

# Axinn Wins Preliminary Injunction for WEX Health (formerly known as Evolution1)

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December 31, 2013

On New Year's Eve, Axinn won a preliminary injunction for health care benefit and payment solutions provider WEX Health (formerly known as Evolution1) preventing benefit administrator Flex-Plan Services, Inc. from terminating a valuable contract at the stroke of midnight.

Two months before, Flex-Plan sued WEX Health in the United States District Court for the Western District of Washington alleging that WEX Health had materially breached the parties' Services Agreement. Flex-Plan claimed damages as well as a right to terminate the contract early and move its business to one of WEX Health's competitors.

WEX Health chose to fight the termination, counterclaiming for actual and anticipatory breach and asking for specific performance of the contract. On the day before Thanksgiving, WEX Health moved for a preliminary injunction forcing Flex-Plan to continue performing the contract during the case. It then won targeted discovery that it used to argue that Flex-Plan's claimed breaches were pretexts and that its true motivation was the prospect of a lower price.

Just hours before Flex-Plan's intended termination was set to take effect, the court granted WEX Health the full relief that it had requested. It found that WEX Health was likely to prove that it did not breach the Services Agreement, rejecting Flex-Plan's "dubious" interpretation of the contract and concluding that WEX Health was likely to establish that Flex-Plan was the party in breach. The court further found that WEX Health was likely to suffer irreparable harm if

Flex-Plan were allowed to walk away from its obligations, that the equities favored WEX Health, and the public interest would be served by holding Flex-Plan to its bargain.

A week later, Flex-Plan stipulated to a judgment in WEX Health's favor and paid seven figures to buy-out the remainder of its contract.

WEX Health was represented by an Axinn team that included Francis Morrison, John Tanski, and Matthew Murphy.

Click [here](#) to view the court's order.

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Matthew S. Murphy

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