

PUBLICATION

Blue Cross Blue Shield of Oklahoma Escapes Antitrust Action by Disgruntled Provider

June 28, 2016

On June 8, District Judge Claire Eagan (N.D. Okla.) dismissed the Blue Cross Blue Shield Association (BCBSA) and Blue Cross Blue Shield of Oklahoma (BCBSO) from an antitrust suit brought by a disgruntled health care provider, Bristow Endeavor Healthcare, finding that plaintiff's assertion that the Blues had participated in an unlawful antitrust conspiracy failed to state a claim against these defendants.

The case, *Bristow Endeavor Healthcare v. Blue Cross Blue Shield Association*, involves a claim by a Tulsa-based health care provider, Bristow, that its request to have its ambulatory surgery center – the Center for Orthopaedic Reconstruction and Excellence (CORE) – granted in-network status by BCBSO was thwarted by an unlawful agreement between the Blues and a rival health system – Hillcrest/Ardent. Specifically, Bristow alleged that BCBSO had denied Bristow's request at the behest of Hillcrest/Ardent, which Bristow alleged is its largest competitor in Northeast Oklahoma/Tulsa.

Judge Eagan began her analysis of Bristow's claim with an examination of the role of the Blue Cross Blue Shield Association in the alleged conspiracy. Finding that "there are no allegations that BCBSA had any role in the alleged conspiracy," Judge Eagan quickly concluded that the association should be dismissed from the case. Moreover, addressing plaintiff's assertion that BCBSA is the "alter ego" of BCBSO, and thus should remain in the case on that basis, Judge Eagan noted that the complaint expressly indicates that BCBSO is an "independent" corporate entity that merely "operates under the tradename Blue Cross Blue Shield of Oklahoma," and thus the plaintiff "does not have a factual basis to allege that BCBSA is the alter ego of [BCBSO]." Accordingly, the Court held, "there is no basis to subject BCBSA to expensive and prolonged antitrust discovery," and the Court dismissed BCBSA from the case.

Turning to BCBSO, the Court found that Bristow's antitrust allegations were equally insufficient, albeit for difference reasons. After first noting that "there are no allegations that [BCBSO] participated in any meeting or communications with [Hillcrest/Ardent] before [BCBSO] decision not to add CORE to Bristow's provider agreement," Judge Eagan added that "there are no allegations that [BCBSO] received any benefit from the conspiracy and, quite to the contrary, plaintiff suggests that [BCBSO] conspired with Hillcrest/Ardent to reduce competition and actually pay higher reimbursement rates to Hillcrest/Ardent." Finding those allegations implausible on their face, the Court dismissed the conspiracy claim against BCBSO as well. In doing so, Judge Eagan also observed that "it is not an antitrust violation every time a health insurer decides not to grant in-network status to a health care provider."

Finally, with respect to Bristow's Section 2 claim against BCBSO, the Court found Bristow's allegations under this theory equally insufficient. While the Court noted that Bristow had alleged that BCBSO has a 64 percent market share in Northeast Oklahoma/Tulsa, Bristow's legal theory – which was one of monopsony power – was similarly "implausible." Accordingly, this claim was dismissed as well and BCBSO and the Blue Cross Blue Shield Association were terminated as parties in the litigation. The case continues against Hillcrest/Ardent.