

**General Docket**  
**United States Court of Appeals for the Ninth Circuit**

<b>Court of Appeals Docket #:</b> 05-36153 <b>Nature of Suit:</b> 3410 Antitrust McKenzie-Willamette, et al v. Peacehealth <b>Appeal From:</b> U.S. District Court for Oregon, Portland <b>Fee Status:</b> Paid	<b>Docketed:</b> 12/07/2005 <b>Termed:</b> 09/04/2007															
<b>Case Type Information:</b> 1) civil 2) private 3) null																
<b>Originating Court Information:</b> <b>District:</b> 0979-3 : <a href="#">CV-02-06032-HA</a> <b>Court Reporter:</b> D. W. Apodaca, Court Reporter <b>Trial Judge:</b> Ancer L. Haggerty, Senior District Judge <b>Date Filed:</b> 01/28/2002 <b>Date Order/Judgment:</b> 11/15/2005 <span style="float: right;"><b>Date NOA Filed:</b> 11/21/2005</span>																
<b>Prior Cases:</b> None																
<b>Current Cases:</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 15%; text-align: center;">Lead</th> <th style="width: 15%; text-align: center;">Member</th> <th style="width: 15%; text-align: center;">Start</th> <th style="width: 15%; text-align: center;">End</th> </tr> </thead> <tbody> <tr> <td>Companion</td> <td style="text-align: center;"><a href="#">05-35627</a></td> <td style="text-align: center;">05-36153</td> <td style="text-align: center;">12/07/2005</td> <td></td> </tr> <tr> <td>Cross-Appeal</td> <td style="text-align: center;"><a href="#">05-35627</a> 05-36153</td> <td style="text-align: center;"><a href="#">05-35640</a> <a href="#">05-36202</a></td> <td style="text-align: center;">01/10/2006 12/22/2005</td> <td></td> </tr> </tbody> </table>			Lead	Member	Start	End	Companion	<a href="#">05-35627</a>	05-36153	12/07/2005		Cross-Appeal	<a href="#">05-35627</a> 05-36153	<a href="#">05-35640</a> <a href="#">05-36202</a>	01/10/2006 12/22/2005	
	Lead	Member	Start	End												
Companion	<a href="#">05-35627</a>	05-36153	12/07/2005													
Cross-Appeal	<a href="#">05-35627</a> 05-36153	<a href="#">05-35640</a> <a href="#">05-36202</a>	01/10/2006 12/22/2005													

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v.

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MCKENZIE-WILLAMETTE HOSPITAL,

Plaintiff - Appellee,

v.

PEACEHEALTH, a Washington State nonprofit corporation,

Defendant - Appellant.

