

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION) MDL 2804
OPIATE LITIGATION)
) Case No. 1:17-md-2804
THIS DOCUMENT RELATES TO:)
) Judge Dan Aaron Polster
PBM Bellwether Cases)
) ORDER GRANTING MOTION TO
) REINSTATE OPTUM ENTITIES
)

Before the Court is the PBM Bellwether Plaintiffs’ Motion to Reinstate OptumHealth Defendants. Docket no. 6541. The OptumHealth entities¹ filed a Response. Docket no. 6557. Plaintiffs filed a Reply. Docket no. 6562. For the reasons below, Plaintiffs’ Motion is **GRANTED**.

Background

From the inception of this litigation, this Court has recognized that the Opioid MDL is among the most complex in our nation’s history. *See, e.g.*, docket nos. 2676 at 2, 5217 at 1.² The MDL is complicated not only because there are numerous categories and large numbers of both plaintiffs and defendants, but also because many defendants have knotty corporate structures, with multiple, subsidiary and related family entities.

In each MDL bellwether case, the Court has encouraged the parties to reduce this complexity—and make the jury’s job easier—by finding ways to refer to each defendant corporate

¹ The OptumHealth entities are OptumHealth Care Solutions, LLC, OptumHealth Holdings, LLC, and Optum Health Networks, Inc. The Court refers below to the entire corporate family as “Optum Defendants.”

² **Error! Main Document Only.** *See also* Sara Randazzo, *Opioid-Addiction Litigation Heads to Complex Trial*, Wall Street Journal (Oct. 20, 2019) (the first Opioid MDL trial “is part of what has been called the largest and most complex civil case in the nation’s history”).

family by a single corporate name. For example, in the first bellwether case, the Court's Case Management Order ("CMO") directed as follows:

All Track One-B parties shall meet and confer and attempt in good faith to reach agreement regarding how they will refer—in trial and on jury verdict forms—to Track One-B Defendant corporate families in a way that will not overly complicate the trial for the Court or for a jury. The Court strongly endorses a mechanism similar to what the parties agreed to in the first Track One trial whereby each corporate defendant family was referred to by a single corporation name.

Docket no. 3116 at 2.

The Track One-B parties reached agreement in accord with the Court's wishes. The Court then reiterated its directive in subsequent bellwether cases.³ And in each such case, the parties did reach a stipulated agreement that allowed the Court, the jury, and the parties to refer to all related corporate entities by a single corporate "family name." Plaintiffs explain these stipulated agreements accurately:

Throughout this litigation, this Court has encouraged all parties to streamline the proceedings by entering into stipulations designed to avoid disputes about what conduct is attributable to which members of each defendant's corporate family. Up until now, every bellwether defendant has been able to reach agreement with the PEC to enter into stipulations under which most members of that bellwether defendant's corporate family would be dismissed and the remaining defendant (or occasionally defendants plural) would stand in the shoes of the dismissed entities and agree that it would not raise the absence of the other entities

³ See, e.g., docket nos. 3769 at 1 (ordering as follows in the Kroger and Meijer bellwether: "Consistent with prior directives, the parties shall meet and confer * * * and seek to reach agreement to streamline the case as to the treatment of multiple named defendants that are part of a single corporate family."); docket no. 5298 at 2 (same in TPP bellwether case); docket no. 6012 at 2 (same in Hospital bellwether case).

as a defense. This approach has saved the parties and the Court considerable time and expense and avoided the need for a great deal of unnecessary motion practice.

Motion at 2.

The PBM Bellwether Case Stipulations

After picking the two PBM bellwether cases, the Court directed the parties to reach a streamlining agreement similar to those reached in every earlier bellwether case.⁴ Plaintiffs Rochester and Ogdensburg succeeded in doing so with the Express Script Defendants. Specifically, Plaintiffs and Express Scripts agreed that: (1) Plaintiffs would dismiss their claims against six of the Express Script family-related Defendants; (2) Plaintiffs would maintain their claims against two of the Express Script family-related Defendants; (3) the two remaining Defendants would “stand in the shoes of” the dismissed Defendants; (4) the six dismissed Defendants would nonetheless participate fully in discovery as if they were named parties; (5) a judgment in favor of the two remaining Defendants would also operate as a judgment in favor of the dismissed defendants; and (6) a judgment in favor of the Plaintiffs could be paid by the Express Script Defendant family. *See* Motion Exh. C (docket no. 6541-3) (Rochester-ESI stipulation).

