

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

SANOFI-AVENTIS U.S., LLC,  
*Appellant/Cross-Appellee,*

v.

U.S. DEPARTMENT OF HEALTH  
AND HUMAN SERVICES, *et al.*,  
*Appellees/Cross-Appellants.*

Nos. 21-3167 &  
21-3379

NOVO NORDISK INC. & NOVO  
NORDISK PHARMA, INC.,  
*Appellants/Cross-Appellees,*

v.

U.S. DEPARTMENT OF HEALTH  
AND HUMAN SERVICES, *et al.*,  
*Appellees/Cross-Appellants.*

Nos. 21-3168 &  
21-3380

ASTRAZENECA  
PHARMACEUTICALS LP,  
*Appellee,*

v.

U.S. DEPARTMENT OF HEALTH  
AND HUMAN SERVICES, *et al.*,  
*Appellants.*

Nos. 22-1676

**PARTIES' JOINT MOTION  
TO DIVIDE ORAL ARGUMENT TIME**

The above-captioned appeals, which have been consolidated for purposes of disposition, are currently scheduled for argument before the Court on November 15, 2022, with 60 minutes of oral argument time allocated

for each side. All parties in these cases respectfully move to divide the oral argument time and to order the argument as described below:

1. These consolidated appeals stem from separate agency actions taken by the U.S. Department of Health and Human Services and the U.S. Health Resources and Services Administration (collectively, “the government”) with regard to Sanofi-Aventis U.S., LLC (Sanofi), Novo Nordisk Inc. and Novo Nordisk Pharma, Inc. (together, “Novo Nordisk”), and AstraZeneca Pharmaceuticals LP (AstraZeneca), concerning the different policies that these manufacturers have adopted in connection with Section 340B of the Public Health Service Act, 42 U.S.C. § 256b.

2. In response to these agency actions, the manufacturers filed three separate lawsuits under the Administrative Procedure Act. Sanofi and Novo Nordisk filed separate suits in the U.S. District Court for the District of New Jersey, and their cases were separately briefed before Chief District Judge Freda L. Wolfson. Chief Judge Wolfson issued a consolidated decision on November 5, 2021. *Sanofi-Aventis U.S., LLC v. HHS*, 570 F. Supp. 3d 129 (D.N.J. Nov. 5, 2021). AstraZeneca filed suit in the U.S. District Court for the District of Delaware, and its case was assigned to then-Chief District Judge Leonard P. Stark. Chief Judge Stark issued a decision on February 16, 2022.

*AstraZeneca Pharms. LP v. Becerra*, No. 21-CV-27-LPS, 2022 WL 484587 (D. Del. Feb. 16, 2022).

3. Sanofi appealed from the district court’s opinion and judgment, and the government filed a cross-appeal, *Sanofi-Aventis U.S., LLC v. HHS*, Nos. 21-3167, 21-3379. Novo Nordisk appealed from the district court’s opinion and judgment, and the government filed a cross-appeal, *Novo Nordisk Inc. v. HHS*, Nos. 21-3168, 21-3380. These appeals were consolidated with one another for purposes of scheduling, preparation of the joint appendix, the government’s briefs, and disposition. Clerk Order (Nov. 26, 2021). In AstraZeneca’s case, the government appealed from the district court’s opinion and judgment. *AstraZeneca Pharmaceuticals LP v. HHS*, No. 22-1676. This Court consolidated the government’s appeal in the AstraZeneca case with the other two appeals for purposes of disposition. Clerk Order (April 28, 2022).

4. The Court has scheduled oral argument in the consolidated appeals and cross-appeals for Tuesday, November 15, 2022, allotting “60 minutes oral argument time for each side.”

5. The parties respectfully request that the Court permit the parties to divide oral argument in the following manner:

Opening arguments:

Sanofi: 20 minutes (less time reserved for rebuttal)

Novo Nordisk: 20 minutes (less time reserved for rebuttal)

AstraZeneca: 20 minutes (less time reserved for rebuttal)

Government's response:

Government: 60 minutes

Rebuttal arguments:

Sanofi: Rebuttal

Novo Nordisk: Rebuttal

AstraZeneca: Rebuttal

6. Allowing Sanofi, Novo Nordisk, and AstraZeneca to divide the allotted 60 minutes between them equally will ensure that the issues relating to each case will be properly and fully presented to the Court. Each manufacturer has adopted a different 340B policy; has filed a separate suit challenging separate agency actions; and has asserted distinct claims against the government. Affording equal time for the three manufacturers will accordingly ensure that the Court is able to resolve all issues in these appeals.

7. Although AstraZeneca's posture vis-à-vis the government is purely as an appellee, having AstraZeneca present argument immediately

following Sanofi and Novo Nordisk will simplify the oral argument presentation. Grouping the parties in this way will result in a block of time for the manufacturers, followed by a block of time for the government, followed by time for rebuttal—creating a more cohesive presentation and structure for the Court.

8. Dividing and ordering argument in this manner will impose no unfairness on the government and no additional burden on the Court, which will not be required to enlarge the total time allotted.

## CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court divide argument time in the manner and order described above.

Dated: November 1, 2022

Respectfully submitted,

/s/ Ashley C. Parrish

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## **CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2022, I electronically filed the foregoing document with the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 1, 2022

/s/ Allon Kedem

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Allon Kedem



## CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the requirements of Fed. R. App. P. 27(d) because it contains 665 words and is formatted in double-spaced 14-point Century font.

Dated: November 1, 2022

/s/ Allon Kedem

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Allon Kedem