12/07/2005	<input type="checkbox"/>	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): n. setting schedule as follows: appellant's designation of RT is due 12/1/05; appellee's designation of RT is due 12/12/05; appellant shall order transcript by 12/21/05; court reporter shall file transcript in DC by 1/23/06; certificate of record shall be filed by 1/30/06 ; appellant's opening brief is due 3/9/06; appellees' brief is due 4/10/06; appellants' reply brief is due 4/24/06; [05-36153] (GR)
12/07/2005	<input type="checkbox"/>	3	Filed Adam J. Gromfin in 05-36153 Civil Appeals Docketing Statement served on 11/21/05 (to CONFATT) [05-36153] [05-36153] (GR)
12/07/2005	<input type="checkbox"/>	4	filed notice of representation of Peter H. Glade, M. Lawrence Popofsky, Heather N. Leal, Adam J. Gromfin, James H. Sneed and Linda M. Holleran as counsel for aplt [05-36153] (GR)
12/07/2005	<input type="checkbox"/>	6	Received Appellant Peacehealth notice of non-designation of reporter's transcript; served on 11/30/05 (Casefile) [05-36153] (GV)
12/12/2005	<input type="checkbox"/>	5	Received Adam J. Gromfin for Appellant Peacehealth letter dated 11/30/05 re: inquiries about the appeal ... (Casefile) [05-36153] (GV)
12/21/2005	<input type="checkbox"/>	8	Received Appellant Peacehealth notice of non-designation of reporter's transcript; served on 12/21/05 (Casefile) [05-36153] (GV)
12/22/2005	<input type="checkbox"/>	7	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): n. setting cross appeal briefing schedule as follows: first cross-appeal brief is due 3/9/06 (Peacehealth); second cross-appeal brief is due 4/18/06 (McKenzie); third cross-appeal brief is due 5/18/06 (Peacehealth); optional cross-appeal reply brief is due 6/1/06 [05-36202, 05-36153] (GR)
02/06/2006	<input type="checkbox"/>	9	Received Aptl's amended notice of representation; served on 1/30/06 (No Action Necessary/Casefile) [05-36153] (GV)
02/06/2006	<input type="checkbox"/>	10	Received copy of amended notice of appeal from district court (MOATT) (GV)
03/07/2006	<input type="checkbox"/>	11	Filed original & 15 copies Def Peacehealth's first brief on cross-appeal (Informal: n) of 5 pages & 5 Excs.; served on 3/7/06 [05-36153, 05-36202] (GV)
03/10/2006	<input type="checkbox"/>	12	Filed certificate of record on appeal RT filed in DC None Requested. (CASEFILE) [05-36153, 05-36202] (RT)
04/10/2006	<input type="checkbox"/>	13	Filed original & 15 copies Pla McKenzie-Willamette's second brief on cross-appeal (Informal: n) of 17 pages 5 Supplemental Excs.; served on 4/7/06 [05-36153, 05-36202] (GV)
05/22/2006	<input type="checkbox"/>	14	Filed original & 15 copies Def Peacehealth's third brief on cross-appeal (Informal: n) of 14 pages; served on 5/18/06 [05-36153, 05-36202] (GV)
12/13/2006	<input type="checkbox"/>	18	Received letter from csl for McKenzie-Willamette Hospital, Thomas M. Triplett, unavailable 1/30-2/20/07. CAL [05-36153, 05-35627, 05-35640, 05-36202] (CW)
01/16/2007	<input type="checkbox"/>	19	Calendar check performed [05-35627, 05-35640, 05-36153, 05-36202] (TH)
01/26/2007	<input type="checkbox"/>	20	CALENDARED: Portland March 5 2007 9:30 a.m. Courtroom 2nd Floor ***Moved to March 6 2007*** [05-35627, 05-35640, 05-36153, 05-36202] (TH)
02/06/2007	<input type="checkbox"/>	21	Filed order (Deputy Clerk: jf) The mtn of Verizon Communications Inc. and Caterpillar Inc. for leave to file brief of amici curiae is granted. The Clerk is directed to file the brief that was received on 10/5/05. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
02/23/2007	<input type="checkbox"/>	22	Filed order (Deputy Clerk: hh) The above captioned case shall be set for oral argument on Tuesday, March 6, 2007, in Portland, Oregon. Each side shall be allotted thirty minutes for argument. (phoned/faxed counsel for parties 3:50 pm) [05-35627, 05-35640, 05-36153, 05-36202] (RT)
03/06/2007	<input type="checkbox"/>	23	ARGUED AND SUBMITTED TO Ronald M. GOULD, Richard A. PAEZ, Johnnie B. RAWLINSON [05-35627, 05-35640, 05-36153, 05-36202] (ME)
03/20/2007	<input type="checkbox"/>	25	Filed order ( Ronald M. GOULD, Richard A. PAEZ, Johnnie B. RAWLINSON, ): The court invites supplemental briefs by any amicus curiae addressing the following issue raised in this appeal: Whether a plaintiff who seeks to establish the predatory or anticompetitive conduct element of an attempted monopolization claim under <input type="checkbox"/> 2 of the Sherman Act by showing that the defendant offered bundled discounts to the defendant's customers must prove that the defendant's prices were below an appropriate measure of the defendant's costs. If so, what is the appropriate measure of costs and how should the trial court instruct the jury on the matter of costs? If not, what standard should the trial court instruct the jury to use to determine whether the bundled discounts are predatory or anticompetitive? Any briefs responding to this order shall be filed no later than thirty days from the filed date of this order. All briefs shall comply with the page or type-volume limitations set forth in Federal Rules of Appellate Procedure 29(d) and 3288 CASCADE HEALTH v. PEACEHEALTH 32(a)(7). Any person or entity wishing to file a brief as an amicus curiae in response to this order is granted leave to do so pursuant to Federal Rule of Appellate Procedure 29(a). (KKW)
04/10/2007	<input type="checkbox"/>	57	Received letter dated 04/10/2008 re: Request the issuance of mandate be withdrawn. [05-35627, 05-36153, 05-35640] (SW)

