the Controlled Substances Act and  
21 there are others that are not.

22           So if they were all to be collapsed into a single  
23 company, that would be subjecting certain entities to legal  
24 duties that they don't actually have. So there are certain  
14:23:21 25 things need to work out in the proposal and will be

1 following up with the Plaintiffs about that this week.

2 THE COURT: Well, we can -- again, the issue  
3 is satisfying any judgment, all right, or any written  
4 injunctive relief. All right? That's all we're talking  
5 about. I mean that's the Plaintiffs' concern. We just --

14:23:36

6 MR. COOPER: That may be the Plaintiffs'  
7 concern -- sorry. I didn't mean to speak over you, sir.

8 THE COURT: But so -- all right. There's ways  
9 to work this out. So all right. What about --

14:23:53

10 MR. WEINBERGER: Your Honor, the document  
11 filed was Document 5450. It has the proposed stipulation.

12 THE COURT: 4540? All right. Fine.

13 MR. WEINBERGER: 5450.

14 THE COURT: 5450. All right fine.

14:24:09

15 Is OptumRx going to respond to the response?

16 MR. BOONE: Your Honor, this is Brian Boone  
17 for OptumRx and United.

18 And we're working on a counter proposal.

19 THE COURT: All right.

14:24:24

20 Well I want this done or else the Court's going to do  
21 it. Okay? And you may not know -- no one may be happy how  
22 I do it. But trust me, no one is going to be -- it's hard  
23 enough for a jury to understand they have to figure out four  
24 or five different identities and four or five separate  
14:24:44 Express groups identities, they won't get beyond that.

14:24:44

1 They'll be bald at the opening statement and it will get  
2 worse, and we have enough smart people who know this.

3 So again, you know, if the lawyers can't solve it,  
4 then I want the clients to solve it. And if no one will  
14:25:02 5 solve it, the Court will get it done. All right?

6 So I'm not going to spend any more time on, you know,  
7 motion to dismiss various entities. Okay?

8 MR. BOONE: Judge Polster, this is Brian Boone  
9 again.

14:25:16 10 THE COURT: You can't resolve it, there would  
11 have to be a whole lot of expensive discovery on each and  
12 every one of these entities before you can ultimately  
13 determine factually what the evidence is against any of  
14 them.

14:25:31 15 Again, this is going to be done. All right? So the  
16 clients understand you're to get it done. If the lawyers  
17 can't, you're to get it done or else I'm going to get it  
18 done and no one may be happy how I'll get it done.

19 MR. BOONE: Judge Polster, this is Brian Boone  
14:25:47 20 again for OptumRx and United.

21 I just want to make sure I understand you. When you  
22 say get it done, what do you mean by that? Do you mean the  
23 dismissal of the non-entities?

24 THE COURT: Why don't you -- why don't you  
14:25:59 25 talk to everyone else on the Zoom afterwards. Okay? When a



1 Federal Judge says the parties don't do it, the Court will  
2 do it, that should be clear. All right? If it's not, well  
3 I suggest you ask someone else because my guess is every  
4 single person on this Zoom besides you understands what I  
14:26:25 5 just said. All right?

6 Now I also don't want to be, you know, spending a lot  
7 of time, you know -- I was very clear in April what I said  
8 the Defendants had to do in their discovery obligations.  
9 All right? They're to do it.

14:26:51 10 It's also clear the CMO said that there were -- each  
11 side got a certain amount of interrogatory requests for  
12 depositions, whatever. All right?

13 If a given party feels that that wasn't sufficient,  
14 and you think you need more, you try and work it out with  
14:27:07 15 the other side. And if you think the other side's being  
16 unreasonable, all right, then you got to ask the Court  
17 permission to exceed the limits. Everyone understands that.

18 So I'm going to put a pause on this briefing on the  
19 motion for sanctions and motions for protective orders and  
14:27:29 20 direct the lawyers to sit down as professionals. If you  
21 can't do it by Zoom, go to some city together and work it  
22 out like good lawyers do. All right?

23 And if the lawyers can't, then I want -- we got the  
24 clients on here. I want them to take control. I want this  
14:27:51 25 litigation to start running professionally.

