

RETURN DATE: MARCH 25, 2008

STATE OF CONNECTICUT	:	SUPERIOR COURT
<i>Plaintiff,</i>	:	
	:	
v.	:	HARTFORD JUDICIAL DISTRICT
	:	AT HARTFORD
	:	
CONNECTICUT CHIROPRACTIC	:	
ASSOCIATION, INC.;	:	
CONNECTICUT CHIROPRACTIC	:	
COUNCIL, INC.; and	:	
ROBERT L. HIRTLE, JR.	:	
<i>Defendants.</i>	:	MARCH 5, 2008

**COMPLAINT**

This is an action by Richard Blumenthal, Attorney General, State of Connecticut, pursuant to the Connecticut Antitrust Act, Conn. Gen. Stat. § 35-24 *et seq.*, to secure civil penalties and appropriate injunctive relief flowing from the unlawful refusal to deal perpetrated by the defendants regarding the provision of chiropractic services in the State of Connecticut, as more fully set forth below.

This action seeks redress for the defendants' unlawful boycott and refusal to deal which occurred in the State of Connecticut beginning in August of 2006. Each of the defendants used considerable influence to persuade chiropractors in the state to opt out of the Anthem Health Plans, Inc. d/b/a Anthem Blue Cross Blue Shield of Connecticut, Inc. ("Anthem") panel of providers in order to prevent Anthem from contracting with American Specialty Health Network, Inc. ("ASH") to administer chiropractic services to patients within the state. In pursuing these illegal practices, the

defendants conspired with each other to unreasonably restrain trade by engaging in an illegal boycott, and violated the Connecticut Antitrust Act Sections 35-26 and 35-28.

### **THE PARTIES**

1. Pursuant to Conn. Gen. Stat. § 35-32(a), Richard Blumenthal, Attorney General of the State of Connecticut (the “Attorney General”), brings this action on behalf of the State of Connecticut and the People of the State of Connecticut for violations of the Connecticut Antitrust Act.

2. The State has an interest in the economic health and well-being of those that reside or transact business within its boundaries. The State also has an interest in ensuring the presence of an honest marketplace in which economic activity is conducted in a competitive manner for the benefit of consumers and other marketplace participants – without collusion, fraud or deception.

3. Defendant Connecticut Chiropractic Association, Inc. (“CCA”) is a non-profit corporation established in the State of Connecticut. The CCA’s principal place of business is Rocky Hill, Connecticut, and it is a trade association whose membership consists of chiropractors licensed in the State of Connecticut. During the relevant time period, the CCA had approximately 327 chiropractors as its members.

4. Defendant Connecticut Chiropractic Council, Inc. (“CCC”) is a non-profit corporation established in the State of Connecticut. The CCC’s principal place of

business is Branford, Connecticut, and it is a trade association whose membership consists of chiropractors licensed in the State of Connecticut. During the relevant time period, the CCC had approximately 116 chiropractors as its members.

5. Both the CCA and the CCC are trade organizations and engage in a number of activities and services such as lobbying, advocacy before administrative agencies, and continuing education for their members.

6. Defendant Robert L. Hirtle is an attorney practicing in the State of Connecticut. Defendant Hirtle's principal place of business is in Hartford, Connecticut.

7. Whenever reference is made in this Complaint to any representation, act or transaction of Defendants CCA or CCC or any other legal or commercial entity, such allegation shall be deemed to mean that their principals, officers, directors, employees, agents or representatives, while acting within their actual or apparent authority, whether they were acting on their own behalf or for their own benefit, did or authorized such representations on behalf of Defendants CCA or CCC or such other legal or commercial entity.

### **FACTS**

8. Since at least July, 2006, the defendants combined and conspired with each other and with other chiropractors in Connecticut to:

(a) Fix, stabilize or affect the compensation that chiropractors in Connecticut receive for chiropractic services provided to people insured by certain Anthem contracts; and

(b) Restrict, regulate, impede or interfere with the reimbursement policies of Anthem and ASH.

9. In furtherance of the alleged combination and conspiracy, the defendants exerted coercive pressure, both directly and indirectly, against Anthem and ASH, by organizing a group boycott designed to defeat ASH's ability to effectively contract with Anthem and administer the chiropractic benefits provided by Anthem.

10. Throughout the course of the conspiracy alleged herein, each defendant provided support to, and advised their client or member chiropractors of, the actions undertaken in furtherance of the combination and conspiracy to refuse to deal with ASH.