- 04/19/2007  26 Filed original and 15 copies Law Professors (Daniel A. Crane, Thomas A. Lambert, Thomas D. Morgan, D. daniel Sokol, Richard C. Squire ) brief of 20 pages ;served on 4/18/07 PANEL. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 04/19/2007  27 Filed Cascade Health additional citations, served on 4/18/07 PANEL. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 04/19/2007  28 Filed original and 15 copies PBTC and Visa U.S.A. Inc. in s brief of ;served on 4/19/07 PANEL. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 04/19/2007  29 Filed original and 4 copies Microsoft Corp. joinder's brief to that of Pacific Bell and Visa brief of 1 pages ;served on 4/19/07 PANEL. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 04/20/2007  30 Filed original and 15 copies Pacificsource Health brief of 15 pages ;served on 4/19/07 PANEL. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 04/20/2007  31 Received Amicus AAI , CFA in 05-36202, 05-36153's brief in 15 copies of 23 pages; deficient: footnotes too small; served on 4/19/07 Notified counsel. PANEL. [05-36153, 05-35627, 05-35640, 05-36202] (KKW)
- 04/23/2007  33 Received proof of service from Microsoft Corpt. re: joinder to brief previously filed. nan/CASEFILE. (KKW)
- 04/24/2007  34 Received Amicus AAI, Amicus CFA, Consumer's Union in 05-36153, 05-36202, satisfaction of (major) brief deficiency, by submitting corrected brief served on 4/23/07 [05-36153, 05-36202] (KKW)
- 04/24/2007  35 Filed original and 15 copies AAI, CFA , Consumer's Union in 05-36153, 05-36202, brief of 29 pages ;served on 4/23/07 PANEL. [05-36153, 05-36202] (KKW)
- 09/04/2007  37 Filed Opinion. In No. 05-35640 VACATE the judgment in favor of Mckenzie and REMAND for further proceedings. In No. 05-35627, VACATE the summary judgment in favor of PeaceHealth and REMAND for further proceedings. In No. 05-36153, VACATE the district court's order awarding attorneys' fees and costs to McKenzie. In No. 05-36202, DISMISS the appeal as moot. Each party shall bear its own costs on appeal. ( Terminated on the Merits after Oral Hearing; Remanded; Written, Signed, Published. Ronald M. GOULD; Richard A. PAEZ; Johnnie B. RAWLINSON. ) Each party sahl bear its own costs on appeal. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 09/18/2007  38 [6291907] Filed original and 50 copies plaintiff McKenzie-Willamette petition for panel rehearing and petition for rehearing en banc 15 p.pages, served on 9/17/07 PANEL AND ALL ACTIVE JUDGES AND ANY INTERESTED SENIOR JUDGES [05-35627, 05-35640, 05-36153, 05-36202] (GR)
- 09/24/2007  39 Filed order ( Ronald M. GOULD, ): Defendant-aplt Peacehealth is ordered to file a response to plaintiff/ape McKenzie-Willamette Hospital's petition for panel rhrg and pet for rhg en banc. The response must be filed 21 days from the date of this order. FAXED PARTIES [05-35627, 05-35640, 05-36153, 05-36202] (GR)
- 10/10/2007  41 Filed Appellee Peacehealth's response opposing petition for enbanc rehearing served on 10/10/07 [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 02/01/2008  42 Orig. certification order and all relevant briefs and excerpts of record, along with a certified copy of the docket report, have been transmitted to OR Supreme Court under official seal of this court. Served on: 2/1/08 [05-35627, 05-35640, 05-36153, 05-36202] (RP)
- 02/01/2008  43 Filed order ( Ronald M. GOULD, Richard A. PAEZ, Johnnie B. RAWLINSON, ): The petition for Rehearing is granted in part, as specifically set forth in the separate published order Amending Opinion. Apart from those specified amendments, the Petition for Rehearing is DENIED....The Pettion for Rehearing En Banc is denied. in 05-35627, 05-35640, 05-36153, 05-36202 [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 02/01/2008  44 Filed order ( Ronald M. GOULD, Richard A. PAEZ, Johnnie B. RAWLINSON, ): We certified question on Oregon price discrimination law to the Oregon Supreme Court. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 02/01/2008  45 OPINION FILED ( Ronald M. GOULD, Richard A. PAEZ, Johnnie B. RAWLINSON, ): In 05-35640 we vacate the judgment in favor of Mckenzie on its monopolization and tortious interference claims. We certify a question to the Oregon Supreme Court on the price discrimination claim. In No. 05-35627 we VACATE the summary judgment in favor of Peace-Health. In No. 05-36153, we VACATE the district's order awarding attorneys' fees and costs to McKenzie. In No. 05-36202, we DISMISS the appeal as moot. Each party shall bear its own costs on appeal. We STAY further proceedings pending resolution of the price discrimination question certified to the Oregon Supreme Court. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 02/12/2008  46 Filed original and 3 copies Appellee Peacehealth petition for rehearing, (PANEL) 9 p.pages, served on 2/12/08 PANEL. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 02/14/2008  47 Filed order ( Ronald M. GOULD, ): Within 21 days, platiff shall file a response to the petition for rehearing. (phoned csl) [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
- 02/25/2008  48 Filed McKenzie-Willamette mtn for extension of time to file response to Peacehealths Petition for rehearing until 2/20/08 served on 2/22/08 PANEL. (KKW)
- 02/25/2008  50 Received order from The Supreme Court of the State of Oregon accepting certified question. PANEL. [05-35627, 05-35640, 05-36153, 05-36202] (KKW)

