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## Mississippi Diabetes Treatment Price Suit Mostly Survives

By **Adam Lidgett**

Law360 (August 30, 2022, 6:04 PM EDT) -- A Mississippi federal judge has refused to toss a suit alleging various pharmacy benefit managers schemed to jack up the price of diabetes treatments, only letting one CVS entity out of the suit.

U.S. District Judge Kristi H. Johnson on Monday denied much of a bid from CVS, Express Scripts and OptumRX Inc. to dismiss the suit from the state of Mississippi alleging violations of state consumer protection law, as well as claims like conspiracy and unjust enrichment.

The dismissal bid said the Mississippi Consumer Protection Act claims had to go because the state never tried to settle that fight informally and because the state didn't adequately point out any "misrepresentative statements," according to the judge. But the judge found neither of those arguments held water.

"In its 118-page complaint, the state describes the PBM defendants' alleged participation in the 'insulin pricing scheme,' including timelines, knowledge, intent, specific statements about insulin pricing that the state particularly alleges are false, and communications about the insulin pricing scheme between PBM defendants and manufacturer defendants," the judge wrote. "The court finds that this level of detail satisfies the 'who, what, when, where and how' of any alleged fraud-based claim at the motion to dismiss stage."

The dismissal bid was filed by a host of parties, including CVS Health Corporation, CVS Pharmacy Inc., Caremark PCS Health LLC, Caremark Rx LLC., Caremark LLC, ESI Mail Pharmacy Services Inc., Evernorth Health Inc., Express Scripts Administrators LLC, Express Scripts Pharmacy Inc., Express Scripts Inc. and OptumRx Inc., according to court records.

But the court on Monday did agree to dismiss CVS Pharmacy from the case.

"The state merely alleges that CVS Pharmacy 'provided retail pharmacy services in Mississippi' and it is therefore somehow connected to the alleged insulin pricing scheme," the judge said. "The court finds that this sole allegation is insufficient to plausibly plead CVS Pharmacy's involvement in the alleged insulin pricing scheme."

The Mississippi Attorney General's Office has alleged in the suit that various manufacturers worked with various PBMs — like the defendants at issue in the dismissal bid — to artificially raise diabetes medication prices, according to court documents.

"We are pleased that our case against the insulin pricing scheme that puts diabetics' lives at risk will now be able to proceed," a representative for the Mississippi Attorney General's Office said in a statement to Law360 on Tuesday.

Representatives for CVS, Express Scripts and OptumRX Inc. did not immediately respond to requests for comment.

Mississippi is represented by Tanya D. Ellis, Edwin S. Gault Jr. and Walter G. Watkins III of Forman Watkins & Krutz LLP, Patricia L. Beale and Caleb A. Pracht of the Mississippi Attorney General's Office, William Liston III and William Lawrence Deas of Liston & Deas PLLC, Matthew C. McDonald of David Nutt & Associates and Joanne Cicala and Josh Wackerly of The Cicala Law Firm PLLC.

CVS is represented by J. Cal Mayo Jr. and Breanna F. G. Young of Mayo Mallette PLLC and Enu Mainigi, Craig Singer, R. Kennon Poteat III and Atticus W. DeProsopo of Williams & Connolly LLP.

Express Scripts is represented by Stephanie M. Rippee of Watkins & Eager PLLC and Jason R. Scherr and Patrick A. Harvey of Morgan Lewis & Bockius LLP.

OptumRx Inc. is represented by Roy D. Campbell III and Jonathan M. Barnes of Bradley Arant Boult Cummings LLP, Brian D. Boone, Elizabeth Broadway Brown, Kelley Connolly Barnaby, Jean E. Richmann and D. Andrew Hatchett of Alston & Bird LLP.

The case is the State of Mississippi ex rel. Lynn Fitch, Attorney General v. Eli Lilly and Company et al., case number 3:21-cv-00674, in the U.S. District Court for the Southern District of Mississippi.

--Editing by Michael Watanabe.

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