

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

FILED

SEP 30 11 39 AM '92

UNITED STATES OF AMERICA,  
Plaintiff,

v.

GREATER BRIDGEPORT INDIVIDUAL  
PRACTICE ASSOCIATION, INC.,

Defendant.

Civil Action No.

Filed:

592CV00575EBB

Judge Burns

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2 (b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust action.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On September 30, 1992, the United States filed a civil antitrust Complaint alleging that defendant Greater Bridgeport Individual Practice Association, Inc., ("GBIPA") and its conspirators conspired not to contract individually with Physicians Health Services of Connecticut, Inc. ("PHS"), a health-maintenance organization, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. According to the Complaint, the conspiracy unreasonably restrained price competition among GBIPA physicians for the sale of their services to PHS and

deprived PHS of the benefits of free and open competition in its purchase of physician services.

The Complaint seeks injunctive relief that would prevent and enjoin defendant from engaging in the same or similar violations if PHS or any other third-party payer for health-care services seeks to initiate, maintain, or renegotiate individual service agreements with GBIPA member physicians. This relief attempts to ensure through various remedial provisions that when a third-party payer seeks to contract, or has already contracted, with otherwise competing GBIPA physician members, GBIPA will not act to thwart individual contracting.

Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

## II.

### DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATION

At trial, the United States would have offered evidence to establish the following:

1. Defendant GBIPA is a not-for-profit corporation organized and existing under the laws of the state of Connecticut and maintaining an office in Bridgeport, Connecticut. During the period of the alleged violation, its membership comprised approximately 670 greater Bridgeport area

physicians, representing 85-95% of the physicians practicing in the area. GBIPA member physicians control GBIPA.

2. From 1980 to date, GBIPA has contracted with PHS to provide physician services to PHS members in the greater Bridgeport area. Pursuant to the contract, PHS pays GBIPA a set monthly capitation fee for each PHS member eligible to be served by GBIPA physicians. In 1990, GBIPA received over \$60 million in such payments from PHS to provide physician services to approximately 82,000 PHS members in the greater Bridgeport area.

3. GBIPA contracts directly with individual physicians to obtain physician services for PHS members. Those contracts provide for payment for services rendered to PHS members, from the capitation fees paid to GBIPA by PHS, in accordance with a fee schedule and a percentage withholding arrangement. Most GBIPA physicians are in independent, private practices and are in potential or actual competition with other GBIPA physicians, in the same or overlapping specialties, to provide services to PHS members.

4. Before and during the period of the alleged violation, contracts between GBIPA and individual physicians did not authorize GBIPA to be the exclusive bargaining agent for GBIPA physicians in contractual negotiations with PHS, nor did the contracts prohibit GBIPA physicians from contracting individually with PHS.

5. From 1980 until 1989, the contract between PHS and GBIPA was renewed automatically each year. On May 8, 1989, GBIPA notified PHS that the contract would not be automatically renewed, and on May 11, 1989, PHS notified GBIPA that if PHS were unable to reach an agreement with GBIPA, PHS might seek to contract directly with individual GBIPA physicians.

6. Subsequent contractual negotiations reached an impasse around September 1, 1989. The major issues of disagreement concerned GBIPA's role in the governance of PHS and the amount that the capitation paid by PHS to GBIPA should increase. GBIPA had subordinated negotiations on the fee increase issue to the issue of governance on the stated view that the governance issue subsumed the fee issue.

7. After suspending negotiations with GBIPA, PHS sought to contract directly with individual GBIPA physicians to provide services to PHS members after its contract with GBIPA expired. On September 5, 1989, PHS mailed proposed individual contracts to GBIPA member physicians.

8. During several weeks preceding September 5, 1989, GBIPA's leadership, in anticipation of a negotiating impasse and PHS's pursuit of individual contracts, sent several letters to all GBIPA physicians seeking support for GBIPA's negotiating position and discouraging them from contracting individually with PHS should the contingency arise. Similar exhortations were made at the medical-staff meeting of at least one Bridgeport hospital.

9. After PHS had ceased negotiations with GBIPA and mailed individual contracts to GBIPA physicians, GBIPA leaders sent GBIPA physicians several additional letters urging them to support GBIPA and not to sign the individual contracts. Two of those letters advised GBIPA physicians that the GBIPA Board of Directors and Negotiating Committee had unanimously agreed that PHS must negotiate with the GBIPA.

10. GBIPA's repeated communications urging GBIPA physicians to support its negotiating position and not sign individual contracts culminated at a called meeting of GBIPA physicians on September 20, 1989, attended by nearly 300 physicians. Among the presentations made at the meeting, at least two GBIPA speakers expressly urged the physicians not to sign individual contracts with PHS and warned them of adverse economic consequences of signing. Speakers also urged that individual contracts that had already been signed be withdrawn. Other speakers also warned of the adverse consequences.

11. In the context of the numerous letters sent over previous weeks urging GBIPA physicians to support the GBIPA negotiating position and not sign individual contracts with PHS, and after presentations urging that a resolution be sent to signal their group solidarity behind pursuing only joint negotiations to the exclusion of individual contracts, the GBIPA physicians at the September 20th meeting voted on a resolution expressing their full support for GBIPA's efforts to negotiate an improved contract with PHS and authorizing GBIPA

to continue negotiations with PHS to take action to protect and enhance the interests of its members. Near the end of the meeting, the physicians' overwhelming support for the resolution was announced.

12. One of the speakers at the September 20th meeting recognized that approval of the resolution would require PHS to resume negotiations with GBIPA. As predicted, PHS decided to resume contractual negotiations with GBIPA. The contract that GBIPA and PHS eventually negotiated for 1990-92 provided for fees at significantly higher levels than those in the individual contracts and those earlier offered in negotiations with GBIPA.

### III.

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and GBIPA have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by either party concerning any issue of fact or law.

Under the provisions of 15 U.S.C. § 16(e), the Proposed Final Judgment may not be entered unless the Court finds that its entry is in the public interest. Section XII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that defendant GBIPA does not disrupt individual contracting

initiatives or arrangements and does not hold itself out or serve as an exclusive negotiating agent for its member physicians with third-party payers.

A. Prohibitions and Obligations

Section IV(A) of the proposed Final Judgment enjoins GBIPA from directly or indirectly encouraging, facilitating, assisting or entering into any contract, agreement, understanding or practice among GBIPA physicians concerning (1) not entering into, withdrawing from, or threatening not to enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer; or (2) any of the terms upon which they would enter into, not enter into, withdraw from, or threaten not to enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer. "GBIPA" is defined in Section II of the proposed Final Judgment as "defendant Greater Bridgeport Individual Practice Association, Inc. and each of its directors, members of any committee responsible for negotiating a collective service agreement with any third-party payer, officers, representatives, agents, employees, successors, and assigns." "Individual service agreement" is defined in Section II of the proposed Final Judgment as "any agreement or contract, oral or written, directly between any physician and any third-party payer, that sets forth the terms, including compensation, under which a physician will provide

covered services to covered persons. The term does not include a service agreement between GBIPA and any third-party payer or a physician agreement between GBIPA and any of its members." "Third-party payer" is defined in Section II of the proposed Final Judgment as "any person or entity that reimburses for, purchases, or pays for health-care services provided to any other person and includes, but is not limited to, health-maintenance organizations, preferred-provider organizations, health-insurance companies, prepaid-hospital, medical or other health service plans such as Blue Shield and Blue Cross plans, government health-benefits programs, administrators of self-insured health-benefits programs, and employers or other entities providing self-insured health-benefit programs."

Section IV(B) enjoins GBIPA from directly or indirectly discussing, providing advice, or making recommendations to any GBIPA member concerning (1) any of the terms contained in any proposed or actual individual service agreement with any third-party payer; (2) entering into, not entering into, withdrawing from, or threatening not to enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer; and (3) that physician's or any other GBIPA member physician's intention or decision to enter into, not enter into, withdraw from, or threaten to not enter into or to withdraw from any proposed or actual individual service agreement with any third-party payer.



Section IV(C) enjoins GBIPA from directly or indirectly communicating to any third-party payer that any physician will or may not enter into or withdraw from any proposed or actual individual service agreement with any third-party payer.

Section IV(D) enjoins GBIPA from directly or indirectly encouraging, advocating, advising or recommending that any GBIPA member physician support GBIPA's negotiating position with any third-party payer that has offered individual service agreements to GBIPA member physicians.

Section IV(E) enjoins GBIPA from directly or indirectly entering into any contract, agreement, understanding or practice (1) to hold itself out or serve as an exclusive negotiating agent for GBIPA member physicians with any third-party payer; or (2) that impedes or prohibits GBIPA member physicians from negotiating or entering into any proposed or actual individual service agreement with any third-party payer.

Section V of the proposed Final Judgment provides that nothing in Section IV shall prohibit any person to whom the Final Judgment applies from engaging solely with any other member or employee of such person's partnership, professional corporation, or other bona fide group practice in activities otherwise prohibited by Section IV.

