



DAILY JOURNAL SPOTLIGHTS BARTKO'S LANDMARK PRE-TRIAL VICTORY IN RULING SETTING THE ANTITRUST STANDARD IN BLUE CROSS HOSPITAL CASE

Media Mentions

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The [Daily Journal](#) recently featured Bartko Pavia LLP's significant victory in *VHS Liquidating Trust v. Blue Cross of California*, where an Alameda County Superior Court judge held that the Blue Cross Blue Shield plans will face strict *per se* antitrust treatment for dividing the country into exclusive territories, unless they can show their predecessors held common law trademark rights in those areas before the 1950s.

The order sets the standards for Cartwright Act claims brought by Verity Health System, Prime Healthcare and Children's Hospital Los Angeles against more than 30 Blue Cross and Blue Shield plans and the Blue Cross Blue Shield Association. The Blues must show that each early plan had a reasonable factual and legal basis to believe it held common-law trademark rights in the area where each plaintiff hospital is located. If they cannot, the *per se* rule will apply to that hospital's market allocation and group boycott claims. The court also applied the *per se* standard to claims involving the Blues' National Best Efforts rule, and the rule of reason to price-fixing claims involving the BlueCard program. Trial is set for March 29, 2027.

[Patrick M. Ryan](#), co-managing partner at Bartko Pavia, emphasized the ruling's reach: "This opinion has broad implications across the entire United States, both state and federal court alike." He explained that "in general, in a horizontal conspiracy case like this, procompetitive justifications like trademarks are inadmissible. Here, the Court recognized a very narrow exception, requiring the Defendants to come forward with specific evidence to show how they can meet specific elements of trademark protection in every jurisdiction where there are plaintiff hospitals."

Ryan added that if the Blues cannot meet their burden, “the case’s primary focus will be all about the size of the damage award. And that ask will be in the billions of dollars across all of our hospital clients.”

Read the full Daily Journal article [here](#).

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PATRICK M. RYAN

Co-Managing Partner

📞 415.956.1900