No. 26–3780

In the United States Court of Appeals for the Sixth Circuit

IN RE OPTUMRX, INC., UNITEDHEALTH GROUP INCORPORATED, OPTUM, INC., OPTUMINSIGHT, INC., OPTUMINSIGHT LIFE SCIENCES, INC., OPTUMRX DISCOUNT CARD SERVICES, LLC, OPTUM PERKS, LLC, OPTUMHEALTH CARE SOLUTIONS, LLC, OPTUMHEALTH HOLDINGS, LLC, OPTUM HEALTH NETWORKS, INC., EXPRESS SCRIPTS, INC., EXPRESS SCRIPTS ADMINISTRATORS, LLC, MEDCO HEALTH SOLUTIONS, INC., ESI MAIL ORDER PROCESSING, INC., ESI MAIL PHARMACY SERVICE, INC., EXPRESS SCRIPTS PHARMACY, INC., EVERNORTH HEALTH, INC., AND EXPRESS SCRIPTS SPECIALTY DISTRIBUTION SERVICES, INC.,

Petitioners.

On Petition for Writ of Mandamus from the U.S. District Court for the Northern District of Ohio, Nos. 1:17-md-2804-DAP (Hon. Dan Aaron Polster)

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE OHIO CHAMBER OF COMMERCE, AND THE PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF MANDAMUS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, each *amicus* entity—the Chamber of Commerce of the United States of America, the Ohio Chamber of Commerce, and the Pharmaceutical Care Management Association—certifies that it is not publicly traded, that it has no parent company, and that no publicly held entity owns ten percent or more of it.

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INTEREST OF *AMICI CURIAE*[*]

The Chamber of Commerce of the United States of America ("U.S. Chamber") is the world's largest business organization. As the nation's leading advocate for business, the U.S. Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Ohio Chamber of Commerce ("Ohio Chamber") is Ohio's largest and most diverse statewide business advocacy organization representing businesses ranging in size from small, sole proprietorships to some of the largest U.S. companies. The Ohio Chamber works to promote and protect the interests of its more than 8,000 business members while building a

[*] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

more favorable business climate in Ohio by advocating for the interests of Ohio's business community on matters of statewide importance. By promoting its pro-growth agenda with policymakers and in courts across Ohio, the Ohio Chamber seeks a stable and predictable legal system, which fosters a business climate where enterprise and Ohioans prosper. The Ohio Chamber regularly files *amicus curiae* briefs in cases important to its members' interests in courts across the state of Ohio.

The Pharmaceutical Care Management Association ("PCMA") is the national trade association representing the interests of pharmacy benefit managers ("PBMs"), including Petitioners Express Scripts, Inc. and Optum, Inc. PCMA's members administer prescription drug plans and operate home delivery and specialty pharmacies for more than 289 million Americans with health coverage through Medicare, Medicaid, public and private employers, labor unions, retiree plans, the Federal Employees Health Benefits ("FEHB") program, and exchange plans. Consistent with its mission, PCMA promotes and defends benefit management tools that have been shown to reduce prescription drug costs, expand access to medications, and enhance patient safety and medication adherence.

There is no denying the magnitude of the opioid crisis in America. It is a devastating social and economic problem—one that deserves serious solutions. Although the dispute underlying the Petitioners' mandamus petition concerns litigation relating to the opioid epidemic, *amici* are not participating because of that subject matter. Rather, *amici* file this brief because adherence to the Federal Rules of Civil Procedure in multidistrict litigation (MDL) proceedings is of particular concern to *amici* and their members.

This is the second time the District Court managing this MDL has failed to properly apply the Federal Rules of Civil Procedure, again departing from Civil Rules 15 and 16, this time to allow 800 plaintiffs to amend their complaints years after the deadline and without any individualized diligence inquiry. Last time, this Court granted mandamus relief against the District Court and declared that the Federal Rules of Civil Procedure "appl[y] in multidistrict litigation under 28 U.S.C. § 1407 just as [they] do[] in any individual case." *In re Nat'l Prescription Opiate Litig.*, 956 F.3d 838, 841 (6th Cir. 2020) ("*CVS*"); *see also* U.S. Chamber *Amicus* Br., *CVS*, No. 20–3075 (6th Cir., filed Jan. 24, 2020) (urging this result). As relevant here, this Court held that "the requirements for granting a motion to amend [in an MDL] . . . are the same as those for ordinary litigation on an ordinary docket." *CVS*, 956 F.3d at 845.

