

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**IN RE:
BLUE CROSS BLUE SHIELD
ANTITRUST LITIGATION
(MDL NO. 2406)**

Master File No. 2:13-CV-20000-RDP

**This Document Relates to
Provider Track Cases**

**PROVIDER PLAINTIFFS' MOTION TO MODIFY THE ROLE OF THE
SETTLEMENT ADMINISTRATOR**

If this Court grants final approval to the Provider Plaintiffs' settlement with the Blues, the Settlement Claims Administrator will begin evaluating Settlement Class Members's claims in order to calculate the payments they will receive from the Net Settlement Fund.¹ Inevitably, there will be disputes about who is entitled to payment, and the amount of the payment. Currently, the Settlement Agreement and proposed Final Approval Order give this Court jurisdiction over such disputes, but they do not specify a procedure for resolving them. The Provider Plaintiffs believe that the most efficient procedure would be to assign such disputes to the Settlement Administrator, who would take evidence and briefing as necessary, and make reports and recommendations to the Court. Separately, the Provider Plaintiffs seek to make explicit the Settlement Administrator's ability to work with experts and vendors to carry out his duties relating to financial management of the settlement.

BACKGROUND

Class Members who do not opt out of the Provider Plaintiffs' settlement are entitled to file claims for payment from the Net Settlement Fund and to receive valuable injunctive relief. When

¹ Capitalized terms not otherwise defined herein shall have the meaning given them in the Settlement Agreement, Doc. No. 3192-2.

the Provider Plaintiffs moved for preliminary approval of their settlement, they submitted a Plan of Distribution, which describes the procedures for calculating Settlement Class Members' payments. Doc. No. 3207-1 ("Plan of Distribution"). For Health Care Facilities, that procedure includes calculating Adjusted Allowed Amounts, which are "the Claimant's allowed amounts for the Blue Plans' Commercial Health Benefit Products," adjusted for "the relative effect of the Defendants' conduct on the Health Care Facility, compared to other Health Care Facilities." *Id.* at 4–6. For Medical Professionals, the procedure is similar but uses Points (which are based on Allowed Amounts) instead of Allowed Amounts themselves. *Id.* at 6–7.

In implementing the Plan of Distribution, disputes will arise about the ownership of claims. During the Settlement Class Period, hospital systems (who are among the largest class members in this case) bought and sold healthcare facilities from each other. Sometimes the sale of a facility included that facility's right to recover in this litigation, and sometimes it did not. Consistent with their duties to the Settlement Class, counsel for the Provider Plaintiffs have been working with Settlement Class Members on filing claims for payment from the Net Settlement Fund, and they know that some of these Settlement Class Members will file claims for facilities included in opt-out plaintiffs' exclusion requests.

In addition, it is likely that some Settlement Class Members will take issue with how their Adjusted Allowed Amounts or Adjusted Points were calculated. Health Care Facilities in particular may be dissatisfied with the data used to calculate their Allowed Amounts under the Default Method, *see* Plan of Distribution at 4, or they may dispute whether they have submitted sufficient information to support their Allowed Amounts under the Alternative Method, *see id.* at 4–5, 8.

The Settlement Agreement and the proposed Final Approval Order do not squarely address how these disputes should be resolved. The Settlement Agreement states that disputes relating to

the Settlement Agreement are subject to the Court’s exclusive jurisdiction, but it does not specify how those disputes will be resolved (except for disputes within the scope of the Monitoring Committee’s authority). Doc. No. 3192-2 (“Settlement Agreement”) ¶ 67; *see also* Doc. No. 3311-13 (“Proposed Final Approval Order”) ¶ 29. The Settlement Agreement gives the Settlement Administrator the responsibility to create a budget for settlement administration and implement financial controls, but not to decide disputes about the Plan of Distribution. Settlement Agreement ¶ 1(eeee). The Settlement Claims Administrator manages and administers the Plan of Distribution, but the Settlement Agreement does not assign it the right to decide disputes about the validity of exclusion requests, or disputes over the payment amount for a given Claimant. *Id.* ¶ 1(hhhh). The Plan of Distribution does provide that the Settlement Claims Administrator will decide disputes between Claimants over the ownership of a claim. Plan of Distribution at 8.

ARGUMENT

For disputes relating to the Plan of Distribution (other than disputes committed to the Monitoring Committee under the Settlement Agreement), it will be most efficient to assign one person to hear argument, take evidence, consult with Provider Co-Lead Counsel, and make a report and recommendation to the Court. Individuals have been appointed to this role in other settlements, including the Subscriber Plaintiffs’ settlement in this case. Doc. No. 2931 at 92; *see, e.g.*, Doc. No. 9403, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 05-md-1720 (E.D.N.Y. Sept. 3, 2024).

