

## Blue Cross Blue Shield Antitrust Litigation

Related Lawyers: **Michael D. Hausfeld, Arthur N. Bailey, Jr., Swathi Bojedla, Megan E. Jones, Scott Martin, Kimberly Fetsick**

Related Practice Areas: **Antitrust / Competition**

*In re Blue Cross Blue Shield Antitrust Litigation*, MDL 2406 (N.D. Ala.) alleges that Blue Cross/Blue Shield entities across the country have entered into agreements not to compete with each other for customers of health insurance. The litigation seeks damages on behalf of a class of over 100 million subscribers, along with injunctive relief that would increase competition in the market for health insurance.

Judge David Proctor appointed Michael Hausfeld co-lead counsel for the class of subscriber plaintiffs (i.e., representing individuals and businesses that pay any Blue Cross Blue Shield entity for health insurance). Judge Proctor also appointed Hausfeld attorney Megan Jones to the Plaintiffs' Steering Committee, Bill Butterfield to co-chair the discovery committee, and Art Bailey to sit on the discovery committee.

In 2014, Judge Proctor denied the Defendant Blues motions to dismiss, and the case proceeded into discovery against more than thirty defendants. In October 2015, the Court held that in order to streamline the action as a whole, the case against Blue Cross Blue Shield of Alabama and Blue Cross Blue Shield Association would proceed on an accelerated basis. Discovery for the accelerated actions closed in December 2017.

In 2017, Plaintiffs moved for a summary judgment finding that agreements between the Blues to allocate territories should be accorded per se treatment under the Sherman Act. Plaintiffs also moved for a finding that Blue Cross Blue Shield Association rules that limit unbranded competition between the Blues should similarly be treated under a per se standard. These motions were based on extensive documentary evidence in which the Blues readily admit the anticompetitive nature of their rules. On April 5, 2018, the Court granted Plaintiffs' motion and found that the challenged restraints are subject to *per se* review under the Sherman Act.

In 2019, Subscriber Plaintiffs filed motions for class certification. Subscriber Plaintiffs seek to certify: 1) a class of subscribers within the state of Alabama who seek damages for defendants' agreement not to compete for subscribers within the state, and 2) a nationwide class of subscribers seeking injunctive relief in the form of removal of geographic restrictions on competition between defendants.