

Antitrust attorney K. Todd Wallace comments on a recent anti-steering case settlement involving Atrium Health

At issue in the case was Atrium Health's use of anti-steering provision in its contracts with health insurance companies, comments K Todd Wallace.

NEW ORLEANS, LOUISIANA, UNITED STATES, December 14, 2018 /EINPresswire.com/ -- New Orleans attorney [K. Todd Wallace](#) published a comment on the recent U.S. Department of Justice settlement with Atrium Health. The settlement was announced by the Justice Department when submitting the proposed settlement for court approval in a case that has been ongoing since 2016. At issue in the case was Atrium Health's use of anti-steering provision in its contracts with health insurance companies. As explained by the DOJ in its press release announcing the settlement, "[t]he Department alleged that Atrium, the dominant



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hospital system in the Charlotte area, used its market power to restrict health insurers from encouraging consumers to choose healthcare providers that offer better overall value. The restrictions also constrained insurers from providing consumers and employers with information regarding the cost and quality of alternative health benefit plans.” If approved, the settlement would enjoin Atrium Health from seeking to enforce the anti-steering provision against health insurers and also prohibit including such provision in its contract with insurers in the future.

[Mr. Wallace](#) notes that the settlement represents an interesting development in light of the recent U.S. Supreme Court decision in *Ohio v. American Express*. In the American Express case,

the Supreme Court held that anti-steering provision in a two sided-market must be evaluated as a whole. Many legal scholars saw this development as potentially having significant effect on the analysis of how other multiparty-market antitrust cases would be evaluated, such as those involving the health insurance industry.

Interestingly, the Second Circuit's decision in the American Express case, which applied the same reasoning later upheld by the Supreme Court, was the basis for Atrium Health's supplemental arguments in its 12(c) Motion for Judgment on the Pleadings. In their opposition, the DOJ argued that American Express was wrongly decided by the Second Circuit, a position that would ultimately be rejected by the Supreme Court. But more importantly, the DOJ argued that the anti-steering provision at issue harms both the patients and insurers. The DOJ argued in their opposition briefing that "Plaintiffs also have alleged actual

anticompetitive effects on price and output for patients and the insurers who pay for their health care. In Paragraph 14 of the Complaint, Plaintiffs allege that when insurers have steered in spite of CHS's restrictions, consumers have paid less for health care. And in Paragraph 27 of the Complaint, Plaintiffs allege that '[a]s a result of this reduced competition due to CHS's steering restrictions, individuals and employers in the Charlotte area pay higher prices' and have less product choice. These are allegations of actual ongoing harm: CHS's steering restrictions result in Charlotte consumers paying more for health care."

It appears that the DOJ satisfied the whole market approach as required by American Express, at least at the initial pleading stage. Although one can only speculate as to what ultimately motivated the parties to settle, it would be reasonable to assume that the dual harm alleged by the DOJ could have played a factor the decision rather than pursue its 12(c) motion to the end.

About [K Todd Wallace](#)



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Kenneth Todd Wallace is an attorney and founding partner of the law firm Wallace Meyaski LLC in New Orleans, Louisiana. He has nearly 20 years of experience in the legal and business professions with established excellence in trial advocacy, negotiation, strategic and initiative planning, employment law compliance, government relations, mergers and acquisitions, and team building.

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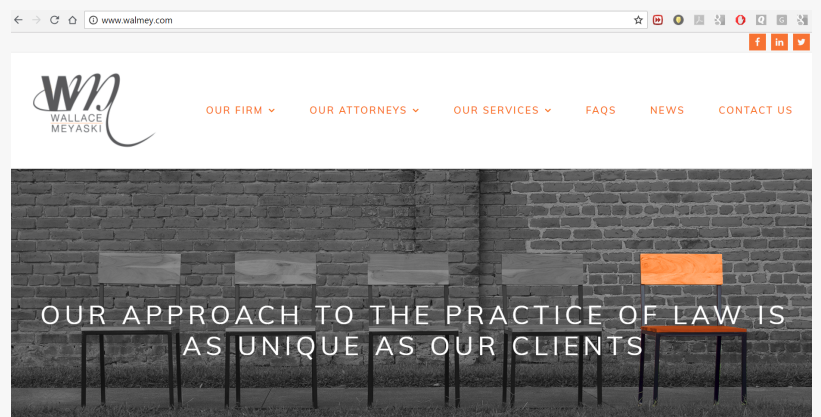
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Todd Wallace, Attorney of the Month, Attorney at Law Magazine 2013



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