For this role, the Provider Plaintiffs recommend the Court-appointed Settlement Administrator, Edgar C. Gentle III. The Court has already noted Mr. Gentle’s experience in claims administration as well as his intimate involvement in this case since its inception. Doc. No. 3225

at 13. The Provider Plaintiffs believe that Mr. Gentle is well positioned to review disputes and make recommendations to the Court.

Because disputes may vary by type and complexity, the Provider Plaintiffs do not believe that there should be a one-size-fits-all procedure for addressing disputes. Instead, the Settlement Administrator should be given discretion to set schedules for briefing, receiving evidence, hearing argument, and other procedures he deems appropriate. For each dispute, Mr. Gentle would submit a report and recommendation to the Court.

In order to maintain a consistent procedure across different types of disputes, the Provider Plaintiffs propose one change to the Plan of Distribution. Instead of committing disputes between Claimants to the Settlement Claims Administrator for a final decision, such disputes would be committed to the Settlement Administrator, who would issue a report and recommendation.

Separately, the Provider Plaintiffs seek to make explicit that the Settlement Administrator, who is responsible for financial management of the settlement, may interface with experts and vendors needed to carry out this process, obtain necessary databases and algorithms, and develop budgets for experts and vendors and carrying out one or more RFPs, to obtain the best administrative value for the Settlement at an optimal cost.

The Settling Defendants do not oppose the relief sought in this motion.

CONCLUSION

For the foregoing reasons, the Court should empower the Settlement Administrator to resolve disputes as set forth in the attached proposed order.

Respectfully submitted this the 23rd day of May, 2025.

/s/ Edith M. Kallas

Edith M. Kallas – ***Co-Lead Counsel***
WHATLEY KALLAS, LLP
152 West 57th Street
41st Floor
New York, NY 10019
Tel: (212) 447-7060
Fax: (800) 922-4851
Email: ekallas@whatleykallas.com

/s/ Joe R. Whatley, Jr.

Joe R. Whatley, Jr. – ***Co-Lead Counsel***
W. Tucker Brown
WHATLEY KALLAS, LLP
2001 Park Place North
1000 Park Place Tower
Birmingham, AL 35203
Tel: (205) 488-1200
Fax: (800) 922-4851
Email: jwhatley@whatleykallas.com
tbrown@whatleykallas.com

Patrick J. Sheehan
WHATLEY KALLAS, LLP
101 Federal Street
19th Floor
Boston, MA 10019
Tel: (617) 573-5118
Fax: (617) 371-2950
Email: psheehan@whatleykallas.com

Henry C. Quillen
WHATLEY KALLAS, LLP
159 Middle Street
Suite 2C
Portsmouth, NH 03801
Tel: (603) 294-1591
Fax: (800) 922-4851
Email: hquillen@whatleykallas.com

Barry Alan Ragsdale – ***Plaintiffs' Liaison Counsel and Discovery Liaison Counsel***
Dominick Feld Hyde, PC
1130 22nd Street South Ridge Park
Suite 4000
Birmingham, AL 35205
Tel: (205) 536-8888
bragsdale@dfhlaw.com

Deborah J. Winegard
WHATLEY KALLAS, LLP
1068 Virginia Avenue, NE
Atlanta, GA 30306
Tel: (404) 607-8222
Fax: (404) 607-8451
Email: dwinegard@whatleykallas.com

Charles Clinton Hunter
HAYES HUNTER PC
4265 San Felipe, Suite 1000
Houston, TX 77027
Tel: (281) 768-4731
Fax: (713) 583-7047
Email: chunter@hayeshunterlaw.com

E. Kirk Wood, Jr. – ***Local Facilitating Counsel***
WOOD LAW FIRM LLC
P. O. Box 382434
Birmingham, AL 35238
Tel: (205) 612-0243
Fax: (205) 705-1223
Email: kirk@woodlawfirmllc.com

Dennis Pantazis – ***Plaintiffs' Steering Committee***
Brian Clark – ***Discovery Committee***
WIGGINS CHILDS PANTAZIS FISHER
GOLDFARB
The Kress Building

Aaron S. Podhurst – ***Plaintiffs' Steering Committee***
Peter Prieto – ***Chair, Expert Committee***
PODHURST ORSECK, P.A.
One S.E. 3rd Avenue
Suite 2300

301 Nineteenth Street North
Birmingham, AL 35203
Tel: (205) 314-0500
Fax: (205) 254-1500
Email: dgp@wigginschilds.com
bclark@wigginschilds.com

