

Blue Cross of Rhode Island is Unsuccessful in Bouncing Hospital System's Antitrust Claim

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In June of 2013, Steward Health System, a Massachusetts-based provider, commenced an antitrust lawsuit against Blue Cross Blue Shield of Rhode Island in the federal district court in Rhode Island. Steward contended that, for anticompetitive reasons, BCBS-RI derailed Steward's proposed acquisition of Landmark Medical Center, a Rhode Island hospital that was in financial distress and looking to be acquired.

Specifically, Steward alleged that because it has a reputation in Massachusetts for partnering with low-cost insurers offering limited network products, BCBS-RI feared Steward's entry into Rhode Island would jeopardize BCBS-RI's alleged market dominance. In support of its claim, Steward alleged that, among other things, BCBS-RI (1) refused to negotiate an extension of "in network" status for Landmark at "reasonable" rates, knowing that this would ensure that Steward would pull back from its offer to acquire Landmark; and (2) terminating BCBS-RI's in-network contract with a different Steward hospital that is located near the Rhode Island/Massachusetts border, despite Steward's offer to continue the relationship on terms "advantageous" to BCBS-RI.

BCBS-RI filed a motion seeking to have Steward's claims dismissed, contending that, for numerous reasons, the allegations failed to state an antitrust claim. However, on February 19, **District Court Judge William Smith** denied BCBS-RI's motion, holding that Steward's claims passed muster under the antitrust laws.

Turning first to BCBS-RI's argument that, even as an alleged monopolist, it had no duty to deal with Steward, Judge Smith found that argument unpersuasive, at least at this stage of the proceedings. After acknowledging that, in most cases, a party is free to choose with whom it will deal; Judge Smith noted that right is not unqualified. Citing the Supreme Court's decision in ***Verizon Communications v. Trinko***, he observed that "under certain circumstances, a refusal to cooperate with rivals can constitute anticompetitive conduct and violate Section 2 of the Sherman Act." And, while the existence of a valid business justification for a monopolist to refuse to deal may preclude Section 2 liability, Judge Smith held that "the existence of a business justification is not properly determined on a motion to dismiss." Moreover, Judge Smith noted that the complaint included "sufficient factual allegations suggesting that [BCBS-RI's] conduct was contrary to its short-term financial interests," and thus held that "it is sufficient for Steward to have pled facts suggesting that Blue Cross rejected proposed reimbursement rates significantly lower than the statewide average that Blue Cross

accepted at other hospitals.”

Second, Judge Smith considered BCBS-RI’s contention that Steward lacked standing to assert its claims. Rejecting this argument as well, the Court held that where a plaintiff demonstrates the “intent and preparedness” to enter the relevant market, that satisfies antitrust standing. While observing that “Steward may ultimately be called upon to demonstrate that its successful acquisition of Landmark would have permitted Steward to develop its community hospital model in Rhode Island, Steward need not do so at the initial pleading stage.”

Finally, addressing BCBS-RI’s contention that Steward had failed adequately to allege the relevant product and geographic markets, the Court rejected this argument as well. While BCBS-RI contended that the proper product market should include both services offered to commercial and government payors (i.e., Medicare and Medicaid), Steward contended that the proper relevant market was commercial payors only, a contention with which the court agreed. And, as to the geographic market, the Court accepted Steward’s contention that the geographic market need not be alleged with precision, and that the fact that a small number of Rhode Island residents cross over into Massachusetts for health care services did not make Steward’s allegation that the geographic market was Rhode Island unreasonable.

Having denied BCBS-RI’s motion, the case now proceeds into discovery. And, given the somewhat unique set of facts presented in ***Steward v. Blue Cross Blue Shield of Rhode Island***, the case is likely to garner significant interest going forward.

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