

Blue Cross/Blue Shield Case in Alabama Will Continue

COURT DISMISSES MONOPOLIZATION COUNTS, BUT NOT CONSPIRACY TO RESTRAIN TRADE

Editorial Staff

Imposing "predatory and punitively low reimbursements, or no reimbursements at all for the services of chiropractic" is among the allegations by plaintiffs in *Dr. Jonathan Griffiths, et al. v. Blue Cross and Blue Shield of Alabama*. The plaintiffs are 11 chiropractors and their clinics.

An order on June 15, 2001 by U.S. District Judge H. Dean Buttram, Jr., in the Northern District of Alabama, Southern Division, granted and denied in part the motion to dismiss by the chief defendant in the case, Blue Cross and Blue Shield (BCBS) of Alabama. The court dismissed the plaintiffs' allegations of violations of Section 2 of the Sherman Act, throwing out charges of "parallel monopolization," "attempted monopolization," and "intentional interference with business relations claims." The court, however, found three claims still viable:

"(1) the Section 1 Sherman Act claims alleging a conspiracy with HealthSouth to restrain trade;

"(2) claims brought under Alabama antitrust law besides those alleging monopolization or attempted monopolization; and

"(3) the fraud claims brought under Alabama law."

The court's 38-page ruling came after reviewing over 60 cases of restraint-of-trade, antitrust and fraud dating back to the 1911 *United States v. Colgate* decision.

Attorneys for the plaintiffs, White, Dunn and Booker of Birmingham, stated they were "very pleased" at the results of the court's decision, and that the lawsuit will move forward.

The plaintiffs' 28-page complaint alleged, in part, the failure of BCBS to "aggressively market the State Employees' Plan chiropractic benefits package to other employer groups," instead, "aggressively marketing health benefit plans that offered chiropractic benefits that were dramatically lower." Documents also claim that the defendant "will not expand chiropractic coverage even if asked to do so by an employer group."

The claimants allege that Blue Cross is using its strength to direct subscriber business from chiropractors and toward other health care providers, "particularly HealthSouth, which offers hospital-based physical therapy;" that Blue Cross has done so by "allegedly establishing substantially more restrictive benefit limits, higher deductibles, lower reimbursement rates, and more burdensome pre-certificate requirements for chiropractic procedures under its health benefit plans than it does for comparable services offered by physical therapists and other health care providers."

Section 1 of the Sherman Act, which the court failed to dismiss, carries potentially heavy penalties with it:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination of conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court."

While the court's opinion disagreed with the plaintiffs over BCBS exerting its power to force chiropractors into accepting lower fees for their services, it admitted, "Blue Cross never truly confronts this aspect of Plaintiff's complaint," when dealing with the claim of having "forced chiropractors to compete on unfavorable terms." It also acknowledged claims of "millions of Blue Cross subscribers in Alabama who experience health problems for which they might seek care from either a chiropractor or physical therapist, for example, (who) are purportedly faced with being saddled with significantly greater out-of-pocket expenses if they opt for chiropractic care, as a result of Blue Cross's allegedly unjustifiably more limited coverage for chiropractic procedures, lower benefit limits, reimbursement rates, and higher deductibles regarding such care."

Blue Cross and Blue Shield of Alabama is the largest provider of health care benefits in its state, with coverage for more than three million people (70 percent of Alabama residents are insured by them), paying "billions of dollars in benefits each year."

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