Dennis C. Reich – ***Chair, Damages Committee***
REICH & BINSTOCK, LLP
4265 San Felipe, Suite 1000
Houston, TX 77027
Tel: (713) 622-7271
Fax: (713) 623-8724
Email: dreich@reichandbinstock.com

Nicholas B. Roth – ***Chair, Discovery Committee***
Julia Smeds Roth – ***Discovery Committee***
EYSTER KEY TUBB ROTH MIDDLETON
& ADAMS, LLP
402 East Moulton Street, SE
Decatur, AL 35602
Tel: (256) 353-6761
Fax: (256) 353-6767
Email: nbroth@eysterkeylaw.com
jroth@eysterkeylaw.com

David A. Balto – ***Expert Committee***
THE LAW OFFICES OF DAVID A. BALTO
1350 I Street, N.W., Suite 850
Washington, DC 20005
Tel: (202) 789-5424
Fax: (202) 589-1819
Email: david.balto@dcantitrustlaw.com

Joey K. James – ***Litigation Committee***
BUNCH & JAMES
P. O. Box 878

Miami, FL 33131
Tel: (305) 358-2800
Fax: (305) 358-2382
Email: apodhurst@podhurst.com
pprieto@podhurst.com

U.W. Clemon – ***Plaintiffs' Steering Committee***
U. W. Clemon, LLC
5202 Mountain Ridge Parkway
Birmingham, AL 35222
Tel: (205) 837-2898
Email: uwclemon1@gmail.com

J. Mark White – ***Litigation Committee***
Augusta S. Dowd – ***Chair, Litigation Committee***
Linda G. Flippo – ***Discovery Committee***
WHITE ARNOLD & DOWD, P.C.
2001 Park Place North
Suite 1400
Birmingham, AL 35203
Tel: (205) 323-1888
Fax: (205) 323-8907
Email: mwhite@whitearnolddowd.com
adowd@whitearnolddowd.com
lflippo@whitearnolddowd.com

Van Bunch – ***Chair, Class Certification Committee***
BONNETT FAIRBOURN FRIEDMAN &
BALINT, P.C.
2325 E. Camelback Road, Suite 300
Phoenix, AZ 85016
Tel: (602) 274-1100
Fax: (602) 274-1199
Email: vbunch@bffb.com

Robert J. Axelrod – ***Chair, Written Submissions Committee***
AXELROD LLP

Florence, AL 35631
Tel: (256) 764-0095
Fax: (256) 767-5705
Email: joey@joeyjameslaw.com

800 Third Avenue, Suite 2800
New York, NY 10022
Tel: (646) 448-5263
Fax: (212) 840-8560
Email: raxelrod39@gmail.com

Richard S. Frankowski – ***Discovery Committee***
THE FRANKOWSKI FIRM, LLC
231 22nd Street South, Suite 203
Birmingham, AL 35233
Tel: (205) 390-0399
Fax: (205) 390-1001
Email: richard@frankowskifirm.com

W. Daniel Miles, III – ***Written Submissions Committee***
BEASLEY ALLEN CROW METHVIN
PORTIS
& MILES, P.C.
218 Commerce Street
Montgomery, AL 36104
Tel: (800) 898-2034
Fax: (334) 954-7555
Email: dee.miles@beasleyallen.com

John C. Davis – ***Written Submissions Committee***
LAW OFFICE OF JOHN C. DAVIS
623 Beard Street
Tallahassee, FL 32303
Tel: (850) 222-4770
Email: john@johndavislaw.net

Michael C. Dodge – ***Expert Committee***
GLAST PHILLIPS & MURRAY, P.C.
14801 Quorum Drive, Suite 500
Dallas, TX 75254
Tel: (972) 419-7172
Email: mdodge@gpm-law.com

Mark K. Gray – ***Discovery Committee***
GRAY & WHITE
713 E. Market Street, Suite 200
Louisville, KY 40202
Tel: (502) 805-1800
Fax: (502) 618-4059
Email: mgray@grayandwhitelaw.com

Michael E. Gurley, Jr. – ***Discovery Committee***
Attorney at Law
24108 Portobello Road
Birmingham, AL 35242
Tel: (205) 908-6512
Email: mgurleyjr@yahoo.com

Stephen M. Hansen – ***Class Certification Committee***
LAW OFFICE OF STEPHEN M. HANSEN
1821 Dock Street
Tacoma, WA 98402
Tel: (253) 302-5955
Fax: (253) 301-1147
Email: steve@stephenmhansenlaw.com

Lynn W. Jinks, III – ***Expert Committee***
Christina D. Crow – ***Discovery Committee***
JINKS CROW, P.C.
219 North Prairie Street
Union Springs, AL 36089
Tel: (334) 738-4225
Fax: (334) 738-4229
Email: ljinks@jinkslaw.com
ccrow@jinkslaw.com

