

Georgia State University College of Law  
**Reading Room**

---

Georgia Business Court Opinions

---

12-28-2018

## **Aliera Healthcare, Inc., Order Entering Temporary Restraining Order**

Alice D. Bonner  
*Fulton County Superior Court*

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>



Part of the [Business Law, Public Responsibility, and Ethics Commons](#), [Business Organizations Law Commons](#), and the [Contracts Commons](#)

---

### **Institutional Repository Citation**

Alice D. Bonner, *Aliera Healthcare, Inc., Order Entering Temporary Restraining Order*, Georgia Business Court Opinions 462 (2018)  
<https://readingroom.law.gsu.edu/businesscourt/462>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact [gfowke@gsu.edu](mailto:gfowke@gsu.edu).

**IN THE SUPERIOR COURT OF FULTON COUNTY  
BUSINESS CASE DIVISION  
STATE OF GEORGIA**

ALIERA HEALTHCARE, INC.,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	
v.	)	Civil Action File
	)	No. 2018CV308981
ANABAPTIST HEALTHSHARE; UNITY	)	
HEALTHSHARE, LLC,	)	
	)	
Defendants/Counterclaimants,	)	Bus. Case Div. 1
	)	
ALEXANDER CARDONA; and TYLER	)	
HOCHSTETLER,	)	
	)	
Defendants.	)	

---

**ORDER ENTERING  
TEMPORARY RESTRAINING ORDER**

Upon due and careful consideration of Defendants-Counterclaimants Anabaptist Healthshare's and Unity Healthshare LLC's ("Unity") (collectively, "AHS/Unity") Motion for Temporary Restraining Order with its accompanying Memorandum of Law, exhibits attached thereto, Affidavit of Tyler Hochstetler, and reply brief submitted in support, as well as Alier's responsive briefing, exhibits, and affidavits in opposition, and applicable law and authorities, the Court finds that a Temporary Restraining Order is appropriate under the circumstances and should be entered in this case to maintain the existing status quo concerning the Unity HCSM plans and avoid any irreparable harm until the Court can hold a full evidentiary hearing on AHS/Unity's Application for Interlocutory Injunction and for Appointment of a Receiver.

In entering this Temporary Restraining Order, the Court is not making any determination on the merits of the parties' claims and the contract dispute at issue, but only finds at this initial stage, for the reasons set forth in the briefing and submission of the parties, that AHS/Unity has made a sufficient showing of the necessary elements to warrant the entry of this Temporary Restraining Order to prevent Alera from completing the January 1, 2019 transition of Unity HCSM plans and members to Trinity Healthshare, LLC, so that the Court can conduct a full evidentiary hearing to determine whether an interlocutory injunction should be entered and a receiver appointed over the Unity HCSM plans during the pendency of this litigation.

Accordingly, the Court **ORDERS** that:

- (1) Alera Healthcare Inc. ("Alera") is hereby **ENJOINED** from transitioning any Unity HCSM members and plan assets to Trinity HealthShare LLC while this Temporary Restraining Order is in effect;<sup>1</sup>
- (2) Alera is **ORDERED** to maintain the status quo with respect to the Unity HCSM plans until further Order of this Court. As such, Alera is **ORDERED** to maintain the Unity HCSM plan assets that are presently in its possession or that come into its possession while this Temporary Restraining Order is in effect in a separate account, and not commingle such plan assets with any other assets of Alera or Trinity, and to administer claims under the Unity HCSM plans in accordance with the plan documents; and

---

<sup>1</sup> This includes all members of Unity HCSM plans as of the August 10, 2018 termination of the parties' Agreement who remain HCSM members as of the date of this Order.

(3) Alieria is **ORDERED** to use electronic means to notify as many Unity HCSM plan members as possible by January 1, 2019, that they will not automatically move to Trinity effective January 1, 2019, as previously stated in Alieria's November 15, 2018 electronic correspondence (and any other similar correspondence that Alieria has provided to members), but rather will remain on their current plans until further notice unless they choose to discontinue their participation in their current Unity HCSM plan. Specifically, in making these notifications by January 1, 2019, Alieria is **ORDERED** to use all of the same means of notification that it used for its November 15, 2018 email attached as Exhibit 10 to AHS/Unity's Motion for Temporary Restraining Order. Furthermore, Alieria is **ORDERED** to use the same membership roster as used in those communications, only excluding any members who have since terminated their HCSM plans. For any Unity HCSM plan members that are not notified through electronic or other means by January 1, 2019, Alieria is **ORDERED** to notify all such remaining members by First Class U.S. Mail or other means no later than five (5) business days from the date of issuance of this Order.

