

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
TULSA, OKLAHOMA**

1) BRISTOW ENDEAVOR HEALTHCARE,
LLC, d/b/a BRISTOW MEDICAL CENTER
and d/b/a CENTER FOR ORTHOPAEDIC
RECONSTRUCTION AND EXCELLENCE
700 West 7th Avenue
Bristow, OK 74010

Plaintiff,

v.

1) BLUE CROSS AND BLUE SHIELD
ASSOCIATION
225 North Michigan Avenue
Chicago, IL 60601

2) HEALTH CARE SERVICE
CORPORATION, d/b/a BLUE CROSS AND
BLUE SHIELD OF OKLAHOMA
300 E. Randolph St.
Chicago, IL 60601

3) HILLCREST HEALTHCARE SYSTEM,
INC., AN OKLAHOMA CORPORATION
c/o The Corporation Company
1833 South Morgan Road
Oklahoma City, OK 73128

4) AHS HILLCREST HEALTHCARE
SYSTEM, LLC, d/b/a HILLCREST
MEDICAL CENTER
c/o Corporation Service Company
2711 Centerville Rd Suite 400
Wilmington, DE 19808

5) AHS HILLCREST MEDICAL CENTER,
LLC, d/b/a HILLCREST MEDICAL
CENTER
c/o Corporation Service Company
2711 Centerville Rd Suite 400
Wilmington, DE 19808

CASE NO. 16-cv-57-CVE-JPC

JUDGE Claire Eagan

COMPLAINT

JURY DEMAND ENDORSED HEREON

6) AHS MEDICAL HOLDINGS LLC, d/b/a	)
ARDENT HEALTH SERVICES	)
1 Burton Hills Boulevard # 250	)
Nashville, TN 37215	)
	)
7) ARDENT HEALTH PARTNERS, LLC,	)
d/b/a ARDENT HEALTH SERVICES	)
1 Burton Hill Boulevard # 250	)
Nashville, TN 37215	)
	)
and	)
	)
8) ARDENT MEDICAL SERVICES, INC.,	)
d/b/a ARDENT HEALTH SERVICES	)
1 Burton Hill Boulevard # 250	)
Nashville, TN 37215	)
	)
Defendants.	)
	)

COMPLAINT

Plaintiff, Bristow Endeavor Healthcare, LLC, d/b/a Bristow Medical Center and d/b/a Center for Orthopaedic Reconstruction and Excellence (“Bristow Healthcare” or “Plaintiff”) for its Complaint against Defendants – (1) Blue Cross and Blue Shield Association, (2) Health Care Service Corporation, d/b/a Blue Cross and Blue Shield of Oklahoma, (3) Hillcrest Healthcare System, An Oklahoma Corporation, (4) AHS Hillcrest Healthcare System, d/b/a Hillcrest Medical Center, (5) AHS Hillcrest Medical Center, LLC, d/b/a Hillcrest Medical Center, (6) AHS Medical Holdings LLC, d/b/a Ardent Health Services, (7) Ardent Health Partners, LLC, d/b/a Ardent Health Services, and (8) Ardent Medical Services, Inc., d/b/a Ardent Health Services (collectively the “Defendants”) – alleges as follows:

THE PARTIES

1. Plaintiff, Bristow Healthcare, is a Texas limited liability company that is registered to do business and has a place of business, and provides healthcare services in Oklahoma, and treats patients in Oklahoma.

2. Bristow Healthcare owns, operates, and does business as, one entity with three facilities in the Tulsa/Northeast Oklahoma area: (a) Bristow Medical Center, (b) Cimarron Healthcare Center, and (c) Center for Orthopaedic Reconstruction & Excellence (“CORE”).

3. Bristow Medical Center was the first hospital that Bristow Healthcare owned and operated.

4. Next, in 2011, Bristow Healthcare began owning and operating Cimarron Healthcare Center.

5. Finally, Bristow Healthcare officially opened CORE in July, 2015.

6. Bristow Medical Center is a hospital located in Bristow, Oklahoma that includes 30 inpatient beds, a 24-hour emergency room, and an urgent care department.

7. Bristow is a small, rural city in Oklahoma with a population of 4,220.

8. Bristow, Oklahoma is approximately thirty-four (34) miles to the south-west of Tulsa, Oklahoma.

9. Cimarron Healthcare Center is a hospital based outpatient facility located in Cushing, Oklahoma which provides primary care, urgent care, and general and specialty surgery.

10. Cushing is a small, rural city in Oklahoma with a population of 7,889.

11. Cushing, Oklahoma is approximately fifty-five miles to the south-west of Tulsa, Oklahoma.

12. CORE is a new 51,000 square foot facility that underwent construction in 2013-2014 and opened in July 2015.

13. CORE is located in Jenks, Oklahoma, which has a population of 18,670.

14. Jenks, Oklahoma is approximately twelve (12) miles to the south of Tulsa, Oklahoma.

15. CORE's facility includes six operating rooms, four procedure rooms, 25 inpatient beds, a physical therapy wing, and a 24-hour emergency room. CORE currently has the largest operating rooms in the greater Tulsa, Oklahoma area.

16. In addition, CORE has the latest and most advanced medical technology. CORE's physicians, surgeons and staff are among the best, providing advanced top-of-the-line care to all Bristow Healthcare patients in Tulsa, Oklahoma area, including the cities of Bristow, Jenks and Cushing.

