

In the lawsuits of the *Federal Trade Commission and the State of Idaho v. St. Luke's Health System, Ltd. and Saltzer Medical Group, P.A.*, and the *Saint Alphonsus Medical Center - Nampa, Inc.; Treasure Valley Hospital Limited Partnership; Saint Alphonsus Health System, Inc.; Saint Alphonsus Regional Medical Center, Inc. v. St. Luke's Health System, Ltd.*, Mr. Brown successfully intervened on behalf of a coalition of several media entities consisting of Idaho Statesman Publishing, LLC (*The Idaho Statesman*); *The Associated Press*; The Idaho Press Club, Inc.; *The Idaho-Press Tribune* (Nampa) owned by Idaho Press-Tribune LLC; and *The Times-News* (Twin Falls) owned by Lee Publications, Inc., who were later joined by the *Lewiston Tribune* and *Moscow-Pullman Daily News* owned by TPC Holdings Inc. The two lawsuits were consolidated under the case number of Case 1:12-cv-00560-BLW, U.S. District Court for the District of Idaho.

The lawsuits involved anti-trust issues concerning the purchase by St. Luke's Health System of the Saltzer Medical Group. A discovery stipulation was agreed upon by the parties which became a Protective Order allowing the parties to designate what would be treated as AEO (Attorney Eyes Only) documents. As is typical with discovery stipulations and orders, there was no filtering by the lower court as to what was or was not going to be designated as an AEO document. A few days before trial, the discovery stipulation and the order were transformed into Pretrial Orders which allowed for the AEO documents to be used at trial as sealed exhibits. This triggered redacted depositions and the closure of courtroom proceedings when any reference was to be made in regard to an AEO document during testimony.

The trial commenced on September 23, 2013. Instead of a few redacted documents or even a few unredacted documents being used in evidence, hundreds and thousands of documents were being introduced and the public and the press were being escorted from the courtroom on a repeated basis. The U.S. District Judge allowed the intervention by the media but denied their request to unseal the many exhibits and depositions used thus far. The Judge also denied the request to allow the media and the public full access to the trial proceedings. On behalf of the media, Mr. Brown then filed a Petition for Writ of Mandamus with the Ninth Circuit Court of Appeals.

The biggest concern that the media representatives had was that the District Court had not applied the "compelling reasons" test on a document-by-document basis and, thus, had not acted as a "gatekeeper" as to First Amendment concerns, which lead to extensive portions of the trial was conducted behind closed doors.

After filing a Petition for a Writ of Mandamus with the Ninth Circuit Court, (No. 13-73931) the Court entered an Order on January 16, 2014, stating the "petition for a writ of mandamus raises issues that warrant a response." The Court mandated that the District Court make a determination as to whether "compelling reasons exist for the continued sealing of trial materials within 120 days." The Ninth Circuit made it clear that its decision applies to "the testimony and exhibits under seal."

On July 7, 2014, the Idaho U.S. District Judge entered a Memorandum Decision and Order which unsealed a great many of the documents, exhibits, and trial testimony which were sealed during the trial upon the grounds that they did not meet the requisite requirements as mandated in Ninth Circuit case law. In doing so, the District Judge found that a significant majority of the transcripts need not be redacted or sealed, and then unsealed over 500 exhibits that had previously been sealed.