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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

UNITED STATES OF AMERICA and the)	
STATE OF IDAHO,)	
)	
Plaintiffs,)	Civil Case No. 10-268
)	
vs.)	
)	COMPLAINT
IDAHO ORTHOPAEDIC SOCIETY,)	
TIMOTHY DOERR, JEFFREY HESSING,)	
IDAHO SPORTS MEDICINE INSTITUTE,)	
JOHN KLOSS, DAVID LAMEY, and)	
TROY WATKINS,)	
)	
Defendants.)	
_____)	

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Idaho, acting under the direction of the Attorney General of the State of Idaho, bring this action for equitable and other appropriate relief against Defendants Idaho Orthopaedic Society, Dr. Timothy Doerr, Dr. Jeffrey Hessing, Idaho Sports Medicine Institute, Dr. John Kloss, Dr. David Lamey, and Dr. Troy Watkins, to restrain Defendants' violations of Section 1 of the Sherman Act and Idaho Code Section 48-101 *et seq.* of the Idaho Competition Act. Plaintiffs allege as follows:

I. NATURE OF THE ACTION

1. Defendants and other competing orthopedists and orthopedic practices in the Boise, Idaho area formed two conspiracies to deny, or to threaten to deny, medical care to patients to force those patients' insurers to increase fees for orthopedic services.

2. In the first conspiracy, Defendants and their co-conspirators agreed, through a series of meetings and other communications, not to treat most patients covered by workers' compensation insurance. Defendants entered into this group boycott to force the Idaho Industrial Commission to increase the rates at which orthopedists are reimbursed for treating injured workers. Defendants' group boycott, which resulted in a shortage of orthopedists willing to treat workers' compensation patients, caused the Idaho Industrial Commission to increase rates for orthopedic services substantially above levels set just a year earlier.

3. In the second conspiracy, Defendants (except for Defendant Lamey) and other conspirators agreed, through a series of meetings and other communications, to threaten to terminate their contracts with Blue Cross of Idaho ("BCI") to force it to offer better contract terms to orthopedists. Their collusion caused BCI to offer orthopedists more favorable contract

terms than BCI would have offered but for Defendants' group boycott of BCI.

4. The United States and the State of Idaho, through this suit, ask this Court to declare Defendants' conduct illegal and to enter injunctive relief to prevent further injury to the State of Idaho and other purchasers of orthopedic services, including self-insured employers and health and workers' compensation insurers in the Boise, Idaho area and elsewhere.

II. DEFENDANTS

5. The Idaho Orthopaedic Society ("IOS") is a non-profit corporation organized and doing business under the laws of the State of Idaho, with its principal place of business in Boise. The IOS is a membership organization that, from 2006 to 2008, consisted of approximately 75 economically independent, competing orthopedists in solo and group practices in Idaho.

6. Timothy Doerr, M.D. is an orthopedic surgeon practicing in Boise. He was at all relevant times a member of the IOS.

7. Jeffrey Hessing, M.D. is an orthopedic surgeon practicing in Boise. He was at all relevant times a member of the IOS.

8. Idaho Sports Medicine Institute, P.A. ("ISMI"), an orthopedic practice group consisting of four physicians, is a corporation organized and doing business under the laws of the State of Idaho, with its principal place of business in Boise.

9. John Kloss, M.D. is an orthopedic surgeon practicing in Boise who formerly practiced with Orthopedic Centers of Idaho, P.A., d.b.a. Boise Orthopedic Clinic ("BOC"). He was at all relevant times a member of the IOS.

10. David Lamey, M.D. is an orthopedic surgeon practicing in Boise who formerly practiced with BOC. He was at all relevant times a member of the IOS.

11. Troy Watkins, M.D. is an orthopedic surgeon practicing in Boise, and was from 2006 through 2008 the President of the IOS. He was at all relevant times a member of the IOS.

III. JURISDICTION AND VENUE

12. The Court has subject-matter jurisdiction over this action under 15 U.S.C. § 4 and 15 U.S.C. § 26, which authorize the United States and the State of Idaho, respectively, to bring actions in district courts to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. Subject-matter jurisdiction also exists pursuant to 28 U.S.C. §§ 1331, 1337 and 1345.

13. The Court has jurisdiction over the State of Idaho's claim under Idaho Code Section 48-101 *et seq.*, under the doctrine of pendent jurisdiction, 28 U.S.C. § 1367.

14. The IOS and ISMI are both found, have transacted business, and committed acts in furtherance of the alleged violations in the District of Idaho. Defendants Doerr, Hessing, Kloss, Lamey, and Watkins all provide orthopedic services and reside in Idaho. Consequently, this Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

IV. CONSPIRATORS

15. Various persons not named as defendants in this action have participated as conspirators with Defendants in the offenses alleged and have performed acts and made statements in furtherance of the alleged conspiracies.

