

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. ) Civil Action No. 92-10273H  
MASSACHUSETTS ALLERGY SOCIETY, INC.; ) Filed: February 3, 1992  
WILFRED N. BEAUCHER; )  
JACK E. FARNHAM; )  
BERNARD A. BERMAN; and ) 15 U.S.C. § 1 (Antitrust  
IRVING W. BAILIT, ) Violation Alleged)  
Defendants. ) 15 U.S.C. § 4 (Equitable  
Relief Sought)

**COMPLAINT**

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under Section 4 of the Sherman Act (15 U.S.C. § 4) in order to prevent and restrain violation by defendants, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Defendants maintain offices, transact business and are found within the District of Massachusetts.

II.

DEFENDANTS

3. Massachusetts Allergy Society, Inc. ("MAS") is made a defendant. MAS was founded in 1977 and is a not-for-profit membership corporation organized and existing under the laws of the Commonwealth of Massachusetts ("Massachusetts"). MAS is a professional association of about 55 medical doctors practicing in Massachusetts who specialize in the treatment of allergies ("allergists"). Most of the allergists practicing in Massachusetts are members of MAS.

4. Wilfred N. Beaucher, M.D. ("Beaucher") is made a defendant. Beaucher is an allergist, licensed to practice medicine in Massachusetts and is in private practice with defendant Dr. Jack E. Farnham. Beaucher is President-Elect of MAS and since October, 1984, has been the official MAS representative to negotiate fees with health maintenance organizations ("HMOs").

5. Jack E. Farnham, M.D. ("Farnham") is made a defendant. Farnham is an allergist, licensed to practice medicine in Massachusetts and is in private practice with Beaucher. Farnham was Secretary-Treasurer of MAS from June 1984 to June 1986 and President of MAS from June 1986 to June 1988. Farnham served as an ex-officio member of the MAS HMO Liaison Committee from September 1986 until at least June 1988.

6. Bernard A. Berman, M.D. ("Berman") is made a defendant. Berman is an allergist, licensed to practice -

medicine in Massachusetts. Berman is a founder of MAS and served as a member of the MAS HMO Liaison Committee from its inception in September 1986.

7. Irving W. Bailit, M.D. ("Bailit") is made a defendant. Bailit is an allergist, licensed to practice medicine in Massachusetts. Bailit is a former president of MAS and served as a member of the MAS HMO Liaison Committee from its inception in September 1986.

8. Whenever this Complaint refers to any act, deed or transaction of any corporation, it means that such corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

### III.

#### CO-CONSPIRATORS

9. Various others, not made defendants herein, have participated as co-conspirators with defendants in the violation alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

### IV.

#### TRADE AND COMMERCE

10. An HMO is an entity that, for a set premium, provides comprehensive health care services to its members through designated providers who contract with the HMO.

11. An HMO in Massachusetts has to be licensed by the Commonwealth in order to operate. In 1988, approximately 20 HMOs provided health care services to approximately 1.3 million people in Massachusetts. Employers contract with an HMO for the HMO to provide health care services to their employees and dependents; individuals also contract to become members of an HMO.

12. HMOs in Massachusetts have to provide allergy services to their members in order to be licensed. HMOs often provide allergy services by contracting with independent, private practice allergists. HMOs typically pay these allergists according to fee schedules set by the HMO. These fee schedules frequently represent a discount from the physicians' usual charges.

13. HMOs in Massachusetts compete with each other to attract members on the basis of price, services, convenience, and other factors important to consumers. Each HMO consequently seeks to minimize its costs, while also arranging for the participation of a sufficient number of quality health care providers to attract members.

14. Defendant MAS is comprised of independent, private practice physicians who compete with each other for both private-pay patients and the opportunity to provide service to HMO members. Defendants Beaucher, Farnham, Berman, and Bailit each provide allergy services to members of one or more HMOs in Massachusetts.

15. The United States Government sends from outside Massachusetts substantial amounts of premium revenues to HMOs in Massachusetts for providing comprehensive health care coverage, including allergy services, to federal government employees and Medicare and Medicaid recipients in Massachusetts.

16. HMOs in Massachusetts contract with employers located outside of Massachusetts for comprehensive health care coverage, including allergy services, for their employees and dependents in Massachusetts. The employers located outside Massachusetts send substantial amounts of premium revenues for this coverage to HMOs in Massachusetts.

