Express Scripts Just Got Sued for Racketeering. Here’s What That Means.

Plaintiffs say a shadowy offshore entity helped Cigna and its PBM quietly siphon money meant for employers, unions and patients.

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A powerhouse law firm has filed a class action lawsuit that should make everyone who pays for prescription drugs through an employer or union health plan sit up and take notice. The target: Express Scripts, the nation’s largest pharmacy benefit manager — and its parent company, Cigna, where I used to work.

The lawsuit was filed on February 17 in the U.S. District Court for the Northern District of Illinois by Bernstein Litowitz Berger & Grossmann, one of the most formidable class action firms in the country. The lead plaintiff is the Plumbers’ Welfare Fund, which provides health benefits for members of Chicago-based Plumbers Local 130. The suit was brought on behalf of all Express Scripts PBM customers — a class that potentially encompasses thousands of employers, unions, and other plan sponsors across the country. The class has not yet been certified; the case is in its early stages.

The allegations are stunning, even by the standards of an industry I spent years working in.

Here’s the core of what the plaintiffs claim: Because Express Scripts’ contracts with its PBM clients required that money it received from drug companies be passed along as rebates, Express Scripts didn’t want to receive those payments directly. So it created Ascent, an offshore entity in Switzerland, to receive the money from drug companies instead — then characterized those payments as “fees” to avoid its contractual obligation to share them with customers.

In other words, they allegedly built a Swiss pass-through entity specifically to hide money from their own clients.

The timing matters. Effective January 1, 2019, the Plumbers' Welfare Fund had amended its contract to require Express Scripts – which is part of Cigna's massive Evernorth division and which is also named in the lawsuit – to pass along the full amount of rebates and administrative fees paid by drug companies. Shortly after, the defendants created Ascent — majority-owned and controlled by Cigna — based in Switzerland. The lawsuit alleges that Ascent assumed responsibility for negotiating rebates and other payments from drug manufacturers. Instead of passing those payments through as rebates, drug companies were directed to pay "rebate administration" and other service fees to Ascent in exchange for favorable formulary placement.

And it gets worse. According to the lawsuit, Cigna's own chief medical officer at the time, Steve Miller, admitted that Ascent's creation had enabled Express Scripts and its parent companies to "double, triple dip on fees" without their customers ever knowing. That's not an allegation from a plaintiffs' lawyer. That's an admission from a senior executive of the company.

The lawsuit also names several major drug companies in the U.S. as participants in these alleged schemes. The legal theory is built around RICO — the Racketeer Influenced and Corrupt Organizations Act, a statute originally designed to take down organized crime.

I reached out to Cigna earlier this week asking for a reaction to the lawsuit but never heard back, and the company has not yet issued a public statement about it. What we do know is the company's posture in related proceedings. Just two weeks before this lawsuit was filed, Cigna reached a settlement with the Federal Trade Commission over related allegations that Express Scripts had inflated insulin prices through anticompetitive rebate tactics. CEO David Cordani framed it as a win for consumers, pointing to an estimated $7 billion in out-of-pocket cost relief over the next decade. In prior disputes with regulators, the company has consistently denied wrongdoing and accused critics of misunderstanding how drug pricing works.

Now, what does it mean if the plaintiffs prevail?

The financial exposure would be enormous. The alleged scheme has been running since April 2019, and plaintiffs are seeking damages to recover excess costs and diverted payments across that entire period. Evernorth — the division that houses Express Scripts — accounts for roughly 60% of Cigna's total profits – far more than the company's health insurance division. A successful RICO case can result in treble damages, meaning a court could award plaintiffs three times their actual losses. Given the scale of the client base and the billions allegedly diverted, the liability could be existential in scale.

But the significance goes beyond dollars. This lawsuit, alongside the FTC settlement, amounts to a formal legal record establishing that the PBM model as practiced by Express Scripts was built on opacity and self-dealing — not on serving the clients who trusted it. Every employer, every union, every government agency that paid Express Scripts to lower their drug costs deserves to ask: were we being taken?

I've said for years that the health insurance industry operates by design in ways that are intentionally opaque. The Ascent structure — a Swiss entity created specifically to reclassify rebates as "fees" — is a textbook example of that opacity in action. (I will write more about Ascent and similar entities established by UnitedHealth Group and CVS/Aetna, both of which also own huge PBMs, in a future post.) This lawsuit is a serious legal reckoning for one of the most powerful companies in American health care. It deserves a lot more attention than it's getting.