

# Consolidation in the Healthcare Marketplace: The Idaho Experience



Reforming States Group  
October 14, 2015

# Healthcare Costs are a Big Deal

- 17.2% of Gross Domestic Product of U.S.
- In English, this is \$2.8 trillion dollars per year
- This is \$8,915 per person
  - Cal. Healthcare Foundation, Health Care Costs 101



# St. Luke's – Saltzer Antitrust Litigation

*Federal Trade Commission & State of Idaho et al. v. St. Luke's Health System, Ltd. & Saltzer Medical Group P.A.*

*2015 WL 407446 (2-10-15 Ninth Circuit)*

*2014 WL 525540 (1-24-14 D.Idaho)*

# Geographic Market Determination is Critical

- The relevant market is a construct of:
  - the geographic market (*where* do parties compete) and
  - product market (*what* are the competing products or services).
- No major dispute in *St. Luke's* that Primary Care Physician (PCP) Services was a proper *product* market.

# Patients Strongly Prefer Access to PCPs Close to Home



157

12 regulatory standards, you have to meet the market  
 13 acceptability standards. In other words, what do  
 14 consumers want. **And my experience with past plans is  
 15 that consumers would like very much and they value  
 16 having their primary physician close to home, within  
 17 a few miles, 10 to five minutes.**

15 that consumers would like very much and they value  
 16 having their primary physician close to home, within  
 17 a few miles, 10 to five minutes.

18 So there's kind of a market acceptability  
 19 that we are trying to achieve and we also have to  
 20 meet the minimum regulatory standards.

21 Q. SelectHealth makes a list of the providers  
 22 in the BrightPath network available on its website to  
 23 members and the public at large, correct?

24 A. Correct.

25 Q. And a person can search that list of



Patricia Richards,  
 CEO of  
 SelectHealth



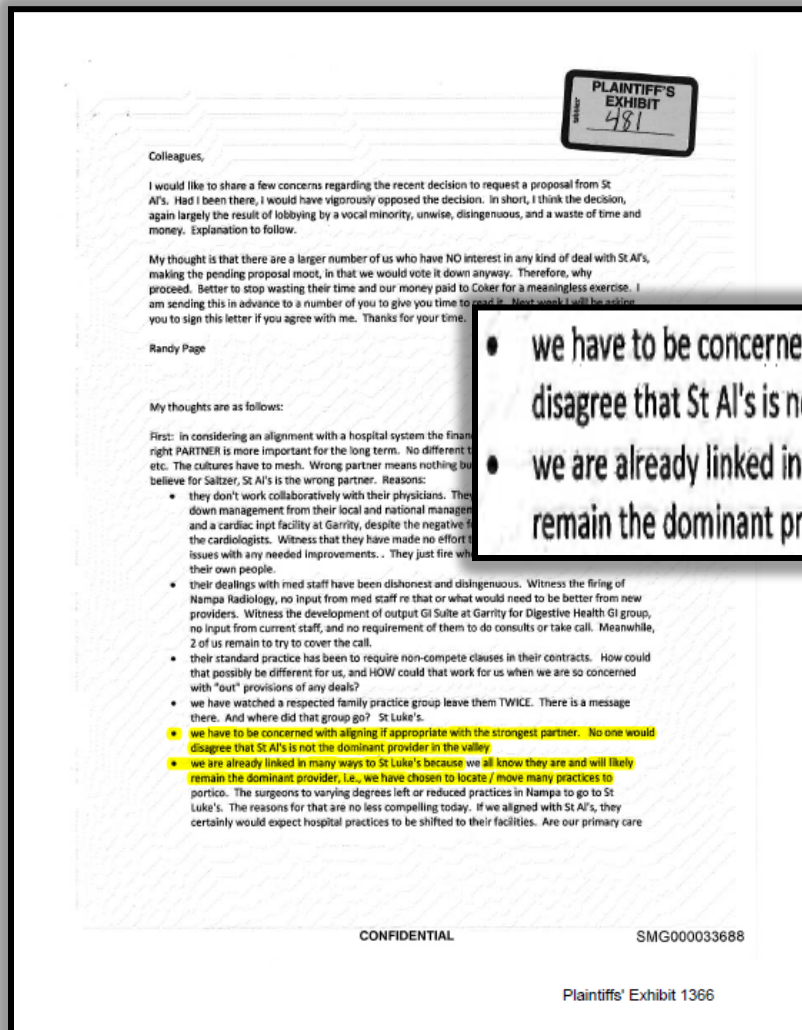
selecthealth.