17. Defendant, Health Care Service Corporation, a mutual legal reserve company, d/b/a Blue Cross and Blue Shield of Oklahoma ("Health Care Service Corporation"), is an Illinois corporation maintaining its principal place of business at 300 E. Randolph St. Chicago, Illinois 60601.

18. Health Care Service Corporation, its subsidiaries, and health care plans are collectively referred herein as Health Care Service Corporation.

19. With more than 13 million members, Health Care Service Corporation is the largest customer-owned health insurer in the United States.

20. Health Care Service Corporation does business as different entities in several markets, including Oklahoma, Illinois, Montana, New Mexico, and Texas. In Oklahoma, Health Care Service Corporation operates under the tradename Blue Cross and Blue Shield of Oklahoma.

21. Defendant, Blue Cross Blue Shield Association (“Blue Cross Association”), is an Illinois corporation with its principle place of business at 225 North Michigan Avenue, Chicago, Illinois 60601.

22. Defendant Blue Cross Association describes itself on its current website, (<http://www.bcbs.com/contact-us/>), as “a national federation of 36 independent, community-based, and locally operated Blue Cross Blue Shield companies.” One of those independent Blue Cross Blue Shield companies is Health Care Service Corporation – owner of the tradename Blue Cross and Blue Shield of Oklahoma.

23. Health Care Service Corporation and Blue Cross Association are collectively referred to herein as “Blue Cross Blue Shield.”

24. In Oklahoma, and in the Tulsa/Northeast Oklahoma geographic region more specifically, Blue Cross Blue Shield exercises market dominance.

25. According to the Kaiser Family Foundation, Blue Cross Blue Shield’s share of the market for health insurers in the entire state of Oklahoma is 64%. This information was obtained from Market Share and Enrollment of Largest Insurers – Individual Market, 2013, available at <http://kff.org/other/state-indicator/market-share-and-enrollment-of-largest-three-insurers-individual-market/>, which was accessed on Dec. 17, 2015. A true and accurate copy of the webpage is attached hereto and incorporated by reference herein as Exhibit “1.”

26. Upon information and belief, Blue Cross Blue Shield’s share of the market for health insurers in the Northeast Oklahoma/Tulsa is at least as high as 64%, if not higher.

27. Defendant, Hillcrest Healthcare System, An Oklahoma Corporation (“HHS”), is an Oklahoma, non-profit corporation and healthcare system in the Northeast Oklahoma/Tulsa area

that is comprised of at least nine (9) hospitals, facilities, and medical centers that it owns, operates and/or is affiliated with.

28. Defendant, AHS Hillcrest Medical Center, LLC, d/b/a Hillcrest Medical Center, a Delaware limited liability company, is one such medical center that HHS owns, operates and/or is affiliated with.

29. Defendant, AHS Hillcrest Healthcare System, LLC, d/b/a Hillcrest Medical Center, a Delaware limited liability company, wholly owns AHS Hillcrest Medical Center, LLC, d/b/a Hillcrest Medical Center.

30. HHS, AHS Hillcrest Medical Center, LLC, d/b/a Hillcrest Medical Center, and AHS Hillcrest Healthcare System, LLC, d/b/a Hillcrest Medical Center are collectively referred to herein as “The Hillcrest Healthcare System.”

31. Defendant, AHS Medical Holdings LLC, d/b/a Ardent Health Services, is a Delaware limited liability company with its principle place of business at 1 Burton Hills Blvd. Suite 250 Nashville, TN 37215; through its parents, subsidiaries and/or affiliates, AHS Medical Holdings LLC, d/b/a Ardent Health Services owns and operates a network of health systems.

32. Defendant, Ardent Health Partners, LLC, d/b/a Ardent Health Services, is a Delaware limited liability company; through its parent, subsidiaries and/or affiliates, Ardent Health Partners, LLC, d/b/a Ardent Health Services owns and operates a network of health systems.

33. Defendant, Ardent Medical Services, Inc., d/b/a Ardent Health Services, is a Delaware corporation; through its parents, subsidiaries and/or affiliates, Ardent Medical Services, Inc., d/b/a Ardent Health Services owns and operates a network of health systems, including The Hillcrest Healthcare System.

34. AHS Medical Holdings LLC, d/b/a Ardent Health Services, Ardent Health Partners, LLC, d/b/a Ardent Health Services, and Ardent Medical Services, Inc., d/b/a Ardent Health Services are collectively referred to herein as “Ardent Health Services.”

35. The Hillcrest Healthcare System was purchased by Ardent Health Services in 2004.

36. Ardent Health Services has exclaimed that The Hillcrest Healthcare System “was at a crossroads [at the time of the purchase]. Growing ranks of uninsured patients and a series of financial losses had left the once thriving not-for-profit system strapped for cash” and in a “precarious financial situation.” See <http://www.ardenthealth.com/Hillcrestcasestudy.pdf>, a true and accurate copy of which is attached hereto and incorporated by reference herein as Exhibit “2.”

37. Since its purchase, Ardent Health Services has invested more than \$362 million into Hillcrest Healthcare System, including \$100 million that was earmarked for improvements to Hillcrest Medical Center, “the system’s flagship and largest facility in downtown Tulsa.” See Exhibit 2.

