

## News

## Vorys Wins 7-2 at U.S. Supreme Court in *Marietta Memorial Hospital Employee Health Benefit Plan v. DaVita Inc.*

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On June 21, 2022, the U.S. Supreme Court released its [decision](#) in *Marietta Memorial Hospital Employee Health Benefit Plan v. DaVita Inc.* siding with petitioners (our side) and our client Marietta Memorial Hospital, its employee group health plan and health plan third-party administrator, for which Vorys argued the case. The Court found that the group health plan does not impermissibly “differentiate in the benefits it provides’ to individuals with end-stage renal disease or ‘take into account’ whether an individual is entitled to or eligible for Medicare.” The Supreme Court decision overturned a split decision by the U. S. Court of Appeals for the Sixth Circuit.

Vorys Partner and Appellate Group Co-Chair John Kulewicz argued the case before the U.S. Supreme Court. On behalf of the petitioners, he urged the Supreme Court to uphold the terms of the group health plan, which keep the cost of dialysis lower for the patient and maximize the resources that are available to cover other health care needs of plan members. The rate being paid by the group health plan in this case was tied to the current Medicare rate for the same services due to unique market conditions. Vorys argued that evidence in the case suggests that DaVita is being paid fairly and adequately under the plan for the services rendered, albeit at a rate lower than DaVita sought in order to maximize its own profit margin through, effectively, private health plan subsidies. The Supreme Court agreed that the group health plan’s terms were in compliance with the law.

Our litigation team of partners Rodney Holaday and Brent Craft, and associates Emily St. Cyr and Erica Rodriguez was able to rely on attorneys with a combination of industry and trial experience including insurance law (partner Anthony Spina), as well as employee benefit plan counseling and health care law (partner Jolie Havens); and appellate law (partners John Kulewicz and Dan Shuey and counsel Evelyn Lundberg Stratton). This team effort allowed us to deliver a smart, effective and strong argument to support our client and all of the petitioners in their efforts

**Case Background:**

The case began on December 19, 2018, when DaVita, a commercial dialysis provider, sued Marietta Memorial Hospital, a small community hospital located in Marietta, Ohio; the Hospital's medical plan, the Marietta Memorial Hospital Employee Health Benefit Plan; and the Hospital's third-party administrator, Medical Benefits Mutual Life Insurance Company, in the United States District Court for the Southern District of Ohio. DaVita, a large, for-profit dialysis provider, alleged violations of the Medicare Secondary Payer Act (MSPA) and Employee Retirement Income Security Act (ERISA). The Defendants, represented by Vorys, filed a motion to dismiss, which the District Court granted.

DaVita appealed to the United States Court of Appeals for the Sixth Circuit, which disagreed with the District Court decision. Marietta appealed the district court decision to the U.S. Supreme Court.

On November 5, 2021, the U.S. Supreme Court granted a writ of certiorari, agreeing to hear the case. In recognition of the importance of the case, the office of the Solicitor General of the United States filed an amicus brief, joined in the oral argument and urged the U.S. Supreme Court to rule in favor of the Marietta Memorial Hospital, its group health plan and the third-party administrator. Oral arguments took place on March 1, 2022.

**About Vorys:**

Vorys was established in 1909 with just four attorneys and has grown to nearly 375 attorneys in eight offices in Ohio, Washington, D.C., Texas, Pennsylvania and California. The Vorys appellate ranks include a former Supreme Court of Ohio Justice, more than 15 lawyers who served as law clerks on appellate courts and nearly 40 lawyers whose clerkships with trial judges have given them unique awareness of potential appellate issues.

Vorys currently ranks as one of the 200 largest law firms in the United States according to *American Lawyer* magazine.