

# PUBLICATION

---

## Pennsylvania Vision Insurer Accused of Anticompetitive Conduct

July 06, 2017

**A group of independent Pennsylvania optometrists and ophthalmologists recently filed a proposed class action antitrust case against vision insurer Davis Vision, alleging that Davis Vision's in-network contractual provisions impose unreasonable, anticompetitive restrictions on plaintiffs' ability to best serve their patients. The action, *Frank v. Davis Vision et al.*, was filed in the Eastern District of Pennsylvania on June 12.**

In the action, the plaintiffs contend that Davis Vision (a subsidiary of health insurer Highmark), requires that the plaintiffs "steer" their patients that need lenses and eyeglass frames to a lab that is affiliated with Davis Vision, notwithstanding that, absent the restriction – at least according to plaintiffs – their patients could get lenses and frames from other, unaffiliated sources for lower prices. Plaintiffs also alleged that Davis Vision provides vision insurance to at least 65 percent of all insured Pennsylvania eye care patients. Plaintiffs also contend that these restrictions are not imposed upon "big box" retailers in Davis Vision's network, including Walmart and Costco, because "presumably they may possess countervailing market or negotiating power – unlike [plaintiffs], who are at Davis Vision's mercy."

Specifically, plaintiffs' complaint includes 11 separate claims, including both per se and rule of reason claims under Section 1 of the Sherman Act, a claim under Section 2 of the Sherman Act for unlawful monopolization/monopsonization, claims under the Pennsylvania common law for both unlawful conspiracy and monopolization/monopsonization, breach of the covenant of good faith and fair dealing, and unjust enrichment.

Notably, the Pennsylvania action comes less than a year after a ruling in a similar case against Davis Vision that was filed in the Central District of Illinois, *Acuity Optical Labs v Davis Vision*. In that case, in an August 23, 2016 decision, the Court granted Davis Vision summary judgment as to the plaintiffs' per se antitrust claims, finding that the restriction was essentially a vertical restraint, not a horizontal restraint, but refused to dismiss the rule of reason claims until the plaintiffs were afforded an opportunity to take additional discovery. However, shortly thereafter, the case was settled on confidential terms.

The direction that this new case will take is, at least for now, uncertain, with Davis Vision having not even yet responded to plaintiffs' complaint. Stay tuned.