38. As part of this infusion of hundreds of millions of dollars, “[i]n addition to strengthening existing services through the recruitment of specialists and the purchase of new equipment, [The Hillcrest Healthcare System] opened a \$13.7 million Spine and Orthopedic Center, which includes four surgical suites and 30 private patient rooms.” See Exhibit 2.

39. Bristow Healthcare is Ardent Health Services’ largest, local competitor.

40. The Hillcrest Healthcare System is Bristow Healthcare’s largest competitor.

41. The Hillcrest Healthcare System exercises market dominance within the relevant product (inpatient and outpatient healthcare services and all reasonably interchangeable substitute services) and geographic markets (Northeast Oklahoma/Tulsa area).

42. The Hillcrest Healthcare System, Ardent Health Services, and Blue Cross Blue Shield have conspired to threaten, are threatening, and have threatened and endangered patient safety in the Tulsa/Northeast Oklahoma area through illegal and wrongful actions, including but not limited to federal and state antitrust violations, conspiracy to monopolize, and tortious inference.

43. Hillcrest Healthcare System, Ardent Health Services, and Blue Cross Blue Shield have colluded, conspired, and/or contracted to restrain Bristow Healthcare's CORE facility from competing in the healthcare market in Northeast Oklahoma/Tulsa area through illegal and wrongful actions, including but not limited to federal and state antitrust violations, conspiracy to monopolize, and tortious inference.

JURISDICTION AND VENUE

44. Plaintiff restates and incorporates the allegations set forth above as if completely rewritten herein.

45. This Court has original federal question jurisdiction over Plaintiffs' federal Sherman Act claim pursuant to 28 U.S.C. § 1337(a), which affords federal courts jurisdiction over "any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

46. This Court has supplemental jurisdiction over Plaintiffs' remaining claims pursuant to 28 U.S.C. § 1367.

47. All Defendants have the minimum contacts with Oklahoma such that they should reasonably anticipate being hauled into court here.

48. All Defendants have purposefully and knowingly directed activities at locations within the state of Oklahoma.

49. Plaintiff's claims arise out of or result from actions taken by the Defendants that create a substantial connection with Oklahoma.

50. Personal jurisdiction over the Defendants comports with the traditional notions of fair play and substantial justice, and is reasonable in light of the circumstances surrounding this case.

51. Given that a substantial part of the events or omissions giving rise to Plaintiff's claims have occurred in this Judicial District, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL BACKGROUND

52. Plaintiff restates and incorporates the allegations set forth above as if completely rewritten herein.

53. At all times relevant to this matter, Bristow Healthcare, through its Bristow Medical Center facility, has been an in-network provider with Blue Cross Blue Shield.

54. On or about July 1, 2013, Bristow Healthcare requested the addition of Cimarron Healthcare Center to Bristow Medical Center's in-network provider agreement with Blue Cross Blue Shield.

55. In January 2014, Bristow Healthcare began negotiating with Blue Cross Blue Shield regarding the inclusion of Cimarron Healthcare Center to Blue Cross Blue Shield's network under Bristow Medical Center's provider agreement.

56. On or about December 19, 2013, Blue Cross Blue Shield classified Cimarron Healthcare Center as an ambulatory surgical center for its purpose of negotiating the inclusion of Cimarron Health Center as an in-network provider.

57. On or about January 14, 2014, Blue Cross Blue Shield offered to include Cimarron Healthcare Center as an in-network provider under Bristow Medical Center's provider agreement with the following terms: \$285/BlueChoice PPO, \$327.75/Blue Traditional, and \$242.25/BluePreferred & BlueLincs. Blue Cross Blue Shield stated that these would be blended rates that would apply to both Bristow Medical Center and Cimarron Healthcare Center.

58. This offer drastically reduced the billing rates Bristow Medical Center was receiving at the time of the offer.

59. Subsequently, on January 17, 2014, Bristow Healthcare provided a counteroffer based on the fact that Blue Cross Blue Shield would not change its position on the blended rate concept between Bristow Medical Center and Cimarron Healthcare Center.

60. Bristow Healthcare provided the following counteroffer: \$297.50/BlueChoice PPO, \$342.13/BlueTraditional, \$252.89/BluePreferred, which was a blended rate for both Bristow Medical Center and Cimarron Healthcare Center.

61. After further discussion, on February 10, 2014, Bristow Healthcare and Blue Cross Blue Shield agreed to the following blended rates for Bristow Medical Center and Cimarron Healthcare Center, which would also add Cimarron Healthcare Center as an in-network provider: BlueTraditional - \$372.50, BlueChoice - \$324.00, BluePreferred - \$275.50, with an increase by four percent (4%) during year two (2) of the agreement.

62. The finalized billing rates ultimately represent a nine percent (9%) reduction below Bristow Medical Center's current rates at the time of negotiations. The rate schedule resulted in Bristow Healthcare losing more than eighty-seven thousand dollars (\$87,000.00) per year of the agreement.

63. On or about March 28, 2014, Bristow Healthcare, on behalf of Bristow Medical Center and Cimarron Healthcare Center, executed the BlueTraditional Network Participating Hospital Agreement (the “Bristow Agreement”).

64. Upon information and belief, the representative of Bristow Healthcare, at the time of agreement, had an implicit understanding that the negotiations for the Bristow Agreement would include all existing and future entities of Bristow Healthcare.

