

### ***Cardiology Specialty Hospital Barred from Network Antitrust Suit Dismissed***

On August 29, 2008, a federal district court dismissed an *antitrust suit* brought by Little Rock Cardiology Clinic (LRCC), a physician-owned specialty hospital, against Baptist Health, the state's largest hospital system, and Arkansas BlueCross BlueShield.<sup>1</sup> LRCC filed antitrust claims against the parties *alleging collusion* between the two parties to avoid competition by keeping the cardiologists and their specialty heart facility out of the network. LRCC alleged that Baptist Health and BlueCross conspired to restrain services and health insurance in the Little Rock area.<sup>2</sup> LRCC claimed millions of dollars of actual damages, and under federal antitrust law, would have been entitled to triple that amount had it prevailed.<sup>3</sup>

In 1997, BlueCross BlueShield excluded the physician owners from its FirstSource insurance network after they opened Arkansas Heart Hospital.<sup>4</sup> Other doctors, meanwhile, were allowed to stay in the plan. Baptist – which the physicians said owned 80% of the privately insured cardiology network in central Arkansas – also adopted an economic credentialing policy whereby it barred doctors with hospital privileges from having outside financial interests in competing facilities.<sup>5</sup> LRCC claimed that its termination resulted from a conspiracy between Baptist Health and BlueCross, allowing Baptist to monopolize the hospital services market and BlueCross to obtain monopoly power in the health insurance industry.<sup>6</sup>

On August 29, 2008 Judge Leon Holmes of the U.S. District Court for the Eastern District of Arkansas dismissed LRCC's claims *with prejudice*. The court held that the claims related to the health insurance market were barred by the statute of limitations because the terminations from BlueCross' network had occurred over ten years before the case was filed, and BlueCross' subsequent refusals to readmit LRCC were merely reaffirmations of the original terminations.<sup>7</sup> The court also concluded that because Baptist Health does not directly provide cardiology services, it therefore could

not monopolize a market that they did not compete in.<sup>8</sup> LRCC also, according to the court, failed to argue an appropriate geographic market because they addressed only where Baptist Health's patients "*actually go for services, not where they could practically turn for services.*"<sup>9</sup>

Legal experts indicate the ruling is a narrow one, but may still offer more guidance on these types of lawsuits, which historically have been difficult to bring.<sup>10</sup> In 2007, a Kansas federal court allowed a similar antitrust suit to proceed to trial, a move believed to be the first decision of its kind.<sup>11</sup> In that case, the U.S. District Court for Kansas found that the physician plaintiffs showed enough evidence to pursue their claims that three Kansas City-area acute care hospitals colluded to exclude physician-owned or specialty surgery centers from insurers' networks.<sup>12</sup> The case ultimately settled.

Commentators say the decision may offer some guidance on such claims, which are difficult to prove in the antitrust arena. LRCC is appealing the decision to the 8<sup>th</sup> Circuit Court of Appeals.

<sup>1</sup> *Little Rock Cardiology Clinic, P.A., et al. v. Baptist Health; Arkansas BlueCross and BlueShield; USABLE Corporation; Baptist Medical System HMO, Inc.; and HMO Partners, Inc.* (E.D. Ark. 2008) No. 4:06CV01594 JLH

<sup>2</sup> *LRCC v. Baptist Health*, at 1-2

<sup>3</sup> "Ober|Kaler Obtains Dismissal of Antitrust Case Against Arkansas-based Baptist Health," September 4, 2008, <http://dc.citybizlist.com/lstg/lstgDetail.aspx?id=39496> (Accessed October 15, 2008)

<sup>4</sup> *LRCC v. Baptist Health*, at 2-3

<sup>5</sup> *LRCC v. Baptist Health*, at 21

<sup>6</sup> *LRCC v. Baptist Health*, at 1-2

<sup>7</sup> *LRCC v. Baptist Health*, at 13-14

<sup>8</sup> *LRCC v. Baptist Health*, at 20

<sup>9</sup> *LRCC v. Baptist Health*, at 35-36

<sup>10</sup> "Court Dismisses Arkansas Specialty Hospital's Lawsuit," Amy Lynn Sorrel, October 13, 2008, AMNews, <http://www.ama-assn.org/amednews/2008/10/13/gvsc1013.htm>, (Accessed October 15, 2008)

<sup>11</sup> *Heartland Surgical Specialty Hospital LLC v. Midwest Division Inc.* (D.C. Kan.) October, 2007

<sup>12</sup> *Heartland Surgical Specialty Hospital LLC v. Midwest Division Inc.* (D.C. Kan.) October, 2007



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