11. ASH is a company that administers the chiropractic benefit for managed care organizations such as Anthem. Were ASH the administrator, chiropractors would submit their claims to ASH, rather than Anthem. ASH would establish the fee schedules for chiropractic services and determine levels of utilization generally deemed medically appropriate, including the number of visits and the types of treatment. ASH, rather than Anthem, would also review the chiropractors' credentials and provide customer service.

12. In July 2006, notice of the proposed contract between Anthem and ASH was delivered to Connecticut chiropractors. The notice stated that beginning on

November 1, 2006, ASH would administer chiropractic benefits for certain Anthem health plans.

13. Under the terms of the contract, chiropractors who became part of the ASH panel agreed to submit to the rules, procedures and reimbursement rates as determined by ASH. The fee schedule for chiropractic services that ASH proposed was lower than the reimbursement that Anthem had paid in previous years.

14. Anthem health plan members represent a large share of insured chiropractic patients in Connecticut.

15. On August 4, 2006 the CCA invited all Connecticut chiropractors to a CCA General Membership meeting to be held on Thursday August 10, 2006 at the Four Points Sheraton in Meriden, Connecticut to discuss the proposed Anthem/ASH contract. In its invitation, the CCA leadership indicated that it would be in a position to discuss at the meeting the questions that many chiropractors had about the upcoming ASH contract.

16. The August 10, 2006 meeting was the first of several meetings that was called by the CCA to discuss the proposed contract. The meeting was led by a CCA member (and former officer), and by the CCA's attorney Robert L. Hirtle ("Hirtle"). Members of the CCA, the CCC, and unaffiliated chiropractors attended the meeting.

17. A principal topic at the meeting was whether the chiropractors, who are direct competitors, would be able to earn as much compensation under the proposed ASH participation agreement as they had under their previous Anthem contract.

18. At the meeting Hirtle stated that ASH, a preferred provider network (“PPN”), already maintained another network in Connecticut due to their participation agreement with CIGNA Corporation (“CIGNA”). He stated that the ASH/Anthem panel would not be viable if a large number of chiropractors decided to opt out.

19. At the meeting, Hirtle sought to influence the attending chiropractors to opt out of the ASH panel in order to avoid the low rates of reimbursement offered by ASH. Hirtle discussed the economic issues raised by the ASH contract.

20. The chiropractors attending the August 10 meeting understood that their conduct might violate the antitrust laws. For instance, Hirtle was asked by a meeting attendee about the penalties that may be applicable if the membership’s activities violated the antitrust laws. Moreover, the group also discussed an antitrust investigation of the Maine Chiropractic Association conducted in 1999 by the Attorney General for the State of Maine. Nevertheless, the chiropractors spoke in favor of opting out of the panel and openly solicited one another to agree to join the boycott.

21. Hirtle engaged in additional conduct at the meeting to facilitate the chiropractors’ boycott of ASH. Hirtle requested that any chiropractor who opted out of the network provide him with a copy of their opt out letter.

22. In the time period following the August 10<sup>th</sup> meeting, Hirtle continued to track the number of chiropractors who opted out and disseminated this information to the group. An August 15, 2006 email sent by Hirtle stated, “[a]s of Tues 8/15 I have received copies of 10 ASH resignation letters. The list has shrunk from 198 to 188. There need to be 60 more resignations to cripple the ASH provider list.”

23. As the boycott effort took root, senior officers of both the CCA and the CCC, including the presidents of the respective associations, worked jointly to prepare memoranda and correspondence intended to urge their respective membership and others to opt out of the ASH network. The correspondence disseminated by the CCA and CCC to their membership specified the number of chiropractors who had agreed to opt out and served to pressure those chiropractors who remained undecided.

24. On Tuesday August 29, 2006 the CCC's president sent an email to officers and directors of both the CCC and the CCA, as well as other chiropractors, advising them, “[a]fter reading this, pass it along to as many colleagues ASAP.” The email beseeched the recipients to join together because, “[t]he only way to stop them [ASH] from ruining chiropractic care in Connecticut is to ensure that there are not enough providers to allow [ASH] to contract with [Anthem]...You are not alone in this fight. There are almost 700 practicing chiropractors in this state and over the next 2 weeks, myself or another doctor will contact you to discuss this situation and to answer any questions you may have...”

25. Upon information and belief, chiropractors disseminated information, including a model opt-out letter to send to ASH, in order to convince their competitors to join the boycott.

