

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARSON B. BURGSTINER;  
GREGORY K. WHITAKER;  
A. JOSEPH EDWARDS, JR.;  
JULES TORAYA;  
LOUIS P. LEOPOLD;  
SPEIR N. RAMSEY;  
JAMES D. SMITH;  
DAVID M. THOMAS;  
EDWARD D. BIGGERSTAFF III;  
JOHN H. ANGELL;  
DARNELL L. BRAWNER;  
DAVID W. FILLINGIM;  
STEPHEN Y.S. CHENG;  
AMOS TIMNA;  
M. M. SCHNEIDER;  
LAWRENCE S. BODZINER;  
WILLIAM G. SUTLIVE;  
R. W. SCARBROUGH, JR.;  
JOHN L. DEKLE;  
LAWRENCE ODOM;  
DONNA MOYERS; and  
GREGG PARKER,

Defendants.

Civil Action No. CV491-044

Filed: February 7, 1991

VERIFIED COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under Section 4 of the Sherman Act (15 U.S.C. § 4) in order to prevent and restrain violation by defendants, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Defendants maintain offices, transact business, and are found within the Southern District of Georgia.

II.

DEFENDANTS

3. Defendants are obstetricians/gynecologists ("OB/GYNs") doing business in the Savannah, Georgia area. During the period covered by this Complaint, defendants were in the private practice of obstetrics and gynecology in the Savannah, Georgia area and comprised approximately 90% of the OB/GYN market in Savannah.

III.

CO-CONSPIRATORS

4. Various others, not made defendants herein, have participated as co-conspirators with defendants in the violation alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

IV.

TRADE AND COMMERCE

5. In the conduct of their obstetric/gynecological practices, defendants treat patients who travel from South Carolina, as well as Georgia, use supplies and equipment that are shipped across state lines, and receive money that flows across state lines for rendering medical services.

6. In many instances, fees for medical services performed by defendants are paid by the federal government through the Medicaid, Medicare, and Champus programs.

7. Defendants receive payments remitted across state lines from patients or third-party payers in states other than Georgia.

8. The general business practices of defendants, and the acts and practices described below, affect the interstate movement of patients, the interstate purchase of medical supplies and products, and the interstate flow of funds, and are within the flow of and have a substantial effect upon interstate commerce.

V.

VIOLATION ALLEGED

9. Beginning at least as early as February 1986 and continuing until March 1987, defendants and others engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the

Sherman Act. This offense is likely to recur unless the relief prayed for is granted.

10. The combination and conspiracy consisted of an agreement, understanding, and concert of action among defendants and co-conspirators to exchange current and prospective fee information for procedures performed by OB/GYNs that resulted directly in higher fees to OB/GYN patients. Specifically, in July 1986, all defendants increased their fees for normal deliveries and cesarean sections approximately \$500 for each type of delivery.

11. In furtherance of this combination and conspiracy, defendants and co-conspirators did those things which they combined and conspired to do, including, among other things:

- (a) meeting under the auspices of the OB/GYN Society of Chatham County on one or more of at least four occasions - February 5, 1986; June 10, 1986; June 23, 1986; and July 7, 1986 - to discuss and exchange OB/GYN fees;
- (b) communicating with each other between February 1986 and March 1987, regarding current and prospective OB/GYN fees; and
- (c) reaching an understanding as to their range of OB/GYN fees, including the range of OB/GYN fees they would submit to the Savannah Business Group, an organization negotiating the price of medical services on behalf of employers.

VI.

EFFECTS

12. The combination and conspiracy had the following effects, among others:

- (a) fees for OB/GYN services in the Savannah area have been maintained at artificial and non-competitive levels;
- (b) prices of OB/GYN services in the Savannah area were artificially increased;
- (c) price competition among defendants for the sale of their services has been unreasonably restrained; and
- (d) patients requiring the services provided by defendants have been deprived of the benefits of free and open competition in the sale of such services.

VII.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that defendants and co-conspirators engaged in an unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act.

2. That defendants, their officers, directors, agents, employees, and successors and all other persons acting or claiming to act on their behalf be enjoined and restrained for a period of 10 years from, in any manner, directly or indirectly, continuing, maintaining, or renewing the alleged combination and conspiracy, or from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action or adopting or following any practice, plan, program, or device having a similar purpose or effect as the alleged combination and conspiracy.

3. That each defendant, for the term of the Final Judgment, shall file with plaintiff, and with the Court under seal, on or before the anniversary date of this Final Judgment, an annual Declaration reporting that defendant has complied with the terms of the Final Judgment and has had no communications of the type prohibited by the Final Judgment.

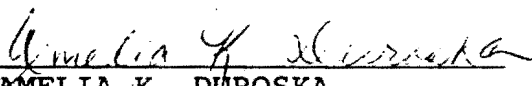
4. That plaintiff have such other relief as the nature of the case may require and the Court may deem just and proper.

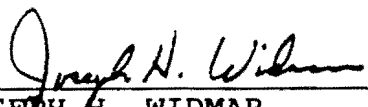
DATED:

  
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ASSISTANT ATTORNEY GENERAL

  
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D. BRUCE PEARSON

  
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HINTON R. PIERCE  
United States Attorney  
Southern District of Georgia

VERIFICATION OF COMPLAINT

I, Amelia K. Duroska, declare:

1. I am an attorney employed by the Antitrust Division of the United States Department of Justice.

2. The foregoing civil antitrust Complaint for and on behalf of the United States of America was duly prepared under the direction of the Attorney General of the United States. The facts stated therein have been assembled by authorized employees and counsel for the United States of America. The allegations of the Complaint are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D. C. on this 4<sup>th</sup> day of February, 1991.

  
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AMELIA K. DUROSKA