Amici and their members have a particular interest in how courts apply the Federal Rules of Civil Procedure in MDL litigation. For decades since the MDL statute was enacted in 1968, MDLs constituted a small portion of civil litigation. In recent years, however, MDLs account for nearly two thirds of all private civil litigation in federal court. *See* U.S. Chamber of Commerce Institute for Legal Reform, *A Step in the Right Direction for MDLs: New Federal Rule of Civil Procedure 16.1*, at 3 (2025) ("Chamber, *Step in Right Direction for MDLs*"), https://perma.cc/V3Q2-JQMS. In January 2025, for example, more than 300,000 pending cases were consolidated in active MDLs. *Id.* MDLs, in other words, have become the predominant means for suing businesses in federal court today.

Not only have *amici*'s members been involved in such litigation, but the U.S. Chamber's Institute for Legal Reform has published several reports on the subject. *See, e.g.*, *id.*; U.S. Chamber of Commerce Institute for Legal Reform, *Twisted Blackjack: How MDLs Distort and Extort* (2021) ("Chamber, *How MDLs Distort and Extort*"), https://perma.cc/KYR4-VLWG; U.S. Chamber of Commerce Institute for

Legal Reform, *Trials and Tribulations: Contending with Bellwether and Multi-Plaintiff Trials in MDL Proceedings* (2019) ("Chamber, *Trials and Tribulations*"), https://perma.cc/PR8B-GEKS; U.S. Chamber of Commerce Institute for Legal Reform, *MDL Imbalance: Why Defendants Need Timely Access to Interlocutory Review* (2019) ("Chamber, *MDL Imbalance*"), https://perma.cc/F89K-XEV4; U.S. Chamber of Commerce Institute for Legal Reform, *MDL Proceedings: Eliminating the Chaff* (2015) ("Chamber, *Eliminating the Chaff*"), https://perma.cc/BV37-6SAY.

Amici are thus uniquely situated to help the Court appreciate the critical guardrails the Federal Rules of Civil Procedure impose on MDL proceedings and the devastating effects this sort of MDL abuse will have on American businesses and thus the national economy.

SUMMARY OF ARGUMENT

I. As this Court instructed the District Court in 2020, "an MDL court's determination of the parties' rights in an individual case must be based on the same legal rules that apply in other cases, as applied to the record in that case alone." *CVS*, 956 F.3d at 841. In particular, "the requirements for granting 'a motion to amend' . . . 'are the same as those for ordinary litigation on an ordinary docket.'" *Id.* at 844 (quoting *In re Korean Air Lines Co.*, 642 F.3d 685, 700 (9th Cir. 2011)).

In allowing 800 plaintiffs to amend their complaints *en masse* to add the Petitioners as defendants, the District Court again violated this bedrock principle—in at least two ways. First, the District Court purported to recognize an MDL exception to the individualized inquiry into diligence and good cause under Civil Rules 15 and 16. The District Court concluded that no such individualized inquiry was required in this MDL context, allowing hundreds of plaintiffs to add the Petitioners as defendants in their separate actions without even submitting an amended complaint for review and approval. Second, the District Court created an MDL exception to the diligence and undue delay standards in Civil Rules 15 and 16, which turn on when the plaintiffs became aware of the basis for the proposed amendment. Instead, the District Court concluded that in this MDL context, diligence and delay are based on when the plaintiffs eventually analyzed information they may have long possessed to conclude they have viable claims against the Petitioners. Both rulings contradict how the Federal Rules of Civil Procedure apply in ordinary civil litigation.

II. MDLs now dominate business litigation in federal court. When properly constrained, MDLs help facilitate an efficient resolution of pretrial proceedings in related cases with overlapping factual and legal issues. But if the Civil Rules are not followed, MDLs can lead to severe abuse of the process by plaintiffs' attorneys, with devastating effects for the business community. When the MDL process is abused, the plaintiffs' bar floods district courts with numerous claimants and meritless claims, bringing inadequately vetted theories and cases in an effort to balloon costs and raise settlement pressure—which plaintiffs' counsel acknowledged is their aim in seeking to add claims at this late stage of the litigation. *See* R.5411, PageID#635513 n.1. This Court should again grant mandamus relief against this District Court to correct these clear errors, and again declare that there is no MDL exception to the Federal Rules of Civil Procedure.

ARGUMENT

I. The Federal Rules of Civil Procedure Apply with Full Force to Multi-District Litigation.

The Federal Rules of Civil Procedure "govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81." Fed. R. Civ. P. 1. Under the Civil Rules, "[t]here is one form of action—the civil action." Fed. R. Civ. P. 2. As the Supreme Court has long observed, "One of the shaping purposes of the Federal Rules is to bring about uniformity in the federal courts by getting away from local rules. This is especially true of matters which relate to the administration of legal proceedings, an area in which federal courts have traditionally exerted strong inherent power, completely aside from the powers Congress expressly conferred in the Rules." *Hanna v. Plumer*, 380 U.S. 460, 472–73 (1965) (quotation marks omitted).

