

CAPITOL STREET

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Preliminary Injunction Denied in IRA Suit

No Surprises: Negotiation Proceeds, As Do Other 7 Cases

Relevant Companies



Late yesterday, District Judge Michael J. Newman of the district court of the southern district of Ohio released his decision for the motions filed in the Dayton Area Chamber of Commerce et al. v. Becerra case. There were two motions under consideration: (1) Chamber's motion for a preliminary injunction and (2) the government's motion to dismiss the case due to lack of standing. Link to decision [here](#).

»» Our Take & Next Up

Some follow-on filings (to Oct 27) remain in the Ohio case but both the government's motion to dismiss and the Chamber's preliminary injunction were denied. The government has until October 27, to renew their motion to dismiss if they choose to do so after the Chamber files an amended complaint by October 13. A final standing decision will be made after a 60-day discovery period after the amended lawsuit. Now, CMS has the green light to continue with the negotiation process. MRK, BMY, AZN, ABBV, and Boehringer Ingelheim have publicly agreed to negotiations. The remaining manufacturers have until October 1 to agree to participate in the program and are expected to do so before the deadline.

»» Key Points

On the motion to dismiss (denied, but not dead): Judge Newman noted that at this early juncture of the case, he does not express an opinion on whether the Chamber has standing. He noted that the Chamber has brought good-faith legal arguments. However, due to the limited information on which member will suffer harm, he wants the plaintiff to file an amended lawsuit that will identify specific members that are manufacturers of the drugs selected for the program. The Chamber will also have to amend their complaint to show current harm, not future harm.

On the preliminary injunction request (denied): Chamber failed to show strong likelihood of success and irreparable harm. At this point, the judge can't tell with certainty whether plaintiffs have standing to raise each of their claims, so he ruled that Chamber cannot have a strong likelihood of success on their due process claim. He stated that to warrant injunctive relief, Chamber must show that no set of circumstances exist where the program would be constitutionally valid under the Fifth Amendment Due Process Clause (which they failed to do). On harm, Judge Newman noted that economic harm will not occur for several years, and that a preliminary injunction won't remedy the money lost by ABBV in complying with negotiations.

Currently, there are eight lawsuits that are proceeding through multiple District Courts. They include MRK's [lawsuit](#) filed in the District Court for DC, BMY's [lawsuit](#) filed in a District Court for New Jersey, JNJ's [lawsuit](#) filed in a District Court for New Jersey, the Chamber of Commerce's [lawsuit](#) filed in a District Court for Ohio, Boehringer Ingelheim's [lawsuit](#) filed in a District Court in Massachusetts, AstraZeneca's [lawsuit](#) filed in Delaware, and PhRMA's [lawsuit](#) filed in District Court for the Western District of Texas. Since the release of CMS's top 10 list, the newest filing is Novartis' [lawsuit](#) filed in New Jersey.

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