

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action
)	No. 96-113P
)	
DELTA DENTAL OF RHODE ISLAND,)	
)	
Defendant.)	Entered: July 2, 1997
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FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint on February 29, 1996. Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or final adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party of any issue of fact or law, nor a determination that any violation of law has occurred. Therefore, before the taking of any trial testimony and without trial of any issue of fact or law, and upon consent of the parties, it is

ORDERED, ADJUDGED, AND DECREED, as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the consenting parties. The Complaint states a claim upon which relief may be granted against Delta under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used herein, the term:

(A) "Defendant" or "Delta" means Delta Dental of Rhode Island.

(B) "Participating Dentist's Agreement" means Delta's agreement with dentists for the provision of dental services to Delta's subscribers, including Delta's Rules and Regulations referenced in the agreement, and all amendments and additions to any such agreement.

(C) "Participating Dentist" means any dentist who has agreed to comply with the terms of the Participating Dentist's Agreement.

(D) "Most Favored Nation Clause" means:

(1) paragraph 10 of Delta's Rules and Regulations, sometimes characterized as Delta's "Prudent Buyer Policy," pursuant to which:

"Delta Dental reserves the right to limit reimbursements to dentists to such levels as such dentists have agreed to accept as reimbursement from other non-governmental dental benefits reimbursement programs;" or

(2) any contractual provision, policy, or practice which requires a dentist to charge Delta no more than the lowest fee charged by that dentist to any non-Delta plan or patient.

(E) "Usual and customary fees" means the fees for services and material that dentists usually charge, before any discounting, to their patients.

III.

APPLICABILITY

This Final Judgment applies to Delta and to its successors and assigns, and to all other persons (including Participating Dentists) in active concert or participation with any of them, who have received actual notice of the Final Judgment by personal service or otherwise.

IV.

PROHIBITED CONDUCT

Delta is enjoined and restrained from:

(A) maintaining, adopting, or enforcing any Most Favored Nation Clause or similar provision in any Participating Dentist's Agreement, or by any other means or methods;

(B) maintaining, adopting, or enforcing any policy or practice varying Delta's payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentist charges Delta;

(C) taking any action to discourage any dentist from participating in any non-Delta plan or from offering or charging to any non-Delta patient, or any non-Delta plan, any fee lower than that paid to the dentist by Delta; and

(D) monitoring, auditing, or obtaining from any dentist the fees a particular dentist charges any non-Delta patient or any non-Delta plan, except as provided in Section V.

V.

PERMITTED ACTIVITIES

Nothing herein shall be construed so as to preclude Delta from:

(A) establishing preferred provider networks or other forms of limited panels of providers, including discounted fee panels, recruiting dentists who are participating with other dental plans in similar panels, and negotiating bi-lateral fee arrangements with such dentists, provided that such activity does not violate any provision of Section IV;

(B) establishing provider reimbursement levels as may be reasonable and necessary to respond to market conditions and having different reimbursement levels for different categories or panels of providers, provided that Delta's criteria for differentiation in reimbursement among categories or panels of dentists are not based on their participation in other dental plans, on fees those dentists offer other dental plans or persons, or on fees those dentists agree upon with other dental plans or persons; and

(C) collecting through otherwise lawful means, including use of a survey sent to all Participating Dentists,

(1) Participating Dentists' usual and customary fees for each applicable service, provided that such information is collected

uniformly from all Participating Dentists; and (2) data and information, including reimbursement levels, regarding other dental plans.

VI.

NULLIFICATION

Delta's Most Favored Nation Clause shall be null and void and Delta shall impose no obligation arising from it on any Participating Dentist. Within 90 days of entry of this Final Judgment, Delta shall disseminate to each Delta Participating Dentist revised Rules and Regulations, referenced in the Participating Dentist's Agreement, that omit the Most Favored Nation Clause. Delta shall eliminate the Most Favored Nation Clause from all Participating Dentist's Agreements entered into after entry of this Final Judgment.

VII.

COMPLIANCE MEASURES

The Delta shall:

(A) distribute, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to: (1) all Delta officers and directors; and (2) all Delta employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with Participating Dentists.

(B) distribute in a timely manner a copy of this Final Judgment to any officer, director, or employee who succeeds to a position described in Section VII(A)(1) or (2);

(C) obtain from each present or future officer, director, or employee designated in Section VII(A)(1) or (2), within 60 days of entry of this Final Judgment or of the person's succession to a designated position, a written certification that he or she: (1) has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(D) maintain a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VII(C), the certification has been obtained;

(E) distribute, within 60 days of the entry of this Final Judgment, a copy of the attached letter, which has been approved by the Antitrust Division, by first-class mail to all currently Participating Dentists; and

(F) report to the Plaintiff any violation of the Final Judgment.

VIII.

CERTIFICATION

(A) Within 100 days of the entry of this Final Judgment, Delta shall certify to the Plaintiff whether it has:

(1) disseminated revised Rules and Regulations pursuant to Section VI; (2) distributed the Final Judgment in accordance with Section VII(A); (3) obtained certifications in accordance with Section VII(C); and (4) distributed copies of the attached letter in accordance with Section VII(E).

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, Delta shall file with the Plaintiff an annual Declaration as to the fact and manner of its compliance with the provisions of Sections IV, V, VI, and VII.

IX.

PLAINTIFF'S ACCESS TO INFORMATION

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to Delta made to its principal office, shall be permitted, subject to any legally recognized privilege:

(1) access during Delta's office hours to inspect and copy all documents in the possession or under the control of Delta, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of Delta and without restraint or interference from it, to interview officers, employees or agents of Delta, who may have Delta's counsel and/or their own counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Delta's principal office, Delta shall submit such written reports, under oath if requested, relating to any matters contained in this

Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) Delta shall have the right to be represented by counsel in any process under this Section.

(D) No information or documents obtained by the means provided in Section IX shall be divulged by the Plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(E) If at the time information or documents are furnished by Delta to Plaintiff, Delta represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Delta marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by Plaintiff to Delta prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Delta is not a party.

(F) Nothing in this Final Judgment prohibits the Plaintiff from using any other investigatory method authorized by law.

X.

FURTHER ELEMENTS OF THE FINAL JUDGMENT

(A) This Final Judgment shall expire ten years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment; to modify or terminate any of its provisions, based on changed circumstances of fact or law warranting such action; to enforce compliance; and to punish violations of its provisions.

(C) This Court finds that this Final Judgment is in the public interest as it effectively eliminates the Most Favored Nation Clause. For the reasons set forth in the Competitive Impact Statement, which is attached, eliminating the Most Favored Nation Clause dismantles a significant barrier to the entry of new dental insurance plans into the Rhode Island market. This Final Judgment will open the Rhode Island market to other dental insurance plans, which ultimately should provide Rhode Island consumers with increased dental insurance options.

DATED:

7/2/97


UNITED STATES DISTRICT JUDGE

Attachment