

- [Advanced Search](#)
- [Search Law360](#)

ryan.boysen@law360.com

- [My Account](#)
- [Emails & Alerts](#)
- [My Favorites](#)
- [Newsletter Signup](#)
- [Log Out](#)

[Close](#)

- Law360 Tax Authority
- [Home](#)
- [Federal](#)
- [State & Local](#)
- [International](#)
- [Cannabis](#)
- [Coronavirus](#)
- [Opportunity Zones](#)
- [Transfer Pricing](#)
- [Tax Authority Map](#)
- [Remote Seller Map](#)
- [Marketplace Facilitator Map](#)
- [Testimonials](#)
- [About Tax Authority](#)
- [Contact Us](#)
- [Sign up for our newsletters](#)

[Account](#)

Try our [Advanced Search](#) for more refined results

[Modern Lawyer](#) | [Courts](#) | [Daily Litigation](#) | [In-House](#) | [Mid-Law](#) | [Legal Tech](#) | [Small Law](#) | [Insights](#) | [Regional Sections](#)

- [California Pulse](#)
- [Connecticut Pulse](#)
- [DC Pulse](#)
- [Delaware Pulse](#)
- [Florida Pulse](#)
- [Georgia Pulse](#)
- [New Jersey Pulse](#)
- [New York Pulse](#)
- [Pennsylvania Pulse](#)
- [Texas Pulse](#)

NEW LEADERBOARD ANALYTICS

[HOME](#) > [Daily Litigation](#)

Litigation Funders, Firms Chase Billions In BCBS Claims

By [Ryan Boysen](#) | 2025-02-05 14:59:33 -0500 · [Listen to article](#)

Litigation funders and law firms are racing to pitch hospitals on opting out of the landmark \$2.8 billion Blue Cross Blue Shield antitrust settlement, with some convinced the hospitals' claims could be worth billions each if they're willing to roll the dice and sue the health insurance giant directly.

Time is of the essence, because the opt-out deadline for the nationwide class of roughly 6,000 hospitals is March 4.

After that date, the hospitals remaining in the [class action settlement](#) will receive the lion's share of the \$2 billion or so left over after attorney fees and marketing costs, as well as injunctive relief intended to blunt the allegedly anticompetitive practices that led to the deal in the first place.

Or they can choose to go it alone and file their own claims against the deep-pocketed insurer. While that route is fraught with risk, the upside is massive — some analysts think big hospital chains could reap \$2 billion or more each if they're successful in court.

The situation is tailor-made for commercial litigation funders, which specialize in providing money upfront to large corporate clients faced with such opportunities. It's also potentially lucrative for law firms with well-established antitrust litigation practices that are willing to work on contingency.

Both firms and funders have been aggressively pitching hospitals on their options ahead of the

deadline, leading to clashes with class counsel [Whatley Kallas](#), the firm that helped negotiate the \$2.8 billion settlement.

At the moment, no one has any idea how many hospitals will ultimately take the plunge and opt out. But if a good chunk do, industry watchers think it could be a seminal moment for litigation funders, contingency fee attorneys and the healthcare industry.

"We think this gives hospitals and healthcare companies in general a very concrete example to discuss how legal finance can help their business, in terms of accelerating their recoveries and de-risking their claims," said Charles Griffin, a vice president at [Burford Capital](#), the largest litigation funder in the U.S. "It helps the light bulb go off."

A Huge Case

The Blue Cross antitrust litigation was filed in 2012, and accuses the [Blue Cross Blue Shield Association](#) and its 33 independent member insurers of illegally carving up the country into exclusive geographical blocs to stifle competition and drive up profits. That arrangement allegedly came at the expense of both subscribers to those health insurance plans and the healthcare providers paid by them.

Commercial and individual subscribers struck a \$2.7 billion deal with Blue Cross in 2020, which was held up on appeal until last year, when the [U.S. Supreme Court declined](#) to take up a challenge by [Home Depot](#).

Providers, meanwhile, continued to litigate until a separate \$2.8 billion settlement was reached in October of last year. That deal received [preliminary approval](#) in December from U.S. District Judge R. David Proctor in Alabama.

