PUBLICATION

Quest Defeats Claims that It Conspired with Health Insurers

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On November 25, District Court Judge William Orrick (N.D. Cal.) dismissed all claims in *Eastman v. Quest Diagnostics,* finding that the plaintiffs, a class of Northern California consumers who had utilized Quest's services, had failed adequately to allege that Quest had engaged in unlawful monopolization of the Northern California clinical laboratory services market.

Specifically, the plaintiffs' claims in the case centered around the allegation that they paid higher prices for lab services than those paid by consumers in other markets, which the plaintiffs attributed to Quest's alleged "market dominance" in Northern California. However, to succeed on such a claim, the antitrust laws also require a plaintiff to plead, and ultimately prove, that the alleged monopolist gained market dominance through improper means. In an effort to meet this requirement, the plaintiffs alleged that Quest had induced Aetna and Blue Shield to terminate Quest's competitors from the insurers' respective networks, permitting Quest to achieve "dominant" status. In further support of that contention, the plaintiffs also alleged that "approximately 1.54 million persons are enrolled in Aetna and Blue Shield plans in California – ten percent of the available enrollees in the relevant market."

However, Judge Orrick held that the plaintiffs' factual allegations were insufficient as a matter of law. Judge Orrick stated that "pleading the percentage of available enrollees 'in California' that are enrolled in Aetna and Blue Shield does not tell [the Court] the percentage for Northern California," and that "even if it did [provide facts to support plaintiffs' market dominance assertions], alleging that ten percent of available enrollees in Northern California are enrolled in Aetna or Blue Shield, without providing more information regarding the players in and dynamics of the relevant market, is not enough to plausibly establish foreclosure of a substantial share." Foreclosure of "30 to 50 percent" of the market "is generally required to plead an exclusive dealing claim," Judge Orrick noted, and "plaintiffs do not cite to any case holding that a claimant that affirmatively pleads foreclosure of only ten percent of the relevant market states a claim for violation of the Sherman Act." Accordingly, because the plaintiffs had failed to allege sufficient facts to suggest that Quest had achieved a "dominant" share of the relevant market through improper means, the claim was properly subject to dismissal.

Despite the fact that the plaintiffs had already amended their complaint once before, Judge Orrick granted them leave to amend their complaint a second time. However, rather than attempting to do so, on December 11 the plaintiffs announced that they would be appealing Judge Orrick's ruling to the Ninth Circuit. Stay tuned.