

# California District Court's Exclusion of Evidence under Scrutiny as Ninth Circuit Hears Oral Arguments in the Appeal of Sidibe v. Sutter Health Class Action

See case page: [Sidibe v. Sutter Health](#)

On August 24, the 9th Circuit Court of Appeals heard oral arguments in the appeal of the federal class action [Sidibe v. Sutter Health](#). A jury verdict in March 2022 in the Northern District Court of California had cleared the hospital giant of anticompetitive allegations that were initially filed over a decade ago. The alleged practices were also at issue in the case filed in state court by a labor union that was later joined by the attorney general, [UEBT v. Sutter Health](#). *That case settled in 2019 (and entered final judgment in August 2021) with injunctions against Sutter's anticompetitive contracting practices. The federal case that initially brought Sutter's conduct into the spotlight, on the other hand, continued onto its 11th year and may continue should the circuit court overturn the verdict.*

One of the main issues argued on appeal is whether inaccurate jury instructions led to exclusion of key evidence and impacted the jury verdict for Sutter. Ahead of the hearing, various stakeholders, including state antitrust regulators and experts

across the country, including The Source, filed [amicus briefs](#) in support of reversing the lower court judgment.

## **Arguments for Reversal**

At the oral arguments in front of the three-judge panel of the Ninth Circuit, both counsel for the class plaintiffs and California's deputy attorney general emphasized that the wrongful exclusion of evidence was a critical error that should be reversed. Specifically, Matthew Cantor for the plaintiff-appellants argued that evidence from before and after Sutter's alleged anticompetitive restraints, including market conditions and the purpose and history of the restraint, are admissible and material evidence. Deputy AG Raymond Wright further pointed out, on behalf of California and other amici states, that under state antitrust law, the Cartwright Act, anticompetitive purpose is a key element that requires examination of the history before and after the conduct at issue. This is also supported by California Supreme Court case *Corwin v. Los Angeles Newspaper Services Bureau*, which held that the purpose of restraints from "before and after" they were imposed is crucial to the antitrust rule of reason analysis.

In this case, even though the contracts relating to the damages at issue are dated from 2007, the alleged restraints of Sutter Health began in 2001, when Sutter moved from individual hospital to systemwide contracting. As such, the attorneys argued that the district court's exclusion of pre-2006 evidence precluded the jury from seeing highly material evidence. Not only is the excluded pre-2006 evidence relevant and admissible on legal grounds, but it is also factually material to the outcome of case. Cantor noted that there is a large body of pre-2006 evidence, both in admissions and economic analyses, that would

show Sutter's anticompetitive strategies in the early 2000s forced insurers to enter into systemwide contracting that tied hospitals that were previously separate. This practice allowed Sutter to leverage its market power to demand anti-steering and anti-tiering contract terms that resulted in higher prices in 2011. As a result, Cantor argued that per *Crawford v. City of Bakersfield*, this error is prejudicial and warrants reversal.

### **Sutter's Defense and Court Response**

Craig Stewart argued on behalf of Sutter Health, focusing on the district court ruling that excluded arguably material evidence pursuant to [Federal Rules of Evidence 403](#). He emphasized that the appellate court review of the Rule 403 ruling should be governed by the [abuse of discretion standard](#), which provides that the reviewing court cannot reverse a ruling unless it determines the trial court judge committed a plain error that is clearly arbitrary or absurd. He argued that because the district court judge had presided over the case for ten years, that court was in the best position to evaluate the complicated antitrust issues and should be given deference. Stewart further argued that systemwide contracting in itself is not an antitrust violation, and in fact the insurers wanted to contract with every single Sutter hospital and be in-network. As a result, the exclusion of such evidence was harmless error.

The judges did not appear convinced. Given that plaintiffs allege that Sutter's system-wide contracting is the mechanism for imposing anti-tiering and anti-steering contract terms, both Judge Koh and Judge Desai held the view that evidence of the history of the restraint before and after is clearly relevant and were befuddled by its exclusion by the district court. Judge Koh in particular grilled Sutter's counsel: "why wouldn't that

be relevant evidence?” and commented that plaintiffs should at least be able to present their case, regardless of the merits of the evidence. What’s more, Judge Koh pointed to ample evidence including Sutter’s admissions that systemwide contracting strategy achieved higher than market pricing which the health plans were forced to pay.

When responding to allegations that the trial judge erroneously excluded anticompetitive purpose considerations from the jury instructions, Stewart argued that it is not consequential because it’s only relevant as an element in one of the later claims (unreasonable course of conduct), which the jury did not get to. The judges also questioned why it was erased from the jury instructions when it is an element required in the antitrust rule of reason analysis under state law. Stewart responded that was something that Sutter requested to modify and argued that no case precedent says that purpose alone is enough, and that the court must first find anticompetitive effect, only after which purpose can be considered. However, Judge Koh in particular expressed concern about deviating from model jury instructions from the Judicial Council of California.

## **What’s Next**

While there is no time limit on how long it takes the court to issue ruling after oral arguments, most cases are decided within 3 months to a year after submission. In this case, if the 9th Circuit decides to overturn the district court decision, it will likely be remanded to the district court where the evidence in question would be admitted at a new trial to be held in the lower court. After that, the jury would deliberate on the merits of the case, potentially with new jury instructions since the inclusion of anticompetitive purpose for consideration on the

jury from is one of the issues on appeal. If the decade-long lawsuit is further extended for lengthy trial proceedings, there is also the possibility that the parties could decide to settle, as the state action did in 2019. Stayed tuned to The Source's [Sutter Case Watch](#) for the latest developments and detailed analysis of this case as we continue to track the Sutter Health antitrust saga.