V. EFFECTS ON INTERSTATE AND IDAHO COMMERCE

16. The activities of Defendants that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

17. Defendants have treated patients who are not residents of Idaho. Defendants have also purchased equipment and supplies that were shipped across state lines.

18. Most Idaho employers provide workers' compensation and health insurance for their employees. The rates that Idaho employers pay for providing workers' compensation and health insurance are based in part on the cost of orthopedic services. Anticompetitive conduct that increases the cost of orthopedic services increases the cost of producing goods and services, which many Idaho employers sell in interstate commerce.

VI. IDAHO WORKERS' COMPENSATION SYSTEM CONSPIRACY

19. The Idaho Workers' Compensation Act, Idaho Code Section 72-101 *et seq.*, requires that most public and private employers in Idaho carry workers' compensation insurance for their employees.

20. The Idaho Industrial Commission is the state agency responsible for regulating workers' compensation insurance in Idaho. Since 2006, the Idaho Industrial Commission has set the fee schedule that determines the amount that orthopedists and other healthcare providers usually receive for treating patients covered by workers' compensation insurance. The fee schedule uses a methodology for determining physician payments called a Resource-Based Relative Value System or RBRVS.

21. The RBRVS methodology uses a "relative value unit" and a "conversion factor" to determine physician payment. The relative value unit measures the resources necessary to perform a medical service. For example, a complicated surgical procedure has a higher relative value unit than a simple office visit. The conversion factor is a set dollar amount, for example, \$100.

22. A physician's payment for any medical service is generally calculated by multiplying the relative value unit by the conversion factor. For example, a physician would receive \$500 for a medical service with a relative value unit of 5 and a conversion factor of \$100.

23. In February 2006, the Idaho Industrial Commission announced a new fee schedule using the RBRVS methodology and setting a conversion factor of \$88 for many orthopedic procedures. The new fee schedule had an effective date of April 1, 2006. Many orthopedists believed this conversion factor would result in lower payments to orthopedists. In response, Defendants and their co-conspirators agreed, through the actions discussed below, not to treat most patients covered by workers' compensation insurance.

24. Shortly after the Idaho Industrial Commission announced the February 2006 fee schedule, many Boise-area orthopedists from competing practices discussed with one another whether to accept the proposed rates or, alternatively, to stop treating workers' compensation patients. For example, at Defendant Doerr's invitation, orthopedists from several competing practices met on March 2, 2006 to talk about "the physician response to the new fee schedule." Also on March 2, 2006, an orthopedist specializing in hand surgery sent an e-mail to several competing orthopedic hand surgeons saying that the new conversion factors represented a severe cut in workers' compensation payments and that, at Defendant Doerr's meeting that night, orthopedists would examine their options. On the same day, Defendant Lamey wrote to a competing orthopedist that he did "not have much problem dropping out of work comp."

25. The day after the March 2, 2006 meeting, orthopedists from two competing practices sent letters to the Idaho Industrial Commission announcing their intention to stop treating workers' compensation patients.

26. Many of the orthopedists who initially boycotted the workers' compensation system were orthopedists who specialized in hand surgery. For example, on April 12, 2006, seven hand surgeons met "to discuss the various docs' interest in continuing to participate" in Idaho's workers' compensation system. An e-mail describing this meeting noted that Defendant Lamey and a competing orthopedist favored "ditching" workers' compensation and that Defendant Kloss agreed but wanted to negotiate a rate increase with the Idaho Industrial Commission. The day after that meeting, Defendants Kloss and Lamey stopped treating workers' compensation patients, with the exception of emergency room patients.

27. A June 6, 2006 letter from the IOS leadership, including Defendants Watkins and Kloss, to members instructed them that they "'must, indeed, all hang together or, most assuredly, we shall all hang separately.'" The letter noted that orthopedists "must act together" concerning the workers' compensation fee schedule and "collectively join our efforts for our practices" to negotiate a more favorable fee schedule.

28. Minutes from a BOC board of directors meeting on June 12, 2006, state that BOC's president told the board that Boise-area orthopedists specializing in hand surgery "have stopped taking new work comp patients." The minutes continue, saying, "Dr. Kloss confirmed this, except for [emergency room] call patients. [Defendant Kloss] said there has been an appeal for orthopedists to support the hand surgeons in their effort to demonstrate the inadequacy of payment for some orthopedic procedures."

29. On September 12, 2006, orthopedists from competing practices attended a meeting organized by Defendants Doerr and Hessing to discuss workers' compensation fees. Within ten days of the meeting, ISMI and two other large orthopedic practices in the Boise area stopped

treating workers' compensation patients.

30. By October 2006, most of the approximately 65 orthopedists in the Boise area had stopped seeing most workers' compensation patients.