65. A true and accurate copy of the Bristow Agreement is attached hereto and incorporated by reference herein as Exhibit “3.”

66. The Bristow Agreement, by and through its Exhibit B, made Cimarron Healthcare Center a party to the Bristow Agreement, thus establishing Cimarron Healthcare Center as an in-network provider for Blue Cross Blue Shield.

67. The Bristow Agreement is a managed care contract whereby Blue Cross Blue Shield has agreed to reimburse Bristow Healthcare for in-network, covered services rendered at Bristow Medical Center and Cimarron Healthcare Center to members of Blue Cross Blue Shield’s networks.

68. Upon information and belief, The Hillcrest Healthcare System, by and through its entities such as Hillcrest Medical Center, also has a managed care contract with Blue Cross Blue Shield, whereby Blue Cross Blue Shield has agreed to reimburse The Hillcrest Healthcare System for in-network, covered services rendered to members of Blue Cross Blue Shield’s networks (the “Hillcrest Healthcare System Agreement”).

69. Upon information and belief, The Hillcrest Healthcare System, by and through Hillcrest Medical Center, is reimbursed for in-network, covered services at rates well above the current Medicare rate schedule (and well above the rates at which Bristow Healthcare receives for

services rendered at Bristow Medical Center and Cimarron Healthcare Center by Blue Cross Blue Shield).

70. No legitimate business reason justifies the difference in reimbursement rates between Bristow Medical Center and Cimarron Healthcare Center, on the one hand, and Hillcrest Medical Center on the other hand, or the fact that CORE has no provider agreement with Blue Cross Blue Shield at all.

71. Pursuant to Section 2.6.0 of the Bristow Agreement, Bristow Medical Center “shall notify [Blue Cross Blue Shield] in writing of any additional entities owned and operated by it [Bristow Medical Center] shall submit an Additional Entities Information Document for each entity, and shall obtain [Blue Cross Blue Shield’s] consent to the addition of these entities to [the Bristow] Agreement.”

72. On or about March 3, 2015, prior to opening the CORE facility, and in compliance with Section 2.6.0 of the Bristow Agreement, Bristow Healthcare notified Blue Cross Blue Shield in writing of CORE’s existence, and it notified Blue Cross Blue Shield of Bristow Healthcare’s desire to have CORE added to its in-network provider agreement, the Bristow Agreement, which would allow CORE to be an in-network provider.

73. At the time of notification, Bristow Healthcare informed Blue Cross Blue Shield that CORE would license and operate under Bristow Medical Center’s Tax Identification Number and National Provider Identifier.

74. Despite follow-up phone calls and emails regarding this notification, Blue Cross Blue Shield delayed in responding to this notification.

75. Finally, on or about March 16, 2015, Blue Cross Blue Shield sent a credentialing application for CORE to Bristow Healthcare.

76. Blue Cross Blue Shield informed Bristow Healthcare that the credentialing application would need to be completed prior to a decision being made regarding CORE's admission as an in-network provider – be it under the Bristow Agreement or a separate agreement.

77. On or about April 6, 2015, Blue Cross Blue Shield advised that “[i]t could take up to 45 days to complete credentialing of” CORE. *See* 4/6/15 e-mail from Pam Milleson included in e-mail chain attached hereto and incorporated by reference herein as Exhibit “4.”

78. As demonstrated herein, the credentialing process for CORE has taken much longer than forty-five (45) days. Indeed, since March 16, 2015, approximately ten (10) months has passed without decision on Bristow Healthcare's credentialing application for CORE.

79. Throughout the credentialing process for CORE, Bristow Healthcare has been met with much resistance and delay from Blue Cross Blue Shield.

80. On or about June 1, 2015, Bristow Healthcare was required to submit to Blue Cross Blue Shield a list of all individuals or entities that possessed an ownership interest in CORE.

81. On June 11, 2015, Blue Cross Blue Shield advised Bristow Medical Center concerning the addition of CORE that “[a]ll of the documentation you provided is being reviewed.” *See* 6/11/15 e-mail from Pam Milleson included in the e-mail chain attached hereto and incorporated by reference herein as Exhibit “5.”

82. On June 30, 2015, Blue Cross Blue Shield advised Bristow Medical Center that it “does not agree to add [CORE] as a party to” the Bristow Agreement.

83. A true and accurate copy of Blue Cross Blue Shield's June 30, 2015 letter is attached hereto as Exhibit “6.”

84. In the June 30, 2015 letter, Blue Cross Blue Shield claimed that it “contracts with each hospital on its own merits . . . [and] maintains separate agreements with each hospital entity.” *Id.*

85. Cimarron Healthcare Center was not required to enter into a separate agreement with Blue Cross Blue Shield. Cimarron Healthcare Center was added as an additional party to the Bristow Agreement under the Bristow Agreement Exhibit B.

86. In the June 30, 2015 letter, Blue Cross Blue Shield claimed that its “expectations is that we would contract CORE . . . separately from” Bristow Medical Center. *Id.*

87. To date, Blue Cross Blue Shield has not contracted with CORE at all.

88. In the June 30, 2015 letter, Blue Cross Blue Shield claimed that “[i]n order for CORE . . . to contract and submit claims to [Blue Cross Blue Shield], it would need to obtain a separate NPI [national provider number].” *Id.*

89. On July 6, 2015, Bristow Healthcare, on behalf of CORE, submitted its response to Blue Cross Blue Shield concerning their refusal to add CORE in-network.

