

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NOVO NORDISK INC., *et al.*,

Plaintiffs,

—v—

NORRIS COCHRAN, *et al.*,

Defendants.

Civil Action No. 3:21-cv-00806-FLW-LHG

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO
INTERVENE BY AMERICAN HOSPITAL ASSOCIATION,
340B HEALTH, AMERICA'S ESSENTIAL HOSPITALS,
ASSOCIATION OF AMERICAN MEDICAL COLLEGES,
CHILDREN'S HOSPITAL ASSOCIATION, AND AMERICAN SOCIETY
OF HEALTH-SYSTEM PHARMACISTS

Justin P. Walder
James W. Boyan III
PASHMAN STEIN WALDER HAYDEN
A Professional Corporation
Court Plaza South
21 Main Street, Suite 200
Hackensack, NJ 07601
Telephone (201) 488-8200
Facsimile (201) 488-5556
jboyan@pashmanstein.com

William B. Schultz (*pro hac vice forthcoming*)
Margaret M. Dotzel (*pro hac vice forthcoming*)
Casey Trombley-Shapiro Jonas
(*pro hac vice forthcoming*)
ZUCKERMAN SPAEDER LLP
1800 M Street NW, Suite 1000
Washington, DC 20036
Tel: (202) 778-1800
Fax: (202) 822-8106
wschultz@zuckerman.com
mdotzel@zuckerman.com
cjonas@zuckerman.com

Ariella Muller (*pro hac vice forthcoming*)
ZUCKERMAN SPAEDER LLP
485 Madison Avenue, 10th Floor
New York, New York 10022
Tel: (212) 704-9600
Fax: (917) 261-5864
amuller@zuckerman.com
Attorneys for Proposed Intervenors

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
BACKGROUND	4
ARGUMENT	8
I. Proposed Intervenors Have a Right to Intervene Under Rule 24(a).	8
A. Timeliness	9
B. Interest	10
C. Interest Impaired.....	12
D. Inadequate Representation	13
II. Alternatively, Proposed Intervenors Should be Permitted to Intervene Under Rule 24(b).	15
CONCLUSION	16

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>ACR Energy Partners, LLC v. Polo N. Country Club, Inc.</i> , 309 F.R.D. 191 (D.N.J. 2015)	9
<i>Am. Hosp. Ass’n v. Azar</i> , No. 4:20-cv-8806 (N.D. Cal. Dec. 11, 2020)	6–7
<i>Brody v. Spang</i> , 957 F.2d 1108 (3d Cir. 1992)	13
<i>Clean Earth, Inc. v. Endurance Am. Ins.</i> , Civ. No. 15-6111, 2016 WL 5422063 (D.N.J. Sept. 28, 2016)	8–9, 10, 12
<i>Friends of the Earth, Inc. v. Laidlaw Env’tl Servs. (TOC), Inc.</i> , 528 U.S. 167 (2000)	10–11
<i>Glover v. Ferrero USA, Inc.</i> , No. 11-1086, 2011 WL 5007805 (D.N.J. Oct. 20, 2011)	9–10
<i>Granillo v. FCA US LLC</i> , No. 16-153, 2018 WL 4676057 (D.N.J. Sept. 28, 2018)	13
<i>Harris v. Pernsley</i> , 820 F.2d 592 (3d Cir. 1987)	9
<i>Hemy v. Perdue Farms, Inc.</i> , No. 11-888, 2011 WL 6002463 (D.N.J. Nov. 30, 2011)	15
<i>King v. Christie</i> , 981 F. Supp. 2d 296 (D.N.J. 2013)	15
<i>Nat’l Ass’n of Cmty. Health Ctrs. v. Azar</i> , No. 1:20-cv-3032 (D.D.C.)	6
<i>Pa. Prison Soc’y v. Cortes</i> , 622 F.3d 215 (3d Cir. 2010)	8
<i>Pennsylvania v. President of the U.S.</i> , 888 F.3d 52 (3d Cir. 2018)	13

Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.,
223 F.R.D. 326 (D.N.J. 2004)9

Ryan White Clinics for 340B Access v. Azar,
No. 1:20-cv-2906 (D.D.C.).....5–6

Tansey v. Rogers,
No. 12-1049-RGA, 2016 WL 3519887 (D. Del. June 27, 2016).....15

Trbovich v. United Mine Workers of Am.,
404 U.S. 528 (1972)13

Wallach v. Eaton Corp.,
837 F.3d 356 (3d Cir. 2016)9

STATUTES

Public Health Service Act, 42 U.S.C. § 2561

RULES

Federal Rule of Civil Procedure 24 1, 8, 15

REGULATIONS

340B Drug Pricing Program; Administrative Dispute Resolution Regulation,
85 Fed. Reg. 80,632 (Dec. 14, 2020) (to be codified at 42 C.F.R. pt. 10).....7

American Hospital Association, 340B Health, America's Essential Hospitals, Association of American Medical Colleges, National Association of Children's Hospitals d/b/a Children's Hospital Association, and American Society of Health-System Pharmacists (collectively the "Proposed Intervenors") move this Court, pursuant to Federal Rule of Civil Procedure 24(a) or in the alternative pursuant to Federal Rule of Civil Procedure 24(b), for an Order granting their Motion to Intervene in this lawsuit regarding the 340B Drug Discount Program.

The 340B Program, established by section 340B of the Public Health Service Act, 42 U.S.C. § 256b, requires, as a condition of participating in Medicaid and Medicare Part B, that pharmaceutical manufacturers sell outpatient drugs at a discounted price (no more than the 340B ceiling price) to certain public and not-for-profit hospitals, community health centers, and other federally funded clinics that serve communities with a large numbers of low income patients ("340B providers" (described in the statute as "covered entities")) in order to increase the funding these entities have available to meet the needs of their patients.

Since the beginning of the program, 340B providers have dispensed covered outpatient drugs to their patients through in-house pharmacies and through community pharmacies that have entered into written contracts with hospitals and other providers ("contract pharmacies"). Under the latter arrangements, the 340B provider orders and pays for the 340B drugs, which are then shipped to the contract

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.