IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 1:05-cv-431
vs.	)	
	)	Hon. Sandra S. Beckwith, C.J.
FEDERATION OF PHYSICIANS AND	)	
DENTISTS, *et al.*,	)	Hon. Timothy S. Hogan, M.J.
	)	
Defendants.	)	

Plaintiff's Certificate of Compliance with the Antitrust Procedures and Penalties Act

Plaintiff, United States of America, by the undersigned attorneys, hereby certifies its compliance with the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), before entry of the Final Judgment As To Settling Physician Defendants ("Final Judgment") as follows:

1. The settlement Stipulation between Plaintiff and Dr. Michael Karram, Dr. Warren Metherd, and Dr. James Wendel (the "Settling Physician Defendants") was filed with the Court on June 24, 2005 (Dkt. Entry #4). The proposed Final Judgment between Plaintiff and the Settling Physician Defendants was lodged with the Court on June 24, 2005. Plaintiff's Competitive Impact Statement Concerning The Proposed Final Judgment As To Settling Physician Defendants ("Competitive Impact Statement") was filed on July 22, 2005 (Dkt. Entry #17).
2. In the Stipulation, Plaintiff and the Settling Physician Defendants agreed that the proposed Final Judgment may be entered by the Court, upon the motion of

Plaintiff, or any Settling Physician Defendant, or upon the Court's own action, at any time after compliance with the requirements of the APPA, and without further notice to any stipulating party or other proceedings;

3. The Stipulation, proposed Final Judgment, and Competitive Impact Statement were published in the Federal Register on August 2, 2005, at 70 Fed. Reg. 44,376 (copy attached as Exhibit A);

4. A summary of terms of the proposed Final Judgment and the Competitive Impact Statement were published in: (a) the *Washington Post*, a newspaper of general circulation in the District of Columbia, beginning on August 4, 2005, and continuing through August 10, 2005; and (b) the *Cincinnati Enquirer*, a newspaper of general circulation in Cincinnati, Ohio, beginning on August 11, 2005, and continuing through August 17, 2005 (copies attached as Exhibit B);

5. Copies of the Stipulation, proposed Final Judgment, and Competitive Impact Statement were furnished to all persons requesting them from Plaintiff;

6. On July 11, 2005, each of the Settling Physician Defendants filed, as required by 15 U.S.C. § 16(g), a certification and description of all written or oral communications, except by counsel of record alone, by or on behalf of defendant with any officer or employee of the United States concerning or relevant to the consent judgment proposal (Dkt. Entries 10, 11, 12);

7. During the sixty-day comment period prescribed by 15 U.S.C. § 16(b) for the receipt and consideration of written comments, commencing on August 18, 2005,

and ending on October 16, 2005, the United States received no comments;

Accordingly, all requirements of the APPA conditioning entry of the proposed Final Judgment have been satisfied since October 17, 2005.

Dated: November 9, 2005

Respectfully submitted,

/s/ Gerald F. Kaminski
Gerald F. Kaminski
(Bar No. 0012532)
Assistant United States Attorney

Office of the United States Attorney
221 E. 4th Street, Suite 400
Cincinnati, Ohio 45202
(p) (513) 684-3711

/s/ Paul Torzilli
Steven Kramer
Paul Torzilli
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530
(p) (202) 514-8349
paul.torzilli@usdoj.gov

Attorneys for plaintiff United States of America

Attachments

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2005, I electronically filed the foregoing Plaintiff's Certificate of Compliance with the Antitrust Procedures and Penalties Act with the Clerk of the Court using CM/ECF system which will send notification of such filing to G. Jack Donson, Esq. (Trial Attorney for Defendant Dr. Michael Karram), and Donald J. Mooney, Jr., Esq. (Trial Attorney for Defendant Federation of Physicians and Dentists, and Defendant Lynda Odenkirk). I further certify that I have caused the document to be sent via electronic mail (or facsimile as indicated below) and first-class U.S. Mail, postage prepaid, to the following non-CM/ECF participants:

Michael E. DeFrank, Esq.
Scott R. Thomas, Esq.
Hemmer Pangburn DeFrank PLLC
Suite 200
250 Grandview Drive
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sthomas@HemmerLaw.com
Trial Attorneys for Defendant Dr. James Wendel
Via electronic mail

Kimberly L. King
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Tallahassee, FL 32309
kking@kkinglaw.com
Attorney for Defendant Federation of Physicians and Dentists
Attorney for Defendant Lynda Odenkirk
Via electronic mail

Jeffrey M. Johnston, Esq.
37 North Orange Avenue
Suite 500
Orlando, FL 32801
Fax: 407-926-2453
Attorney for Defendant Dr. Warren Metherd
Via facsimile

s/ Paul Torzilli
Paul Torzilli
Attorney for the United States of America
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EXHIBIT A

required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

L. Defendants may offer a bonus or severance to employees whose primary employment responsibilities relate to the Divestiture Assets, that continue their employment until divestiture (in addition to any other bonus or severance to which the employees would otherwise be entitled).

