



HOSPITALS SCORE ANOTHER MASSIVE VICTORY AGAINST THE BLUES AS COURT REJECTS INSURANCE COMPANIES' SECOND ATTEMPT TO DISMISS HEALTHCARE PROVIDERS' ANTITRUST CLAIMS

Press Release

05, June 2023

BARTKO FIRM SOUNDLY DEFEATS DEFENDANTS' SECOND DEMURRER AND MOTION TO STRIKE

San Francisco, CA – In a June 5, 2023 Order, only made available on the public docket late June 6, 2023, 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 a comprehensive Order resoundingly rejecting the Defendant Blues' second attempt to dismiss the Plaintiffs' claims.

Plaintiffs' central allegations are that the Blues violated the antitrust laws of California and other states by entering into unlawful agreements to divide territories. While purporting to be separate entities in competition with one another, the Blues agreed with each other to allocate the United States into separate geographic service areas in which only one Blue, or an agreed and limited number of Blues, could sell health insurance, administer employee benefit plans, or contract with healthcare providers. These unlawful agreements both reduced the reimbursements they paid to healthcare providers, including Plaintiffs, and 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 misconduct of the Blues in California and in other states.

The Blues lost an earlier demurrer in June of last year as to all but one of Plaintiffs' claims (which the Court granted leave to amend), and a motion to strike where Defendants failed to limit the scope of damages. Nonetheless, the Blues took another shot to try and knockout Plaintiffs' *per se* and rule of reason claims alleging an illegal boycott and a *per se* price-fixing claim under California's Cartwright Act. The Blues also targeted Plaintiffs' claims for the unlawful exchange of information, claims under California's Unfair Competition Law, and claims under the antitrust laws of nine other states. In addition, the Blues moved to strike Plaintiffs' allegations as to the claims subject to their demurrer.

The Court wholly rejected the Blues' second demurrer and motion to strike, upholding all of Plaintiffs' claims, and leaving the case entirely intact. This is yet the latest in a series of decisive victories for Plaintiffs in their action against the Blues.

"We believe that hospitals across the country have been harmed by the Blues anticompetitive conduct in the billions of dollars," said Patrick M. Ryan, lead trial counsel for the Plaintiffs. "The order we just obtained represents a massive victory for hospital Plaintiffs, who were robbed of precious resources, while the Blues reaped massive profits on the backs of providers. This victory is a clarion call for all hospitals across the country considering seeking relief against the Blues for their anticompetitive conduct," he said. "This powerful order, combined with the Court's prior orders, paves the way for our hospital clients, and others, to vindicate all of their rights and seek the maximum possible damages for illegal conduct, in light of the Court's prior tolling ruling, dating back all the way to 2008."

Previously, Defendant Blue Cross Blue Shield Association ("BCBSA") also sought to remove this litigation to federal bankruptcy court, and to transfer it to a proceeding involving similar claims pending in a federal court in Alabama. The Bankruptcy Court rebuked BCBSA, holding: "Absent some cogent analysis regarding how these other asset categories create a bona fide 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.**" *VHS Liquidating Trust v. Blue Cross of California, et al.* 2021 WL 11134503 (N.D. Cal. Bank. Nov. 22, 2021) (emphasis added).

Plaintiffs are represented by Bartko Bunzel & Miller, and the team – led by [Patrick M. Ryan](#) – includes [Chad E. DeVeaux](#), [Marisa C. Livesay](#), [Brittany N. DeJong](#), [John "Jack" McLean](#), [Sean R. McTigue](#), and [Steve Vieux](#). Howard Grobstein, of Grobstein Teeple LLP, is serving as the liquidating trustee for VHS, the second largest healthcare bankruptcy in recent memory.

The Blue Cross Blue Shield Association and additional Defendants are represented by Cravath, Swaine & Moore LLP, including Evan R. Chesler, Karin A. Demasi, Helam Gebremariam, David K. Korn, Lauren R. Kennedy, Katherine A. Dubois, Silvie Saltzman, and Christopher J. Kelly of Mayer

Brown LLP, which filed both of the failed demurrers and motions to strike. Defendant Anthem, Inc. and a number of additional Blues were represented by E. Desmond Hogan of Hogan Lovells US LLP. Defendants Health Care Service Corporation, Highmark Inc., and a number of additional Blues were represented by Jennifer B. Fisher of Goodwin Procter, LLP and Jeffrey J. Zeiger, P.C. of Kirkland & Ellis LLP. [Patrick M. Ryan](#) | pryan@bartkolaw.com | 415.291.4540

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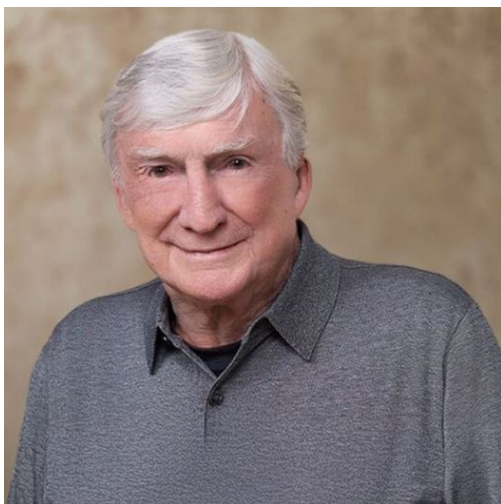
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