The Optum Defendants, however, refused to agree to the same framework. The parties did reach a stipulated agreement, wherein plaintiffs dismissed 7 of the 10 named Optum family-related Defendants. But the agreement does not include the “stand in the shoes” provision; to the contrary, the stipulation provides explicitly this would *not* occur. *See* Motion Exh. A (docket no. 6541-1 ¶4

⁴ *See* docket no. 5466 at 13 (Transcript of May 22, 2024 Zoom conference) (“THE COURT: So we were talking about all these various entities. * * * We’re not going to be worrying about all these different entities for OptumRx and Express Scripts. It’s going to be OptumRx . . . and Express group. And that’s how the witnesses will refer to the corporation, that’s how the Judge will, that’s how the lawyers will, and the jury instructions, and the verdict forms.”).

at 3) (Rochester-Optum stipulation) (“OptumRx, Inc. will not stand in the shoes of or accept liability on behalf of any other entity.”). The Optum agreement also included the following Clause No. 7: “If the Bellwether Plaintiffs re-assert claims against any or all of the [Optum] defendants dismissed under Paragraph 1, the Dismissed Optum Entities agree that they will not use any earlier dismissal under this stipulation as a defense.” *Id.* at 3-4.

The Current Motion

Plaintiffs now move to reinstate three of the seven dismissed Optum Entities as defendants (those three are listed in footnote one). Plaintiffs state that the parties’ stipulated agreement “gave the Plaintiffs time to evaluate, with the benefit of a deeper understanding of their respective cases, whether the absence of the tentatively dismissed entities would have a meaningful impact on the case.” Motion at 3. Plaintiffs declare that, “[w]ith the benefit of a fuller evidentiary record, Rochester and Ogdensburg have determined that the [three Dismissed Optum] Entities need to be reinstated as defendants.” *Id.* And plaintiffs conclude that Clause No. 7 gives them an unrestricted right to re-assert claims against these Dismissed Optum Entities. *See* Motion at 3-4.

Plaintiffs also contend that, even though they do not need to show it, good cause exists to reinstate these Dismissed Optum Entities. Plaintiffs assert good cause exists because: (1) OptumRx refuses to stand in the shoes of the Dismissed Optum Entities; (2) evidence obtained through discovery reveals that the three Dismissed Optum Entities engaged in conduct that led to the opioid crisis; and (3) the original stipulated dismissal was undertaken to achieve the Court’s own directive. Plaintiffs further contend the Dismissed Optum Entities will not be prejudiced by being reinstated, because they have participated all along in discovery, and have already filed and fully briefed motions to dismiss. Plaintiffs assert that, conversely, *disallowing* reinstatement would

“penalize Plaintiffs for attempting to effectuate the Court’s goal of streamlining the litigation . . . and impede Plaintiffs’ ability to pursue the case they alleged in their complaint.” *Id.* at 3.

In response, Optum argues that Clause No. 7 does not “create an affirmative right” to reinstate the dismissed entities as defendants, but rather merely “contemplat[es] what will happen if a Court allows plaintiffs to reassert their claims.” Response at 12. Optum contends that, to reassert claims against any previously dismissed defendant, Plaintiffs must satisfy the legal standards set forth in Fed. R. Civ. P. 60, and Plaintiffs fail to offer a legally sufficient basis for setting aside the stipulated dismissals.