M. Until the Divestiture Assets are divested to an Acquirer(s) acceptable to plaintiff, defendants shall provide to the Divestiture Assets, at no cost, support services needed to maintain the Divestiture Assets in the ordinary course of business, including but not limited to:

(1) Federal and state regulatory policy development and compliance;

(2) Human resources administrative services;

(3) Environmental, health and safety services, and developing corporate policies and insuring compliance with federal and state regulations and corporate policies;

(4) Preparation of tax returns;

(5) Financial accounting and reporting services;

(6) Audit services;

(7) Legal services;

(8) Routine network maintenance, repair, improvements, and upgrades;

(9) Switching, call completion, and other services necessary to allow subscribers to use mobile wireless services and complete calls;

(10) Billing, customer care and customer service related functions necessary to maintain the subscriber account and relationship;

(11) For each retail and indirect sales outlet, a sixty (60) day supply of inventory, including both handsets and accessories, branded as directed by the Management Trustee, based on each outlet's average sales for the prior two (2) months, and if the Management Trustee requests, ALLTEL shall make available in sufficient quantities, branded as directed by the Management Trustee, handsets and accessories, introduced by ALLTEL in similar markets that are compatible with the network in the sixteen (16) Divestiture Markets;

(12) The individual financial reports described in seciton VI.F shall be provided on a monthly basis; and

(13) The sales reports described in Section VI.G shall be provided on a daily basis.

N. Prior to the closing of the Transaction, defendants will notify plaintiff in writing of the steps defendants have taken to comply with this Section. If the Transaction has not closed within seven (7) days after the filing of the Complaint, on that day defendants will submit to plaintiff and the Management Trustee a detailed statement of how defendants will comply with Section VI.A prior to the closing of the Transaction, including but not limited to: (1) Marketing plans for the sale of mobile wireless telecommunications services by the mobile wireless business to be divested, including customer retention plans and promotions; (2) the designation of a management team who will have responsibility for and manage the Divestiture Assets prior to the closing of the Transaction, identifying any changes from pre-filing staffing; (3) plans for retention of employees and payment of retention bonuses to employees whose primary duties related to the mobile wireless business to be divested; and (4) plans for network maintenance, repair improvements, and upgrades of the Wireless Divestiture Assets.

O. This Preservation of Assets Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated: July 6, 2005.

Respectively submitted.

For Plaintiff United States

Deborah A. Roy (D.C. Bar #452573),
Laura R. Starling,
Hillary B. Burchuk (D.C. Bar #366755),
Matthew C. Hammond,

Attorneys, Telecommunications & Media Enforcement Section, Antitrust Division.

U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514–5621, Facsimile (202) 514–6381.

For Defendant ALLTEL Corporation

Michael L. Weiner,
Brian C. Mohr (D.C. Bar #385983),

Skadden, Arps, State, Meagher & Florn LLP, Four Times Square, New York, New York 10036–6522, (212) 735–2632.

For Defendant Western Wireless Corporation

Ilene Knable Gotts (D.C. Bar # 384740),

Wachtell, Lipton, Rosen & Katz, 51 W. 52nd Street, New York, NY 10019, (212) 403–1247.

Order

It is so ordered by the Court, this__day of__, 2005.

United States District Judge.

[FR Doc. 05–15020 Filed 5–8–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Federation of Physicians and Dentists, et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Ohio in *United States* v. *Federation of Physicians and Dentists, et al.*, Civil Case No. 1:05–cv–431. The proposed Final Judgment is subject to approval by the Court after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), including expiration of the statutory 60-day public comment period.

On June 24, 2005, the United States filed a Complaint alleging that the Federation of Physicians and Dentists ("Federation"), Dr. Michael Karram, Dr. Warren Metherd, and Dr. James Wendel conspired with other OB-GYN members, to increase fees paid by commercial insurers to Federation members in violation of Sherman Act section 1.

