

PUBLICATION

Blues Defeat Antitrust Claim by Heart Monitoring Device Maker

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On April 3, Judge Eduardo Robreno, District Judge for the Eastern District of Pennsylvania, granted judgment to a collection of insurer defendants in an antitrust conspiracy case brought against them by heart monitoring device manufacturer Lifewatch Services – *Lifewatch Services v. Highmark et al.* (E.D. Pa).

The action centered on a claim by Lifewatch, one of the two largest manufacturers of mobile cardiac outpatient telemetry devices (MCOTs), that the Blue Cross Blue Shield Association, together with several Blue Cross licensees (including Highmark, a Pennsylvania Blue), had unlawfully agreed not to provide coverage for MCOTs, despite "ample scientific evidence supporting the efficacy of the devices" and the fact that *other* commercial insurers, as well as Medicare and Medicaid, cover such devices. Lifewatch alleged that the Blues' decision not to provide coverage from MCOTs had caused them to lose more than \$50 million in sales, and that the decision violated the antitrust laws.

In response, the Blue defendants filed a motion to dismiss Lifewatch's complaint, raising several arguments as to the legal sufficiency of Lifewatch's claim under the antitrust laws. Ultimately, Judge Robreno agreed with the insurers that the alleged conduct was not actionable, because "Defendants' refusal to cover telemetry devices does not constitute competition-reducing conduct." In reaching this conclusion, Judge Robreno noted that "Lifewatch alleges that [the insurers] treat all telemetry providers equally," and thus "Lifewatch fails to show that this treatment – concerted or not – violates antitrust laws, which 'were enacted for the protection of competition not competitors.'" In addition, Judge Robreno also stated that "an alternate explanation for the conduct at issue is that the Blue Plans have simply decided – whether in a concerted fashion or not – that the benefits of telemetry devices do not (yet) outweigh their costs." In support of that conclusion, Judge Robreno noted that Lifewatch had acknowledged that telemetry services are three times as costly as other options for monitoring cardiac arrhythmia, and that "the conspiracy's object is to lower the total price paid for cardiac monitoring." Accordingly, Judge Robreno concluded that "the fact that Lifewatch has been unable to persuade all insurance companies that telemetry is worth three times the cost might reduce Lifewatch's sales, but it does not harm competition." For all of these reasons, Judge Robreno held that Lifewatch's claim failed as a matter of law and dismissed the claim.

Finally, quite notably, Judge Robreno granted the defendants' joint motion to dismiss the complaint *with* prejudice, finding that any possible amendment that Lifewatch might make to its allegations would, in this case, be futile. Accordingly, absent an appeal by Lifewatch, the ruling terminates the action with a victory for the insurers.