

FTC's Antitrust Case Against Private Equity Group Could Impact Payers

By [Gale Scott](#) October 6, 2023



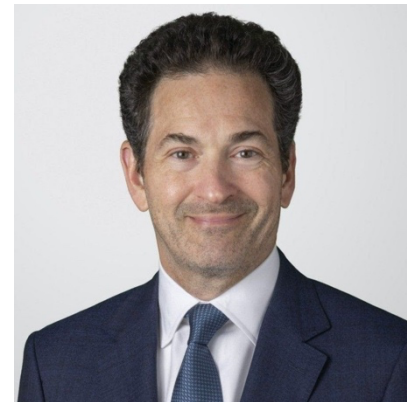
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A bold legal move by the **U.S. Federal Trade Commission** has private equity moguls on high alert, riveted by a case that has implications for payers as well.

The FTC recently sued **Welsh Carson Anderson & Stowe**, a Manhattan financial firm that in 2012 created a Dallas, Tex. company called **U.S. Anesthesia Partners**, charging it with antitrust violations.

The case is the first in which regulators have gone after the investors behind an alleged monopoly. The immediate legal issue is whether Welsh Carson's alleged "roll-up" tactics in buying up large anesthesia practices gave USAP a monopoly on anesthesia services in the Lone Star state. But the broader concern for payers is what the case says about the Biden administration's attitude toward mergers and acquisitions and what place a company like Welsh Carson and its investment strategies should have in the U.S. economy.

“The FTC and the **Department of Justice** have been talking about roll-ups for quite some time because they frown on them and don’t believe that they improve the quality of healthcare or lower prices,” **Bill Katz**, a partner at **Holland & Knight** law firm in Dallas, tells Health Payer Specialist.



Welsh Carson, which has managed \$31 billion in funds since it was founded in 1979, has a history of buying up specialty medicine practices. That includes **EmCare**, the emergency medicine staffing company whose out-of-network billing resulted in the consumer outrage that led to the passage of the federal **No Surprises Act**. Welsh Carson

Bill Katz, partner at Holland & Knight

characterizes the current FTC case as the agency “using litigation to pursue radical policy theories.” The firm is a minority stakeholder in USAP so the FTC is targeting it unfairly, the private equity firm says.

At stake for payers in the case are not just the potential impact of such serial medical practice acquisitions on the cost of services—such consolidation gives companies like USAP clout in asking for higher reimbursements— but the payer sector’s own fraught relations with the FTC when it comes to mergers and acquisitions. The FTC is eyeing the wider trend of payer-driven consolidation, one in which some major companies have become not just insurers but providers, pharmacy benefits managers, and in an even newer trend, becoming part of the supply chain as payers’ PBMs are starting to manufacture specialty pharmaceuticals.

The USAP case is a high-profile initiative for the Biden administration, Katz and others note.

“This is an example of the FTC not just talking the talk, but also walking the walk when it comes to private equity roll-ups,” he tells Health Payer Specialist. In the USAP case the FTC is also “challenging horizontal agreements that allegedly kept a new entrant out of the market and allowed other anesthesia groups to raise their prices,” he says.

According to the FTC’s complaint, filed Sept 21 in **U.S. District Court for the Southern District of Texas** in Houston, USAP now dominates the markets in Dallas, Houston, and Austin, giving it an illegal monopoly on anesthesia services. The big questions for stakeholders are whether the suit will succeed, and more broadly, if the Biden administration will make good on its promise to stop the private equity rollups of such medical services, a trend that can raise prices and dictate medical protocols.

At Welsh a spokesperson issued a statement saying the firms “is profoundly disappointed that the FTC has chosen to bring this unwarranted case,” adding, “We are proud of our investment in USAP which has allowed independent anesthesiologists to deliver superior clinical outcomes to underserved populations.” Though anesthesia services rates have gone up, the firm concedes, they “have not exceeded the rate of medical cost inflation for close to ten years.”

To **Marco Fernandez**, M.D., a Chicago, Ill. anesthesiologist who heads a large group practice, the FTC case is welcome news. “It’s been a long time coming,” he tells Health Payer Specialist. “We saw the writing on the wall for the corporate practice of medicine years ago.”

From his perspective, the private equity investors targeting anesthesia practices “squeeze and sell” them, meaning they look at reducing staffing to cut expenses, without offering the anesthesiologists much in return.

“It’s very different than how they treat surgeons,” Fernandez says, “with the surgeons they buy and build.” The investors acquire surgical practices, “give them better technology, more efficiency, and help them grow.” But in anesthesiology, “There’s not a lot of overhead, your biggest expense is staff, so they change your model of care.” Faced with that prospect, Fernandez says, he turned down offers from USAP.” Fernandez was approached by USAP a few years ago with an offer to sell his large practice but after discussing terms over dinner, he rejected the bid.

At **Morgan Lewis** law firm, partners **Ryan Kantor** in Washington and **Zachary Johns** in Philadelphia co-wrote an analysis of the case on the firm’s [site](#). They question whether the “FTC’s novel roll-up theory will survive judicial scrutiny,” in part because Welsh Carson has reduced its stake in the company and currently owns only 23%.



FTC Chair Lina Khan

Further, the lawyers note, since any decision in the case will be subject to review by the **U.S. Court of Appeals for the Fifth Circuit**, known to be “adverse to aggressive agency action” including litigation from the FTC, a win by the agency would likely be overturned.

That does not mean private equity firms, providers, and payers can rest easy, the lawyers write. “It is clear that healthcare acquisitions, including those by private equity firms, will be subject to increased scrutiny by regulators regardless of the size or structure of the transactions,” Kantor and Johns note, “The FTC’s complaint is likely just the beginning.”

FTC Chair **Lina Khan** said as much when she said the agency “will continue to scrutinize and challenge serial acquisitions, roll-ups, and other stealth consolidation schemes that unlawfully undermine fair competition and harm the American public.”