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## Sutter Health Defeats \$411M Antitrust Class Action At Trial

By **Bonnie Eslinger**

Law360 (March 11, 2022, 2:56 PM EST) -- A California federal jury cleared Sutter Health in a \$411 million class action claiming the hospital giant used restrictive contracts with insurance companies to illegally boost prices and overcharge millions of premium-paying employers and individuals in Northern California, finding Friday that antitrust laws had not been violated.

The nine-member jury, which delivered its verdict after eight hours over two days of deliberations, rejected claims that Sutter illegally forced insurers **for the class** of around three million premium payors to agree to contract terms blocking plans that steered patients to lower-cost hospitals, or required them to contract for services at Sutter's more expensive hospitals in order **to get access** to the hospitals members needed.



Sutter Health's win ends a long-running lawsuit claiming that the health system took advantage of its dominance in Northern California when contracting with insurers, leading to artificially inflated premiums for the class members. (AP Photo/Rich Pedroncelli, File)

The class comprises those who purchased health insurance policies since 2011 from Blue Shield, Anthem Blue Cross, Aetna, Health Net or United Healthcare, which accounts for 90% of all fully insured patients in California, according to an economics expert for the plaintiffs who testified during the four-week trial.

Sutter's victory on Friday closed the book on a long-running lawsuit, **first filed in 2012**, claiming that Sutter took advantage of its dominance in Northern California when contracting with insurers, leading to **artificially inflated** premiums for the class members, including the **City and County of San Francisco**.

During **opening statements** on Feb. 10, a lawyer for the plaintiffs said Sutter had stifled competition and "gouged" class members — but counsel for Sutter countered that the nonprofit faces "enormous" competition in Northern California, particularly from Kaiser Permanente, and thus didn't hold the market power required for the suit's claims to succeed.

Jurors, who began deliberating Thursday, went through a nine-question verdict form that asked whether Sutter sold inpatient hospital services that were tied to the more expensive hospital facilities and whether Sutter forced the class health plans to agree to contracts that had terms that prevented the plans from steering patients to lower-cost options.

The jury answered no to both questions, and thus no damages were owed to the class.

**The lawsuit** isn't the first time Sutter has faced allegations of anti-competitive conduct. Sutter reached a **\$575 million** agreement in 2019 with California's attorney general, the United Food and Commercial Workers, Employers Benefit Trust and class action plaintiffs to resolve similar claims that Sutter's anti-competitive practices led to higher health care costs.

But as Sutter's lawyer, Jeffrey Alan LeVee of Jones Day, told jurors during closing statements Wednesday, this lawsuit is notable because few antitrust cases go to a jury trial.

"This one did," he said.

Matthew Cantor of Constantine Cannon LLP, a lawyer for the plaintiffs, had argued at the trial's wrap that the hospital chain's contracts with insurers were restrictive, "unfair," "unjust" and "illegal."

Throughout the litigation, Sutter denied that it had accrued substantial market power over inpatient hospital services in seven mostly rural communities in Northern California, or that it used that power to tie insurers to the four more expensive hospitals in other areas, such as San Francisco.

After closing arguments Wednesday, U.S. Magistrate Judge Laurel Beeler told jurors that market power is the ability of an entity to increase prices or reduce offerings without losing market share — and that the higher a seller's market share, the more likely it has market power.

During the weeks of trial, jurors heard from insurance company executives, who testified that Sutter held **all the leverage** during contract negotiations for its inpatient services and used that leverage to make onerous contract demands.

While the insurers are not parties to the litigation, Sutter's lawyer said Wednesday during his **closing statement** that they were "not unbiased" and were the "true" plaintiffs in the case.

"Let's be serious, the insurance company witnesses had a lot of money at stake in this trial," he said.

During his rebuttal, Cantor shot back that insurers won't get "one penny of relief" from the litigation.

Sutter called several of **its own executives** to the witness stand, including CEO Emeritus Sarah Krevans, interim CEO James Conforti and its chief medical officer, William Isenberg.

They testified to the benefits of the nonprofit hospital organization's business model and said company profits were reinvested into capital investments and Sutter's 24-hospital integrated system, resulting in operational efficiencies and improved patient health care.

Jurors also heard from Sutter's economics expert that **Kaiser's market share** in Northern California has grown in recent years while Sutter's has shrunk. The economics expert for the plaintiffs, however, said Kaiser could not be considered a competitor in this case since it has a **"closed system,"** meaning other insurance companies cannot contract to send their members to its hospitals.

"We are obviously pleased and gratified with the jury's verdict," Sutter attorney LeVee said Friday after the decision was announced.

Sutter released a statement from Conforti, saying the nonprofit is extremely pleased with the unanimous verdict in Sutter's favor.

"This decision is important not only for Sutter Health, but for all health care providers in California,"

Conforti said. "It validates that health care providers, including doctors and hospitals, have a right to evaluate whether to participate in health plan networks and ensure that they don't interfere with the ability to provide coordinated patient care."

Cantor told Law360 on Friday afternoon that the plaintiffs are "evaluating our next steps."

"We believe that the evidence demonstrated that Sutter's conduct harmed the class members and we continue to believe that," he said.

The plaintiffs are represented by David Brownstein and David Goldstein of Farmer Brownstein Jaeger Goldstein Klein & Siegel LLP, Matthew L. Cantor and Jean Kim of Constantine Cannon LLP, Jill M. Manning of Pearson Simon & Warshaw LLP, Allan Steyer and Suneel Jain of Steyer Lowenthal Boodrookas Alvarez & Smith LLP and Azra Z. Mehdi of The Mehdi Firm PC.

Sutter is represented by Robert H. Bunzel, Patrick M. Ryan and Oliver Q. Dunlap of Bartko Zankel Bunzel & Miller and Jeffrey Alan LeVee and David Craig Kiernan of Jones Day.

The case is Sidibe et al. v. Sutter Health, case number 3:12-cv-04854, in the U.S. District Court for the Northern District of California.

--Additional reporting by Hannah Albarazi and Lauren Berg. Editing by Orlando Lorenzo.

*Update: This article has been updated with comment from Sutter, its counsel and plaintiffs' counsel.*

*Update: This story has been updated with additional counsel information for Sutter.*