In 1968, Congress enacted the Multidistrict Litigation Act, which created a new mechanism to combine similar civil lawsuits from across the country into a single court for coordinated pretrial proceedings. *See* Pub. L. No. 90–296, 82 Stat. 109 (1968), codified at 28 U.S.C. § 1407. Importantly, Congress instructed that any court-created rules governing MDL procedure cannot be "inconsistent with Acts of Congress and the Federal Rules of Civil Procedure." 28 U.S.C. § 1407(f). In other words, as the Supreme Court has emphasized, each of the individual cases combined within an MDL "retain their separate identities." *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 413 (2015). "Section 1407 refers to individual 'actions' which may be transferred to a single district court," the Supreme

Court continued, "not to any monolithic multidistrict 'action' created by transfer." *Id.* (quoting 28 U.S.C. § 1407(a)).

In 2020, this Court granted mandamus relief against this District Court in a related MDL for violating this bedrock principle of civil procedure. Writing for the Court, Judge Kethledge explained:

> The rule of law applies in multidistrict litigation under 28 U.S.C. § 1407 just as it does in any individual case. Nothing in § 1407 provides any reason to conclude otherwise. Moreover, as the Supreme Court has made clear, every case in an MDL (other than cases for which there is a consolidated complaint) retains its individual character. That means an MDL court's determination of the parties' rights in an individual case must be based on the same legal rules that apply in other cases, as applied to the record in that case alone. Within the limits of those rules, of course, an MDL court has broad discretion to create efficiencies and avoid duplication—of both effort and expenditure—across cases within the MDL. What an MDL court may not do, however, is distort or disregard the rules of law applicable to each of those cases. The rules at issue here are the Federal Rules of Civil Procedure, which have the same force of law that any statute does.

CVS, 956 F.3d at 841 (paragraph break omitted).

The errors the District Court committed in 2020 are the same errors it has committed in this MDL litigation. Here, the District Court allowed 800 plaintiffs to add the Petitioners as defendants *en masse*, and "[t]hose amendments came long after the deadline set by the court's scheduling order, which means the court's discretion to allow them was limited by

Civil Rule 16(b).” *Id.* at 843. In a hearing ten months before its ultimate order, the District Court declared that “[e]veryone knows or should have known that I’m not going to allow 800 amendments adding [the Petitioners as defendants], nor am I going to allow zero.” R.6273, PageID#695081. “And if I did one or the other,” the District Court candidly admitted, “the Sixth Circuit would reverse me in a heartbeat.” *Id.* Yet ten months later the District Court brazenly reversed field and allowed the motion to amend in full.

What changed in the law between this Court’s 2020 decision against the District Court in *CVS* and the District Court’s decision to allow 800 plaintiffs to add the Petitioners as defendants in this MDL litigation? Nothing. Neither the Supreme Court nor this Court has revisited existing precedent. Congress has not amended the MDL statute to allow courts to create local MDL rules inconsistent with the Federal Rules of Civil Procedure. And the Federal Rules of Civil Procedure remain unchanged in all relevant respects.

Indeed, in 2024, the Committee on Rules of Practice and Procedure approved a new Civil Rule 16.1 to formalize certain procedures unique to the MDL context. Adopted by the Supreme Court and made effective

December 1, 2025, this new rule requires that "the transferee court should schedule an initial management conference to develop an initial plan for orderly pretrial activity in the MDL proceedings." Fed. R. Civ. P. 16.1(a). As the U.S. Chamber has explained, "Rule 16.1 reflects a meaningful step in the right direction in addressing abuses of the MDL process—in particular, the widespread filing of unverified or unsupportable claims that could not survive for long outside of the MDL context." Chamber, *Step in Right Direction for MDLs*, *supra*, at 2.

Importantly, however, Civil Rule 16.1 did not disturb this Court's and the Supreme Court's precedents that the Federal Rules of Civil Procedure, including Civil Rules 15 and 16, apply with full force to MDL proceedings. The Rules Committee and the Supreme Court had an opportunity to depart in other ways from the Civil Rules for MDLs. They chose not to. The District Court cannot rewrite Civil Rules 15 and 16 on its own, as it has done in this case in at least two ways.