Richards Dep Tr. at 157

# St. Luke's Idaho Presence



# Background--St. Luke's is a “Dominant” Healthcare Provider



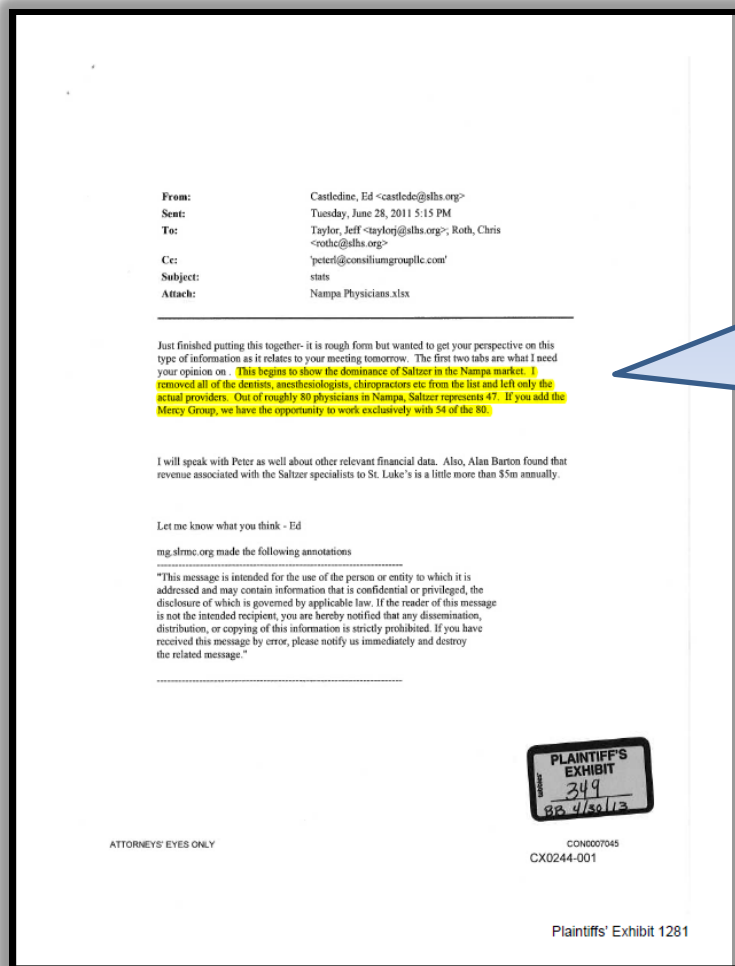
- we have to be concerned with aligning if appropriate with the strongest partner. No one would disagree that St AI's is not the dominant provider in the valley
- we are already linked in many ways to St Luke's because we all know they are and will likely remain the dominant provider, i.e., we have chosen to locate / move many practices to



**Dr. Randell Page,**  
**Saltzer's Contracts**  
**Committee Chair**



# Background—Saltzer is a “Dominant” Healthcare Provider



**“This begins to show the *dominance of Saltzer in the Nampa market. . . . Out of roughly 80 physicians in Nampa, Saltzer represents 47. If you add the Mercy Group, we have the opportunity to work exclusively with 54 of the 80.*”**



