

Blog Post

Reversal of Fortune: Rhode Island Court Withdraws “Tentative” Decision to Grant Summary Judgment to Health Insurer in Health System Antitrust Case and Sets Matter for Trial

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In what was a surprise result, on April 23, Judge William Smith (Chief Judge of the District of Rhode Island) reversed the “tentative” decision he had announced last November, in *Stewart Health v. Blue Cross & Blue Shield of Rhode Island*, which would have granted defendant Blue Cross & Blue Shield of Rhode Island (BCBS-RI) summary judgment on all claims in the case. Instead, in a 101 page decision, Judge Smith ruled that this closely watched antitrust case, in which Steward Health alleged that BCBS-RI violated the antitrust laws in an effort to keep Steward Health, a Massachusetts-based health system, out of the Rhode Island market, will proceed to trial. In explaining the reason for his changed view on defendant’s motion, Judge Smith stated “... this is a complicated case, and the areas of antitrust law governing the claims [are], to put it kindly, confused and opaque.”

Judge Smith further explained that his “view on the outcome of the motion has changed as a result of careful and complete review of the record and the law,” and that “without question, this is a close case – one that highlights the difficulty of applying less-than-clear antitrust doctrines and precedents to one

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of the most complicated and volatile sectors of the national economy.”

Judge Smith’s unexpected decision continues litigation that began back in 2013, when Steward alleged that BCBS-RI took steps – individually and in concert with two other healthcare providers in Rhode Island – to impede Steward’s ability to enter the Rhode Island market. Specifically, Steward alleged that BCBS-RI, the largest health insurer in Rhode Island, frustrated Steward’s ability to acquire a failing Rhode Island community hospital – Landmark Medical Center – to deny Steward the ability to gain a foothold in the state. Steward further alleged that this decision was predicated on a fear that Steward’s business model, which it characterizes as being atypical and includes the sharing of risk with health insurers, could ultimately jeopardize BCBS-RI’s position in the Rhode Island insurance market. So, according to Steward, BCBS-RI refused to negotiate in good faith with Steward regarding “in-network” rates post-closing, resulting in Steward ultimately failing to complete its proposed acquisition of Landmark.

In assessing Steward’s claims, Judge Smith acknowledged that whether “a monopolist has a duty to deal . . . is one of the most unsettled and vexatious in the antitrust field.” And, after first acknowledging that “in the absence of any purpose to create or maintain a monopoly, [the Sherman Act] does not restrict [a party’s] long recognized right to . . . exercise its own independent discretion as to parties with whom it will deal,” Judge Smith proceeded on to the evidence. Ultimately, however, despite the legal challenges raised by Steward’s claim, Judge Smith concluded that “Steward sets forth an abundance of evidence that points toward a ‘distinctly anticompetitive bent’ [on the part of BCBS-RI], which could persuade a reasonable jury that Blue Cross unlawfully monopolized the relevant markets by excluding Steward from Rhode Island.”

In reaching this decision, Judge Smith pointed to evidence suggesting that BCBS-RI had (1) terminated a profitable in-network relationship with Landmark to dissuade Steward from taking over the hospital; (2) informed its subscribers that Landmark would be “out-of-network” before even receiving approval for that decision from the Rhode Island Department of Health, allegedly to make Landmark less desirable to Steward, and (3) steered subscribers to other hospitals, even those charging rates higher than those BCBS-RI had rejected when proposed by Landmark or Steward. Judge Smith also noted that the Rhode Island Attorney General (who had attempted to broker an agreement between the parties) told Steward that Blue Cross “just doesn’t want to do business with you in this State.”

In denying BCBS-RI’s motion for summary judgment, Judge Smith also considered, and rejected, several BCBS-RI defenses, at times doing so in rather colorful fashion. For example, in response to BCBS-RI assertion that Steward’s antitrust claims were “unprecedented,” because they “ask this Court to find that Blue Cross has an antitrust duty to accept particular reimbursement rates” proposed by Steward, Judge Smith characterized the argument as a “melodrama” and stated that “the law does not impose, and this Court does not dictate, the precise terms that Blue Cross must accept: but the law does impose a duty on Blue Cross to compete fairly, and specifically to not forego short term profits for the purpose of blocking competition and maintaining a monopoly.” Similarly, in response to BCBS-RI’s assertion that Steward’s acquisition of Landmark would ultimately have led to higher, not lower, prices for healthcare for Rhode Island residents, Judge Smith stated that this was “like the boy who kills his parents and then pleads for mercy as an orphan,” and stated that “Steward cannot be faulted for having no direct evidence of the competitive benefits that it could have brought to Rhode Island when the barricade was erected by Blue Cross’s allegedly exclusionary conduct.”

Finally, in addition to denying BCBS-RI's request for summary judgment on Steward's Section 2 monopolization claim, Judge Smith also reversed his earlier tentative ruling on Steward's Section 1 (conspiracy) claim. In reaching this decision, Judge Smith pointed to evidence in the record suggesting that a rival hospital – Lifespan – and a large physician group – Thudermist – may have actively assisted BCBS-RI in its alleged goal of keeping Steward out of Rhode Island. In any event, the evidence on the conspiracy claim, like the monopolization claim, was such that a reasonable jury could decide for Steward, making summary judgment inappropriate.

The case had originally been scheduled for a January 2018 trial, but the trial date was cancelled when the Court issued its “tentative” ruling in its November Notice. Accordingly, absent a settlement, a new trial date will need to be chosen, and a trial of the matter is likely to go forward in the next few months.

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