90. A true and accurate copy of Bristow Healthcare’s July 6, 2015 letter is attached hereto and incorporated by reference herein as Exhibit “7.”

91. In Bristow Healthcare’s July 6, 2015 letter, Blue Cross Blue Shield’s justification concerning the refusal to contract with CORE is revealed to be patently false. *Id.*

92. In the July 6, 2015 letter, Bristow Healthcare reminded Blue Cross Blue Shield that Cimarron Healthcare Center’s initial admission as an in-network provider was denied because a separate agreement and National Provider Identifier number were required. “However, [Bristow Healthcare and Blue Cross Blue Shield] were able to compromise and agree to a blended rate

between the proposed [Cimarron Healthcare Center] rates and the current [Bristow Medical Center] rates.” *Id.*

93. Subsequent to the July 6, 2015 letter, upon information and belief, Blue Cross Blue Shield requested a copy of CORE’s State of Oklahoma Hospital License.

94. A true and accurate copy of the Hospital License obtained by CORE is attached hereto and incorporated by reference herein as Exhibit “8.”

95. The Hospital License lists CORE as a division of Bristow Medical Center. *Id.*

96. On or about July 22, 2015, Blue Cross Blue Shield issued correspondence to Bristow Healthcare requesting information regarding the meaning of “a division of Bristow Medical Center,” as it is written on the Hospital License.

97. On or about July 22, 2015, Bristow Healthcare responded by indicating that the Hospital License covers three locations, one Tax Identification Number and one National Provider Number. The three locations are as follows: Bristow Medical Center, Cimarron Healthcare Center, and CORE.

98. Subsequent to the July 22, 2015 correspondence, Bristow Healthcare attempted to have numerous meetings and calls with Blue Cross Blue Shield regarding the admission of CORE as an in-network provider.

99. Many of these calls and meetings were cancelled by Blue Cross Blue Shield representatives.

100. Furthermore, on or about August 6, 2015, Blue Cross Blue Shield requested additional information from Bristow Healthcare regarding a breakdown of CORE patients and the number and types of procedures they received at the CORE location. Blue Cross Blue Shield also

requested a breakdown of the financial classification of CORE patients, specifically the type of insurance each patient possessed.

101. Bristow Healthcare submitted all of this information to Blue Cross Blue Shield.

102. On or about September 18, 2015, representatives from Bristow Healthcare and Blue Cross Blue Shield engaged in a phone conference. During the call Blue Cross Blue Shield acknowledged receipt of all necessary information to make a decision regarding in-network admission for CORE.

103. Bristow Healthcare informed Blue Cross Blue Shield that some of the Bristow Medical Center and Cimarron Healthcare Center patients stated a desire to use CORE for specific procedures. Blue Cross Blue Shield responded that all members of Blue Cross Blue Shield should use in-network facilities, which would exclude CORE.

104. Bristow Healthcare also informed Blue Cross Blue Shield that a representative(s) of Blue Cross Blue Shield threatened physicians with network agreement terminations if they referred patients to out-of-network facilities, such as CORE.

105. Subsequently, upon information and belief, a representative of Blue Cross Blue Shield told the representative from Bristow Healthcare that it was denying a contract to CORE for “CORE’s own protection.” The representative went on to state that “if Hillcrest tried to open a facility in Bristow, we [Blue Cross Blue Shield] would ‘protect you.’”

106. To this date, Blue Cross Blue Shield has refused to allow CORE to receive an in-network provider agreement or be added as a party to the Bristow Agreement.

107. On October 29, 2015, Bristow Medical Center wrote to Blue Cross Blue Shield to advise that:

As of November 1, 2015 the surgical department at Bristow Medical Center will be closed temporarily for a complete renovation. We estimate that the remodel will take approximately 5 months. Our plan is to move our Bristow area surgeries to our other facilities in Jenks and Cushing. BMC's only other inpatient facility is CORE at Jenks. How do you propose that we care for inpatient BCBS surgical cases? Can I provide in-network care for those patients at CORE during this period?

See e-mail chain attached hereto and incorporated by reference herein as Exhibit "9."

108. Blue Cross Blue Shield replied in response, in part, that "[t]he physicians in Bristow [Medical Center] should refer BCBS members to in-network hospitals." *Id.* The in-network hospitals Blue Cross Blue Shield was referring to were The Hillcrest Healthcare System locations approximately twelve (12) miles from the CORE facility.

109. On or about December 4, 2015, at the urging of an Oklahoma state senator, Rick Kelly, a senior vice president at Blue Cross Association, met with Jan Clark, the representative from Bristow Healthcare to discuss the status of the CORE application and to discuss the reasons for Blue Cross Blue Shield's refusal to allow CORE into the network.

110. Following the meeting, Rick Kelly indicated that he would provide a formal response after the meeting but, to date, he has not done so.

111. As of the filing of this Complaint, Blue Cross Blue Shield has unreasonably refused to contract with CORE and add CORE to its network.

112. No legitimate business reason justifies Blue Cross Blue Shield's exclusion of CORE from in-network status.

113. As with Bristow Medical Center and Cimarron Healthcare Center, CORE is able to (and does) deliver the highest quality care in a cost-effective manner.