**Ed Castledine,  
Director of Business  
Development**



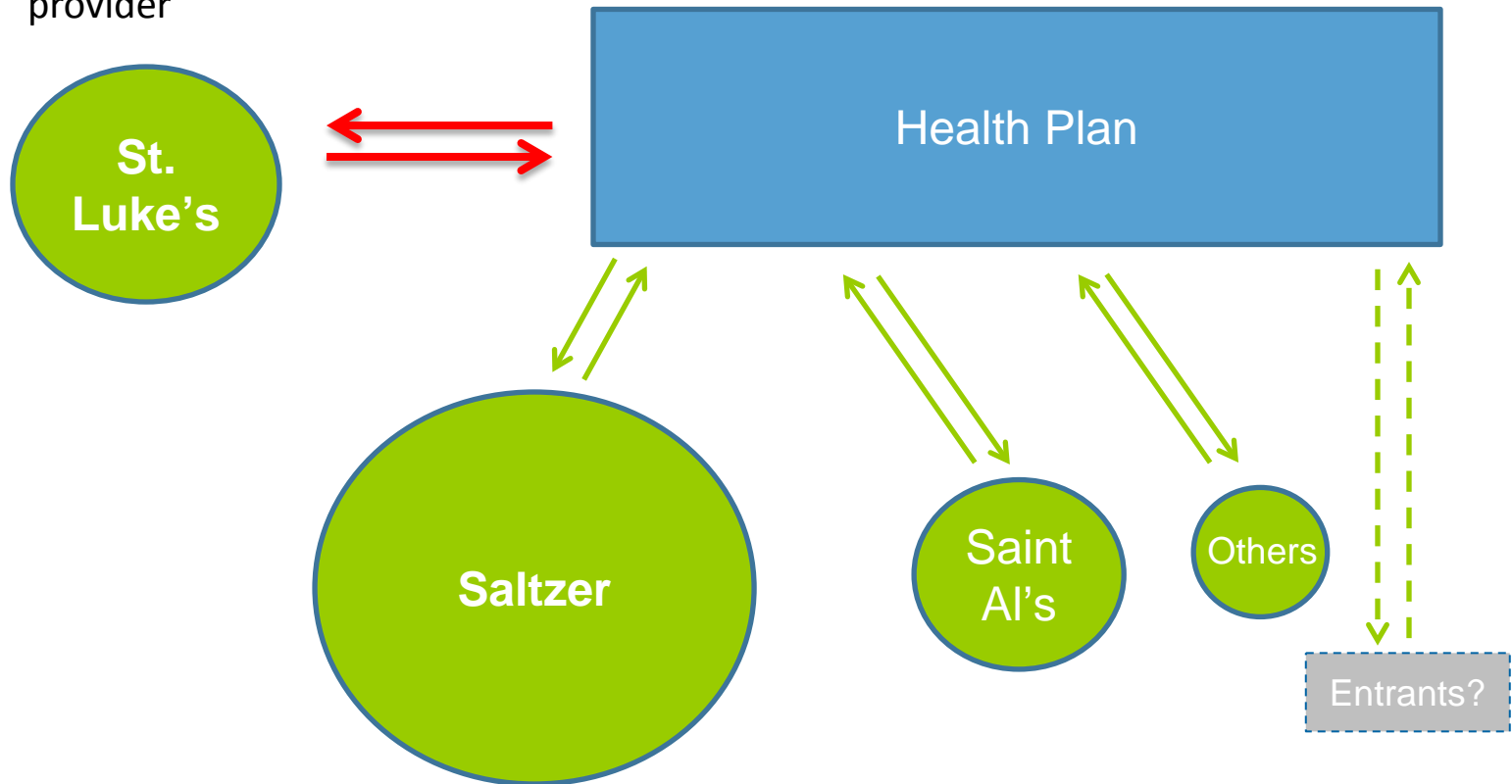


# Background—The Acquisition



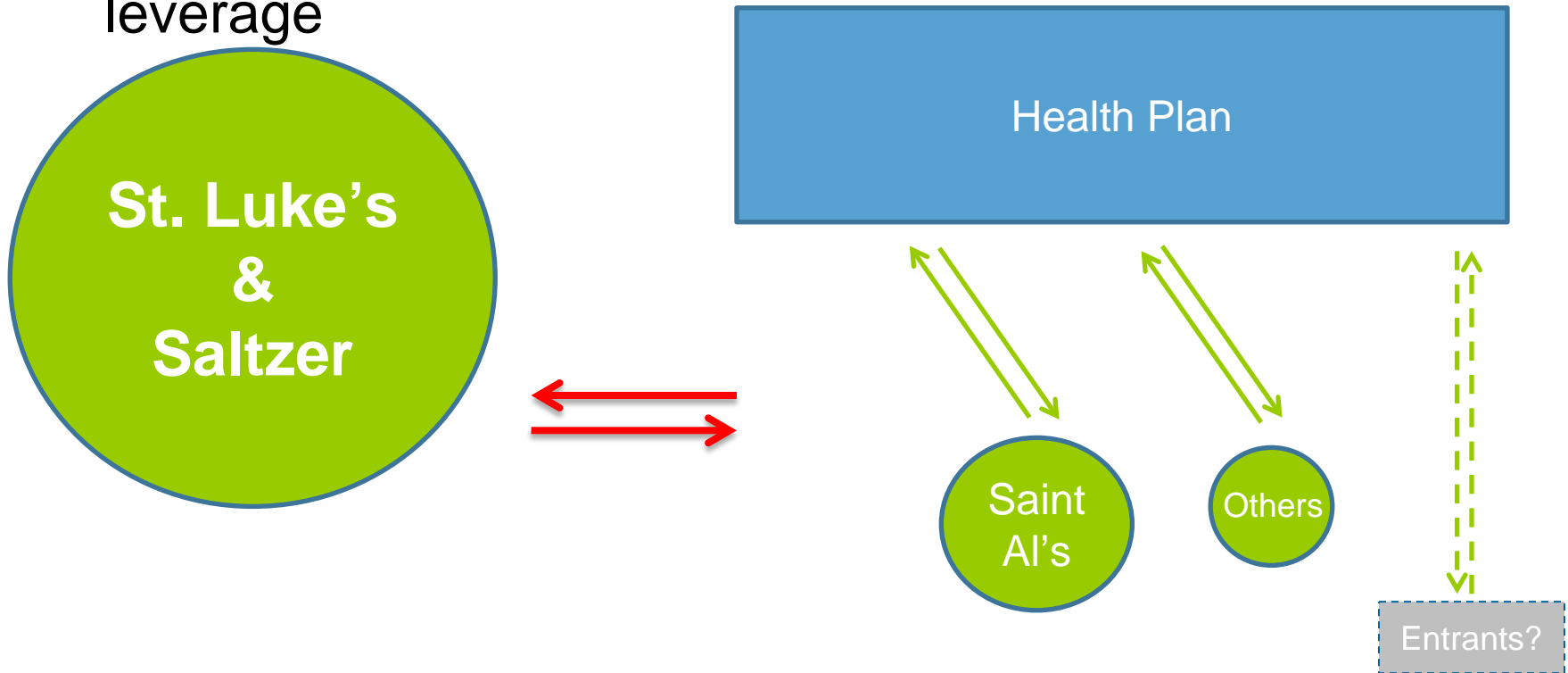
# Bargaining leverage depends on substitute physician groups in the market

- Before the Acquisition: Saltzer PCPs offer an attractive substitute for St. Luke's PCPs, and vice versa
  - The health plan thus has a credible “outside option” when it negotiates with each provider