Harley S. Tropin – ***Damages Committee***
Javier A. Lopez – ***Discovery Committee***
KOZYAK TROPIN &

Myron C. Penn – ***Discovery Committee***
PENN & SEABORN, LLC
53 Highway 110

THROCKMORTON, P.A.
2525 Ponce De Leon Boulevard, 9th Floor
Miami, FL 33134
Tel: (305) 372-1800
Fax: (305) 372-3508
Email: hst@kttlaw.com
jal@kttlaw.com

Post Office Box 5335
Union Springs, AL 36089
Tel: (334) 738-4486
Fax: (334) 738-4432
Email: myronpenn28@hotmail.com

C. Wes Pittman – *Settlement Committee*
THE PITTMAN FIRM, P.A.
432 McKenzie Avenue
Panama City, FL 32401
Tel: (850) 784-9000
Fax: (850) 763-6787
Email: wes@pittmanfirm.com

J. Preston Strom, Jr. – *Litigation Committee*
STROM LAW FIRM, LLC
2110 N. Beltline Boulevard, Suite A
Columbia, SC 29204-3905
Tel: (803) 252-4800
Fax: (803) 252-4801
Email: petestrom@stromlaw.com

Robert B. Roden – *Litigation Committee*
SHELBY RODEN, LLC
2956 Rhodes Circle
Birmingham, AL 35205
Tel: (205) 933-8383
Fax: (205) 933-8386
Email: rroden@shelbyroden.com

Thomas V. Bender – *Discovery Committee*
Dirk L. Hubbard
HORN AYLWARD & BANDY, LLC
2600 Grand Blvd., Suite 1100
Kansas City, MO 64108
Tel: (816) 421-0700
Email: tbender@hab-law.com
dhubbard@hab-law.com

Gary E. Mason – *Class Certification Committee*
WHITFIELD BRYSON & MASON, LLP
1625 Massachusetts Ave. NW, Suite 605
Washington, DC 20036
Tel: (202) 429-2290
Fax: (202) 640-1160
Email: gmason@wbmlp.com

Gregory S. Cusimano – *Litigation Committee*
CUSIMANO, ROBERTS & MILLS, LLC
153 South 9th Street
Gadsden, AL 35901
Phone: (256) 543-0400
Fax: (256) 543-0488
Email: greg@alalawyers.net

Michael L. Murphy – *Discovery Committee*
BAILEY GLASSER LLP
910 17th Street, NW, Suite 800
Washington, DC 20006
Tel: (202) 463-2101
Fax: (202) 463-2103
Email: mmurphy@baileyglasser.com

Brian E. Wojtalewicz
WOJTALEWICZ LAW FIRM, LTD.
139 N. Miles Street
Appleton, MN 56208
Tel: (320) 289-2363
Fax: (320) 289-2369
Email: brian@wojtalewiczlawfirm.com

Lance Michael Sears
SEARS & SWANSON, P.C.
First Bank Building
2 North Cascade Avenue, Suite 1250

Archie C. Lamb, Jr.
ARCHIE LAMB & ASSOCIATES, LLC
301 19th Street North, Suite 585
The Kress Bldg.

Colorado Springs, CO 80903
Tel: (719) 471-1984
Fax: (719) 577-4356
Email: lance@searsassociates.com

Birmingham, AL 35203-3145
(205) 458-1210
Email: alamb@archielamb.com

Jessica Dillon
Ray R. Brown
Molly Brown
DILLON & FINDLEY, P.C.
1049 W. 5th Avenue, Suite 200
Anchorage, AK 99501
Tel: (907) 277-5400
Fax: (907) 277-9896
Email: Jessica@dillonfindley.com
Ray@dillonfindley.com
Molly@dillonfindley.com

Paul Lundberg
LUNDBERG LAW, PLC
600 4TH Street, Suite 906
Sioux City, IA 51101
Tel: (712) 234-3030
Fax: (712) 234-3034
Email: paul@lundberglawfirm.com

Allyson C. Dirksen
HEIDMAN LAW FIRM, P.L.L.C.
1128 Historic 4th Street
P. O. Box 3086
Sioux City, IA 51101
Tel: (712) 255-8838
Fax (712) 258-6714
Email: allyson.dirksen@heidmanlaw.com

Gwen Simons
SIMONS & ASSOCIATES LAW, P.A.
P.O. Box 1238
Scarborough, ME 04070-1238
Tel: (207) 205-2045
Fax: (207) 883-7225
Email: gwen@simonsassociateslaw.com

Counsel for Provider Plaintiffs