

PUBLICATION

Blue Cross Plans Effort to Escape MDL Antitrust Case on Jurisdictional Grounds Fails

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On December 21, District Judge David Proctor (N.D. Alabama) denied an attempt by nine Blue Cross plans to escape the *In re Blue Cross Blue Shield Antitrust Litigation*. Finding that the Blues (Mississippi, Triple-S Salud [Puerto Rico], Arizona, Kansas, North Dakota, Wyoming, Western New York, Excellus and Capital) had failed to demonstrate that they had insufficient ties to Alabama for the Court to exert jurisdiction over them, the Court denied their motion to dismiss the action as to them, requiring that they continue to defend the case along with their 29 other Blue Cross Blue Shield co-defendants.

The proceeding, which was commenced in 2012 and consolidated as a multi-district litigation matter in the Northern District of Alabama in 2013, centers on a claim that the Blue Cross Blue Shield Association and its 38 member Blues have utilized trademark licensing agreements to allocate geographic service areas, fix prices for certain products and services from health care providers, and to boycott health care providers who reside outside a Blue plan's principal service area. In a June 2014 ruling, Judge Proctor denied a motion by all of the Blues to dismiss the case, finding that the plaintiffs, a class of health care providers, had adequately stated an antitrust claim against the Blues.

The current motion was brought only by nine of the Blues, each of which asserted that its contacts with the state of Alabama were insufficient for the Alabama court to hear and decide the claims asserted against them and/or that venue was not proper in that court. In opposing the Blues' motion, the plaintiffs argued that (1) Section 12 of the Clayton Act expressly provided the court with authority to hear the matter; (2) that because plaintiffs asserted a conspiracy claim, personal jurisdiction existed based upon the fact that the defendants' actions had caused harm to Alabama residents, and that overt acts were committed in furtherance of the conspiracy in Alabama; and (3) that each of the moving defendants had the necessary minimal contacts with the state for the court to assert jurisdiction over them. As to the venue issue, the plaintiffs argued that (1) venue was proper under Section 12 of the Clayton Act because the defendants "transact business" in Alabama; and (2) that venue was proper under 28 U.S.C 1391 because a significant part of the events, acts and omissions resulting in the action occurred in Alabama.

In a 63-page decision issued on December 21, Judge Proctor ruled for the plaintiffs on all issues, finding that personal jurisdiction was present for each reason the plaintiffs' asserted, as was venue. Significantly, in analyzing the moving defendants' arguments, Judge Proctor noted that "the vast majority of the defendants in these actions, including the Association, have not contested personal jurisdiction or venue." While Judge Proctor did not clearly indicate the significance of that observation, it appears that it may have played some role in his decision.

With the nine moving defendants' efforts to escape this long-running litigation having failed, they return to the defense of the case (which is currently in the discovery stage) along with their fellow Blues. Given the stakes for the Blues in this matter, the case will continue to be "one to watch" throughout 2017.