

Conspiracy Claims Against Quest, Insurers Face Dismissal

By **Beth Winegarner**

Law360, San Francisco (February 05, 2014, 8:10 PM ET) -- A California federal judge said Wednesday that he's inclined to throw out the bulk of an antitrust suit alleging Quest Diagnostics Inc. illegally offered insurers incentives to spurn its competitors, saying the amended complaint was unsuccessful in showing that insurers agreed to go along with any conspiracy.

U.S. District Judge William Orrick ultimately took Quest, Aetna, Inc., Blue Cross & Blue Shield Association and California Physicians' Services Inc.'s motions to dismiss under submission.

However, at the start of Wednesday's hearing on the motions, he said he would likely toss most of the claims, brought by four medical testing labs, but would give the plaintiffs another shot at allegations that the defendants violated California's Unfair Competition Law and Unfair Practices Act.

"I recognize the efforts the plaintiffs have made to amend and deal with the points I made in my last order, but I don't think you were successful," Judge Orrick said. "I'm inclined to dismiss without leave to amend, except for [those] causes of action."

Judge Orrick also said that lead plaintiff Diagnostics Laboratory Inc. had effectively made its case under the Unfair Practices Act.

The plaintiffs' attorney Anne Marie Murphy of Cotchett Pitre & McCarthy LLP argued that the court should look closely at allegations that Quest targeted physicians and coerced them not to send their patients to other labs.

"We believe there's a plausible theory that physicians in a busy practice are not going to bother to send to small labs that do provide superior services when they are faced with this type of coercive pressure," Murphy said. "We think that's the number one issue at the heart of the dispute today."

But Blue Shield of California's attorney Robert Bloch of Mayer Brown LLP said those claims aren't specific enough to implicate his client because the plaintiffs don't show the relationship between doctors who agree to participate in Blue Shield's network and those who refer patients to diagnostic labs.

"We end up in the same place: insufficient factual allegations and insufficient antitrust claims," Bloch said.

Judge Orrick said he'd take another look at those arguments before making up his mind.

The labs sued Quest, Aetna, Blue Shield and their co-defendants over the alleged scheme in late 2012. According to the plaintiffs — Quest rivals Rheumatology Diagnostics, Pacific Breast Pathology Medical Corp., Hunter Laboratories LLC and Surgical Pathology Associates — the insurers have helped Quest to lock its rivals out of their provider networks, aiding the company's scheme to drive its competitors out of business.

Quest's scheme also involves the company contracting with doctors groups on a below-cost, set-fee basis in order to steer their patients away from Quest rivals, and induce the referral of lucrative fee-for-service Medicare and Medicaid patients, the plaintiffs claimed in their first complaint.

Last June, U.S. District Judge Jon Tigar, who was presiding over the case, dismissed the suit, saying the plaintiffs lacked evidence of a coordinated plot and of a Quest monopoly. After they amended their complaint, Judge Orrick dismissed some of their claims in October, but refused to throw out allegations brought under California's Unfair Competition Law and Unfair Practices Act, finding the plaintiffs' arguments adequate.

The plaintiffs are represented by Cotchett Pitre & McCarthy LLP.

The defendants are represented by Jones Day, Mayer Brown LLP, Sidley Austin LLP and Jenner & Block LLP.

The case is Rheumatology Diagnostics Laboratory Inc. et al. v. Blue Shield of California Life & Health Insurance Co. et al., case number 3:12-cv-05847, in the U.S. District Court for the Northern District of California.

--Additional reporting by Daniel Wilson and Dan Prochilo. Editing by Andrew Park.