Taken together, the two deals make up one of the largest-ever settlements in an antitrust case, according to Whatley Kallas, class counsel in the multidistrict litigation.

In addition to the monetary relief, Blue Cross agreed to make sweeping changes to its internal systems to increase transparency, efficiency and accountability, according to court documents. Whatley Kallas has valued those concessions at northwards of \$17 billion.

Despite the historic size of the settlements and the potential for systematic reforms in the injunctive relief, some observers are convinced that hospitals have a good shot at recovering many times more than their pro rata share of the provider settlement fund if they opt out and sue

Blue Cross directly.

Partly that's due to previous rulings by Judge Proctor in the provider multidistrict litigation. In 2022, he found Blue Cross' activity from 2008 to 2021 was subject to the per se antitrust standard of review, essentially branding that conduct as anticompetitive on its face and preventing Blue Cross from arguing otherwise, a major blow in antitrust litigation.

While other judges wouldn't be bound by that ruling, it could give hospitals a road map of how to reach the same result if they opt out.

"The level of work and discovery that's gone into the class action seems likely to benefit any opt-out plaintiffs looking to bring those types of claims," said Jeffery Lula, a principal at litigation funder [GLS Capital LLC](#) and a former commercial litigator at [Kirkland & Ellis LLP](#). "It certainly gives everyone confidence that their claims may be valuable."

Another factor that makes opt-out litigation attractive is the sheer size of Blue Cross and its member insurers, and the massive amounts of money affected by its allegedly anticompetitive conduct.

"This is a huge case that touches a large part of commerce overall in healthcare in the United States, which is itself a large and growing section of the entire U.S. economy," said Ted Farrell, a litigation funding broker and consultant who runs Litigation Funding Advisers.

If Blue Cross and its members operated as a single company, they would be the largest health insurer in the country by a wide margin. For the purposes of any opt-out litigation, each of those plans would be jointly and severally liable, dramatically reducing recovery risk.

"For most providers, their largest payor is going to be their Blues plan," said Michael R. Greer, a healthcare antitrust litigator at [Hall Render Killian Heath & Lyman PC](#).

Several experts who spoke with Law360 Pulse for this article declined to speculate on the record about the potential recoveries available to hospitals that pursue opt-out litigation, but gave a general overview of the back-of-the-envelope math involved.

A single large hospital chain probably conducted tens if not hundreds of millions of transactions with Blue Cross during the 2008 to 2021 time period covered by the settlement. Even if it were overcharged only slightly on each transaction, the hospital could potentially argue it's owed tens of billions of dollars. If a jury awards a fraction of that sum, say \$800 million, it would then be

automatically tripled due to provisions in antitrust law, producing a final award of \$2.4 billion.

Every step of that theoretical process depends on a million things going right and would be fought aggressively by Blue Cross in court, those experts caution, but it is within the realm of possibility.

"There are hospital systems in this country that, if they decide to opt out and go to trial and prevail on a straightforward damages claim, could receive more than the entirety of the settlement," said one analyst who was granted anonymity to speak frankly.

A Smart Play

The sheer size of those potential payouts, however fraught with litigation risk, has led to intense jockeying by law firms and litigation funders that want to be first in line for any hospitals that do decide to opt out.

Attorneys at [Zuckerman Spaeder LLP](#) and [Polsinelli PC](#) have given presentations to hospitals on the pros and cons of opting out of the settlement, leading Whatley Kallas to ask Judge Proctor to disqualify them from representing opt-outs. Whatley Kallas claims those firms' representation of subscriber clients in the earlier settlement presents a conflict of interest, according to court documents.

"Recently [Zuckerman Spaeder's Cy Smith] has disparaged the providers' settlement agreement to encourage provider class members to opt out, so he can represent them in separate litigation," the motion to disqualify said.

In its reply brief Zuckerman Spaeder said its presentation was even-handed, claimed the "disparaging" remarks Whatley Kallas is referring to were taken out of context, and denied that representing opt-out clients presented a conflict of interest. Polsinelli has not yet responded to Whatley Kallas' disqualification bid.

