

**BEFORE THE UNITED STATES JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

**IN RE: INSULIN PRICING  
LITIGATION**

§

**MDL NO.** \_\_\_\_\_

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**MOTION FOR TRANSFER OF ACTIONS PURSUANT TO  
28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL  
PROCEEDINGS**

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Movants the States of Arkansas, Illinois, Kansas, Mississippi, and Montana move this Panel for an order pursuant to 28 U.S.C. § 1407 transferring the five actions identified in the attached Schedule of Actions to the Southern District of Mississippi for coordinated or consolidated pretrial proceedings.<sup>1</sup> Transfer is appropriate for the following reasons:

1. Movants seek transfer and coordination or consolidation of the five cases identified in the attached Schedule of Actions (Scheduled Actions). Movants expect additional states will file similar cases.
2. The Scheduled Actions involve the Insulin Pricing Scheme, a conspiracy to artificially inflate the price of insulin. There are two active and essential participants in this conspiracy—the Insulin Manufacturer Defendants (Insulin Manufacturers)<sup>2</sup> and the Pharmacy Benefit Manager Defendants (PBMs).<sup>3</sup> The Insulin Manufacturers make 99%

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<sup>1</sup> Although not movants, the California Attorney General, the Louisiana Attorney General, and the Secretary of Justice of Puerto Rico filed suit on January 12, 2023, March 14, 2023, and January 17, 2023, respectively. Each of the cases has been removed to federal court. Remand motions are pending in the California and Puerto Rico actions.

<sup>2</sup> Insulin Manufacturers are Eli Lilly and Company, Sanofi-Aventis U.S. LLC, and Novo Nordisk Inc.

<sup>3</sup> There are three sets of PBMs: (a) Caremark, consisting of CVS Health Corporation, CVS Pharmacy, Inc., Caremark Rx LLC, CaremarkPCS Health LLC, and Caremark LLC; (b) Express Scripts, consisting of Evernorth Health Inc., Express Scripts Inc., Express Scripts Administrators, LLC, ESI Mail Pharmacy Service, Inc., Express Scripts Pharmacy Inc., and

of insulins on the market. PBMs control the market and the downstream purchase price of the insulins.

3. The Scheduled Actions are five actions filed by the Attorneys General of five states in their respective state courts. These five cases were removed to five different federal district courts alleging the same wrongful conduct on the part of Insulin Manufacturers and PBMs. The Scheduled Actions are pending in federal district courts in Arkansas, Illinois, Kansas, Mississippi, and Montana.
4. The Scheduled Actions involve common questions of fact. Insulin Manufacturers and PBMs engaged in and continue to engage in the Insulin Pricing Scheme nationally to inflate insulin prices to the point of fiction and falsity. PBMs develop drug formularies that control which insulins are covered by insurance. Insulin Manufacturers negotiate with PBMs to pay significant sums to ensure the inclusion and preferential treatment of their insulins on these formularies, and arbitrarily raise their list prices for insulins to cover these payments.
5. The Insulin Pricing Scheme results in false, artificially inflated insulin list prices that are not based on the cost of production, innovation, or other legitimate market forces. Rather, the insulins are captive to a vicious cycle of price increases in an industry in which there is no price competition among Insulin Manufacturers who produce this century-old drug.
6. The Scheduled Actions involve a nearly identical factual background and substantially similar complaints against the same defendants.

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Medco Health Solutions Inc.; and (c) OptumRx, consisting of UnitedHealth Group, Inc., Optum Inc., OptumInsight Inc., OptumRx Holdings LLC, and OptumRx Inc. As reflected in the Schedule of Actions, all three PBMs are defendants in all of the Scheduled Actions, but not all of their constituent affiliates remain as defendants in all of the Scheduled Actions.

7. Absent transfer, the parties and respective courts will be subject to potentially inconsistent pretrial rulings on discovery and substantive matters, duplicative discovery, including expert discovery, and the burden and inconvenience of litigating the same issues and producing many of the same witnesses and documents in numerous individual cases in different judicial districts.
8. As explained further in the accompanying Brief in Support of this Motion, Movants request transfer of the Scheduled Actions to a single District for coordinated or consolidated pretrial proceedings.
9. In support of this Motion, Movants file:
  - a. Brief in Support of this Motion;
  - b. Schedule of Actions including the complete name of each action as well as (1) a listing of the full names of each party including, to the extent applicable, additional parties such as movants, intervenors, etc.; (2) the district court and division; (3) the civil action number; and (4) the judge assigned for each action;
  - c. Proof of Service, indicating service of papers on the clerk of each district court that may be affected by the motion including the name and address of each attorney served and the party represented by each;
  - d. Oral Argument Statement; and
  - e. Copies of all complaints and docket sheets for all actions listed on the Schedule of Actions.

WHEREFORE, Movants respectfully request that the Panel grant its Motion and transfer the Scheduled Actions to the Southern District of Mississippi for coordinated or consolidated pretrial proceedings.

Dated: May 9, 2023

Respectfully submitted,

**Counsel for Movants, the States of Arkansas, Illinois, Kansas, Mississippi, and Montana**

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**Certificate of Service**

I hereby certify that on May 9, 2023, the clerks of the relevant district courts and counsel for the parties have been served with the foregoing by U.S. mail or electronic mail, as indicated in the Proof of Service filed herewith.

/s/ Edwin S. Gault, Jr.  
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