UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

# Ocean State Physicians Health Plan, Inc. v. Blue Cross & Blue Shield of Rhode Island

883 F.2d 1101 (1st Cir. 1989) · No. No. 88-1851 · Decided August 21, 1989

## SUMMARY

The First Circuit affirmed judgment notwithstanding the verdict for Blue Cross & Blue Shield of Rhode Island in claims brought by Ocean State Physicians Health Plan and participating physicians. The court held that Blue Cross's HealthMate product and adverse-selection pricing policy were exempt from antitrust scrutiny under the McCarran-Ferguson Act, while its Prudent Buyer policy was legitimate competitive conduct under Sherman Act § 2. The court also upheld judgment for Blue Cross on the related Rhode Island tortious-interference claim.

## CASE DETAILS

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| COURT | United States Court of Appeals for the First Circuit |
| WRITING FOR THE COURT | Levin H. Campbell; Levin H. Campbell, Chief Judge; Bownes, Circuit Judge; Caffrey, Senior District Judge, sitting by designation |
| JURISDICTION | Federal |
| DECIDED | August 21, 1989 |
| DOCKET | No. 88-1851 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Plaintiffs appealed from the district court's entry of judgment notwithstanding the verdict for Blue Cross on Sherman Act monopolization and Rhode Island tortious-interference claims, and from the denial of injunctive relief and an additur. |
| STANDARD OF REVIEW | The court reviewed judgment notwithstanding the verdict under the same standard applicable to the district court: viewing the evidence in the light most favorable to the plaintiffs, judgment as a matter of law is proper only when no conclusion other than the defendant's can be drawn. |
| PRECEDENTIAL VALUE | Published federal appellate opinion; precedential within the First Circuit subject to subsequent authority. |

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| PARTIES | Ocean State Physicians Health Plan, Inc., Certified class of Ocean State's participating physicians v. Blue Cross & Blue Shield of Rhode Island |

## TOPICS

insurance · commercial litigation · appellate procedure · standard of review · health law

## PRACTICE AREAS

antitrust · insurance · health law · commercial litigation · tortious interference

## QUESTIONS PRESENTED

1. Whether the jury's finding of antitrust liability with no antitrust damages independently required judgment for Blue Cross despite the plaintiffs' request for injunctive relief.
2. Whether HealthMate and Blue Cross's adverse-selection pricing policy were exempt from federal antitrust scrutiny under the McCarran-Ferguson Act.
3. Whether Blue Cross's Prudent Buyer policy constituted exclusionary conduct and unlawful monopolization under section 2 of the Sherman Act.
4. Whether the Prudent Buyer policy constituted wrongful or unjustified intentional interference with Ocean State's contractual relationships with participating physicians under Rhode Island law.
5. Whether the district court properly denied injunctive relief and an additur.

## HOLDINGS

1. HealthMate and the adverse-selection pricing policy were exempt from antitrust scrutiny under the McCarran-Ferguson Act because they constituted the business of insurance, were regulated by Rhode Island law, and did not involve boycott, coercion, or intimidation.
2. The Prudent Buyer policy did not, as a matter of law, constitute unlawful monopolization or exclusionary conduct under section 2 of the Sherman Act.
3. The Prudent Buyer policy was justified as a matter of law and therefore could not constitute wrongful or tortious interference with Ocean State's contractual relationships with participating physicians.
4. The district court properly entered judgment notwithstanding the verdict for Blue Cross because the evidence, viewed in the plaintiffs' favor, could not support liability as a matter of law on either the antitrust or tortious-interference claims.

## KEY QUOTATIONS

> *"Section 2 does not prohibit vigorous competition on the part of a monopoly. To the contrary, the primary purpose of the antitrust laws is to encourage competition."*

> *"As long as Blue Cross's course of conduct was itself legitimate, the fact that some of its executives hoped to see Ocean State disappear is irrelevant."*

> *"For the same reasons that we held that Prudent Buyer did not violate the Sherman Act, therefore, we hold that it could not as a matter of law constitute tortious interference with plaintiffs' contractual relationships."*

### FACTUAL BACKGROUND

Blue Cross was the largest health insurer in Rhode Island, while Ocean State was a rapidly growing HMO that attracted approximately 70,000 enrollees as Blue Cross lost approximately 30,000 enrollees. Blue Cross responded with three policies: a competing HMO called HealthMate, adverse-selection pricing for traditional coverage, and a Prudent Buyer policy limiting physician payments to the lowest amount accepted from another health-care purchaser. Approximately 350 of Ocean State's 1,200 physicians resigned from Ocean State after the Prudent Buyer policy was implemented.

### PROCEDURAL HISTORY

A jury found Blue Cross liable under section 2 of the Sherman Act and liable for tortious interference with contractual relationships, awarding no antitrust damages but awarding compensatory and punitive damages on the tort claim. The district court granted Blue Cross judgment notwithstanding the verdict on both claims, denied injunctive relief and an additur, and the First Circuit affirmed.

### DISPOSITION

affirmed

### CASES CITED

- Rios v. Empresas Lineas Maritimas Argentinas, 575 F.2d 986 (1st Cir. 1978)
- United States v. Articles of Drug Consisting of the Following: 5,906 Boxes, 745 F.2d 105 (1st Cir. 1984)
- Union Labor Life Insurance Co. v. Pireno, 458 U.S. 119 (1982)
- Group Life & Health Insurance Co. v. Royal Drug Co., 440 U.S. 205 (1979)
- Health Care Equalization Committee v. Iowa Medical Society, 851 F.2d 1020 (8th Cir. 1988)
- Anglin v. Blue Shield of Virginia, 693 F.2d 315 (4th Cir. 1982)
- Securities and Exchange Commission v. National Securities, Inc., 393 U.S. 453 (1969)
- Federal Trade Commission v. National Casualty Co., 357 U.S. 560 (1958)
- Mackey v. Nationwide Insurance Cos., 724 F.2d 419 (4th Cir. 1984)
- St. Paul Fire and Marine Insurance Co. v. Barry, 438 U.S. 531 (1978)
- Klamath-Lake Pharmaceutical Ass'n v. Klamath Medical Service Bureau, 701 F.2d 1276 (9th Cir. 1983)
- Feinstein v. Nettleship Co. of Los Angeles, 714 F.2d 928 (9th Cir. 1983)
- United States v. Grinnell Corp., 384 U.S. 563 (1966)
- Standard Oil Co. v. Federal Trade Commission, 340 U.S. 231 (1951)
- Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585 (1985)
- Barry Wright Corp. v. ITT Grinnell Corp., 724 F.2d 227 (1st Cir. 1983)
- Kartell v. Blue Shield of Massachusetts, 749 F.2d 922 (1st Cir. 1984)

- Travelers Insurance Co. v. Blue Cross of Western Pennsylvania, 481 F.2d 80 (3d Cir. 1973)
- Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263 (2d Cir. 1979)
- United States v. New York Great Atlantic & Pacific Tea Co., 173 F.2d 79 (7th Cir. 1949)
- Smith Development Corp. v. Bilow Enterprises, 112 R.I. 203, 308 A.2d 477 (1973)
- Mesolella v. City of Providence, 508 A.2d 661 (R.I. 1986)

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