26. On September 12, 2006 a chiropractor wrote to Hirtle, "I understand through the vine that we are doing very well with the UNITY issue to fight ASH. Who are the doctors [still on the panel]?"

27. Rather than advising the chiropractor that he was mistaken about a group effort to defeat the ASH contract, or even try to clarify any misunderstanding, Hirtle instead simply replied, "I'll send you a list."

28. Throughout the late summer and fall of 2006, chiropractors sought continuous updates from Hirtle on those who had opted out and those who had not. Not only did Hirtle supply the number of chiropractors that had opted out, he also solicited additional chiropractors to join, writing at one point: "We need 50 more to destroy the panel," and on another day replying to a chiropractor that, "It would be nice to get 100% out in Hartford and New Haven Counties tomorrow."

29. During these months the chiropractors repeatedly incited each other to unite in their fight to defeat the ASH program through communications that include: "We all need to unite on this issue," "We must band together," and "Get [ASH] out of this state!"



30. By October 19, 2006 it was apparent that the boycott had achieved its objective. As one chiropractor succinctly stated in an email to Hirtle, "I have heard through the vine that we have beaten them again! Imagine the chiropractic unity, is at an all time high. What is the next step and what do you see in the future, how are they going to hit us. What will it take to have ASH leave or are they here to stay..." Hirtle replied, "ASH has been defeated again..."

31. On November 15, 2006 Hirtle wrote, "The list is now 18 [chiropractors]. 5 Counties out 100%. A great victory for Chiropractic!"

32. As a result of the illegal agreement among the chiropractors, the ASH/Anthem contract never went forward.

33. The Defendants entered into illegal agreements and engaged in an anticompetitive conspiracy to boycott insurers and managed care organizations residing in the State of Connecticut.

34. The Defendants' unlawful conspiracy had the purpose or effect, or the tendency or capacity, to unreasonably restrain and injure competition by, among other things:

- (a) Restraining competition among chiropractors;
- (b) Fixing, stabilizing, or otherwise affecting the reimbursement paid to chiropractors who provide chiropractic services;
- (c) Raising the costs to insurers for chiropractic services;

(d) Depriving insurers and ASH of the benefits of competition among chiropractors; and

(e) Depriving consumers of the benefits of competition among chiropractors.

35. The Defendants' actions as alleged herein have caused loss and damage, and threaten to cause loss and damage, to persons residing in the State of Connecticut.

### **CAUSE OF ACTION**

#### **Breach of Connecticut Antitrust Act (Conn. Gen. Stat. § 35-24 *et seq.*)**

36. The Defendants' actions as alleged herein violate Conn. Gen. Stat. § 35-26 and § 35-28 because the illegal agreements were entered into or effectuated within the State of Connecticut and have the purpose or the effect of unreasonably restraining trade and commerce within the State of Connecticut.

### **DEMAND FOR RELIEF**

**WHEREFORE**, the State of Connecticut requests the following relief:

1. A finding that the Defendants have engaged in trade or commerce in Connecticut;

2. A finding that the Defendants have entered into a contract, combination or conspiracy in Connecticut to unlawfully fix, control or maintain prices, rates or fees in the provision of chiropractic services;

3. A finding that by the acts alleged herein the Defendants engaged in a boycott that was an unreasonable and anticompetitive restraint of trade or commerce in violation of the Connecticut Antitrust Act;

4. An injunction pursuant to Conn. Gen. Stat. § 35-32(a) and 35-34 enjoining the Defendants from engaging in any acts that violated the Connecticut Antitrust Act, including, but not limited to, the unlawful and anticompetitive acts alleged herein;

5. Civil penalties of up to \$25,000 for Defendant Hirtle pursuant to Conn. Gen. Stat. § 35-38 for each violation of the Connecticut Antitrust Act;

6. Civil penalties of up to \$250,000 for Defendants CCA and CCC pursuant to Conn. Gen. Stat. § 35-38 for each violation of the Connecticut Antitrust Act;

7. Reasonable attorneys' fees and costs pursuant to Conn. Gen. Stat. § 35-35; and

8. Such other relief as the Court deems just and equitable.

Dated at Hartford, Connecticut this 5th day of March, 2008.

**PLAINTIFF  
STATE OF CONNECTICUT**

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RICHARD BLUMENTHAL  
ATTORNEY GENERAL

BY:

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**AMOUNT IN DEMAND**

The amount, legal interest, or property in demand is \$15,000.00 or more, exclusive of interests and costs.

**PLAINTIFF  
STATE OF CONNECTICUT**

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