*[ Order continues on the following page ]*

(4) The notifications required by (3) above shall state as follows, in their entirety:

“Dear Member,

***No Action Is Required***

This is to notify you that, until further notice, your healthcare cost sharing ministry plan (“HCSM”) is not being transitioned to Trinity Healthshare, LLC on January 1, 2019, as we had indicated in prior correspondence. This is only to notify you that your plan will remain a Unity HCSM plan at this time. All plan features will remain the same with no changes and you will retain the same Member ID number.

Sincerely, Alieria.”


Alieria shall not modify or substantively add to this notification in any way. If Alieria receives any inquiries about the notification, Alieria shall inform the member, broker, agent, or other inquiring person that none of the terms and conditions of the Unity HCSM plan have changed, but the plan is currently the subject of a dispute between Alieria and AHS/Unity, and the Court that is handling the dispute has issued a Temporary Restraining Order requiring Alieria to maintain the plan as a Unity HCSM plan until further notice. Alieria is permitted to also provide the case caption, court, and case number to anyone who seeks further information, but Alieria shall not otherwise discuss the dispute and litigation with any members, brokers, or agents, or engage in any efforts to persuade any of the Unity HCSM plan members, or any of their brokers or agents, to move these members over to Trinity.

(5) Alera is **ORDERED** to provide notice of this Order within three (3) business days of its issue to its officers, agents, servants, employees, attorneys, and anyone acting in concert or participation with them with respect to the Unity HCSM plans (including without limitation officers, agents, servants, employees, and attorneys of Trinity), and this Order shall also be binding on such persons with respect to the Unity HCSM plans.

This order shall remain in effect until further order of the Court but shall not exceed thirty (30) days from the entry of this order pursuant to O.C.G.A. § 9-11-65(b). The Court will hold a hearing on **January 22, 2019 beginning at 10:00 AM** on AHS/Unity's Application for an Interlocutory Injunction and for the Appointment of a Receiver as well as a hearing on the parties' claims seeking declaratory relief. *See* O.C.G.A. §§ 9-11-65(b), 9-4-3, 9-4-5.

The foregoing hearing will be held in Courtroom 9J of the Fulton County Courthouse, 136 Pryor Street, 9th Floor, Atlanta, Georgia 30303. A court reporter will not be provided. If the parties wish for the hearing or any other court proceeding to be taken down, counsel must confer and make appropriate arrangements to have a court reporter present.

**IT IS SO ORDERED at 11:51 a.m. on this 28<sup>th</sup> day of December, 2018.**

  
\_\_\_\_\_  
HONORABLE ALICE D. BONNER  
Superior Court of Fulton County  
Business Case Division  
Atlanta Judicial Circuit

Prepared and presented by<sup>2</sup>:

/s/ Kyle G.A. Wallace

Kyle G.A. Wallace  
Georgia Bar No. 734167  
Gavin Reinke  
Georgia Bar No. 159424  
Andrew Brown  
Georgia Bar No. 890126  
ALSTON & BIRD LLP  
1201 West Peachtree Street  
Atlanta, GA 30309  
Telephone: (404) 881-7000  
Facsimile: (404) 881-7777  
[kyle.wallace@alston.com](mailto:kyle.wallace@alston.com)

*Attorneys for Defendants/Counterclaimants*

**Served upon registered service contacts via eFileGA**

<b>Attorneys for Plaintiff</b>	<b>Attorneys for Defendants</b>
<b>Joseph W. Letzer</b> <b>Greg F. Harley</b>  BURR & FORMAN LLP  171 17 <sup>th</sup> Str. NW, Suite 1100 Atlanta, GA 30363 T: 404.817.3244 F: 404.815.3000  <a href="mailto:jletzer@burr.com">jletzer@burr.com</a> <a href="mailto:gharley@burr.com">gharley@burr.com</a>	<b>Kyle G.A. Wallace</b> <b>Gavin Reinke</b> <b>Andrew Brown</b>  ALSTON & BIRD LLP  1201 West Peachtree Street Atlanta, GA 30309 T: 404.881.7000 F: 404.81.7777  <a href="mailto:kyle.wallace@alston.com">kyle.wallace@alston.com</a> <a href="mailto:gavin.reinke@alston.com">gavin.reinke@alston.com</a> <a href="mailto:andrew.brown@alston.com">andrew.brown@alston.com</a>

<sup>2</sup> Edited by the Court.