114. Upon information and belief, it is through undue influence and illegal conspiracy with The Hillcrest Healthcare System and Ardent Health Services that Blue Cross Blue Shield has

arbitrarily, capriciously, and unreasonably refused to contract with CORE and add CORE to its network.

115. More specifically, The Hillcrest Healthcare System and Ardent Health Services have plotted to exclude CORE from the Northeast Oklahoma/Tulsa area healthcare marketplace. Every Tuesday for two hours, Thom Biby, a representative from Tulsa Spine & Specialty Hospital (“Tulsa Spine”), which is currently owned and operated by Hillcrest Health System, and representatives from Hillcrest Health System and Ardent Health Services would meet to discuss affairs, including CORE. These meetings took place from 2011 to 2015.

116. Indeed, in the summer of 2014, Tulsa Spine went as far as hiring a private investigator to investigate who the participants, players and physicians were that would be involved in the start-up of CORE

117. The representatives from one of The Hillcrest Healthcare System’s facilities, Tulsa Spine, included Thom Biby, Terry Woodbeck (CEO of Tulsa Spine), Trent Gastineau, and Steven E. Gaede, M.D.

118. The representatives from The Hillcrest Healthcare System included Kevin Gross, the current President of Ardent Health Services and Chief Executive Officer of The Hillcrest Healthcare System.

119. The representatives from Ardent Health Services included Eddie Gwock (Vice President of Managed Care Networks) and Kevin Gross.

120. At the meetings between The Hillcrest Healthcare System and Ardent Health Services, the entities discussed their current status as major healthcare entities in the Tulsa, Oklahoma area and surrounding suburb areas, both possessing a high percentage of the healthcare market share in this area.

121. At these meetings, it was communicated to Tulsa Spine that Blue Cross Blue Shield, Ardent Health Services, and The Hillcrest Healthcare System agreed that Blue Cross Blue Shield would reimburse The Hillcrest Healthcare System for in-network services at rates well above the current Medicare rates.

122. Upon information and belief, in turn, Blue Cross Blue Shield promised to reimburse Bristow Medical Center and Cimarron Healthcare Center for in-network services at rates well below those offered/agreed to by The Hillcrest Healthcare System.

123. At these meetings and related telephone calls, in order for The Hillcrest Healthcare System to retain its market share in the area, Blue Cross Blue Shield discussed with The Hillcrest Healthcare System ways to prevent CORE from becoming an in-network provider with Blue Cross Blue Shield.

124. During one of these discussions, Mr. Gwock of Ardent told representatives from Tulsa Spine that he could leverage his relationship with Blue Cross Blue Shield to keep CORE out of the network.

125. Mr. Gwock also reported that he spoke to Blue Cross Blue Shield, and in connection with the “strategic initiative” between Blue Cross Blue Shield, Ardent Health Services, and Hillcrest Health System, Blue Cross Blue Shield would be able to keep CORE out of network.

126. These discussions and reports from Mr. Gwock took place in December 2014/January 2015.

127. Blue Cross Blue Shield has kept CORE out of network.

128. Effectively, Blue Cross Blue Shield, Ardent Health Services, and The Hillcrest Healthcare System colluded and conspired in refusing to add CORE to Blue Cross Blue Shield’s network.

129. This agreement was made with the intent to prevent CORE from fully competing in Oklahoma, and more specifically the Tulsa, Oklahoma area.

130. This agreement was made with the intent for The Hillcrest Healthcare System to maintain and eventually earn a higher percentage of the Northeast Oklahoma/Tulsa area healthcare market share.

131. Upon information and belief, as part of the unlawful conspiracy, in colluding with The Hillcrest Healthcare System and Ardent Health Services, Blue Cross Blue Shield has threatened to terminate provider agreements with physicians affiliated with Bristow Healthcare and that provide services at Bristow Medical Center and Cimarron Healthcare Center who refer patients to out-of-network facilities, including CORE.

132. CORE remains an out-of-network provider with Blue Cross Blue Shield.

133. The fact that CORE remains out-of-network with Blue Cross Blue Shield, which exercises market dominance in the Northeast Oklahoma/Tulsa area, is significant.

134. Generally, health insurance plans that permit members to seek medical services from out-of-network healthcare providers are more expensive than plans that limit members' coverage to care provided by in-network providers. Accordingly, members pay higher premiums for out-of-network benefits for the flexibility and right to obtain medical care from the provider of their choice.

135. Blue Cross Blue Shield prefers for its members to utilize its panel of in-network providers because it pays far less for in-network services under its provider agreements than it is required to pay under the out-of-network benefit plans for which patients have paid additional premiums. In-network fees are generally set at rates lower than a provider's usual and customary

charges in exchange for health insurers' steering patients to in-network providers (such as The Hillcrest Healthcare System in this case).

136. The plans at issue permit members and beneficiaries to obtain healthcare services from out-of-network or non-participating providers.

137. The Defendants' illegal and tortious conduct have prevented patients from obtaining and receiving healthcare at CORE.

138. Blue Cross Blue Shield has conspired with The Hillcrest Healthcare System and Ardent Health Services to unfairly eliminate Bristow Healthcare's competition from the local market.

139. Blue Cross Blue Shield has conspired with The Hillcrest Healthcare System and Ardent Health Services to fix prices or otherwise restrict competition in the Northeast Oklahoma/Tulsa area.

