

PUBLICATION

Tenth Circuit Affirms Dismissal of Antitrust Case Against Health Insurer

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On May 31, the Tenth Circuit Court of Appeals affirmed the dismissal of plaintiff's claims in *Bristow Endeavor Healthcare v. Blue Cross Blue Shield Association et al.*, handing Blue Cross Blue Shield of Oklahoma, and its co-defendants, a significant victory.

The action was commenced in 2016 by Bristow Endeavor Healthcare, a northeast Oklahoma health care provider, with Bristow alleging that defendant Health Care Service Corporation (which does business as Blue Cross Blue Shield of Oklahoma) had denied Bristow's request to add an additional Bristow facility to HCSC's provider network pursuant to an unlawful agreement between HCSC and another healthcare provider, Hillcrest/Ardent. Specifically, Bristow alleged that HCSC and Hillcrest had agreed that HCSC would deny Bristow in-network status to prevent Bristow from competing effectively in northeast Oklahoma, a market in which both Hillcrest and Bristow currently have rival facilities.

At the trial court level, the court ruled that Bristow's claims did not plausibly allege any actionable conspiracy and dismissed Bristow's claims on that basis. On appeal, the Tenth Circuit agreed, explaining that "Hillcrest may have been motivated to undermine Bristow as a direct competitor, but HCSC – a purchaser of healthcare services – would be acting directly against its own interests if it agreed to reduce competition in the health care provider market, particularly in light of Bristow's allegation that HCSC pays Hillcrest higher reimbursement rates." In addition, the Court further noted that the complaint "does not identify any benefit that HCSC obtained from Hillcrest as part of the alleged conspiracy." Accordingly, the Court concluded that Bristow had not pled facts that "tended to exclude the possibility of independent action" by HCSC, rendering Bristow's allegations insufficient as a matter of law.

Finally, while Bristow sought to explain HCSC's conduct by arguing on appeal that HCSC was acting at the behest of Hillcrest to maintain Hillcrest's business, the Court rejected that argument, noting that "the complaint does not contain any particularized allegations permitting an inference that Hillcrest possessed market power such that it could compel HCSC to act against its own interest." Accordingly, the Tenth Circuit found that Bristow had failed adequately to allege a conspiracy as between HCSC and Hillcrest, and affirmed the lower court's dismissal of Bristow's complaint. Absent an appeal to the Supreme Court, the Tenth Circuit's ruling likely brings an end to the litigation.