

INSULIN PRICING SCHEME LITIGATION



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WHY HAS THE PRICE OF INSULIN SKYROCKETED?

While the public has seen the price of insulin dramatically increase as much as 1,000%, the production cost of insulin has actually decreased in recent years due to efficiency, optimized processes, and minimal innovations. One study found that, based on production costs, a year's supply of insulin should be \$48 to \$71 per person and even at those prices, manufacturers would still earn generous profits. Another study found that manufacturers could even be profitable charging less than \$2 per vial for insulin. Nevertheless, according to the National Institutes of Health, the average diabetic spends nearly \$6,000 on insulin every year.

WHAT IS THE INSULIN PRICING SCHEME ALLEGED IN RECENTLY FILED LAWSUITS?

According to court filings, government reports, and the FTC, the alleged Insulin Pricing Scheme is a multi-billion-dollar price-fixing scheme orchestrated by the three largest PBMs. Cases filed by health plans and State Attorneys General also blame the three leading manufacturers of insulin. Three manufacturers control the U.S. market for insulin, while three PBMs control the market for PBM services. According to the legal actions and government investigations, the following activities are at the core of the alleged insulin pricing scheme:

1. PBMs control what drugs are covered under health insurance plans through their management of formularies. Over the years, PBMs allegedly demanded increasingly large “rebates” from insulin manufacturers for preferred placement on the PBMs’ formularies.
2. For their part, the manufacturers allegedly agree to pay those rebates because preferred placement on the PBMs’ formularies means greater market share for their drugs (and greater profits) which get passed on to health plans and patients.
3. As outlined in the FTC’s complaint, the agreed upon structure where manufacturers bid based on rebates instead of price, allows prices to be raised without fear of price competition.

WHAT CAN BE DONE?

The conduct at issue in these cases gives rise to a number of potential legal claims. Among other potential causes of action, plaintiffs have asserted claims for violations of RICO, deceptive and unfair trade practices, and unjust enrichment. Through these claims, plaintiffs are seeking to obtain money damages and disgorgement for the alleged excessive insulin prices paid in the past and they also are seeking to ensure that those rates are not charged in the future.

Potential remedies sought include:

- Money wrongfully paid for artificially inflated insulin prices on behalf of insured beneficiaries. For some claims, the damages awarded may be trebled – not only to compensate for expenses wrongfully incurred, but also to deter similar future behavior.
- Injunctive relief to stop the alleged insulin pricing scheme.
- Disgorgement of ill-gotten gains.
- Punitive damages designed to punish past misconduct and to deter future misconduct.

ATTORNEYS



Mark Pifko

Mark Pifko specializes in the prosecution of high-profile and complex cases against multi-national corporations. Mr. Pifko's cases have addressed corporate fraud and wrongdoing across a broad array of business areas, including in the financial services, pharmaceutical, and automotive industries. Since joining Baron & Budd in 2011, Mr. Pifko's efforts have led to the recovery of billions of dollars for his clients and affected changes in corporate behavior. Prior to joining the firm, Mr. Pifko spent nearly a decade working at AM Law100 firms, representing some of the world's largest companies in high-stakes litigation. Recently, Mr. Pifko's practice has been focused on the national opioid litigation and his work has been featured in The Washington Post and the non-fiction book, *American Cartel*. He was recognized as a 2023 Lawdragon 500 Leading Plaintiff Consumer Lawyer, named in the Top 40 Under 40 Civil Plaintiff Trial Lawyers by National Trial Lawyers in 2017, identified as a "Rising Star" by Law360 in 2016, and included in the Super Lawyers publications dating back to 2013.



Tom Young

Headquartered in Washington, D.C., Young & Partners' practice is national in scope, as we have trusted co-counsel relationships with leading law firms in all fifty states.

Founding Partner Tom Young has recovered hundreds of millions of dollars for governmental entities and individual victims of various major disasters over the past 25 years, including the 2010 BP *Deepwater Horizon* oil spill in the Gulf of Mexico, the 2015 Volkswagen "dieselgate" emissions scandal, recent devastating hurricanes along the East Coast, the ongoing nationwide opioid epidemic, PFAS "forever chemical" contamination and more. The firm also represents individuals in mass tort actions who were allegedly harmed by various dangerous and defective products such as the herbicides Roundup and Paraquat, medical devices like hernia mesh, the pharmaceutical Zantac, talcum powder based consumer products (baby powder), infant formula associated with necrotizing enterocolitis in premature newborns, and service member veterans harmed by water contamination at Marine Corps Base Camp Lejeune.

Young holds a Bachelor's of Arts in Economics and a Juris Doctor, with Honors, from the University of Florida Levin College of Law. While there, Young was one of the first students awarded a *Certificate in Environmental & Land Use Law*. Young's practice includes educating and assisting consumers, businesses, nonprofit organizations and government entities in understanding their rights as they pertain to losses due to negligence or disaster, in both state and federal court. Importantly, we only represent plaintiffs, not defendants, and never insurance companies.

He is a member of the Phi Eta Sigma National Honor Society, the Golden Key International Honor Society, the Florida Bar, the District of Columbia Bar, the State Bar of Arizona, the Bar of the Supreme Court of the United States, the Trial Lawyers Association of Metropolitan Washington, D.C., the Florida Justice Association, the Arizona Association for Justice, and the American Association for Justice. Young was the 2012-2018 President of the Civil Justice Foundation and a former AAJ state delegate.



Patrick Mickler

Mickler has extensive experience in the legal industry representing clients in complex national mass tort litigations involving product defects and pharmaceuticals as well as general negligence matters. Mickler has also assisted clients, including governmental entities, in various major disasters, including the nationwide opioid epidemic, and the ongoing PFAS "forever chemicals" environmental catastrophe.

Mickler holds a Bachelor's of Arts degree from Washington and Lee University in Journalism and a Juris Doctor, summa cum laude, from Mitchell Hamline School of Law. He is a member of the American Association for Justice, The Florida Justice Association, and the Trial Lawyers Association of Metropolitan Washington, D.C., as well as the Florida Bar and the District of Columbia Bar.

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