

Omnicare v. UnitedHealth

CASE STUDY

Client Omnicare, a supplier of institutional pharmacy services, filed a lawsuit against
UNITEDHEALTH UnitedHealth and PacifiCare Health Systems, two health insurance companies
that merged in 2005. Omnicare claimed that any pre-merger coordination between
UnitedHealth and PacifiCare led to the joint exercise of monopsony power—the ability
of a buyer to depress the price paid for a product or service below the competitive
price. Omnicare alleged that UnitedHealth and PacifiCare coordinated to lower the
prices paid to Omnicare for its pharmacy services. Outside counsel for UnitedHealth,
the law firms of Hogan Lovells and Robins, Kaplan, Miller & Ciresi, hired Bates White
to assess likely damages and evaluate the damages analysis of Omnicare’s economic
expert.

Industry
HEALTHCARE

The Bates White team, led by Bates White Partner George Rozanski, who served as the testifying expert, took a three-pronged approach to the damages analysis. First, the team reviewed contract termination dates to establish a precise time horizon during which the alleged coordination could have taken place. Second, the team identified appropriate contracts to use in building a large data set. The team then used these data to develop an econometric model that objectively predicted but-for reimbursement rates. Finally, the team analyzed several but-for scenarios to estimate prices and reimbursement rates that would have resulted had the alleged collusion between UnitedHealth and PacifiCare not taken place. The team’s varying but-for scenarios uncovered substantial inaccuracies in Omnicare’s allegations. Based on the findings, the team concluded that coordination between UnitedHealth and PacifiCare would not likely have had significant effects on prices paid to Omnicare.

On January 16, 2009, the U.S. District Court for the Northern District of Illinois granted UnitedHealth’s motion for summary judgment against plaintiff Omnicare, thereby forestalling any possibility of a trial. By granting the defendant’s motion for summary judgment, the judge ruled that the evidence in favor of the defendant was so strong that no reasonable jury would rule in favor of the plaintiff. The decision was a significant victory for the client as well as for the attorneys with whom Bates White worked. On January 10, 2011, the U.S. Court of Appeals for the Seventh Circuit affirmed the summary judgment ruling for UnitedHealth and PacifiCare Health Systems.¹

Contact us

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¹ The case is *Omnicare Inc. v. UnitedHealth Inc. et al.*, case number 09-1152, in the U.S. Court of Appeals for the Seventh Circuit, available at <http://caselaw.findlaw.com/us-7th-circuit/1551887.html>.