

CASE STUDY



Express Scripts, Inc.

ST. LOUIS, MO OVERVIEW

Plaintiff HM Compounding Services LLC sued Express Scripts alleging that ESI wrongfully terminated provider agreements in an alleged attempt to dominate the compounding pharmacy market for itself.

Challenges

Our first challenge was venue-related. The case was originally filed in 2014 in New York federal court as *Paduano et al v. Express Scripts, Inc. et al.* Our second challenge involved the nature of the litigation itself, which was in effect an attempt by the plaintiff to wrap allegations of antitrust violations around a straightforward contract dispute. Further challenges were presented through the pre-trial phase of the litigation by the plaintiff's manifold abuses of the discovery process.

Solution

To address the first challenge, our team successfully moved to sever and transfer ESI-related claims to the Eastern District of Missouri pursuant to 28 U.S.C. § 1404(a) and the forum selection clause in the ESI provider agreement. The second challenge was essentially a question of the proper order of operations and the sequence by which the court would address the substantive issues at trial. In 2017 our team prevailed upon the court to address first the contract dispute resting at the heart of the matter, since the antitrust

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allegations depended upon it. In response to the plaintiff's questionable behavior prior to and during discovery, our team also introduced counterclaims accusing the plaintiff pharmacies of breach of contract and fraud.

Result

Prior to the scheduled November 2018 trial date, ESI uncovered a series of systematic abuses of the discovery process by the plaintiffs, later described by the court as "gross misconduct," including the suppression of key documents relating to ESI counterclaims. Ultimately, the court issued a summary judgment in favor of ESI on these counterclaims. Then, remarkably, as our team entered Day One of what was originally to be a multi-week jury trial, the court declared that ESI was to be considered the plaintiff, and the case would be re-styled as *Express Scripts v. HM Compounding*. Rather than face a jury on the question of liability, HM Compounding surrendered with a \$20 million judgment, providing ESI with an emphatic and complete defense victory, including an order granting Express Scripts more than \$366,000 in fees.