31. Five of the few remaining Boise orthopedists who continued to care for workers' compensation patients worked at BOC. Other orthopedists encouraged and pressured those BOC orthopedists to join the boycott and stop seeing workers' compensation patients. In an October 24, 2006 email, BOC's president also encouraged these five BOC orthopedists to join the boycott. He explained that if the doctors were to stop treating new workers' compensation patients, the workers' compensation system would "be brought to a virtual standstill," increasing the doctors' negotiating leverage.

32. Over the following months, orthopedists and practice administrators regularly monitored adherence with the group boycott and pressured doctors to maintain a disciplined front. For example, on November 27, 2006, an ISMI administrator assured a competing practice that although ISMI had recently accepted one workers' compensation patient to offer a second opinion, it would not do so again, lest it "risk the rath [*sic*] of all the orthopedic surgeons because we're doing this." The ISMI administrator assured the competing practice group that ISMI was "turning away all other worker's comp cases," and asked the recipient to "[p]lease tell your docs what we did so it doesn't come back and sound worse than it already is!"

33. Defendants and their co-conspirators refused to treat most workers' compensation patients because they believed that if injured workers were unable to find orthopedists willing to treat them, the Idaho Industrial Commission would be forced to increase the orthopedist fee schedule. An ISMI employee explained that her practice's "lack of participation, along with

others in the area, may cause them [i.e., the Idaho Industrial Commission] to review their current Proposed Rule, which also includes the fee schedule.” A January 2007 IOS newsletter notes that “lack of access [to orthopedists] is the key” to increased workers’ compensation rates.

34. According to the February 5, 2007 minutes of the Idaho House of Representatives Commerce & Human Resources Committee, Defendant Watkins openly discussed that physicians had agreed not to treat most workers’ compensation patients. The minutes describe Defendant Watkins as stating that “[a] group of physicians met and decided that the [fee] table was not satisfactory. They decided to stop seeing workers’ compensation patients [except] in the emergency room, and stop seeing and giving second opinions until discussion happened about [the] conversion factor chart.”

35. In the face of an effective and widely adhered to group boycott, in February 2007, the Idaho Industrial Commission announced workers’ compensation rates that were up to 61% higher than the rates that the Commission had announced a year earlier.

36. After the new rates were announced, Defendants and their co-conspirators agreed to end their boycott and accept the new rates. In a February 13, 2007 letter to IOS membership, Defendant Watkins wrote, “We . . . all think this [the higher fee schedule] represents a major accomplishment, and that we should accept it now.” Shortly thereafter, Defendants and almost all of the orthopedists who had participated in the conspiracy resumed participation in the workers’ compensation system.

VII. BLUE CROSS OF IDAHO CONSPIRACY

37. BCI is a not-for-profit mutual insurance company that offers a wide range of healthcare plans to employers and other groups in Boise and other areas of Idaho.

38. To offer these plans, BCI contracts with orthopedists and other physicians to provide medical services. BCI's contracts with orthopedists set the reimbursement amounts that BCI pays orthopedists for providing covered health care to BCI's enrollees.

39. In December 2007, BCI informed its network of orthopedists and other physicians of new rates that would take effect on April 1, 2008. Some of the Defendants and other orthopedists were concerned that the new rates were lower than BCI's previous rates.

40. Before the rates became effective, several of the Defendants and other competing orthopedists communicated with each other their dissatisfaction with BCI's proposed rates. In addition, on February 22, 2008, Defendant Watkins sent a letter to BCI saying that "[m]any of our members are worried that they may not be able to sustain some of the reductions they are facing with the proposed 2008 rates."

41. On April 9, 2008 – eight days after the new BCI rates took effect – the IOS sponsored an "Orthopedic Open House" at Defendants Hessing and Doerr's office. At this meeting, the orthopedists discussed how to respond to BCI's adoption of new rates and encouraged others to send termination notices to BCI. Defendants Doerr and Hessing encouraged the orthopedists in attendance to put an ad in the newspaper to alert their patients and to assure other orthopedists that they were joining the boycott.

42. Shortly after the Orthopedic Open House, orthopedists began issuing termination notices to BCI and advertising their intended withdrawals in local newspapers. Between April and June 2008, twelve practice groups – representing approximately 31 of 67 orthopedists in the Boise area at the time – gave BCI notice that they would withdraw from BCI's network. This group included many IOS practice groups, including the practice group of Defendants Hessing

and Doerr, and ISMI.

43. From April to June 2008, while orthopedic groups were sending termination notices to BCI, orthopedists communicated with each other to encourage others to withdraw from the BCI network. As part of this communication, many practices placed newspaper advertisements announcing their withdrawal from the BCI network. In addition, orthopedists discussed how the successful boycott of workers' compensation patients provided the model for collectively standing up to BCI and negotiating higher rates.