02/26/2008	<input type="checkbox"/>	49	Filed order ( Ronald M. GOULD, Richard A. PAEZ, Johnnie B. RAWLINSON, ): Plaintiff's reqes for an extension of time to 3/20/08 in which to file its reponse to Defendant's Petition for Rehearing is granted. (phoned csIs) [05-35627, 05-35640, 05-36153, 05-36202] (KKW)
03/20/2008	<input type="checkbox"/>	<a href="#">51</a> 1 pg, 133.89 KB	Filed original and 4 copies of Appellant McKenzie-Willamette Hospital in 05-36202 response to Petition for rehearing. 12 pages. Served on 03/19/2008. () [05-35627, 05-36153, 05-36202, 05-35640] (SW)
03/24/2008	<input type="checkbox"/>	53	Received Appellant Cascade Health Solutions fka McKenzie-Williamette Hospital and Appellee Peacehealth in 05-35627, Appellant Peacehealth and Appellee McKenzie-Willamette Hospital in 05-35640, 05-36153, Appellant McKenzie-Willamette Hospital and Appellee Peacehealth in 05-36202 Joint Designation of Record, [05-35627, 05-36153, 05-36202, 05-35640] (CW)
03/25/2008	<input type="checkbox"/>	<a href="#">52</a> 3 pg, 25.34 KB	Filed order (RONALD M. GOULD, RICHARD A. PAEZ and JOHNNIE B. RAWLINSON): PeaceHealth's petition for rehearing is DENIED. 05-35627, 05-36153, 05-36202, 05-35640] (AF)
04/03/2008	<input type="checkbox"/>	<a href="#">54</a> 2 pg, 29.01 KB	MANDATE ISSUED. RMG, RAP and JBR [05-35627, 05-36153, 05-36202, 05-35640] (SW)
04/07/2008	<input type="checkbox"/>	55	Mail returned on 04/02/2008 addressed to David A. Balto, Esq. for CFA, AAI and Consumer's Union in 05-36153, re: 3.25.08 order. Resending to: no other alternate address exists for atty (CASEFILES). [05-35627, 05-36153, 05-35640] (RC)
04/08/2008	<input type="checkbox"/>	56	Filed Appellant Cascade Health Solutions fka McKenzie-Williamette Hospital, Appellant Peacehealth joint status report, served on 04/08/2008 [05-35627, 05-36153, 05-36202, 05-35640] panel (CW)
04/11/2008	<input type="checkbox"/>	<a href="#">59</a> 2 pg, 27.96 KB	Filed clerk order (Deputy Clerk:SW): The mandate was issued prematurely and is hereby recalled. [05-35627, 05-36153, 05-36202, 05-35640] (SW)
04/14/2008	<input type="checkbox"/>	58	Deleted Incorrect Docket Entry (SW)
08/25/2008	<input type="checkbox"/>	60	Filed Appellant Peacehealth in 05-35640, 05-36153 motion to vacate certification and for mandate. Served on 08/25/2008. [05-35627, 05-36153, 05-36202, 05-35640] (CW)
09/03/2008	<input type="checkbox"/>	<a href="#">61</a> 4 pg, 33.92 KB	Filed order FOR PUBLICATION (RONALD M. GOULD, RICHARD A. PAEZ and JOHNNIE B. RAWLINSON) On August 25, 2008, this Court was advised that the parties have resolved the dispute that gave rise to this appeal. In light of this resolution, the motion to vacate certification and for mandate is GRANTED. Our prior Order Certifying Question To The Supreme Court Of Oregon is hereby VACATED. The question certified to the Oregon Supreme Court shall be withdrawn and our clerk of court shall transmit a copy of this order to the Oregon Supreme Court with advice that we withdraw our certified question which is now moot in light of the parties' resolution of the appeal. Also, the clerk of our court is instructed to issue the mandate in this case. [05-35627, 05-36153, 05-36202, 05-35640] (RP)
09/03/2008	<input type="checkbox"/>	<a href="#">62</a> 2 pg, 27.98 KB	MANDATE ISSUED.(RMG, RAP and JBR) [05-35627, 05-36153] (SW)
09/12/2008	<input type="checkbox"/>	64	Received a copy of State Court order re: Dismissal. [05-35627, 05-36153, 05-36202, 05-35640] (Faxed to PANEL) (TB)
09/22/2008	<input type="checkbox"/>	63	Received party Stipulation Regarding Missing Portions of Record on Review submitted in Supreme Court of the State of Oregon. (CASEFILES). [05-35627, 05-36153, 05-36202, 05-35640] (TB)



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- Documents and Docket Summary
- Documents Only

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Selected Pages:  Selected Size:

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