17. Most allergists in Massachusetts, including defendants Beaucher, Farnham, Berman, and Bailit, provide allergy services to HMO members and purchase substantial amounts of supplies from out-of-state vendors that are shipped into Massachusetts.

18. The general business activities of defendants and co-conspirators, and the acts and practices described herein, are within the flow of, or have a substantial effect on, interstate commerce.

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V.

VIOLATION ALLEGED

19. Beginning at least as early as October 1984 and continuing at least until the date of this Complaint, defendants and their co-conspirators have engaged in a continuing combination and conspiracy in unreasonable

restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to continue unless the relief prayed for is granted.

20. The combination and conspiracy consists of a continuing agreement, understanding, and concert of action among defendants and their co-conspirators to fix and raise the fees paid for allergy services by certain HMOs in Massachusetts.

21. In furtherance of this combination and conspiracy, defendants and co-conspirators combined and conspired to, among other things:

- (a) agree to have defendant MAS act as their joint negotiating agent to obtain higher fees from certain HMOs for allergy services and to resist competitive pressures to discount fees; and
- (b) develop and adopt a fee schedule to be used by defendant MAS in negotiating higher fees on their behalf from certain HMOs.

## VI.

### EFFECTS

22. The combination and conspiracy has had the following effects, among others:

- (a) price competition among defendants for the sale of their services to certain HMOs in Massachusetts has been unreasonably restrained;

- (b) fees for allergy services provided to members of certain HMOs in Massachusetts have been artificially increased; and
- (c) certain HMOs in Massachusetts have been deprived of the benefits of free and open competition in the sale of allergy services.

VII.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that defendants and co-conspirators have engaged in an unlawful combination and conspiracy in violation of Section 1 of the Sherman Act.
2. That defendants, their officers, directors, agents, employees, and successors and all other persons acting or claiming to act on their behalf be enjoined and restrained for a period of 10 years from, in any manner, directly or indirectly, continuing, maintaining or renewing the alleged combination and conspiracy, or from engaging in any other combination, conspiracy, agreement, understanding, plan, program, or other arrangement having a similar purpose or effect as the alleged combination and conspiracy.
3. - That defendant MAS be required to institute a compliance program to ensure that defendant MAS does not enter into, maintain or participate in any contract, agreement,

understanding, plan, program, or other arrangement having the purpose or effect of continuing or renewing such combination and conspiracy.

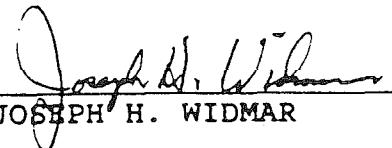
4. That plaintiff have such other and further relief as the nature of the case may require and the Court may consider just and proper.

5. That plaintiff recover the costs of this suit.

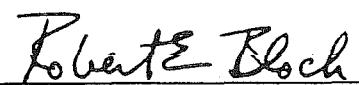
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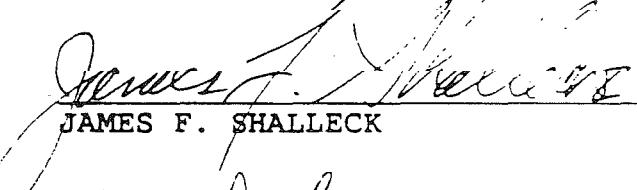
  
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JAMES F. RILL  
Assistant Attorney General

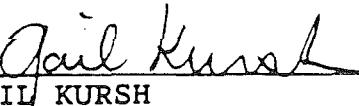
  
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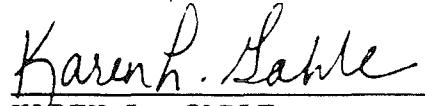
  
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JOSEPH H. WIDMAR

  
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SEYMOUR H. DUSSMAN

  
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ROBERT E. BLOCH

  
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JAMES F. SHALLECK

  
\_\_\_\_\_  
GAIL KURSH

  
\_\_\_\_\_  
KAREN L. GABLE

Attorneys, Antitrust Division  
U.S. Department of Justice

Attorneys, Antitrust Division  
U.S. Department of Justice  
555 4th Street, N.W.  
Washington, D. C. 20001  
202/307-0808

  
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WAYNE A. BUDD  
United States Attorney  
District of Massachusetts