

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Pharmaceutical Research and
Manufacturers of America,

Plaintiff,

v.

Stuart Williams, Stacey Jassey, Mary Phipps, Andrew Behm, James Bialke, Amy Paradis, Rabih Nahas, Samantha Schirmer, and Kendra Metz, in their official capacities as members of the Minnesota Board of Pharmacy; and Nate Clark, Peter Benner, Suyapa Miranda, David Fisher, Jodi Harpstead, Phil Norrgard, Stephanie Stoffel, and Andrew Whitman, in their official capacities as members of the Board of MNsure,

Defendants.

Case No. 0:20-cv-01497 DSD/DTS

**PLAINTIFF PHARMACEUTICAL
RESEARCH AND MANUFACTURERS
OF AMERICA'S MEMORANDUM OF
LAW IN SUPPORT OF
CONDITIONAL MOTION FOR
LEAVE TO FILE
[PROPOSED] SUPPLEMENTAL
COMPLAINT**

INTRODUCTION

This case involves a constitutional challenge to the Alec Smith Insulin Affordability Act ("Act"), which requires insulin manufacturers to provide insulin at no charge for certain Minnesota residents who meet the Act's eligibility criteria. *See* Minn. Stat. § 151.74. On June 30, 2020, plaintiff Pharmaceutical Research and Manufacturers of America (PhRMA) filed suit on behalf of itself and three of its members that manufacture insulin products subject to the Act. PhRMA's suit seeks,

among other things, a declaratory judgment that the Act compels the taking of its members' property without just compensation in violation of the Takings Clause of the United States Constitution, and an injunction against the enforcement of these unconstitutional provisions.

Defendants moved to dismiss under Rules 12(b)(6) and 12(b)(1), claiming, among other things, that PhRMA lacks standing and that its takings claim is not ripe. Defendants argued that, because the complaint was filed the day before the Act's mandates went into effect, PhRMA did not allege that any manufacturer had actually given away insulin under the Act, and "it is not clear when the manufacturers will be required to provide insulin under the Act." *See* Dkt. Entry 16 at 19; *see also id.* at 15-26.

PhRMA is today filing a memorandum of law in opposition to defendants' motion to dismiss and in support of its own motion for summary judgment. That memorandum explains that PhRMA has standing and that its takings claim is ripe because (1) the complaint alleged that certain PhRMA members faced imminent, or certainly impending, injuries from the Act, which was clearly designed to compel unconstitutional takings of insulin; and (2) those injuries have in fact occurred since the Act's provisions went into effect. Each of these reasons is itself a sufficient basis for rejecting defendants' standing and ripeness arguments.

If, however, the Court harbors any doubt concerning its authority to adjudicate PhRMA's claims, PhRMA conditionally seeks leave of court under Fed. R. Civ. P. 15(d) to supplement its complaint to set out events that have occurred after the filing of the complaint—*i.e.*, that since the Act took effect, manufacturers have in fact provided insulin at no charge for Minnesota residents who meet the Act's eligibility criteria. Allowing such supplementation would not prejudice the defendants. It would serve the interests of justice by avoiding any need for PhRMA to file a new complaint that raises the same claims and simply confirms that the unconstitutional takings that were imminent the day before the Act took effect have in fact occurred. PhRMA therefore respectfully requests the Court for leave to file its proposed supplemental complaint, in the form attached as Exhibit A¹ to the accompanying motion.²

LEGAL ARGUMENT

The purpose of a motion to supplement a pleading under Rule 15(d) is to “cover[] matters subsequently occurring but pertaining to the original cause.” *In re Rutledge*, 956 F.3d 1018, 1033 (8th Cir. 2020) (quotation omitted). “Such

¹ Consistent with Local Rule 15.1, a version that shows, through redlining, the differences between the proposed supplemental complaint and the operative complaint is attached as Exhibit B.

² Consistent with the Court's dismissal of certain defendants pursuant to the parties' stipulation, *see* ECF No. 22, PhRMA's Proposed Supplemental Complaint also removes the dismissed defendants.

amendments are well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice.” *Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 227 (1964). In a takings suit, the Sixth Circuit observed that a supplemental complaint “should be allowed almost as a matter of course” where it “alleges the consummation of the destruction of plaintiffs’ property, which was foreshadowed in the original action.” *McHenry v. Ford Motor Co.*, 269 F.2d 18, 25 (6th Cir. 1959). “If it is not shown that defendant may be injured by the filing of such amendments, applications for leave to serve a supplemental complaint are normally granted.” *Id.*

Courts in this Circuit have also allowed supplemental pleadings under Rule 15(d) to address subsequent events that defeat ripeness arguments raised in a motion to dismiss. *See NCJC, Inc. v. Lawrence*, No. 17-cv-2385 (SRN/SER), 2018 WL 2122867, at *3 (D. Minn. May 8, 2018); *United Health Grp. Inc. v. Lexington Ins. Co.*, No. 5-cv-1289 (DSD/SRN), 2006 WL 8426436, at *3 (D. Minn. Apr. 18, 2006). Indeed, such requests for leave to supplement are routinely granted. As Judge Nelson explained in *United Health Group*, “[a] supplemental pleading ‘is a useful device enabling a court to award complete relief, or more nearly complete relief, in one action, and to avoid the cost, delay and waste of separate actions which must be separately tried and prosecuted’ and ‘ought to be allowed as of course, unless some particular reason for disallowing [it] appears.’” 2006 WL 8426436, *3 (quoting *New*

Amsterdam Cas. Co. v. Waller, 323 F.2d 20, 28–29 (4th Cir. 1963)) (emphasis added).

Because leave to supplement is routinely granted, and because defendants would suffer no unfair prejudice if leave is granted, the Court should grant PhRMA’s motion to supplement its complaint in the event that the Court harbors any doubt that the complaint pleads facts sufficient to establish PhRMA’s standing and a ripe takings claim.

CONCLUSION

For the reasons set forth above, PhRMA respectfully requests that the Court grant PhRMA leave to file its proposed supplemental complaint in the form attached as Exhibit A.

Dated: October 1, 2020

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