

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

C.P., by and through his parents, Patricia Pritchard and Nolle Pritchard; S.L. by and through her parents, S.R. and R.L.; EMMETT JONES, each individually and on behalf of similarly situated others; and PATRICIA PRITCHARD, individually,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ILLINOIS,
Defendant.

NO. 3:20-cv-06145-RJB

DECLARATION OF ELEANOR HAMBURGER IN SUPPORT OF CLASS'S OPPOSITION TO DEFENDANT'S MOTION FOR STAY PENDING APPEAL (DKT. NO. 210)

**Note on Motion Calendar:
January 12, 2024**

I, Eleanor Hamburger, declare under penalty of perjury and in accordance with the laws of the State of Washington and the United States that:

1. I am a partner at Sirianni Youtz Spoonemore Hamburger and am one of the attorneys for Plaintiffs in this action.

2. Attached as *Exhibit 1* is a true and correct copy of the email string between BCBSIL's counsel and myself regarding the Class's proposal for a limited stay of reprocessing, and class notice. Class counsel proposed that the Court's Order for prospective injunctive relief would remain in place, as well as the Court's Order for class notice. The parties would reach agreement, if possible on the form of the class notice, and the Class is agreeable to using postcard notice, so long as the full notice can be

1 provided via email, on the parties' websites, and upon request by class members. Class
2 counsel also recommended notice to all of the providers who submitted claims that were
3 denied by BCBSIL.

4 3. The anticipated costs of such notice are quite modest, totaling
5 approximately \$6,200 to provide full notice by mail to every class member and their
6 provider.

7 4. BCBSIL's counsel responded that they were investigating whether BCBSIL
8 could deliver notice to class members via email notice, and rejected without explanation,
9 providing notice to the medical providers listed on the claims. BCBSIL's counsel
10 subsequently responded on January 8, 2024 indicating a possible agreement on the
11 Class's proposed notice process, but rejecting the Class's proposed compromise on the
12 stay. *See Exh. 1.*

13 DATED this 8th day of January, 2024, at Seattle, Washington.

14
15 /s/ Eleanor Hamburger

16 Eleanor Hamburger (WSBA #26478)
17 SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC
3101 Western Avenue, Suite 350
18 Seattle, WA 98121
Tel. (206) 223-0303; Fax (206) 223-0303
19 Email: ehamburger@sylaw.com

20 *Attorneys for Plaintiffs and the Class*

Exhibit 1

From: Payton, Gwendolyn <GPayton@ktslaw.com>
Sent: Monday, January 8, 2024 8:17 AM
To: Ele Hamburger <ele@sylaw.com>; Bedard, Stephanie <Sbedard@ktslaw.com>
Cc: Daniel Gross <Daniel@sylaw.com>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Karen Loewy <KLoewy@lambdalegal.org>; Charnes, Adam <acharnes@ktslaw.com>; Stendara, Zoe <ZStendara@ktslaw.com>
Subject: RE: [External] CP v. BCBSIL

Ele,

Thanks for your messages. We can agree to the stay as outlined below except that we need a change to item number 1, and to have the stay extent to prospective injunctive relief. Let me know if this is acceptable.

Gwendolyn

Gwendolyn Payton

gpayton@ktslaw.com
Kilpatrick Townsend & Stockton LLP
1420 Fifth Avenue | Suite 3700 | Seattle, WA 98101
T 206 626 7714 | F 206 299 0414
[My Profile](#) | [vCard](#)

Please note that my email address has changed. Please consider adding this new email to your safe senders list, downloading my vCard or sending me an email using the address in my signature line. To learn more about our new visual identity, please visit us online at www.ktslaw.com.

From: Ele Hamburger <ele@sylaw.com>
Sent: Sunday, January 7, 2024 11:21 AM
To: Payton, Gwendolyn <GPayton@ktslaw.com>; Bedard, Stephanie <Sbedard@ktslaw.com>
Cc: Daniel Gross <Daniel@sylaw.com>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Karen Loewy <KLoewy@lambdalegal.org>
Subject: RE: [External] CP v. BCBSIL

Does BCBSIL agree to the partial stay as described below with the exception of notice to providers?

Ele

From: Payton, Gwendolyn <GPayton@ktslaw.com>
Sent: Saturday, January 6, 2024 2:34 PM
To: Ele Hamburger <ele@sylaw.com>; Bedard, Stephanie <Sbedard@ktslaw.com>
Cc: Daniel Gross <Daniel@sylaw.com>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Karen Loewy <KLoewy@lambdalegal.org>

Subject: RE: [External] CP v. BCBSIL

We are still investigating whether we can effectively do emails. Most likely we will need to do postcards.

