



U.S. Department of Justice
Civil Division
Federal Programs Branch
1100 L Street NW
Washington, DC 20005

July 12, 2024

VIA ECF

Hon. Zahid N. Quraishi
United States District Judge
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: *Novartis Pharmaceuticals Corp. v. Becerra*, No. 3:23-cv-14221-ZNQ-JBD

Dear Judge Quraishi:

Defendants in the above-captioned case respectfully submit this notice of supplemental authority to inform the Court of a July 3, 2024 Memorandum Opinion by the United States District Court for the District of Connecticut, *Boehringer Ingelheim Pharmaceuticals, Inc. v. HHS*, Case No. 23-1103 (D. Conn.). A copy of the decision is attached to this Notice. *See* Attach. A.

Like Plaintiff here, the plaintiffs in *BI* raised First, Fifth, and Eighth Amendment challenges to the Drug Price Negotiation Program created by the Inflation Reduction Act of 2022, Pub. L. No. 117-169. Indeed, the arguments presented by the plaintiff in *BI* were substantially similar to the arguments presented in this case. In a carefully reasoned opinion, the district court in *BI* rejected those challenges, and granted summary judgment in favor of the Government on all claims.

As to the First and Fifth Amendment claims, the district court in *BI* agreed with the analysis in this Court's April 29, 2024 Memorandum Opinion in *Bristol Myers Squibb Co. v. Becerra*, No. 23-cv-3335 (D.N.J.) and *Janssen Pharmaceuticals, Inc. v. Becerra*, No. 23-cv-3818 (D.N.J.). Among other things, the *BI* court concluded "that because BI can opt out of Medicare and Medicaid, it has not been deprived of property for the purposes of its Due Process Clause and Takings Clause claims." Attach. A at 14. Likewise, the court concluded that plaintiffs' First Amendment claim failed because the Negotiation Program "regulates BI's conduct, and any effects it may have on speech are 'plainly incidental.'" *Id.* at 31 (quoting *Rumsfeld v. Forum for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 61 (2006)). The court also rejected all of BI's unconstitutional conditions arguments, finding that they failed under each of the theories BI offered. *Id.* at 33-38.

Finally, as relevant here, the court held that it lacked jurisdiction over plaintiff's Eighth Amendment Excessive Fines Clause claim. *Id.* at 43-46. In so ruling, the court concluded that plaintiff could not establish either prong of the narrow *Williams Packing* exception to the Anti-Injunction Act. First, the court explained that plaintiff would not suffer irreparable harm prior to its filing of a refund suit, at which point the plaintiff would either receive a refund on the "minimal" tax it paid or be required to pay a constitutional tax, "which would mean the tax inflicted no actionable harm." *Id.* at 45. Second, the court held that plaintiff's "novel" Eighth Amendment claim could not meet the "demanding" "certainty of success on the merits" standard. *Id.* at 45-46.

Dated: July 12, 2024

Respectfully submitted,

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