

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

July 26, 2024

Honorable Westchester County Board of Legislators
County of Westchester
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Re: Request to authorize the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

Dear Members of the Honorable Board of Legislators:

Attached for your consideration is an Act which, if approved by your Honorable Board, would authorize the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

Lawsuits have already been filed against three drug manufacturers – Eli Lilly, Novo Nordisk and Sanofi-Aventis – and pharmacy benefit managers (“PBMs”) by various state attorneys general and counties throughout the nation seeking injunctive relief, punitive damages, restitution, disgorgement, penalties and other legal and equitable monetary remedies. The Judicial Panel on Multidistrict Litigation consolidated all federal Insulin Pricing Scheme lawsuits in the District of New Jersey before Judge Brian Martinotti. Many governmental entities, like Westchester County, have self-insured health plans, including pharmacy benefits, for their employees and retirees. The entities contract with PBMs to oversee their prescription drug benefits. The PBMs negotiate prices with drug manufacturers and assist payors in managing drug expenses. Each PBM maintains a formulary and has the power to include or exclude a drug from its formulary.

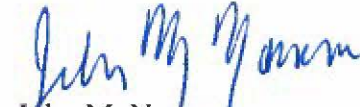
The three insulin manufacturers named above produce over 90% of the global insulin supply. It is alleged that since at least 2003, they have been conspiring to artificially inflate their list prices and making undisclosed kickbacks to PBMs under the guise of rebates, discounts,



credits or administrative fees. The payments served as a quid pro quo for inclusion and favorable placement on the PBM formularies. The revenues generated by certain PBMS greatly surpassed the fair market value of the services they provided, and the kickbacks they received far exceeded the fair market value of those services.

The causes of action against the manufacturer and PBMs will include violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), deceptive and unfair trade practices, civil conspiracy, and unjust enrichment. Potential remedies sought will include compensatory damages, injunctive relief and punitive damages. The law firm of Napoli Shkolnik has already filed actions on behalf of 11 New York cities/counties with 3 New York cities/counties soon to be filed.

Very truly yours,



John M. Nouna
County Attorney

Encls.
JMN/lz

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would Request to authorize the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

Because the conduct dates back to approximately 2003 and covers insulin medication widely used, the County's spending on these products – and thus potential damages in this suit, which can be trebled – is significant.

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It is alleged that since at least 2003, the manufacturers have been conspiring to artificially inflate their list prices and making undisclosed kickbacks to PBMs under the guise of rebates, discounts, credits or administrative fees.

The payments served as a quid pro quo for inclusion and favorable placement on the PBM formularies. The revenues generated by certain PBMS greatly surpassed the fair market value of the services they provided, and the kickbacks they received far exceeded the fair market value of those services.

The causes of action against the manufacturer and PBMs will include violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), deceptive and unfair trade

practices, civil conspiracy, and unjust enrichment. Potential remedies sought will include compensatory damages, injunctive relief and punitive damages.

Your Committee has carefully considered the subject matter and the attached act and recommends authorizing the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
July __, 2024

COMMITTEE ON

ACT NO. - 2024

AN ACT authorizing the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is hereby authorized to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

Section 2. The County Attorney or his duly designated representative is hereby authorized to undertake such legal proceedings and prepare all documents necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: County v. Manufacturers of Insulin NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: N/A

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: An act authorizing the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufactures and pharmacy benefit managers for anticompetitive activities and unlawful, unfair and deceptive businesses practices related to insulin.

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: N/A

Next Four Years: N/A

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: July 25, 2024

Reviewed By: *Christine Lampert*

Budget Director

Date: 7/25/24