A. There Is No MDL Exception to the Individualized Inquiry on Diligence and Good Cause under Civil Rules 15 and 16.

Civil Rules 15 and 16 govern how plaintiffs can seek to amend a complaint after a court-ordered deadline. Amendments are "permitted under Rule 16 if Plaintiffs can demonstrate 'good cause' for their failure to comply with the original schedule, by showing that despite their diligence they could not meet the original deadline." *Leary v. Daeschner*, 349 F.3d 888, 907 (6th Cir. 2003). This diligence requirement "ensure[s] that at some point both the parties and the pleadings will be fixed." *CVS*, 956 F.3d at 843 (quoting *Leary*, 349 F.3d at 906). Only after plaintiffs meet that threshold requirement can the trial court proceed to analyze whether leave should be granted under Civil Rule 15(a). *See CVS*, 956 F.3d at 843. "If we considered only Rule 15(a) without regard to Rule 16(b)," the Eleventh Circuit has explained, "we would render scheduling orders meaningless and effectively would read Rule 16(b) and its good cause requirement out of the Federal Rules of Civil Procedure." *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1419 (11th Cir. 1998).

As the Petition details (at 21–28), the District Court clearly erred by refusing to engage in an individualized assessment of due diligence when allowing 800 plaintiffs to add the Petitioners as defendants in their individual lawsuits years after the Civil Rule 16(b) scheduling order deadline. The District Court did not require any plaintiff to file an amended complaint, engaged in no individualized analysis of diligence despite plaintiffs with vast differences, and ignored over 3,500 pages of briefing from the Petitioners that engaged in plaintiff-by-plaintiff analysis of why each plaintiff had failed to demonstrate good cause.

Instead of following what it agreed is "the normal procedure" for each plaintiff to submit "a proposed amended complaint," the District Court rewrote Civil Rule 16 to include an MDL exception, arguing that individualized pleadings would require "colossal resources" and would not serve the "efficiency goals of an MDL." Issue Ruling No. 4, R.6428, PageID##707424–707425. Indeed, the District Court declared that "no motion for leave to amend to add [the Petitioners as defendants] will be denied for lack of diligence." Issue Ruling No. 5, R.6553, PageID#711239.

In any situation, the District Court's categorical approach would be a clear error meriting mandamus relief. But here the error is even more brazen, as it contradicts this Court's unambiguous instructions in *CVS* that a trial court may not "distort or disregard the rules of law" for efficiency's sake; "the requirements of the Civil Rules in an MDL case—indeed, the requirements for granting a motion to amend in particular—are the same as those for ordinary litigation on an ordinary docket." 956 F.3d at 841, 844 (quotation marks omitted).

B. There Is No MDL Exception to the Undue Delay and Diligence Standards in Civil Rules 15 and 16, Which Turn on When Plaintiffs Became Aware of the Basis for the Amendment.

In assessing undue delay under Civil Rule 15 and good-cause diligence under Civil Rule 16, it is well settled that courts assess both based on when plaintiffs became "aware of the basis of the claim." *Duggins v. Steak 'N Shake, Inc.*, 195 F.3d 828, 834 (6th Cir. 1999); *accord Leary*, 349 F.3d at 907–09. Plaintiffs must demonstrate that the information necessary to know the need to amend was "unavailable" before the motion to amend and the Civil Rule 16(b) deadline. *Garza v. Lansing Sch. Dist.*, 972 F.3d 853, 879 (6th Cir. 2020). In other words, both inquiries hinge on access to information that could serve as the basis for a claim.

As the Petition details (at 28–38), the District Court made no effort to determine whether each individual plaintiff was aware of the basis of the claims against the Petitioners before the Civil Rule 16(b) deadline or long before seeking to amend. Instead, the District Court essentially held that, at least in this MDL litigation, the timing instead turns on when plaintiffs are "confident they could defeat" a sanctions motion or when plaintiffs could analyze and appreciate the Petitioners' business practices that it perceived as "unusually opaque" or otherwise difficult to understand. *Id.* Ruling No. 5, R.6553, PageID#711238 & n.19.

That, of course, is not the proper inquiry. Good-cause diligence and undue delay focus on when the plaintiff became aware of the basis of the claim, not when the plaintiff ultimately decides to analyze information it may have long possessed. Due diligence requires acting on information once it becomes available, not sitting on it.