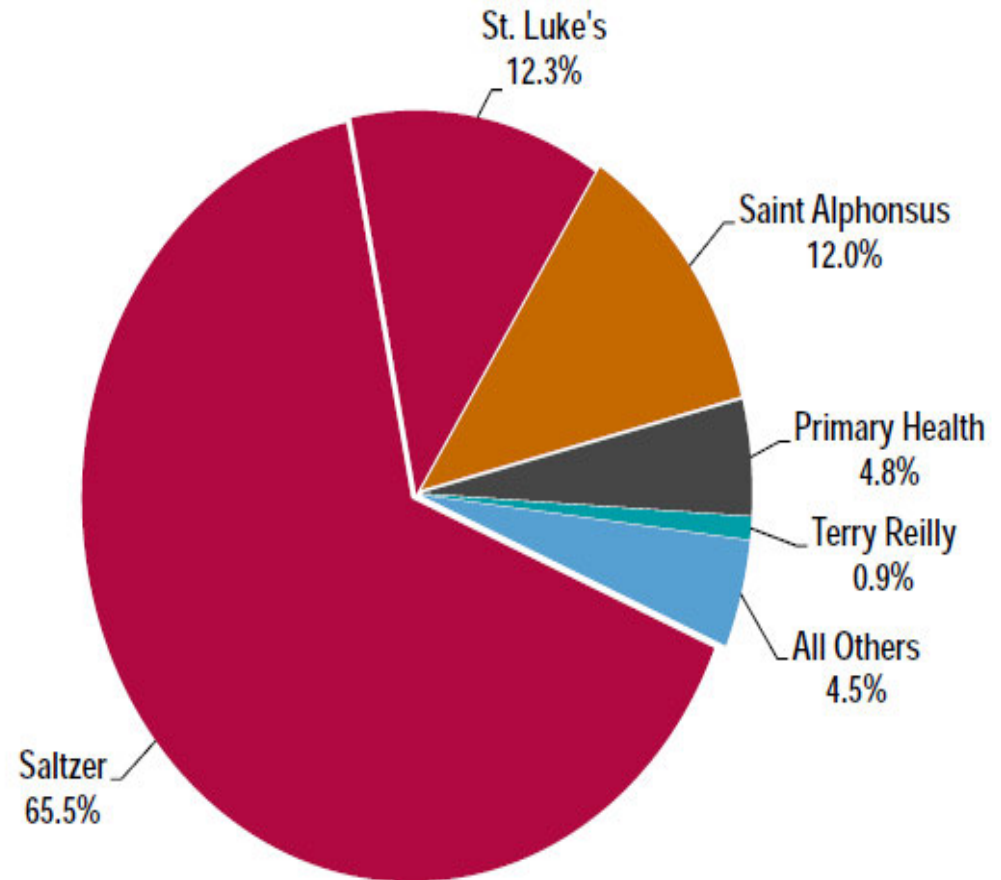
# Bargaining leverage depends on substitute physician groups in the market

- After the Acquisition: the health plan loses a credible outside option, and the provider gains negotiating leverage

