



# COURT REJECTS INSURANCE COMPANIES' EFFORT TO DISMISS ANTITRUST CLAIMS AND LIMIT DAMAGES OF HEALTHCARE PROVIDERS

## Press Release

01, June 2022

## **BARTKO LAW FIRM SOUNDLY DEFEATS INSURERS' DEMURRER AND MOTION TO STRIKE**

**San Francisco, CA** – On June 1, 2022, the Honorable Evelio Grillo of the Alameda Superior Court, in *VHS Liquidating Trust, et al. v. Blue Cross Blue Shield Association, et al.*, Case Number RG21106600, issued two comprehensive orders that emphatically rejected the Defendants' attempts to dismiss the Plaintiffs' claims and limit their potential damages.

First, the Court rejected Defendants' efforts to dismiss 10 of Plaintiffs' 13 claims and gave Plaintiffs leave to amend the 13th claim. Thus, Plaintiffs' entire case shall remain entirely intact following the ruling. Second, the Court rebuffed Defendants' attempt to limit the damages period, preserving Plaintiffs' ability to pursue subscriber and provider damages dating back to 2008 and 2009, respectively. The Court agreed with Plaintiffs that as members of a federal class action, their claims are equitably tolled back to the filing of the class action complaints, regardless of the label of the claim. Based on California law and public policy, the Court pointedly held that equitable tolling applies equally whether the prior claims arose under federal or state antitrust laws in either a federal or state class action.

The central allegations in the case brought forth by Bartko on behalf of Verity Health System Liquidating Trust claim the Defendant Blues violated the antitrust laws of California and other states by entering into unlawful agreements to reduce the reimbursements they paid to U.S. healthcare providers, including Plaintiffs. The Blues simultaneously forced Plaintiffs and other

subscribers to pay them more to provide health insurance to their employees. Bartko is already investigating bringing similar claims on behalf of other providers similarly injured by the conduct of the Blues.

"These combined orders represent a massive victory for the Plaintiffs, and for any other provider considering seeking relief in California courts against the Defendants' anticompetitive conduct," said Patrick M. Ryan, lead trial counsel for the Plaintiffs. "We are delighted by the Court's recognition of our clients' meritorious claims and are gratified that providers will now be able to seek the maximum damages against these insurance companies who have caused massive harm to providers across California."

Previously, Defendant Blue Cross Blue Shield Association ("BCBSA") had sought to remove this litigation to federal bankruptcy court, and to transfer it to a proceeding involving similar claims. The Bankruptcy Court rebuked BCBSA, then represented by Kirkland & Ellis LLP, holding: "Absent some cogent analysis regarding how these other asset categories create a bonafide dispute that requires this court to 'interpret' the Plan, Blue Shield/Blue Cross's argument leaves this court wanting. The court should not find 'related-to jurisdiction' on a speculative assessment regarding how state law litigation may unwind. Accordingly, Plaintiffs' motion to remand is granted."

Plaintiffs are represented by Bartko Bunzel & Miller, and the team, led by [Patrick M. Ryan](#), includes [Sean R. McTigue](#), [John "Jack" McLean](#), [Chad E. DeVeaux](#), [Marisa C. Livesay](#), and [Brittany N. DeJong](#). The Bartko team also represents VHS Liquidating Trust in another action (*VHS Liquidating Trust v. MultiPlan Corporation, et al.*, San Francisco Superior Court Case Number CGC-21-594966) alleging that the most powerful and highly profitable commercial health insurers unlawfully agreed with each other through a "hub, spoke, and rim" conspiracy to follow the pricing of their corporate hub, MultiPlan, in a concerted effort to reduce their out-of-network reimbursement payments to health care providers, and Bartko is currently investigating similar claims on behalf of other providers. Howard Grobstein, of Grobstein Teeple LLP, is serving as the liquidating trustee for VHS, the second largest healthcare bankruptcy in recent memory.

After remand, BCBSA engaged Cravath, Swaine & Moore LLP and Mayer Brown LLP, which filed the demurrer and motion to strike, both of which were meaningfully overruled and denied, respectively, by the Alameda County Superior Court in its two lengthy opinions as follows: [Order Granting In Part Motion to Strike Based on Application of Equitable Tolling](#) and [Order Sustaining With Leave to Amend Demurrer to First Amended Complaint](#). At the hearing on the demurrer and motion to strike, seven lawyers for the Defendants appeared.

Defendant BCBSA was represented by the law firms Cravath, Swaine & Moore LLP and Mayer Brown LLP. Defendant Anthem, Inc. was represented by Hogan Lovells US LLP.

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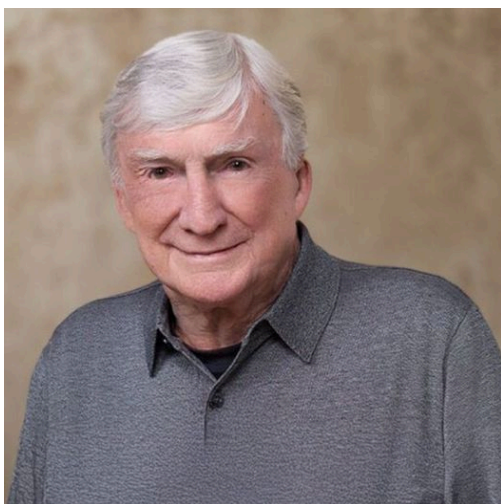
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