Meanwhile, Burford, the litigation funder, has discussed the Blue Cross case at length in its quarterly newsletter. In December, the funder held a webinar on the litigation along with Ryan Phair, co-chair of the antitrust practice at [Paul Hastings LLP](#).

Law firms have also been alerting potential clients about the deadline, and urging them to carefully consider opting out.

[ArentFox Schiff LLP](#), [Duane Morris LLP](#) and Hall Render, for example, all have posts on their websites advising hospitals to get in touch and discuss the situation, and Hall Render recently released an op-ed on the subject. A number of other BigLaw firms are said to be having discussions with hospitals as well.

Other commercial litigation funders besides Burford are doing the same, but there are only a few large enough to supply the sums of money — likely tens of millions just to get started — that would be required to litigate these types of cases without unbalancing their investment portfolios. Those include GLS Capital, [Omni Bridgeway](#), [Parabellum Capital LLC](#) and [Fortress Investment Group](#).

"All those outfits may only be able to do a couple deals before their portfolio gets overweight," said one industry observer who was granted anonymity to speak frankly. "I don't know how many opt-outs will be able to get monetized."

If more than a handful of hospitals do decide to opt out, observers said they expect to see those plaintiffs organize themselves into a half-dozen or so groups, each led by one or two law firms.

Any opt-out litigation could take years to resolve, which is why hospitals may be drawn to litigation funders. Hospitals could receive substantial sums within a few months of inking a deal that are comparable to their settlement payout or more. If the litigation doesn't work out, the funders will eat the loss, but if the litigation is successful the hospitals could reap an additional windfall later on after the lawyers and funders take their cut.

Some funders hope that if all goes well, the Blue Cross opt-out litigation could be a tipping point for future partnerships between themselves and big players in the U.S. healthcare industry.

"For a long time, hospitals viewed this type of litigation as not reputationally appropriate," said GLS Capital's Lula. "But these Blue Cross cases have been a signal to providers that their legal claims are potentially very valuable."

"More and more the industry is looking at those sorts of claims as something more akin to a monetary asset," he added.

That dovetails with the general [evolution](#) of the U.S. litigation finance industry over the past few years, from a niche curiosity to a commonplace part of the legal landscape.

"Anecdotally, the litigation finance industry has definitely reached a more mature status," said

Rebecca Berrebi, a litigation finance broker who works with Farrell. "Simply put, more people are aware of it and more companies are looking into how they can potentially use it."

For funders, the Blue Cross litigation presents an invaluable opportunity to get a foot in the door and have substantive conversations with decision-makers at large healthcare providers.

"I think some funders are essentially trying to set themselves up as outside corporate legal finance for hospitals," said one observer who was granted anonymity to speak freely. "That's a smart play."

Risky Business

Before hospitals, lenders and law firms can reap the rewards of any Blue Cross opt-out litigation, however, they'll still have to win first. Even the most gung ho litigators acknowledge that outcome is far from guaranteed.

"I think you've got a lot of opt-out lawyers believing they can make a quick buck on this case based on what's happened in the settlement," said one observer who was granted anonymity to speak frankly. "But they are sadly mistaken."

Most observers fully expect Blue Cross to fight any opt-out litigation with everything it's got, just as it's litigated for the past 12 years with [Cravath Swaine & Moore LLP](#), its primary defense counsel.

Discovery, crucial experts like antitrust economists, and other factors are also likely to cost millions upon millions of dollars.

For funders, there's also the risk that opt-out plaintiffs could decide to settle their claims for less than they're potentially worth, in order to avoid destroying their ongoing business relationships with Blue Cross.

Meanwhile, for Whatley Kallas, class counsel in the MDL, the risk is that too many hospitals opting out could jeopardize the entire settlement, and the \$754 million in attorney fees that were recently approved along with it.

Several experts who spoke with Law360 consider that outcome unlikely, but Whatley Kallas has repeatedly mentioned it in its motions to disqualify Zuckerman Spaeder and Polsinelli from representing opt-out clients.

