

Nos. 21-3168, 21-3380

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NOVO NORDISK INC. AND NOVO NORDISK PHARMA, INC.,

Appellants,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;
SECRETARY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;
GENERAL COUNSEL; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
SERVICES; HEALTH RESOURCES SERVICES ADMINISTRATION; ADMINISTRATOR OF
THE HEALTH RESOURCES SERVICES ADMINISTRATION,

Appellees.

On Appeal from the United States District Court for the District of New Jersey,
No. 3:21-cv-00806, Hon. Freda L. Wolfson, U.S. District Judge

APPELLANTS' REQUEST FOR ORAL ARGUMENT

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Pursuant to Local Rule 34.1(b), Appellants Novo Nordisk Inc. and Novo Nordisk Pharma, Inc. (“Novo”) respectfully request that the Court hear oral argument in this matter, and that Novo receive 20 minutes of argument time in its appeal and the cross appeal (Nos. 21-3168 and 21-3380). Novo understands that appellants in the consolidated case (Nos. 21-3167 and 21-3379) intend to submit a similar request.

Oral argument is warranted because this case raises a substantial and novel legal question that is important to the public interest. The appeal asks the Court to resolve a dispute over the correct interpretation of section 340B of the Public Health Service Act, which governs the federal 340B Drug Pricing Program. That program has grown in recent years to become the nation’s second largest federal prescription drug program. Instead of addressing abuses that have contributed to the program’s unchecked growth, the government is attempting to read into the statute a new obligation for drug manufacturers to transfer their drugs at deeply discounted prices to commercial contract pharmacies. Under the government’s statutory interpretation, billions of dollars will be taken at the expense of manufacturers for the benefit of commercial pharmacies instead of being used for the benefit of patients. Reflecting the importance of these issues, the appeal has prompted the filing of multiple amicus briefs and generated substantial attention.

Oral argument is also warranted because the district court's interpretation of the 340B statute is at odds with at least two recent rulings by other district courts. *See Novartis Pharms. Corp. v. Espinosa*, No. 21-CV-1479, 2021 WL 5161783 (D.D.C. Nov. 5, 2021); *AstraZeneca Pharms. LP v. Becerra*, No. 21-27-LPS, 2022 WL 484587 (D. Del. Feb. 16, 2022). Moreover, in addition to the appeals pending before this Court, there are two other courts of appeal — the D.C. Circuit and the Seventh Circuit — that are also considering closely related issues in cases addressing the proper interpretation of the 340B statute. *See Novartis Pharms. Corp. v. Johnson*, No. 21-5299 (D.C. Cir.); *Eli Lilly & Co. v. Becerra*, No. 21-3128 (7th Cir.). Oral argument will aid the Court in understanding the issues raised in this case and how they relate to these other pending cases.

Oral argument should also be helpful to the Court in answering any questions the Court may have about the history and functioning of the 340B program, the numerous non-binding guidance documents the government has issued relating to the 340B statute, the various agency actions that have been challenged, and the procedural history of this matter. Reflecting the complexity of that history and the importance of the issues involved, the administrative record exceeds 12,000 pages and the district court's decision equals 122 pages.

For these reasons, Novo respectfully requests that the Court hear oral argument and allot Novo 20 minutes of argument time for its appeal and the cross-appeal (Nos. 21-3168 and 21-3380).

Respectfully submitted,

/s/ Ashley C. Parrish

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May 16, 2022

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Ashley C. Parrish
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