

## Crowell & Moring to Withdraw from Humana Litigation Amid Allegations of 'Betrayal' by Walgreens



Crowell & Moring, a prominent law firm, has decided to withdraw from representing health insurer Humana in an ongoing litigation case after facing allegations of "unethical side-switching" from its opponent, Walgreens. The withdrawal was disclosed in a brief filed on June 12, in which Crowell argued that there was no conflict of interest in its representation of Humana in litigation against Walgreens. This development has garnered coverage from Law360, a reputable legal news source.

The accusations of "betrayal" stemmed from a petition filed by Walgreens seeking to vacate a \$642 million arbitration award that Humana had obtained against the pharmacy chain for overcharges. According to Walgreens, Crowell had previously provided legal advice to them in 2008 and 2009 regarding the impact of a pharmacy savings club on the reported "usual and customary" prices for insurer reimbursement. However, in 2017, Crowell presented a "pitch" document to Humana, arguing that Walgreens and other pharmacies had overcharged the insurer by not treating the savings club prices as usual and customary. Humana subsequently engaged Crowell to pursue litigation against Walgreens based on these allegations.

In the June 12 brief, Humana contended that Walgreens had failed to file a motion to disqualify Crowell at the beginning of the arbitration process, instead holding the conflict claims as a strategic move to use in case of an unfavorable outcome. Humana argued that such gamesmanship should not be permitted and that Walgreens had waived its right to seek disqualification due to the delayed motion. The brief further stated that several courts have held that a failure to timely move for disqualification also waives any breach of fiduciary duty claims. Humana asserted that the same principle should preclude Walgreens from attempting to vacate the arbitral award based on Crowell's alleged conflict.

Additionally, Walgreens filed a separate lawsuit against Crowell in the superior court of Washington, D.C., alleging that the law firm had breached its fiduciary duty to Walgreens. The brief filed by Humana in response to the conflict claims was not submitted by Crowell lawyers directly. However, a footnote in the brief addressed an issue raised by the judge overseeing the arbitration award litigation, U.S. District Judge Ana C. Reyes of the District of Columbia.

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During a recent hearing, Judge Reyes expressed her interpretation of a clause in Crowell's engagement letter with Humana, suggesting that the firm's fight to remain in the litigation might be linked to potential forfeiture of fees upon withdrawal. The footnote in Humana's brief clarified that neither Humana nor Crowell believed that the two paragraphs in question applied to the present situation. Furthermore, they stated that these provisions did not pose any financial disincentive or impediment to Crowell's withdrawal from the case.

Crowell elaborated on the issue in an exhibit attached to the brief to provide further clarity, addressing the questions raised during the court hearing. The law firm clarified that the paragraphs mentioned by Judge Reyes specified that Humana would not owe fees if Crowell withdrew after determining that the matter lacked merit or if a conflict arose between Humana and another health plan represented by Crowell, necessitating withdrawal. Crowell affirmed that neither of these circumstances was relevant or served as a basis for a conflict in the current situation.

The withdrawal of Crowell & Moring from representing Humana in the ongoing litigation against Walgreens marks a significant development in the case. The allegations of "unethical side-switching" and "betrayal" have raised questions about the ethical obligations of law firms and the potential impact on the legal proceedings. As the matter progresses, further legal analysis and decisions will shed light on the implications of Crowell's withdrawal and the overall outcome of the Humana versus Walgreens litigation.