"If the solicitation of opt outs succeeds to the level of compromising the provider settlement altogether," Whatley Kallas warned, then the providers will not receive "any of the injunctive relief in the settlement, and likely could never retain that relief even after prevailing at trial."

Because the sheer number of hospitals covered by the Blue Cross MDL makes it nearly impossible to say how many are seriously considering opting out, however, for the time being all parties involved are in wait and see mode.

"I have no idea," said Hall Render's Greer. "That's the million-dollar question everyone is trying to figure out."

--Editing by Robert Rudinger.

For a reprint of this article, please contact reprints@law360.com.

0 Comments

Ryan Boysen

Your name will appear next to your comment. If you do not disclose your full name, your comment will be deleted. Your email address will not be visible to the public.

[Terms of Service](#)

Tell us what you think (1,500 characters max)

Comment

Find More

[Read more on the latest litigation developments in Lexis](#)

Discover

Law360 Pulse → In-House Counsel Satisfaction Survey

[The 2025 In-House Counsel Satisfaction Survey.](#)

Related Sections

- [Daily Litigation](#)
- [In-House](#)
- [Modern Lawyer](#)

Trending Stories

1. [Litigation Funders, Firms Chase Billions In BCBS Claims](#)*Daily Litigation*
2. [Cooley Taps NY Leader To Head Global Litigation Practice](#)*Daily Litigation*
3. [Inside Fitch Even's Play To Reclaim Patent Litigation Work](#)*Daily Litigation*

Got a tip?

[Email us confidentially here.](#)

© 2025, Portfolio Media, Inc. | [About Law360 Pulse](#) | [Contact Us](#) | [Terms](#) | [Privacy Policy](#)

×

Account

[My Account](#) [My Feeds and Alerts](#) [My Favorites](#) [Newsletter Signup](#) [Log Out](#)

Law360

Rankings

^{NEW} [Leaderboard Analytics](#) [Social Impact Leaders](#) [Prestige Leaders](#) [Pulse Leaderboard](#) [Women in Law Report](#) [Law360 400](#) [Diversity Snapshot](#) [Rising Stars](#) [Summer Associates](#)

National Sections

[Modern Lawyer](#) [Courts](#) [Daily Litigation](#) [In-House](#) [Mid-Law](#) [Legal Tech](#) [Small Law](#) [Insights](#)

Regional Sections

[California Pulse](#) [Connecticut Pulse](#) [DC Pulse](#) [Delaware Pulse](#) [Florida Pulse](#) [Georgia Pulse](#) [New Jersey Pulse](#) [New York Pulse](#) [Pennsylvania Pulse](#) [Texas Pulse](#)

Site Menu

[Subscribe](#) [Advanced Search](#) [About](#) [Contact](#)



Add this article to my Favorites

Litigation Funders, Firms Chase Billions In BCBS Claims

New Folder Name - Required

OR SELECT FROM



[Add Now](#)

Cancel



SIGN UP FOR OUR DAILY LITIGATION NEWSLETTER

You must correct or enter the following before you can sign up:

PLEASE PROVIDE A PROFESSIONAL EMAIL:

REGIONAL	NATIONAL
<input type="checkbox"/> CALIFORNIA PULSE	<input type="checkbox"/> MODERN LAWYER
<input type="checkbox"/> CONNECTICUT PULSE	<input type="checkbox"/> COURTS
<input type="checkbox"/> DC PULSE	<input checked="" type="checkbox"/> DAILY LITIGATION
<input type="checkbox"/> DELAWARE PULSE	<input type="checkbox"/> IN HOUSE
<input type="checkbox"/> FLORIDA PULSE	<input type="checkbox"/> MID LAW
<input type="checkbox"/> GEORGIA PULSE	<input type="checkbox"/> LEGAL TECH
<input type="checkbox"/> NEW JERSEY PULSE	<input type="checkbox"/> SMALL LAW
<input type="checkbox"/> NEW YORK PULSE	
<input type="checkbox"/> PENNSYLVANIA PULSE	
<input type="checkbox"/> TEXAS PULSE	

Law360 Pulse takes your privacy seriously. Please see our [Privacy Policy](#).

No Thanks

[Sign up now](#)

Thank You!