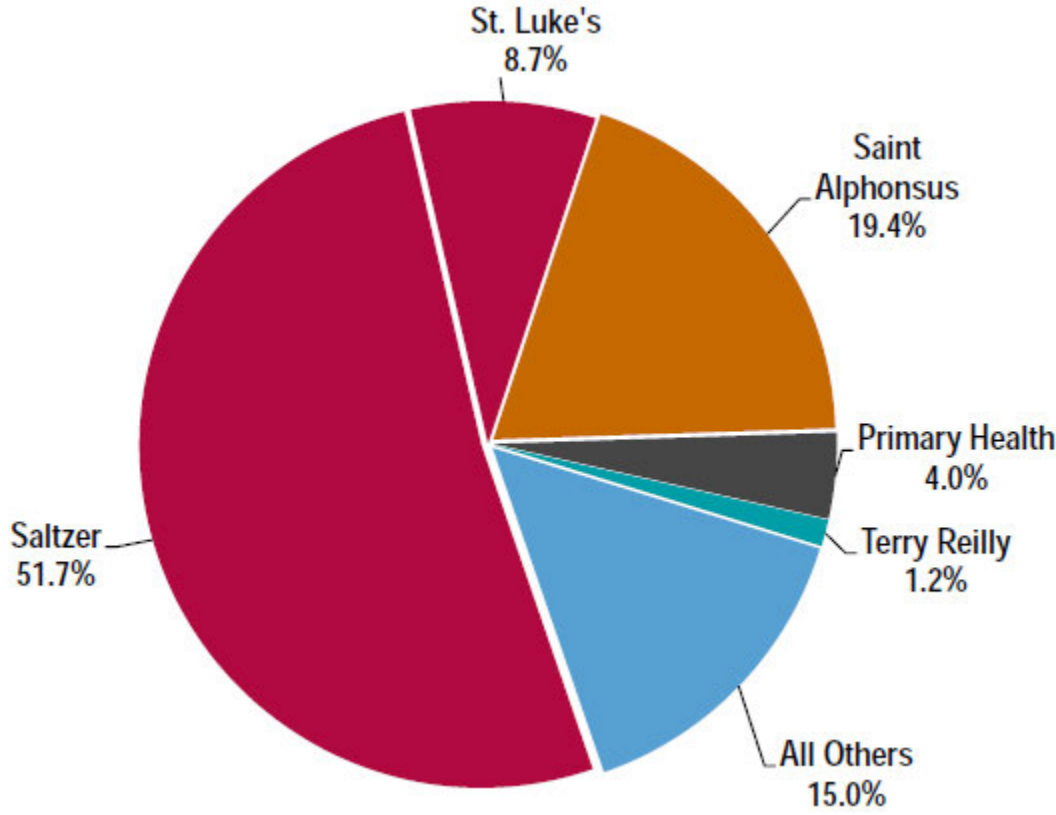


# Background—The Acquisition

St. Luke's and Saltzer Accounted For Nearly 80% of Primary Care Physician Services in Nampa