The Court agrees with Plaintiffs. Rule 41 permits parties to agree to a voluntary dismissal by stipulation. Fed. R. Civ. P. 41(a)(1)(A)(ii). If, as here, “the dismissal is by stipulation under Rule 41(a)(1), the parties are free to negotiate the conditions on which they agree to stipulate.” Wright and Miller, 9 Fed. Prac. & Proc. Civ. § 2366 (4th ed.). “A stipulation in fact represents a contract between the parties and, as such, is subject to the general principles governing construction of a contract.” *In re Nicholson Indus., Inc.*, 73 B.R. 266, 268 (Bankr. N.D. Ohio 1987). Courts determine a “contract’s meaning by looking to the parties’ intent” and “when a contract contains clear text, this text conclusively establishes that intent.” *P.I. & I. Motor Express, Inc. v. RLI Ins. Co.*, 40 F.4th 398, 410 (6th Cir. 2022) (internal citations and quotations omitted).

Here Clause No. 7 states explicitly that the Plaintiffs may “re-assert claims against any or all of the defendants dismissed” and the agreement prohibits “the Dismissed Optum Entities” from “us[ing] any earlier dismissal under this stipulation as a defense.” Optum argues this prohibition only takes effect if Plaintiffs first “clear the procedural hurdle of setting aside a voluntary dismissal under Rule 60(b).” Response at 12. But this argument is persuasive only by reading limiting language into the parties’ agreement. The stipulation says, simply, “the Dismissed Optum Entities

agree that they will not use any earlier dismissal under this stipulation as a defense.” It does not say they will not use any earlier dismissal as a defense “except if Plaintiffs move to reinstate without good cause,” or “except if Plaintiffs move to reinstate two years from now,” or “except Plaintiffs still have to show extraordinary circumstances.” The language is plain and the Court cannot ignore it.

Moreover, the factual context surrounding the parties’ stipulation is entirely supportive of the plain meaning of the text. The Court used strong language to urge the parties to find a way to refer to the Optum Defendant family by fewer corporate names, as had every other bellwether defendant (including co-defendant ESI, in these cases). Optum was certainly within its rights to refuse to agree to the “step in the shoes” language, and the Court is not now requiring any party to do so. But given this refusal, Plaintiffs were primarily and duly concerned that: (1) discovery could unearth evidence showing that a dismissed defendant was culpable; (2) that evidence would not be admissible at trial against any other defendant, since the remaining defendants did not “stand in their shoes;” and (3) the only mechanism to present the evidence at trial, therefore, would be through reinstatement of the dismissed defendant. The entire reason for Clause No. 7 was to meet the Court’s directive while also guarding against prejudice from the absence of the “stand in the shoes” provision that was present in all other, similar stipulations. Accordingly, pursuant to the clear language of their agreement, “the Bellwether Plaintiffs [may] re-assert [their] claims against [the three Dismissed Optum Entities],” and “the Dismissed Optum Entities [cannot now] use any earlier dismissal under this stipulation as a defense” to reinstatement.

Although the Court does not believe that Rule 60 applies to the circumstances presented, the Court adds that—for all of the reasons stated in Plaintiffs’ Reply at 2 & 4-8—it also concludes

Plaintiffs would be entitled to reinstate their claims against the Dismissed Optum Entities pursuant to Fed. R. Civ. P. 60(b).

Subsequent Motions

Notably, the parties' stipulated agreement further states that "[t]he Dismissed Optum Entities may also re-assert any defenses—including jurisdictional defenses—if Plaintiffs renew any claims against them." Docket no. 6541-1 ¶7 at 3-4. Optum declares in its briefing that, "[i]f Plaintiffs' claims are reinstated, [the Dismissed Optum Entities] plan[] to immediately move for summary judgment on [their] jurisdictional defenses." Response at 13 n.4. The Court will address the issues raised in any such motion in due course.

Conclusion

For the reasons stated above, Plaintiffs' Motion to Reinstate is **GRANTED**. OptumHealth Care Solutions, LLC, OptumHealth Holdings, LLC, and Optum Health Networks, Inc. are hereby reinstated as parties-defendant in the two PBM Bellwether cases.

IT IS SO ORDERED.

/s/ Dan Aaron Polster May 18, 2026
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE