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Client Alert

Antitrust

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MultiPlan Algorithmic Pricing Antitrust Claims Survive Motion to Dismiss

On June 3, 2025, Judge Matthew F. Kennelly of the United States District Court for the Northern District of Illinois denied motions to dismiss antitrust claims in a multidistrict litigation (MDL)[i] against MultiPlan, Inc. and major health insurance companies, including Aetna, Cigna, UnitedHealth, Blue Cross Blue Shield Association, and others.[ii] The plaintiffs, which include a consolidated class action and a consolidated group of direct action healthcare providers, allege that MultiPlan—a healthcare technology, data, and insights company—colluded with insurers to fix reimbursement rates for out-of-network healthcare services. Defendants filed motions to dismiss the complaints, but the Court has allowed the federal and state antitrust claims, as well as state consumer protection claims, to proceed to discovery. The Court dismissed plaintiffs' unjust enrichment claims.

ALGORITHMIC PRICING ANTITRUST CASES

The *MultiPlan* litigation is the latest in a growing wave of antitrust cases alleging algorithmic price fixing. Price fixing has long been prohibited under Section 1 of the Sherman Act, but plaintiffs argue that the advent of modern data-sharing tools and high-tech algorithms have facilitated more efficient—and less detectable—forms of coordination.

Notable examples of these cases include the ongoing antitrust actions against RealPage,[iii] Yardi,[iv] AgriStats,[v] and several Las Vegas and Atlantic City hotels and casinos.[vi] Rulings at the motion to dismiss stage in those cases have generally turned on the level of detail and nonpublic nature of pricing information shared and the extent to which competitors have unilateral discretion to adopt the prices generated from the algorithm.[vii]

MULTIPLAN CASE BACKGROUND

The class action and direct-action plaintiffs in the *MultiPlan* litigation allege that MultiPlan and the insurer defendants violated Section 1 of the Sherman Act through hub-and-spoke price fixing agreements to suppress insurers' out-of-network healthcare reimbursement rates paid to providers. According to the complaints, MultiPlan collects confidential pricing data from insurers, uses its algorithm to generate reimbursement rates substantially below competitive levels, and facilitates insurers' horizontal agreement to adopt these coordinated rates, thereby reducing competition and harming the healthcare providers by suppressing reimbursement rates.

In their motions to dismiss, the defendants relied on the dismissal of a similar lawsuit against them in California state court.[viii] In *VHS*, the Superior Court of California held that out-of-network reimbursement rates do not constitute a "price" that can be fixed under antitrust laws, and that providers lack standing to challenge insurance reimbursement rates. While the state court's decision is not binding on the federal MDL court, defendants referenced it as persuasive authority. Judge Kennelly, however, declined to adopt the reasoning from *VHS*.

KEY HOLDINGS

Judge Kennelly rejected multiple arguments raised by the defendants, ultimately allowing the antitrust claims to proceed.

1. **Plaintiffs Plausibly Pleaded Antitrust Standing and Antitrust Injury**

As in the *VHS* case, defendants contended that patients, not healthcare providers, were the direct victims of the alleged price fixing conspiracy because providers would be injured only if patients do not pay the balance that is not covered by insurance companies. Judge Kennelly rejected this argument based on allegations that providers prefer to accept a guaranteed partial payment from third-party payors in exchange for an agreement not to seek further reimbursements from patients (i.e., a "balance billing prohibition"). The Court explained that providers face a practical choice between accepting guaranteed, below-market payments or risking non-payment from patients. The balance billing prohibition prevents patients from being injured, and thus patients have no incentive to sue. This dynamic, the Court reasoned, rendered providers the direct victims of the alleged price fixing.

Moreover, Judge Kennelly held that the pleadings were sufficient to find antitrust injury where defendants allegedly agreed not to compete against each other on pricing for out-of-network services, which would injure providers through unreasonably low reimbursement rates.

2. **Harm to Competition in a Properly Defined Relevant Market**

The Court found that defendants' motions failed to address the alleged relevant market (out-of-network *services*) and instead their arguments incorrectly focused on a different market (out-of-network *coverage*), which is not relevant. The Court held that defendants are "purchasers" of out-of-network services even though they do not use the services and merely negotiate rates on behalf of patients. The Court disagreed with the *VHS* case's holding that there was no fixable "price" where out-of-network services are only one aspect of the total insurance premium. Instead, the Court found that price is the reimbursement amount for out-of-network healthcare services sold to third-party payors, and that this price can be fixed by competing third-party payors.

The Court also held that plaintiffs plausibly pleaded out-of-network services to be in the same "cluster" market where the various types of services in the market use a similar benchmark or algorithm. The Court found that defendants' argument that in-network-services are in the same market amounted to a factual dispute that should be left for discovery.

3. **Plausible Allegations of Hub-and-Spoke Agreements Between MultiPlan and the Insurers**

The Court found that a horizontal conspiracy between MultiPlan and the insurers was implausible because the complaint pleaded that MultiPlan participated only in the market for *in*-network healthcare services. But the Court did find that the complaint plausibly pleaded hub-and-spoke agreements between MultiPlan and each insurer. An agreement is a necessary element of a price fixing conspiracy in violation of Section 1 of the Sherman Act. Agreements can be demonstrated through parallel conduct in addition to the existence of certain "plus factors."

Defendants argued that because the MultiPlan algorithm is "customizable" and "discretionary," it cannot serve as evidence of parallel conduct. The Court disagreed and held that even if the algorithm generated custom prices for each third-party payor, "[a]n agreement to fix prices within a below-market *range* through use of an algorithm is no different for antitrust purposes than an agreement to fix prices to a single point."[ix] Moreover, "third party payors' theoretical ability to deviate from a MultiPlan-calculated rate does not mean payors actually reject MultiPlan's recommendations in practice."[x] Because plaintiffs alleged that MultiPlan's recommendations were more akin to mandates, the pleadings plausibly alleged parallel conduct.

Moreover, the Court held that plaintiffs allege sufficient "plus factors" along with parallel conduct to infer hub-and-spoke agreements, including the plus factor of defendants engaging in conduct against their own self-interest. The Court found that defendants' sharing competitively sensitive information regarding prices with each other was against their own self interest. The Court did not find sufficient allegations that the insurers shared competitively sensitive information directly with MultiPlan as an input to the algorithm, but did find sufficient allegations of a plus factor where MultiPlan divulged enough pricing output information with each insurer for those insurers to "glean" how their competitors were calculating their out-of-network rates.

The Court concluded that these hub-and-spoke agreements, if proven, were plausible allegations of "horizontal price-fixing agreements [that] are per se illegal" in violation of federal antitrust law.

Ultimately, the Court denied the defendants' motion to dismiss the federal and state antitrust claims, and related state consumer protection claims, while granting dismissal of the direct-action plaintiffs' unjust enrichment claims.[xi]

KEY TAKEAWAYS

Judge Kennelly's decision underscores the evolving application of antitrust law to algorithmic pricing and data-sharing practices. As other courts have indicated, two key issues in algorithmic price fixing cases are whether (1) the algorithm involves the exchange of confidential, nonpublic information, and (2) the algorithm's pricing recommendations are mandatory rather than mere suggestions. Judge Kennelly found that if discovery ultimately supports the allegations in the complaints, a per se horizontal price fixing conspiracy in violation of federal and state antitrust laws could be found.

The *MultiPlan* litigation now represents a significant exposure for health insurance companies. Plaintiffs have alleged that the underpayments in 2020 alone were $19 billion, and those underpayments allegedly grew to $6.4 billion in the third quarter of 2024, meaning the total alleged exposure in *MultiPlan* could exceed $100 billion even before trebling under the antitrust laws.

Judge Kennelly's ruling serves as a reminder that when companies use algorithms as an input to price, or anything related to price (such as reimbursement amounts or other competitively sensitive information in the healthcare industry), those companies should consult with antitrust counsel.

[i] Memorandum Opinion and Order on Motions to Dismiss, *In re Multiplan Health Insurance Provider Litigation*, No. 24-C-6795 (N.D. Ill. June 3, 2025), ECF 428 ("Opinion") at 32.
[ii] In addition to the insurers listed above, who are the defendants in the class action case, the direct-action plaintiffs also named Blue Shield of California, Blue Cross Blue Shield of Massachusetts, Blue Cross Blue Shield of Michigan, Blue Cross Blue Shield of Minnesota, Cambia, CareFirst, Inc., Centene, Elevance, Health Care Service Corporation, Highmark Health, Horizon Blue Cross Blue Shield of New Jersey, Kaiser, Molina Healthcare, Sanford Health Plan, Allied National, Benefit Plans Administrators, Central States, Consociate, Healthcare Highways, and Secure Health.
[iii] *In Re: RealPage, Inc., Rental Software Antitrust Litigation (No. II*), No. 3:23-md-3071 (M.D. Tenn.)
[iv] *Duffy v. Yardi Sys., Inc*., No. 2:23-cv-01391 (W.D. Wash.)
[v] *United States v. Agri Stats Inc*, No. 0:23-cv-3009 (D. Minn.)
[vi] *Gibson v. MGM Resorts International*, No. 2:23-cv-00140 (D. Nev.); *Cornish-Adebiyi v. Caesar's Entertainment*, Inc, No. 1:23-cv-02536 (D.N.J.)
[vii] *Compare In re RealPage, Inc., Rental Software Antitrust Litig. (No. II*), 709 F. Supp. 3d 478, 503 (M.D. Tenn. 2023) (denying motion to dismiss where plaintiffs alleged that the algorithm relies on "proprietary commercial data as an input" to its software) *and Duffy v. Yardi Sys., Inc*., 758 F. Supp. 3d 1283, 1292 (W.D. Wash. 2024) (denying motion to dismiss because plaintiffs showed that the software relies on clients' "confidential and commercially sensitive pricing, inventory, and market data" and adopts the generated price "with very little, if any, second guessing") *and United States v. Agri Stats, Inc.,* No. 0:23-cv-3009, 2024 WL 2728450, at *1 (D. Minn. May 28, 2024) (denying motion to dismiss based on allegations that Agri Stats "collects detailed information from its subscribers about their operations, including information about sales, live production, processing, and profits, which is not available elsewhere.") *with Gibson v. Cendyn Grp., LLC*, No. 2:23-cv-00140, 2024 WL 2060260, at *4 (D. Nev. May 8, 2024) (dismissing case where plaintiffs failed to show that room pricing was based on non-public competitor information); *Cornish-Adebiyi v. Caesars Ent., Inc*., No. 1:23-cv-02536, 2024 WL 4356188, at *5 (D.N.J. Sept. 30, 2024) (same).
[viii] *VHS Liquidating Trust v. MultiPlan Corp., et. al*., No. CGC-21-594966 (Sup. Ct. Cal. Aug. 4, 2024) ("*VHS*")
[ix] Opinion at 32.
[x] *Id.* at 33.
[xi] The unjust enrichment claims were dismissed because, despite bringing claims under the laws of thirty-one states and the District of Columbia, the plaintiffs failed to differentiate between each of those jurisdiction's unjust enrichment laws. *Id.* at 48–49.