To help restore competition, the proposed Final Judgment filed with the Complaint will enjoin Dr. Karram, Dr. Metherd, and Dr. Wendel ("the Settling Physicians") from encouraging, facilitating, or participating in any agreement among competing physicians pertaining to any contract term, negotiations with any health care payer, or the provision of consulting, financial, legal, or negotiating services concerning any payer contract. The Settling Physicians are also not permitted to use the Federation for contracting and negotiation services, such as messenger services. The proposed Final Judgment also prohibits certain communications between any Settling Physician and any competing physician.

A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215 North, 325 Seventh Street, NW. 20530 (telephone: 202/514–2692), and at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Western Division, Potter Stewart U.S.

EXHIBIT A

Courthouse, Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20250 (Telephone 202/307–0001).

J. Robert Kramer II,

Director of Operations, United States Department of Justice, Antitrust Division.

United States District Court for the Southern District of Ohio, Western Division

United States of America, Plaintiff v. Federation of Physicians and Dentists, et al., Defendants

Civil No. 1:05CV431.
Chief Judge Beckwith.
United States Magistrate Judge Hogan.

Plaintiff's Competitive-Impact Statement Concerning the Proposed Final Judgment as to Setting Physician Defendants

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment as to Settling Physician Defendants ("Final Judgment"). The proposed Final Judgment was lodged with the Court on June 24, 2005, for eventual entry in this civil antitrust proceeding, following the parties' compliance with the APPA, and, if the Court determines, pursuant to the APPA, that the proposed Final Judgment is in the public interest.

I. Nature and Purpose of the Proceeding

The plaintiff filed this civil antitrust Complaint on June 24, 2005, in the United States District Court for the Southern District of Ohio, Western Division, alleging that Drs. Warren Metherd, Michael Karram, and James Wendel ("the Settling Physician Defendants"), obstetrician-gynecologist physicians ("OB–GYNs") practicing in Cincinnati, Ohio, participated in a conspiracy that has unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. As alleged in the Complaint, this agreement has artificially raised fees paid by health insurers to OB–GYNs in the Cincinnati area that are ultimately borne by employers and their employees.

The plaintiff and the Settling Physician Defendants have stipulated that the proposed Final Judgment may be entered upon the Court's determinations that it serves the public interest and that there is no just reason to delay its entry while the litigation involving the two non-settling defendants proceeds. Entry of the proposed Final Judgment would terminate this action against the Settling Physician Defendants, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations of it.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

The Complaint in this action includes the following allegations. In the spring of 2002, the Settling Physician Defendants joined the Federation of Physician and Dentists ("Federation"), a membership organization of physicians and dentists, headquartered in Tallahassee, Florida. The Federation's membership includes economically independent physicians in private practice in many states, including Ohio. The Federation offers such member physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

Cincinnati OB–GYNs became interested in joining the Federation primarily to negotiate higher fees from health care insurers. The Settling Physician Defendants assisted the Federation in recruiting other Cincinnati-area OB–GYNs as members. By June, 2002, the membership of the Federation had grown to include a large majority of competing OB–GYN physicians in the Cincinnati area.

With substantial participation by the Settling Physician Defendants, the Federation coordinated and helped implement its members' concerted demanded to insurers for higher fees and related terms, accompanied by threats of contract terminations. From September, 2002, through the fall of 2003, the Settling Physician Defendants communicated with Federation employees, each other, and other Cincinnati-area OB–GYN Federation members to assist the Federation in coordinating members' contract negotiations with health care insurers. The Settling Physician Defendants' communications included assisting the Federation in developing a strategy for the Federation to intensify members' pressure on health insurers to renegotiate their contracts, apprising each other and other physicians about their own practice group's negotiations, working primarily through the Federation to inform Federation members about steps to take to coordinate their negotiations, and leading a campaign for Federation members to endorse insurers that agreed to meet all Federation members' contract demands.

The Settling Physician Defendants' and their conspirators' collusion caused Cincinnati-area health care insurers to raise fees paid to Federation members OB–GYNs above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of the Settling Physician Defendants' and their conspirators' conduct, the three largest Cincinnati-area health care insurers were each forced to increase fees paid to most Federation members OB–GYNs by approximately 15–20% starting July 1, 2004, followed by cumulative increases of 20–25%, starting January 1, 2004, and 25–30%, effective January 1, 2005. The Settling Physician Defendants' and their conspirators' conduct also caused other insurers to raise the fees they paid to Federation members OB–GYNs.