1           There are -- there's some substantive motions to  
2 dismiss, based on -- well, I guess limitation and whether  
3 there's not -- there's a monetary loss, whatever, I'll have  
4 to deal with those in the briefs. But this other stuff, you  
14:28:22 5 all know how to work things through, and I'm going to give  
6 you one more chance to do it because I have to start doing  
7 it. It's going to end up being very expensive for some of  
8 the lawyers and some clients. I will, of course, have to do  
9 it if I'm given no choice but no one's going to be happy  
14:28:47 10 with the outcome.

11           So, you know, again, I want your clients to start  
12 having, you know, skin in the game. And so, you know,  
13 you're taking your time and your money to travel to  
14 Cleveland but more importantly, I want people to start  
14:29:05 15 getting to know each other. And if you've got something to  
16 say or some problem, then you sit down and you work it  
17 through. Okay?

18           We used to do it that way. Obviously, everyone knows  
19 the most important things that ever happen in a court  
14:29:23 20 hearing or conference or whatever is not what happens in  
21 with the Judge. It's before and afterward, 90 percent of  
22 what needs to get done, and that's when it gets done. When  
23 you see each other, you talk to people. All right?

24           And we've lost that with Zoom. So now that we can get  
14:29:39 25 back together again, we're going to do it. And it's clear

1 we need it with this litigation. So we're going to start  
2 doing this.

3 So I'm proposing, you know, about a month from now,  
4 Tuesday, June 25th, at 3:00 P.M., and then I want a joint  
14:29:58 5 status court Monday June the 24th at noon. And you don't  
6 need to file the report on the public docket. You just  
7 e-mail it to the Court. And I think that's --

8 MR. WEINBERGER: Your Honor, the -- your  
9 Honor, the 25th is -- just checking the calendar.

14:30:27 10 THE COURT: Tuesday, the 25th.

11 MR. WEINBERGER: Okay.

12 THE COURT: About a month from now.

13 MR. WEINBERGER: Yeah, okay.

14 THE COURT: At 3:00 P.M. and spend an hour or  
14:30:38 15 two working through whatever we've got. And mainly, I think  
16 some personal face-to-face contact will be beneficial for  
17 everyone in this litigation. And I want to get this back on  
18 an even keel. All right?

19 I mean I had monthly meetings in this MDL at the  
14:31:01 20 beginning, and they were helpful, helpful to the Court. And  
21 I think everyone got to know each other. We obviously four  
22 years ago put a pause on all sorts of public meetings. And  
23 I haven't felt the need to resume them until now. But we'll  
24 do it, litigation with the PBMs. All right.

14:31:29 25 That's really pretty much what I had to say. But the

1 floor is now open for anyone from the Plaintiffs' side or  
2 from OptumRx or Express Scripts. Any of the clients want to  
3 say anything?

14:32:04 4 MR. COVER: Judge, this is Jeremy Cover with  
5 the City of Missouri. Can you please clarify who you would  
6 expect to see on the 25th at 3:00 P.M.?

7 THE COURT: The people we've got on -- the  
8 people we have now.

9 These are -- you know, I've got lead counsel of each  
14:32:24 10 of the four subdivisions, I mean four bellwethers. I've got  
11 some representation from PEC. I've got the -- I think I  
12 asked for the chief legal officer from each of the  
13 subdivisions and the general counsel or some equivalent for  
14 the two corporate Defendants. I figured, you know, I count  
14:32:45 15 them as the clients. I could have gotten CEO's, mayors, or  
16 county executives, but I don't need -- you know, I want the  
17 people who are, who I believe are, from the clients'  
18 standpoint, are overseeing the litigation.

19 If I was wrong with that, I mean I'm assuming the law  
14:33:05 20 director or chief legal officer of the city or county is the  
21 right person and, you know, the corporate representatives, I  
22 assume I've got the right people. If I've got the wrong  
23 people, then you've got to figure -- you know, let me know  
24 and send the right people.

14:33:23 25 MR. COVER: Thank you, sir.

1 THE COURT: Okay.

2 Any -- I don't want to be accused of, you know, not  
3 letting anyone speak. I mean I want everyone to hear from  
4 me, but I want everyone to have the opportunity to address  
5 anything they want with me or anyone else. Okay.

14:33:47

6 Thank you very much and have a good afternoon.

7 (Proceedings adjourned at 2:34 p.m.)

8 C E R T I F I C A T E

9 I certify that the foregoing is a correct  
10 transcript from the record of proceedings in the  
11 above-entitled matter.

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15

s/Shirle Perkins  
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