
Nos. 21-3128 & 21-3405

**In The United States Court of Appeals
for the Seventh Circuit**

ELI LILLY AND COMPANY and LILLY USA, LLC,
Plaintiffs-Appellants-Cross-Appellees,

v.

XAVIER BECERRA, DANIEL J. BARRY, UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, DIANA ESPINOSA, AND HEALTH
RESOURCES AND SERVICES ADMINISTRATION
Defendants-Appellees-Cross-Appellants.

On Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division
Case No. 1:21-cv-00081-SEB-MJD
Honorable Sarah Evans Barker

NOTICE REGARDING AMENDED JUDGMENT

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April 15, 2022

Pursuant to this Court's Order of April 7, 2022, Plaintiffs-Appellants Eli Lilly and Company and Lilly USA, LLC, hereby inform the Court that the district court entered an amended judgment on April 14, 2022. A copy of the amended judgment is attached hereto as Exhibit A.

Dated: April 15, 2022

Respectfully submitted,

s/ John C. O'Quinn

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CERTIFICATE OF SERVICE

I hereby certify that on **April 15, 2022**, a copy of the foregoing was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

/s/ John C. O'Quinn
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Appellants

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ELI LILLY AND COMPANY, et al.)	
)	
Plaintiffs,)	
)	
v.)	No. 1:21-cv-00081-SEB-MJD
)	
UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES, et al.)	
)	
Defendants.)	

AMENDED PARTIAL FINAL JUDGMENT¹

The Court, having this day granted summary judgment in favor of Plaintiffs on Counts III and XII, and in favor of Defendants on Counts X, XI, and XIII, finds, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for delay. The Court therefore hereby enters partial final judgment in favor of Defendants and against Plaintiffs on Counts X, XI, and XIII, and in favor of Plaintiffs and against Defendants on Counts III and XII.

Accordingly, the Court enters declaratory judgment as follows:


- (1) HHS's General Counsel's December 30, 2020 Advisory Opinion is arbitrary and capricious under 5 U.S.C. § 706;
- (2) HRSA's May 17, 2021 Enforcement Letter is arbitrary and capricious under 5 U.S.C. § 706;

¹ Pursuant to the Seventh Circuit's April 8, 2022 directive [Dkt. 155], we are entering this amended judgment "declaring specifically and separately the respective rights of the parties," *nunc pro tunc* to October 29, 2021.

- (3) HRSA's May 17, 2021 Enforcement Letter does not violate the notice-and-comment requirements of 5 U.S.C. § 553;
- (4) HRSA's May 17, 2021 Enforcement Letter does not exceed statutory authority under 5 U.S.C. § 706 because 42 U.S.C. § 256b, correctly construed, does not permit drug manufacturers, such as Plaintiffs, to impose unilateral extra-statutory restrictions on their offer to sell 340B drugs to covered entities utilizing multiple contract pharmacy arrangements;
- (5) HRSA's May 17, 2021 Enforcement Letter is not a taking under the Fifth Amendment's Takings Clause; and
- (6) HRSA's May 17, 2021 Enforcement Letter is not an unconstitutional condition on the receipt of benefits.

HHS's General Counsel's December 30, 2020 Advisory Opinion and HRSA's May 17, 2021 Enforcement Letter are hereby SET ASIDE and VACATED, and HRSA's May 17, 2021 Enforcement Letter is REMANDED for further action as Defendants may determine consistent with these rulings.

Date: 4/14/2022



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Distribution:

AMERICA'S ESSENTIAL HOSPITALS

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