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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Allied World Specialty Insurance Company  
f/k/a Darwin National Assurance Company,

Plaintiff,

vs.

Blue Cross Blue Shield Of Arizona, Inc.,

Defendants.

) No.

) **COMPLAINT FOR DECLARATORY**  
) **JUDGMENT**

Plaintiff, Allied World Specialty Insurance Company f/k/a Darwin National Assurance Company ("Allied World"), brings this action seeking declaratory relief against the Defendant, Blue Cross & Blue Shield of Arizona, Inc. ("BCBS-AZ"), and alleges the following:

**Parties, Jurisdiction and Venue**

1. This is a diversity action for declaratory relief pursuant to 28 U.S.C. § 2201 to declare the rights and other legal relations of the parties regarding an insurance policy issued by Allied World.

2. Allied World is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of New York.

3. BCBS-AZ is a corporation organized and existing under the laws of the State of Arizona with its principal place of business in the State of Arizona.

6. This action is brought pursuant to 28 U.S.C. § 2201, which provides that the Court may declare the rights and other legal relations of the parties. Allied World and BCBS-AZ are both parties having an interest in the insurance policy referenced herein.

## BACKGROUND FACTS

### *The MDL Action*

7. Beginning in 2012, numerous class action lawsuits were filed against multiple Blue Cross Blue Shield entities or member plans (“Blues”) and the Blue Cross Blue Shield Association (“BCBSA”) alleging violations of federal antitrust laws. One set of cases was filed by “Providers” (physicians and other healthcare providers who render services to persons insured under Blue Plans), and another set of cases was filed by “Subscribers” (persons and businesses that have Blue Plan healthcare insurance policies)

8. While brought by different groups of plaintiffs, the lawsuits each allege generally that the Blues and the BCBSA conspired to leverage their economic power and market dominance to under-compensate healthcare providers for their services and to increase healthcare costs to subscribers by coordinating their operations and limiting their activities through restrictions in their trademark licenses.

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1           9.       On December 12, 2012, the Judicial Panel on Multidistrict Litigation  
2 consolidated both the Provider and Subscriber lawsuits and transferred them to the United States  
3 District Court for the Northern District of Alabama, thus creating the MDL litigation referred to  
4 as *In Re: Blue Cross Blue Shield Antitrust Litigation*, Master File No 2:13-cv-20000-RDP (the  
5 “MDL Action”). A copy of the December 12, 2012 MDL Transfer Order is attached hereto as  
6 **Exhibit 1**.

8           10.       In consolidating the Providers’ and the Subscribers’ actions, the MDL Panel  
9 found: “Here, the actions involve substantial common questions of fact relating to the state  
10 BCBS entities’ relationship with the national association, BCBSA, and the licensing agreements  
11 that limit the Blue Plans’ activity to exclusive service areas, among other restrictions.” MDL  
12 Transfer Order at 2.

14           11.       Pursuant to an Order issued by the MDL Court, two consolidated complaints  
15 were filed in the MDL Action on July 1, 2013, one for the “provider track” (the “Provider  
16 Complaint”) and one for the “subscriber track” (the “Subscriber Complaint”), both of which  
17 have been amended several times. A copy of the Consolidated Fourth Amended Provider  
18 Complaint is attached hereto as **Exhibit 2**; a copy of the Subscriber Track Fourth Amended  
19 Consolidated Class Action Complaint is attached hereto as **Exhibit 3**.

22           12.       BCBS-AZ was first named as a defendant in each the Provider Complaint and in  
23 the Subscriber Complaint when the consolidated complaints were filed on July 1, 2013.

24           13.       The Provider Complaint alleges that the Blues have been engaged for many  
25 years in an agreement not to compete against one another, but instead to cooperate and  
26

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1 coordinate their activities on a nationwide basis in order to maximize their profits. The  
2 Complaint claims that the Blues agreed to cease competing and to impose operational uniformity  
3 on themselves decades ago by carving out exclusive service areas, setting up their national  
4 programs (including Blue Card), and establishing BCBSA's uniform rules and regulations. The  
5 Blues allegedly formalized their cooperation agreement through restrictions in their trademark  
6 licenses, such as the requirement of mandatory participation in the national programs.

8  
9 14. The alleged conspiracy has perpetuated and strengthened the dominant market  
10 position each Blue enjoys in its specifically defined geographic market which, in turn, has  
11 enabled the Blues to force healthcare providers to accept anticompetitive rates and terms. The  
12 Provider Complaint alleges that healthcare providers have been subjected to lower rates and less  
13 favorable terms than would have been the case in the absence of the conspiracy.

14  
15 15. The Provider Complaint seeks injunctive relief prohibiting the Blues, including  
16 BCBS-AZ, from entering into, honoring, or enforcing any agreements that restrict territories or  
17 geographic areas, enjoining the Blues from utilizing the Blue Card Program to pay healthcare  
18 providers, and enjoining the Blues from developing any other program or structure that is  
19 intended to fix, or has the effect of fixing, prices paid to healthcare providers. The Provider  
20 Complaint also seeks money damages in the form of treble damages.

22 16. The Subscriber Complaint similarly alleges that the Blues have been engaged for  
23 many years in an agreement not to compete against one another, but instead to cooperate and  
24 coordinate their activities on a nationwide basis in order to maximize their profits. The  
25 Subscriber Complaint alleges that the Blues agreed to cease competing and to impose  
26

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1 operational uniformity on themselves decades ago by carving out exclusive service areas and  
2 establishing BCBSA's uniform rules and regulations, including BCBSA's Membership  
3 Standards and Guidelines. The Blues allegedly formalized their cooperation agreement in their  
4 trademark licenses.  
5

6 17. The Subscriber Complaint seeks injunctive relief prohibiting the Blues, including  
7 BCBS-AZ, from entering into, honoring, or enforcing any agreements that restrict territories or  
8 geographic areas, and it also seeks to eliminate restrictions on the Blues' activities. The  
9 Complaint further seeks money damages in the form of treble damages of the amount by which  
10 the plaintiffs allege premiums were artificially inflated above their competitive levels.  
11

12 18. On November 30, 2020, the Court in the MDL Action preliminarily approved a  
13 settlement of the Subscribers' claims, pursuant to which the Blues agreed to pay \$2.67 billion. A  
14 copy of the Court's Memorandum Opinion and Order Preliminarily Approving Settlement, Plan  
15 of Distribution, and Notice Plan, and Directing Notice to the Class is attached as **Exhibit 4**.  
16

17 19. The Provider Complaint and the Subscriber Complaint are based upon the same  
18 or related conduct of the Blues relating to the Blues' "relationship with the national association,  
19 BCBSA, and the licensing agreements that limit the Blue Plans' activity . . . ." MDL Transfer  
20 Order at 2. The Complaints differ only with respect to the alleged harm to the Providers and to  
21 the Subscribers. Both Complaints seek damages in excess of this Court's jurisdictional limit and  
22 invoke federal question jurisdiction.  
23  
24

25 **Prior Related Litigation – Love**

26 20. BCBS-AZ was also a defendant in a prior class action litigation styled *Love v.*

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