Section VI requires GBIPA to establish and maintain an antitrust compliance program that shall include at a minimum: (A) appointing a person, and any necessary successor, to coordinate compliance activities; (B) establishing, adopting, and maintaining a written statement setting forth GBIPA's policy regarding compliance with the antitrust laws and the Final Judgment; (C) distributing by certified mail, return-receipt requested, within 60 days of the entry of the Final Judgment, copies of the Final Judgment, the Complaint, this Competitive Impact Statement, and the required policy statement to each member and employee of GBIPA; (D) holding a briefing annually at a general membership meeting on the meaning and requirements of the Final Judgment and the antitrust laws; (E) providing a copy of the Final Judgment along with the Complaint and this Competitive Statement to each person joining GBIPA within 60 days of that person joining; (F) obtaining from each GBIPA director and officer an annual written certification that he or she (1) has read, understands, and agrees to abide by the terms of the Final Judgment, (2) has been advised and understands that noncompliance with the Final Judgment may result in his or her conviction for criminal contempt of court and imprisonment and/or fine, and (3) is not aware of any violation of the Final Judgment; (G) maintaining for inspection by plaintiff a record of recipients to whom the Final Judgment has been distributed and from whom the required certification has been obtained; and (H) conducting an audit of

its activities within 60 days from the entry of the Final Judgment, and annually thereafter, to determine compliance with the Final Judgment.

Section VII of the proposed Final Judgment requires GBIPA to make specified certifications. Section VII(A) requires GBIPA to certify to plaintiff within 75 days after the entry of the Final Judgment that it has appointed a person to coordinate compliance activities, whom it shall identify; that it has established and adopted a written antitrust compliance policy, which shall be provided to plaintiff; that it has distributed copies of the Final Judgment, the Complaint and this Competitive Statement, and the policy statement as required by Sections VI(A)-(C); and that it has conducted an audit of its activities. Section VII(B) requires GBIPA to certify annually to plaintiff whether GBIPA has complied with the provisions of Sections VI(D)-(H).

Section VIII provides that nothing in the Final Judgment shall bar the United States from seeking, or the Court from imposing, against GBIPA or any person any other relief available under any applicable provision of law for violation of the Final Judgment.

Section IX(A) provides that an authorized representative of the Department of Justice may visit GBIPA's office after providing reasonable notice, to review its records and may conduct interviews regarding any matter contained in the Final

Judgment. Section IX(B) requires GBIPA to submit, upon request, written reports, under oath, relating to any matter contained in the Final Judgment.

B. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment applies to GBIPA and to all other persons (including GBIPA members) acting in concert or participation, with GBIPA, who receive actual notice of the Final Judgment by personal service or otherwise.

Section XI of the proposed Final Judgment provides that the Final Judgment shall expire 10 years from the date of entry.

C. Anticipated Effects of the Proposed Judgment on Competition

Entry of the proposed Final Judgment should significantly deter GBIPA from engaging in anticompetitive conduct against PHS, or any other third-party payer, that seeks to enter into, maintain, or renegotiate individual service agreements with GBIPA physicians. Such individual contracting should assist third-party payers to contract with GBIPA physicians upon competitively determined terms. Third-party payers' ability to resort to individual contracting should also provide an incentive to GBIPA physicians, when negotiating as a group, to offer terms approximating the competitive level.

The Department of Justice believes that the proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based.

#### IV.

##### REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the judgment has no prima facie effect in any subsequent lawsuits that may be brought against GBIPA.

#### V.

##### PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided in Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), any person believing that the proposed Final Judgment should be modified may submit written comments to Robert E. Bloch, Chief; Professions and Intellectual Property Section; U.S. Department of Justice; Antitrust Division; 555 4th Street, N.W.; Room 9903; Judiciary Center Building; Washington, D.C. 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given

due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. Section X of the proposed Final Judgment provides that the Court retains jurisdiction to enable either of the parties to the Final Judgment to apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI.

### ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be litigation, possibly including a full trial of the case. In the view of the Department of Justice, such litigation would involve substantial cost to the United States and is not warranted because the Final Judgment provides the relief that the United States sought in its Complaint.

Structural relief was not considered to be appropriate in this case. The Complaint alleges a conduct violation, and the conduct relief chosen by the Department should deter recurrence of the violation alleged in the Complaint.

The Department also considered a provision that would have enjoined GBIPA from seeking to initiate, continue, or resume contract negotiations with any third-party payer that had offered individual service agreements to GBIPA member physicians, unless expressly requested to do so in writing by the third-party payer. The Department of Justice concluded

that the other extensive injunctive relief agreed to by GBIPA was sufficient to prevent further violations of the nature challenged in the Complaint and that such a provision might interfere with possible procompetitive relationships between GBIPA and third-party payers.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

Respectfully submitted,

  
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