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To keep health care costs in check, lawyers challenge big hospital system's contracting practices

ANTITRUST

UFCW & Employers Benefit Trust et al. and People of the State of California v. Sutter Health et al.

RICHARD L. GROSSMAN,
PILLSBURY & COLEMAN, LLP
CHRISTOPHER C. WHEELER, KAREN KIMMEY,
FARELLA BRAUN + MARTEL LLP
EMILIO E. VARANINI, MALINDA LEE,
OFFICE OF THE CALIFORNIA ATTORNEY GENERAL,
SARAH GROSSMAN SWENSON,
MCCRACKEN, STEMERMAN & HOLSBERY, LLP

In a landmark antitrust class action against the dominant hospital system in Northern California, plaintiffs including union trusts and government entities won a cost-saving settlement that curbs alleged provider overcharges and other abuses, hands the plaintiffs \$575 million in cash for past excess payments and includes years of prospective injunctive relief.

Several law firms and the state Attorney General's Office worked together to achieve the result. Lead class counsel Richard L. Grossman of Pillsbury & Coleman, LLP joined with Supervising Deputy Attorney General Emilio E. Varanini, the lead counsel for the People, to helm the sprawling case. Christopher C. Wheeler of Farella Braun + Martel LLP and Sarah Grossman Swenson of McCracken, Stemerma & Holsberry, LLP were the lead lawyers for their firms.

The plaintiffs alleged that the defendant hospital system denied them access to lower-priced healthcare plans, bundled services people didn't want and routed people to higher cost out-of-network providers. Separate cases filed by private plaintiffs in 2014

and joined by the state in 2018 were consolidated. *UFCW & Employers Benefit Trust et al. and People of the State of California v. Sutter Health et al.*, CGC-14-538451 and CGC-18-565398 (San Francisco Super. Ct., filed April 7, 2014 and March 29, 2018, respectively). "It took a world-class team to litigate such a case," Grossman said. Swenson noted that the plaintiffs included both labor unions and large companies. "It was remarkable that they united in their concern about high health care costs. When anti-competitive practices drive up costs, it takes money out of workers' pockets," she said. Added Wheeler, "We believe this settlement will curb Sutter Health's abuses and make it possible for health plans to choose more cost effective hospitals for care."

The plaintiff lawyers said they believed that no class of health care services purchasers had ever before been certified in California in an antitrust action, and only one other such class had been certified nationally. Sutter Health outlined the task's complexity by arguing in court that the plaintiffs were "chal-



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TOP LEFT TO RIGHT: CHRISTOPHER C. WHEELER, RICHARD L. GROSSMAN, SARAH GROSSMAN-SWENSON | BOTTOM LEFT TO RIGHT: MALINDA LEE, KAREN P. KIMMEY, EMILIO E. VARANINI

lenging the separate prices charged on literally thousands of different services, at over 20 different hospitals, under different contracts with different [health plans] (each amended multiple times), over a 14-year period in which market conditions and Sutter's pricing methodologies changed dramatically."

Also key to the effort were Malinda Lee of the Attorney General's Office and Karen P. Kimmey of Farella Braun.

"I don't think that either side could have better legal representation than they had in this case," Superior Court Judge Anne-Christine T. Massullo said as the litigation neared conclusion. She entered final judgment in October 2021.

The case spanned five and a half years and settled just minutes before opening statements. Fact discovery took more

than 30 months. The parties took over 200 depositions and covered more than 50,000 pages of transcripts. In all, nearly 17 million pages of documents were produced. The plaintiffs' experts processed and analyzed over 870 million observations of claims data subpoenaed from five different plans. Sutter Health unsuccessfully appealed a denial of arbitration to the state Supreme Court. The \$575 million cash payment represents one of the largest all-cash settlements in the history of California state court.

"We demonstrated the effectiveness of a model partnership with the Attorney General's Office," Wheeler said. "Obtaining the best result, for us, came before the ego of any team member."

- JOHN ROEMER