# Broader Marker—Same Result

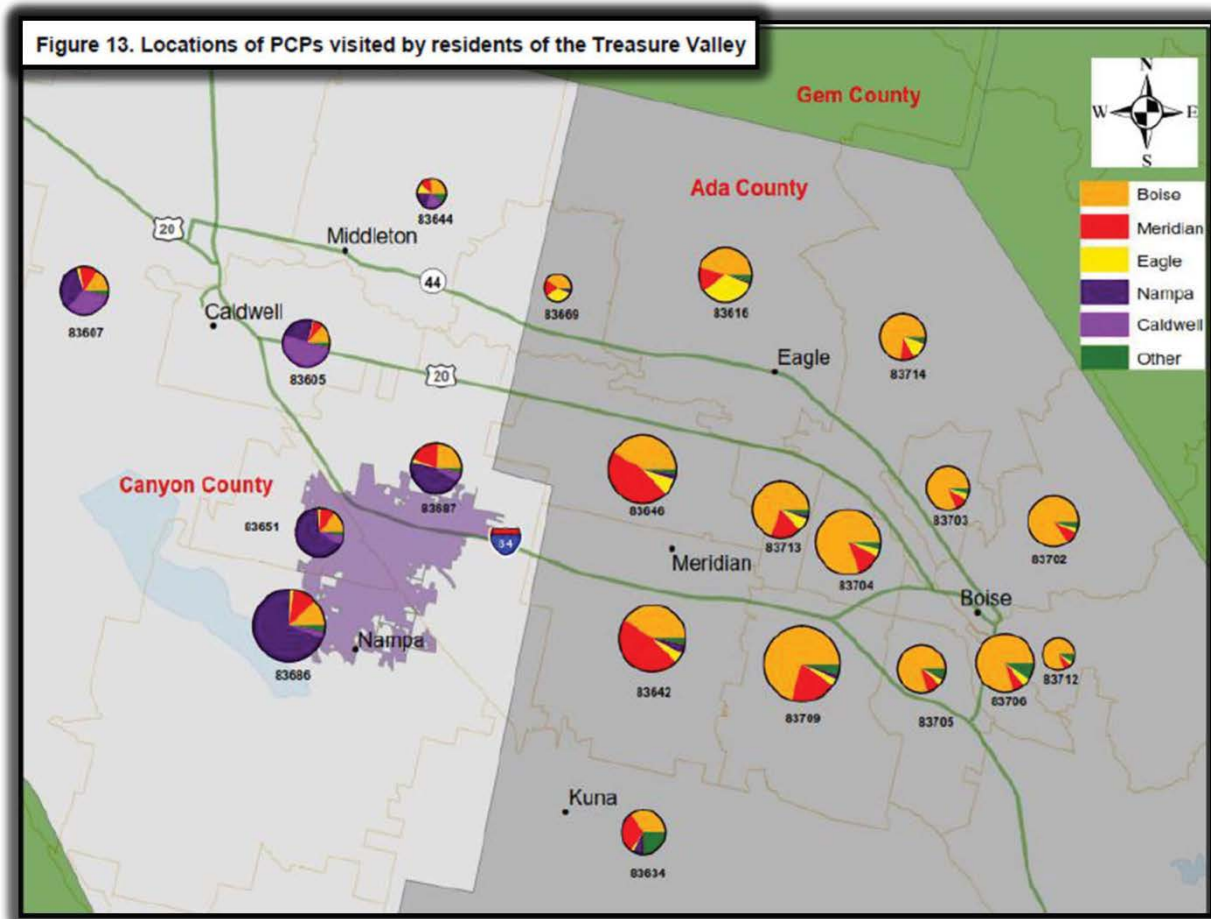




# Background--Markets

- The standard for geographic market is “...where buyers can turn for alternate sources of supply.” (*Morgan, Strand v. Radiology, Ltd.*, 924 F.2d 1484, 1490 (9<sup>th</sup> Cir. 1991). Here the relevant buyers are the insurance companies not individual consumers:
- ...the vast majority of health care consumers are not direct purchasers of health care—*the consumers purchase health insurance and the insurance companies negotiate directly with providers.*” (Findings, ¶ 53 (emphasis added).)
- Ninth Circuit emphatically endorsed this, stating it is now the “accepted model.” 2015 WL at \*4 n. 10.

# Market Access is Local



# Background—Judgment in Favor of the Government Plaintiffs

- Rejection of Assumption that Non-Profit Entities Will Not Exercise Market Power
- Rejection of Economic Theories that Generated Overbroad Geographic Markets
- Skeptical Review of Asserted Efficiency Benefits
- Rejection of ACA “Defense”
- Affirmance of Divestiture as the Presumed Remedy in Government Actions



**STATE OF IDAHO**  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE WASDEN

For Immediate Release  
February 10, 2015

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## **Attorney General Wasden's Statement on the St. Luke's Antitrust Lawsuit**

(Boise) – Idaho Attorney General Lawrence Wasden issued this statement following the decision today by the 9<sup>th</sup> U.S. Circuit Court of Appeals in the antitrust lawsuit involving St. Luke's Health System:

"I appreciate today's decision and what it means for consumers and the healthcare marketplace of the Treasure Valley," Attorney General Lawrence Wasden said. "This case is important because it ensures Idaho's laws will continue to protect and promote competition and a healthy, thriving marketplace, not just in southwestern Idaho but across the state. The decision by the 9<sup>th</sup> U.S. Circuit Court of Appeals, which affirms the 2013 decision by U.S. District Judge Lynn Winmill, upholds my commitment to protecting and defending Idaho's marketplace and competition laws.

"We look forward to working with St. Luke's in any way possible to fulfill what is now required by the court's decision," Wasden said.





# Conclusions

- Healthcare markets are local.
  - Can't compare not so far flung areas because patients won't make the drive
  - Major concern shaping up with graying of smaller communities.
    - Shrinking aging populations need more healthcare
    - Providers consolidating and relocating to population centers
    - Cause and effect
- Consolidation so far has not resulted in cost savings that are passed on to the patients.
- Consumers are patients and insurers—thus the bargaining leverage is an essential component.
- Public Hospital/ Tax Revenue supported healthcare
  - Appealing targets for private/ non-profit
  - NFL Dilemma?
  - Entry magnifies this problem