140. As a result of the conspiracy amongst Blue Cross Blue Shield, The Hillcrest Healthcare System, and Ardent Health Services, CORE has been deprived of patient referrals from credentialed providers and the dollars that would have been associated with the care of those patients.

141. The Defendants' illegal and tortious conduct has not only damaged the Plaintiffs, but have also acted to deprive Bristow Healthcare and CORE's patients of their choice of health care providers and to prevent them from using insurance benefits for which they have paid premiums.

142. Because the surgical department at Bristow Medical Center has been closed since November 1, 2015 for complete renovation (and will be closed for at least one (1) year or more),

and Bristow Healthcare's only other inpatient facility is CORE, neither Bristow Medical Center nor Cimarron Healthcare Center can refer inpatient surgeries to CORE.

143. Blue Cross Blue Shield has not acted independently, but rather acted in concert with The Hillcrest Healthcare System and Ardent Health Services as co-conspirators.

144. The Hillcrest Healthcare System and Ardent Health Services, with the help of co-conspirator Blue Cross Blue Shield, are illegally taking advantage of the remodeling at Bristow Medical Center to steer patients to facilities owned in whole or in part by the co-conspirator hospital systems. Because The Hillcrest Healthcare System is a dominant hospital system and is essential to Blue Cross Blue Shield's network, upon information and belief, Blue Cross Blue Shield readily agreed to join the conspiracy and to undertake actions designed to stop the flow of patients and money to Bristow Healthcare's facilities, including CORE, in an attempt to put CORE out of business and damage of the business of Bristow Medical Center and Cimarron Healthcare Center.

145. The Defendants' illegal and tortious conduct has resulted in damages to Bristow Healthcare and CORE, including lost profits, in the amount of \$40 million.

146. Bristow Healthcare and its locations, Bristow Medical Center, Cimarron Healthcare Center, and CORE, have suffered and in all likelihood will continue to suffer antitrust injury as a result of the aforementioned, anti-competitive activities and agreements in restraint of trade, including, but not limited to, decreased utilization and/or decreased revenues.

147. Without Court intervention and relief, Blue Cross Blue Shield and its co-conspirator's illegal conduct will continue unabated.

COUNT I

(Violation of 15 U.S.C. §1: Section 1 of the Sherman Act – All Defendants)

148. Plaintiff restates and incorporates the allegations set forth above as if completely rewritten herein.

149. Blue Cross Blue Shield, The Hillcrest Healthcare System, and Ardent Health Services are engaged in a conspiracy, combination, and/or contract.

150. The conspiracy, combination, and/or contract engaged in by Blue Cross Blue Shield, The Hillcrest Healthcare System, and Ardent Health Services produce adverse, anticompetitive effects within the relevant product (inpatient and outpatient healthcare services and all reasonably interchangeable substitute services) and geographic markets (Northeast Oklahoma/Tulsa area).

151. The objects of and conduct pursuant to Blue Cross Blue Shield, The Hillcrest Healthcare System, and Ardent Health Services' conspiracy, combination, and/or contract were illegal.

152. The unlawful anticompetitive restraints that are the subject of the conspiracy, combination, and/or contract are illegal *per se* because the surrounding circumstances make the likelihood of anticompetitive conduct so great as to render unjustified further examination of the challenged conduct.

153. The unlawful anticompetitive restraints that are the subject of the conspiracy, combination, and/or contract are illegal *per se* because the co-conspirators' practices are such that they would always or almost always result in the restriction of competition and decrease output.

154. The unlawful anticompetitive restraints that are the subject of the conspiracy, combination, and/or contract are illegal under the rule of reason because said conspiracy, combination, and/or contract is one that suppresses competition (rather than promotes it).

155. Bristow Healthcare, and its locations Bristow Medical Center, Cimarron Healthcare Center, and CORE, have been injured as a proximate result of said conspiracy, combination, and/or contract.

156. Bristow Healthcare, and its locations Bristow Medical Center, Cimarron Healthcare Center, and CORE, are in a worse position than they would have been had Blue Cross Blue Shield and its co-conspirators not committed the antitrust conduct.

157. As a direct and proximate result of the Defendants' continuing violations of Section 1 of the Sherman Act, Bristow Healthcare, and its locations Bristow Medical Center, Cimarron Healthcare Center, and CORE, have suffered and continue to suffer injury and damages of the type that the federal antitrust laws were designed to prevent. Such damages consist of having been paid lower rates, having fewer surgeries performed at their facilities, otherwise having business diverted to competitors who were part of the illicit conspiracy, combination and/or contract, and/or having access to far fewer patients than they would have with fair competition but for Blue Cross Blue Shield and its co-conspirators' anticompetitive agreements and practices.

158. Plaintiff seeks money damages from all of the Defendants for their violations of Section 1 of the Sherman Act.

159. Pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, Plaintiff is entitled to recover treble damages, prejudgment interest, and the costs of suit, including attorneys' fees.

160. The Defendants' unlawful conduct threatens to continue to injure Bristow Healthcare, and its locations Bristow Medical Center, Cimarron Healthcare Center, and CORE, who as a consequence seek a permanent injunction prohibiting all of the Defendants from entering into, or from honoring or enforcing, any illegal conspiracy, combination, or contract that have been entered into in restraint of trade.

