

AMERICAN ARBITRATION ASSOCIATION

AIDS HEALTHCARE FOUNDATION,

Claimant,

v.

PRIME THERAPEUTICS LLC,

Respondent.

No. 01-22-0000-2756

Arbitrator: Stuart M. Widman

**Ruling On Respondent's Motion *In Limine* To Exclude Interim Report**

The Motion *in Limine* is denied. While the FTC's July 2024 Interim Staff Report entitled "Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies" (the "FTC Report") does not directly address the Collaboration, it does mention Respondent Prime Therapeutics as among the "Big 6" PBMs in the United States and how they collectively might lessen competition and inflate drug costs.

Those and other potential collective impacts were discussed by Prime's expert, Dr. Maness, in his Expert Report, and therefore the FTC Report is appropriately usable on cross-examination of Dr. Maness. Thus, the FTC Report is at least relevant on the issue of the weight to be given to Dr. Maness's testimony, and is therefore not unduly prejudicial because it might assist this Arbitrator in assessing the merits. Just as this Arbitrator is allowing evidence at the Hearing on actual pro-competitive effects of the Collaboration on consumers and patients, so too is evidence on actual detrimental effects.<sup>1</sup>

This Arbitrator does not credit Prime's arguments that the FTC Report is inadmissible under the Federal Rules of Evidence (FRE) as improper hearsay or as otherwise untrustworthy.

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<sup>1</sup> The Motion only addresses the FTC Report, but AHF's Opposition (Addendum 2) also discusses a recent House Committee report entitled "The Role of Pharmacy Benefit Managers in Prescription Drug Markets." This Ruling provides guidance for the use of the House Committee report and other similar reports too.

First, even interim reports of governmental agencies are admissible as an authoritative statement of a public official. FRE 803(8); *Ponce v. Construction Laborers Pension Trust*, 774 F.2d 1401, 1403 (9th Cir. 1985).

Second, the absence of a single identified author of the FTC Report is neither unusual nor problematic. Given their scope and work necessary to produce them, such reports are generally group efforts. Indeed, Prime and Maness had earlier touted (see Motion for Summary Adjudication, pp. 6 - 7; Maness Expert Report, ¶¶ 48 - 49) the FTC's evaluation of the Collaboration, so Prime cannot now say that authorship is questionable.

Third, the informational sources for the FTC Report are known, as they are abundantly footnoted throughout. True, there are some redactions, but those seem limited to the respondents' submissions and thus do not overall impact the reliability or thoroughness of the report.

One point of the Opposition (p. 4) remains unclear, however. AHF says that it should be allowed to offer the FTC report and other governmental reports "[t]o the extent that Mr. [sic] Maness and Prime continue to rely on generalized praise of PBMs to defend Prime in this arbitration." This Arbitrator is uncertain what "continue to rely on" means, and how, if at all, Prime could now (even if it wanted to) disassociate itself from Maness's "praise". The Maness Expert Report is in the record and it was relevant to the Ruling on the Motion for Summary Adjudication. This conditionality to the usage of such government reports needs clarification.

For the foregoing reasons, the Motion *In Limine* is denied.

Dated: July 31, 2024

/s/ Stuart M. Widman  
Stuart M. Widman, Arbitrator