

# ANTITRUST & TRADE PRACTICES

## *Alert*

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

### **Albany Hospitals Score Partial Victory: Federal Court Limits Scope of Class Certification in Nurse Wage-Fixing Case**

August 11, 2008

#### **Key Points**

- Registered nurses have alleged in five federal class actions that hospitals conspired to hold down their wages.
- The court in the first case to reach the class certification stage has certified an Albany, New York class on the issue of whether the hospitals violated the antitrust laws, but not on the issues of whether individual class members were injured or their damages.
- The decision represents a substantial victory for the hospitals because the Albany class members will have a more difficult time litigating their claims.

#### **Background**

For the past two years, a number of hospitals have fought allegations that they conspired to fix and suppress the wages of registered nurses (RNs). In 2006, five class action lawsuits were filed in federal courts across the country by a consortium of plaintiffs' firms alleging that hospitals had engaged in conspiracies to suppress RN compensation in the Albany, Chicago, Detroit, Memphis and San Antonio metropolitan areas.<sup>1</sup> The virtually identical complaints claim that hospitals in those cities violated Section 1 of the Sherman Act by either conspiring to fix RN wages or by suppressing RN wages through an agreed exchange of information about RN compensation.

Each of the five cases alleges that the named hospitals directly shared information on nurse compensation with each other and agreed not to compete in setting nurse compensation levels.

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<sup>1</sup> The cases are: *Fleischman v. Albany Med. Ctr.*, No. 06-CV-0765 TJM/DRH (N.D.N.Y. filed June 20, 2006) (formerly titled *Unger v. Albany Med. Ctr.*); *Reed v. Advocate Health Care*, No. 1:06-CV-03337 (N.D. Ill. filed June 20, 2006); *Clarke v. Baptist Mem'l Healthcare Corp.*, No. 2:06-CV-02377-SHM-dkv (W.D. Tenn. filed June 20, 2006); *Maderazo v. Vanguard Health Sys.*, No. SA-06-CA-0535-OG (W.D. Tex. filed June 20, 2006); and *Cason-Merendo v. Detroit Med. Ctr.*, No. 06-CV-15601 (E.D. Mich. filed December 15, 2006).

Some of the cases also allege that the named hospitals participated in third-party surveys that collected and disseminated data on nurse compensation. These surveys supposedly gave the hospitals information about their local competitors' compensation levels that eliminated any concern about being "out-bid" for RNs.

## **Summary**

On July 28, 2008, the United States District Court for the Northern District of New York issued an opinion on whether the Albany case could proceed as a class action lawsuit. Class actions are designed to make litigation more efficient by permitting a single or a small number of named plaintiffs to bring claims on behalf of a large number of people. However, class actions are not appropriate where, for example, distinct evidence is necessary to prove the claims of each class member.

In the July 28 opinion, the court held that the Albany case is only partially suitable for treatment as a class action. The named plaintiffs sought to represent approximately 2300 persons employed to work as an RN in a hospital in the Albany area any time from June 20, 2002 until the present. The complaint alleges that as a result of the hospitals' conspiracy, these persons received lower wages than they would have received in a competitive market.

While the court allowed the case to proceed as a class action on whether the defendants had engaged in an anticompetitive conspiracy, the court did not grant the case class action status on whether the 2300 RNs were injured by that alleged conduct or, if so, the amount of damages each RN suffered. The court was persuaded by the hospitals' argument that individual and distinct evidence would be necessary to prove that each class member was injured and the amount of his or her damages.

## **What Is Next?**

This decision represents a substantial victory for the hospitals because it will make it more difficult for the Albany class members to litigate their claims. While the case can proceed as a single trial on the issue of whether the hospitals violated the antitrust laws, separate trials will still be necessary for each of the class members to prove he or she was injured and the amount of damages.

In the four remaining cases, class certification has not yet been decided. Briefing on the class certification issue has been completed in the San Antonio case, has just begun in the Chicago case, is scheduled to begin shortly in the Memphis case, and is not scheduled to begin until March 2009 in the Detroit case.

These cases highlight the risks of exchanging information with competitors about certain subjects, like employee wages and other input costs, which can result in significant and costly antitrust litigation.

Feel free to contact any of our attorneys listed below regarding these developments.

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