We disagree we need to send notice to providers at all.

I have some fairly modest edits to the member notice you sent that the client is still reviewing. I will send as soon as I get approval.

Thanks,

Gwendolyn

Gwendolyn Payton

gpayton@ktslaw.com

Kilpatrick Townsend & Stockton LLP
1420 Fifth Avenue | Suite 3700 | Seattle, WA 98101
T 206 626 7714 | F 206 299 0414
[My Profile](#) | [vCard](#)

Please note that my email address is changing. Please consider adding this new email to your safe senders list, downloading my vCard or sending me an email using the address in my signature line. To learn more about our new visual identity, please visit us online at www.ktslaw.com.

From: Ele Hamburger <ele@sylaw.com>

Sent: Friday, January 5, 2024 11:45 AM

To: Payton, Gwendolyn <GPayton@kilpatricktownsend.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>

Cc: Daniel Gross <Daniel@sylaw.com>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Karen Loewy <KLoewy@lambdalegal.org>

Subject: RE: CP v. BCBSIL

****CAUTION: External Email****

Some additional information. We have up-to-date pricing on class notice from our recent *Schmitt v. Kaiser* settlement. To send a postcard notice is \$.034 to print and \$.376 for postage. To send full notice (assuming a 4 page notice, 2 page claim form and return envelope) is \$3.10 to print and \$.66 for postage.

If everyone in the class got a full notice it would cost about \$3,069, based on BCBSIL's information that it is about 1500 people. If it goes to providers and class members, assuming each class member has their own individual provider (which is unlikely), it would be about \$6200. There is a significant cost savings if emails are sent, but in any event, these Class notice costs are quite modest. We would also agree to have an online method of submitting claims, if BCBSIL is amendable to that.

Ele

From: Ele Hamburger

Sent: Thursday, January 4, 2024 11:56 AM

To: Payton, Gwendolyn <GPayton@kilpatricktownsend.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>

Cc: Daniel Gross <Daniel@syllaw.com>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Karen Loewy <KLoewy@lambdalegal.org>

Subject: CP v. BCBSIL

Dear Gwendolyn and Stephanie,

Before we file our opposition to BCBSIL's Motion for Stay, we wanted to explore whether BCBSIL would agree to the following partial stay:

1. The Court's Order for prospective permanent injunction would remain in place
2. The Court's Order for Class Notice would remain in place
 - a. We would agree to email notice where BCBSIL has emails and postcard notice where there is no good email (e.g., where BCBSIL has no email address or where the initial email notice is returned as undeliverable.) The postcard would link to a website where claims can be uploaded. Full written notice shall be mailed by U.S. post when requested by a class-member. It can be done by BCBSIL or we can have a litigation claims administrator do it. Attached is the latest version of our draft "full notice" to class members that would be emailed out. We are working on a proposed postcard notice.
 - b. Email notice/postcard notice will also be sent to all of the class members' providers who submitted pre-authorization or post-service claims. Attached is the latest draft version of the notice to providers.
 - c. A 90 day claims period would be put in place and BCBSIL or a litigation claims administrator would receive the claims. The entity receiving the claims would tally the total number of claims and the total amount claimed so that the parties would know the total potential liability, without application of copayments, deductibles, medical necessity review, etc. for the back benefits.
3. The parties would stipulate and the Court would order that BCBSIL or the claims administrator would not need to adjudicate the claims or pay them until BCBSIL's appeal is decided or a settlement is reached.
4. Similarly, the Court would decide the Class's anticipated motion for attorneys fees, costs and case contribution awards, but we would agree to a stay of any requirement that these awards be paid, until the appeal is decided or settlement is reached.

Please let us know as soon as possible if this proposed partial stay is acceptable. We understand that it may take more time to reach agreement or an impasse on the language in the notices.

Thank you,

Ele

Ele Hamburger

SIRIANNI YOUTZ

SPOONEMORE HAMBURGER PLLC

3101 WESTERN AVENUE, SUITE 350

SEATTLE, WASHINGTON 98121

DIRECT LINE: (206) 838-1809

GENERAL OFFICE: (206) 223-0303

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E-MAIL: ehamburger@sylaw.com

WEBSITE: www.sylaw.com

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