Nor is the District Court's invocation of the complexity of the subject matter compelling. In a decision that was such an obvious application of clearly established precedent that this Court chose not to publish it, the Court rejected an argument that the plaintiffs were excused from the Civil Rule 26(b) amendment deadline because the medical records long in their possession were too "complex" for "a layperson . . . [to] reasonably assess" and that they "were so vague and scarce in details that even their medical expert could not be certain that [the doctor] committed medical malpractice before reviewing [the doctor's] deposition." *Profitt v. Highlands Hosp. Corp.*, 2024 WL 3622448, at *4 (6th Cir. Aug. 1, 2024) (quotation marks omitted). This was a lack of diligence, the Court concluded, because the relevant "information [was] plainly available" to the plaintiffs before the deadline, and one of the plaintiffs "could have developed her claim against [the doctor] much sooner than she did." *Id.* Moreover, the Court emphasized, "pleading standards have never required certainty on behalf of litigants." *Id.*

Indeed, the First Circuit had no difficulty concluding that similar attempts by the City of Boston to add some of these same Petitioners as defendants were time barred, because the city "had ample reason to know of [the Petitioners' alleged] wrongdoing and had ample means to discover the facts to support a claim against [the Petitioners] before 2021." *City of Boston* v. *OptumRx, Inc.*, 169 F.4th 58, 62 (1st Cir. 2026). The First Circuit found it simply "not plausible" that the plaintiff was unaware of the basis for adding the Petitioners as defendants; after all, there were already dozens of public lawsuits and MDL bellwether cases naming the Petitioners as defendants. *Id.* at 63. Indeed, as the Petition documents (at 6), between 2018 and 2019—years before the deadline under Civil Rule 26(b) in this MDL proceeding—plaintiffs in at least 74 lawsuits sued the Petitioners alleging harms related to prescription opioid abuse. The only way the District Court could rule otherwise here was to improperly create yet another MDL exception, this time to these well-established standards in Civil Rules 15 and 16.

II. This Court's Review Is Urgently Needed Because the District Court's Orders Set Dangerous Precedents for MDL Proceedings.

MDLs account for nearly two thirds of all private civil litigation in federal court. *See* Chamber, *Step in Right Direction for MDLs*, *supra*, at 3. Businesses today are more likely to be defendants in MDL proceedings than in ordinary, individual civil lawsuits. *See id.* To be sure, MDLs are not necessarily a bad development. As the U.S. Chamber has observed, "MDL proceedings are intended to allow for the efficient resolution of pre-trial proceedings in related cases involving overlapping factual and legal issues." Chamber, *Trials and Tribulations*, *supra*, at 17.

But when the Civil Rules are not faithfully applied, MDLs can be extremely disruptive to the business community and thus the national economy. As the U.S. Chamber has documented, MDLs can be riddled with inadequately vetted theories and cases, plaintiffs' firms can fuel meritless lawsuits through aggressive client recruitment, and the excessive focus on settlement prospects often distorts the value of plaintiffs' claims. *See* Chamber, *Eliminating the Chaff*, *supra*, at 3–14. These problems are exacerbated by the fact that timely interlocutory review in MDL proceedings can be difficult to obtain. *See* Chamber, *MDL Imbalance*, *supra*, at 1–2. As a result, "MDL plaintiffs with potentially meritorious claims," the U.S. Chamber has observed, "run the risk that a litigation loaded with weak or outright frivolous claims that cannot be culled will force the defendant into bankruptcy or other financial restrictions, leaving legitimate claimants most in the lurch." Chamber, *How MDLs Distort and Extort*, *supra*, at 6.

The Federal Rules of Civil Procedure impose critical guardrails to help prevent and discourage these MDL abuses. The addition of Civil Rule 16.1 in 2025, for instance, seeks to address "the widespread filing of unverified or unsupportable claims that could not survive for long outside of the MDL context." Chamber, *Step in Right Direction for MDLs*, *supra*, at 2. But courts must similarly ensure that "every case in an MDL . . . retains its individual character. That means an MDL court's determination of the parties' rights in an individual case must be based on the same legal rules that apply in other cases, as applied to the record in that case alone." *CVS*, 956 F.3d at 841.

The District Court's distortion of Civil Rules 15 and 16 allowed 800 plaintiffs to add the Petitioners as defendants long after the deadline without any individualized showing of good cause, due diligence, and the lack of undue delay. The District Court did not filter out amendments that never would have been permitted if these cases were considered individually. This sort of MDL abuse, if left uncorrected, will lead to severe manipulation of the MDL process by plaintiffs' attorneys, with devastating effects for American businesses. This Court should again grant mandamus relief against the District Court to correct these clear errors, and again declare that the Federal Rules of Civil Procedure apply with full force in MDL proceedings.

CONCLUSION

For these reasons, the Court should grant the petition for a writ of mandamus.

Respectfully submitted,

September 2, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to Fed. R. App. P. 32(g)(1) that the foregoing brief has been prepared using proportionally spaced typeface and includes 3,894 words according to the Microsoft Word count function, excluding those materials not required to be included under Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. I further certify that counsel for the parties in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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