



## **Tennessee Supreme Court – Evidence Cannot Be Used to Contradict Written Contract**

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In a case closely watched by Tennessee's business community, the state's highest court held that trial courts cannot use evidence outside of the written agreement to interpret a contract if that evidence is contrary to the contract's written terms.

The case stems from an agreement BlueCross first made in 1999 with insurance agency Individual HealthCare Specialists, Inc., to allow Individual HealthCare to solicit applications for BlueCross insurance policies. New contracts were entered into by the parties each year during a 10 year business relationship that spelled out the commission rates for sales of new insurance policies and renewals of existing insurance policies.

For years, BlueCross paid Individual HealthCare commissions on renewal policies at the renewal rate in effect when the policy was first issued. In 2011, however, BlueCross cut the commissions paid on renewal policies, basing them on the rate in effect when the policy was renewed, which was substantially less.

Individual HealthCare objected to the change, claiming that BlueCross could not change those rates without Individual HealthCare's permission. Ultimately, the parties' business relationship ended and Individual HealthCare sued BlueCross in Davidson County Chancery Court for breach of contract. The parties disputed, among other things, whether BlueCross had the authority to unilaterally change commission rates on renewal policies.

The trial court considered the oral testimony of three former BlueCross executives who helped negotiate the agency contract. They testified that during the pre-contract negotiations neither party intended for BlueCross to have the authority to unilaterally change the commission rate. The trial court ordered BlueCross to pay Individual HealthCare more than \$2.1 million in damages and legal fees.

The Tennessee Supreme Court acknowledged that Tennessee judges have long used extrinsic evidence of the circumstances existing when parties entered into a contract to interpret what the written words were intended to mean.

However, in the Tennessee Supreme Court's ruling on January 18, 2019, the court determined that this long time practice should end, and the use of evidence outside the written contract was to cease when interpreting what the parties intended the written words to mean. *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tennessee, Inc.*, No. M201502524SCR11CV, 2019 WL 256716, at \*31 (Tenn. Jan. 18, 2019).

The Tennessee Supreme Court found that the language in the contract between BlueCross and Individual HealthCare clearly gave BlueCross the right to unilaterally change all of the commission rates, including the renewal rates. The Court concluded that the trial court erred by using evidence of the parties' pre-contract negotiations to contradict the written words in their agreement and overturned the lower court judgment.

This ruling establishes a new rule under Tennessee law prohibiting the use of extrinsic evidence of pre-contract negotiations to justify an interpretation of the contract that contradicts the contract's written words. Judges in Tennessee must exclusively look at the "four corners" of the signed document to interpret the contract. Therefore, it is extremely important that written contracts are carefully reviewed by the parties and with legal counsel to ensure the terms accurately reflect all aspects of the agreement among the parties. Please contact the attorneys at Holifield Janich Rachal Ferrera, PLLC for assistance with contract drafting.

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