44. In June 2008, Defendant Watkins attempted to negotiate with BCI on behalf of competing orthopedists. He asked that BCI representatives meet with himself, Defendant Hessing, and Defendant Kloss (all of whom were in competing practices). In a separate June 2008 meeting, Defendant Watkins told BCI representatives that Idaho's orthopedists were a "very cohesive group" that had been successful in their efforts related to workers' compensation payments the previous year. Defendant Watkins also encouraged BCI to negotiate with practices that had already sent termination notices to BCI because otherwise BCI would experience a severe shortage of orthopedists in its network.

45. In response to the orthopedists' group boycott, on June 18, 2008, BCI offered orthopedists an additional contracting option to encourage orthopedists to continue to participate in BCI's provider network. The new option allowed orthopedists to choose between continuing to participate in BCI's network at current rates for one year with the possibility for higher rates the next year or to lock in existing rates for a three-year period. The new offer from BCI divided Boise's orthopedists, as several orthopedic practices accepted the new BCI offer.

46. In July 2008, when the conspirators failed to convince a large Boise orthopedic

practice to join the boycott of BCI and that practice decided to continue its participation with BCI, BCI was able to contract with a sufficient number of orthopedists to maintain a viable physician network. Realizing that no further concessions beyond BCI's new offer would be forthcoming, practice groups began rescinding their termination notices. By the end of August 2008, most orthopedic practices had rescinded their termination notices and remained in the BCI network.

VIII. NO INTEGRATION

47. Other than in their separate practices, IOS members do not share any financial risk in providing physician services, do not collaborate in a program to monitor and modify their clinical practice patterns to control costs or ensure quality, and do not otherwise integrate their delivery of care to patients.

IX. VIOLATIONS ALLEGED

A. Claim 1: Conspiracy to Boycott Workers' Compensation Patients

48. Plaintiffs reiterate the allegations contained in paragraphs 1 through 36 and 47.

49. Beginning at least as early as February 2006 and continuing until at least February 2007, Defendants and their co-conspirators engaged in a combination or conspiracy in restraint of trade or commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 48-104 of the Idaho Competition Act, by collectively refusing to treat workers' compensation patients. The Defendants' group boycott to refuse to treat workers' compensation patients led to Defendants' obtaining higher reimbursement rates from the Idaho Industrial Commission.

B. Claim 2: Conspiracy to Boycott Participation in BCI

50. Plaintiffs reiterate the allegations contained in paragraphs 1 through 47.

51. Beginning in or about January 2008, and continuing through at least August 2008, the participating Defendants and their co-conspirators engaged in a combination or conspiracy in restraint of interstate trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 48-104 of the Idaho Competition Act, by collectively threatening to terminate their contracts with BCI. The participating Defendants' group boycott to terminate their contracts with BCI led to Defendants' obtaining more favorable contract terms from BCI.

X. REQUEST FOR RELIEF

52. To remedy these illegal acts, the United States of America and the State of Idaho request that the Court:

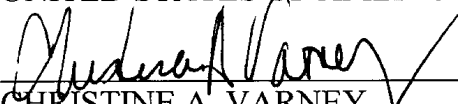
a. adjudge and decree that Defendants entered into two unlawful contracts, combinations, or conspiracies in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Idaho Code Section 48-104 of the Idaho Competition Act;

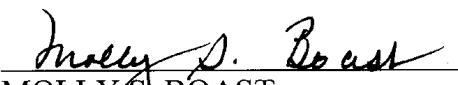
b. enjoin the Defendant IOS and its members, officers, agents, employees and attorneys and their successors; Defendant ISMI; the individual physician Defendants; and all other persons acting or claiming to act in active concert or participation with one or more of them, from continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement to fix health care services prices, collectively negotiate on behalf of competing independent physicians or physician groups, or collectively boycott patients or health care insurers or other payors of health care services; and

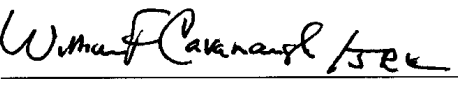
c. award to plaintiffs their costs of this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

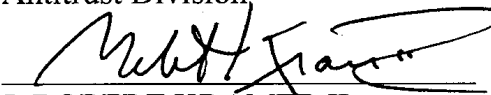
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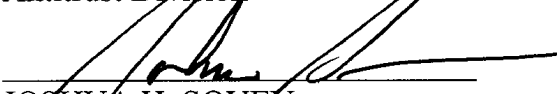
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c. award to plaintiffs their costs of this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

DATE: _____, 2010

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UNITED STATES OF AMERICA:

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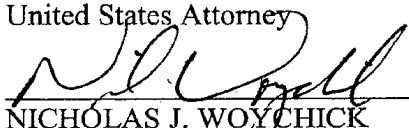
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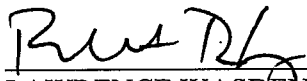
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