COUNT II
(Violation of 79 O.S. § 203(A) – All Defendants)

161. Plaintiff restates and incorporates the allegations set forth above as if completely rewritten herein.

162. The conspiracy, combination, and/or contract engaged in by Blue Cross Blue Shield, The Hillcrest Healthcare System, and Ardent Health Services also violates Oklahoma state law, under which “[e]very act, agreement, contract, or combination in the form of a trust, or otherwise, or conspiracy in restraint of trade or commerce within this state is hereby declared to be against public policy and illegal.” 79 O.S. § 203(A).

163. As a direct and proximate result of the Defendants’ conduct in violation of 79 O.S. § 203(A), Plaintiff has suffered monetary damages in an amount to be determined at trial.

164. Plaintiff seeks money damages from all of the Defendants for their violations of 79 O.S. § 203(A).

165. Pursuant to 79 O.S. § 205, Plaintiff is entitled to recover treble damages, prejudgment interest, and the costs of suit, including attorneys’ fees.

166. The Defendants’ unlawful conduct threatens to continue to injure Bristow Healthcare, and its locations Bristow Medical Center, Cimarron Healthcare Center, and CORE, who as a consequence seek a permanent injunction prohibiting all of the Defendants from entering into, or from honoring or enforcing, any illegal conspiracy, combination, or contract that have been entered into in restraint of trade.

COUNT III
(Violation of 79 O.S. § 203(B) – All Defendants)

167. Plaintiff restates and incorporates the allegations set forth above as if completely rewritten herein.

168. The conspiracy, combination, and/or contract engaged in by Blue Cross Blue Shield, The Hillcrest Healthcare System, and Ardent Health Services also violates Oklahoma state law, under which “[i]t is unlawful for any person to monopolize, attempt to monopolize, or conspire to monopolize any part of trade or commerce in a relevant market within this state.”

169. Through their conduct, as more fully described herein, The Hillcrest Healthcare System and Ardent Health Services, through the help of its co-conspirator Blue Cross Blue Shield, are attempting to monopolize or conspiring to monopolize the market for inpatient and outpatient healthcare services in the Northeast Oklahoma/Tulsa area.

170. As a direct and proximate result of the Defendants’ conduct in violation of 79 O.S. § 203(B), Bristow Healthcare, and its locations Bristow Medical Center, Cimarron Healthcare Center, and CORE, have suffered monetary damages in an amount to be determined at trial.

171. Plaintiff seeks money damages from all of the Defendants for their violations of 79 O.S. § 203(B).

172. Pursuant to 79 O.S. § 205, Plaintiff is entitled to recover treble damages, prejudgment interest, and the costs of suit, including attorneys’ fees.

173. The Defendants’ unlawful conduct threatens to continue to injure Bristow Healthcare, and its locations Bristow Medical Center, Cimarron Healthcare Center, and CORE, who as a consequence seek a permanent injunction prohibiting all of the Defendants from entering into, or from honoring or enforcing, any illegal conspiracy, combination, or contract that have been entered into in restraint of trade.

COUNT IV
(Tortious Interference with Business Relations – All Defendants)

174. Plaintiff restates and incorporates the allegations set forth above as if completely rewritten herein.

175. Bristow Healthcare, and its locations Bristow Medical Center, Cimarron Healthcare Center, and CORE all had business and contractual rights.

176. Through the bad faith, malicious, intentional, and/or tortious conduct described at length therein, the Defendants have interfered with said business and contractual rights.

177. Said interference by the Defendants is neither justified, privileged, nor excusable.

178. As a direct and proximate result of their unjustified, unprivileged, and inexcusable interference, Plaintiff has suffered monetary damages from all of the Defendants in an amount to be determined at trial.

179. In violation of and pursuant to 23 O.S. § 9.1(B)(1), the Defendants have recklessly disregarded the rights of Bristow Healthcare, Bristow Medical Center, Cimarron Healthcare Center, and CORE, entitling Plaintiff to an award of punitive damages.

180. In violation of and pursuant to 23 O.S. § 9.1(C)(1), the Defendants have acted intentionally and with malice towards Bristow Healthcare, Bristow Medical Center, Cimarron Healthcare Center, and CORE, entitling Plaintiff to an award of punitive damages.

181. In violation of and pursuant to 23 O.S. § 9.1(D)(1), the Defendants have acted intentionally and with malice towards Bristow Healthcare, Bristow Medical Center, Cimarron Healthcare Center, and CORE, entitling Plaintiff to an award of punitive damages pursuant to said statute.

WHEREFORE, Plaintiff requests that the Court enter judgment in its favor on all Counts of this Complaint against the Defendants, and pray for the following relief:

- a. Compensatory damages in an amount to be determined;
- b. Treble damages on Plaintiff's antitrust claims;
- c. Punitive damages in an amount to be determined;
- d. Pre- and post-judgment interest;
- e. The costs of suit, including but not limited to attorneys' fees and expenses;
- f. Issuance of a permanent injunction barring the Defendants from entering into, or from honoring or enforcing, any illegal conspiracy, combination, or contract that have been entered into in restraint of trade; and
- g. Such other and further relief as deemed just and proper by the Court.

Respectfully submitted,

s/ Michael Burrage
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DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

s/ Michael Burrage

Michael Burrage