

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of:

Caremark Rx, L.L.C.;

Zinc Health Services L.L.C.;

Express Scripts, Inc.;

Evernorth Health, Inc.;

Medco Health Services, Inc.;

Ascent Health Services L.L.C.;

OptumRx, Inc.;

OptumRx Holdings L.L.C.; and

Emisar Pharma Services L.L.C.,

Respondents.

Docket No. 9437

**RESPONDENTS CAREMARK RX, L.L.C. AND ZINC HEALTH SERVICES, L.L.C.'S
MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF THEIR MOTION FOR A
SEPARATE EVIDENTIARY HEARING**

Respondents Caremark and Zinc met and conferred with Complaint Counsel on November 8,

Email: mike.cowie@dechert.com
Email: rani.habash@dechert.com
Email: gregory.luib@dechert.com
Tel: (202) 261-3300

*Counsel for Caremark Rx, L.L.C. and Zinc
Health Services, L.L.C*



involved allegations of coordination between the respondents. The core issue in that case was whether the challenged practices “promote price uniformity by providing a vehicle for communicating current price information,” thereby “facilitating pricing coordination” between competitors. *Id.* at *127.

These cases stand in sharp contrast to this one, where, as Complaint Counsel concedes, there are no allegations of collusive or coordinated activity among Respondents. Complaint Counsel cannot point this Court to a single precedent where the Commission has filed a complaint against multiple parties that are not alleged to have colluded or coordinated with each other.

II. Common Claims and Requests for Relief Do Not Support a Consolidated Proceeding.

Complaint Counsel argues that this Court should decline to hold separate evidentiary hearings because “[e]ach Respondent is charged with violating the same law” and because Complaint Counsel “is seeking the same relief from all Respondents,” which, according to Complaint Counsel, is “in contrast to cases cited by Respondents.” Opp. Br. at 4–5.

IV. Conclusion.

For the reasons stated above and for the reasons stated in Caremark and Zinc's Motion for a Separate Evidentiary Hearing, Caremark and Zinc respectfully request a separate evidentiary hearing in this matter.

Dated: November 12, 2024

Respectfully submitted,

/s/ Enu Mainigi _____

Enu Mainigi
Craig Singer
Jonathan Pitt
Steven Pysen
Williams & Connolly LLP
680 Maine Avenue SW,
Washington DC 20024
Email: emainigi@wc.com
Email: csinger@wc.com
Email: jpitt@wc.com
Email: spysen@wc.com
Tel: (202) 434-5000

Michael Cowie
Rani Habash
Gregory Luib
Dechert LLP
1900 K Street NW
Washington, DC 20006
Email: mike.cowie@dechert.com
Email: rani.habash@dechert.com
Email: gregory.luib@dechert.com
Tel: (202) 261-3300

*Counsel for Caremark Rx, L.L.C. and Zinc
Health Services, L.L.C.*

**UNITED STATES OF AMERICA
THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of:

Caremark Rx, LLC;

Zinc Health Services LLC;

Express Scripts, Inc.;

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2024, I caused the foregoing document to be filed electronically using the FTC's E-Filing system which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW, Rm. H-110
W1.8 (e)4.9 7 >m7d (e)3.1 (nnsylne)3.1 (nnsylnh141h)-2.1 (2

*Inc., Evernorth
Health, Inc., Medco Health
Services, Inc., and
Ascent Health Services LLC*