III. Explanation of the Proposed Final Judgment

A. Relief To Be Obtained

The proposed Final Judgment prohibits the Settling Physician Defendants from encouraging, facilitating, or participating in any agreement or understanding among competing physicians about any contract term, about the manner in which those physicians will negotiate or deal with any health care payer, or about the use of any person or organization that provides consulting, financial, legal, or negotiating services concerning any payer contract. The proposed Final Judgment also enjoins the Settling Physician Defendants from using Defendant Federation of Physicians and Dentists ("Federation") for any messenger, financial, legal, consulting, or negotiating service concerning any payer contract or contract.

The proposed Final Judgment also prohibits each Settling Physician Defendant from communicating with any competing physician about his or his practice group's view or position concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including his or his medical practice group's negotiating or contracting status with any payer. Each Settling Physician Defendant is also enjoined from communicating with any competing

EXHIBIT B

THE CINCINNATI ENQUIRER
THE CINCINNATI POST
THE KENTUCKY POST

312 ELM STREET
CINCINNATI, OHIO 45202-2739
(513) 721-2700

AFFIDAVIT

(CASE NUMBER) MAURA P LE
(CAPTION COPY) CASE # 1:05-CV-431
(QUOTED COST) $1,678.79
(AD #) 44477
(ORDER #) 1000060782

STATE OF OHIO, SS.
HAMILTON COUNTY,

PERSONALLY APPEARED BEFORE ME,

A NOTARY PUBLIC, IN AND FOR HAMILTON

COUNTY, OHIO Judy Smith.

WHO, BEING DULY SWORN, SAYS THAT THE

ANNEXED ADVERTISEMENT WAS PUBLISHED

IN THE

CINCINNATI ENQUIRER

DAILY NEWSPAPERS 7 TIMES TO WIT:

8/11, 8/12, 8/13, 8/14, 8/15, 8/16, 8/17/05

Judy Smith
AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME THIS

31st DAY OF August 2005

NOTARIAL SEAL STATE OF OHIO

Anita L. Alexander
NOTARY PUBLIC

ANITA L. ALEXANDER
Notary Public, State of Ohio
My Commission Expires Aug. 7, 2010

Department of Justice Antitrust Division Take notice that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Ohio in United States v. Federation of Physicians and Dentists, et al., Case No. 1:05-cv-431. On June 24, 2005, the United States filed a Complaint alleging that the Federation of Physicians and Dentists ("Federation"), Dr. Michael Karram, Dr. Warren Metherd, and Dr. James Wendel conspired with other Ob-Gyn members to increase fees paid by commercial insurers to Federation members, in violation of Sherman Act section 1. The proposed Final Judgment filed with the Complaint will help restore competition by prohibiting Dr. Karram, Dr. Metherd, and Dr. Wendel ("the settling Physicians") from any involvement in any agreement among competing physicians pertaining to contract terms, negotiations with health care payers, or the provision of consulting, financial, legal, or negotiating services concerning any payer contract. The Settling Physicians are also not permitted to use the Federation for contracting and negotiation services such as messenger services. The proposed Final Judgment also prohibits certain communications between any Settling Physician and any competing physician. A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 215 North - 325 Seventh Street, N.W., 20530 (telephone: 202/514-2692), and at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Western Division, Potter Stewart U.S. Courthouse, Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202. Interested persons may address comments to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530 (telephone: 202/307-0001) within 60 days of the date of this notice.
44477/1000060782

EXHIBIT B

Ad # 23218 Name US DEPT OF JUSTICE/ANTI TRUS Size 76 lines M0102
Class 815' PO # PO 5337 Authorized by MAURA LEE Account 632270

PROOF OF PUBLICATION

District of Columbia, ss., Personally appeared before me, a Notary Public in and for the said District, Kate M. Davey well known to me to be Billing Manager of The Washington Post, a daily newspaper published in the City of Washington, District of Columbia, and making oath in due form of law that an advertisement containing the language annexed hereto was published in said newspaper on the dates mentioned in the certificate herein.

I Hereby Certify that the attached advertisement was published in The Washington Post, a daily newspaper, upon the following dates at a cost of $4,689.20, and was circulated in the Washington metropolitan area.

Published 7 times. Dates: Aug 4, 5, 6, 7, 8, 9 and 10, 2005
Account 632270

Kate M. Davey

Witness my hand and official seal this 7th day of September 2005

Jennifer A. Johnsen
Notary Public, District of Columbia
My Commission Expires 03-30-2006

My commission expires

U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
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Interested persons may address comments to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530 (202-307-0001) within 60 days of the date of this notice.