

Pa. Hospital Urges Class Cert. In Med Supply Antitrust Row

By **Matt Fair**

Law360, Philadelphia (October 9, 2015, 3:23 PM ET) -- A Pennsylvania hospital operator urged a federal judge to certify a class Friday in an antitrust case accusing distributor Owens & Minor Inc. of scheming to dominate the market for sutures and stitches by improperly bundling the supplies with other items that hospitals purchased.

At oral arguments Friday, plaintiff Schuylkill Health System's counsel told U.S. District Judge Juan R. Sanchez of Pennsylvania that both common evidence and common method for calculating damages in the case warranted certification of claims that Owens & Minor had shut out competitors through the scheme and kept prices artificially high.

"Each of the key questions in this case has common answers," Hausfeld LLP attorney Brent Landau said. "Even if each class member were an individual lawsuit, each one would need to do an identical analysis to evaluate how much of the market as a whole was foreclosed to competition."

Schuylkill, which operates two hospitals in Pottstown, Pennsylvania, sued medical supply companies Owens & Minor and Cardinal Health Inc. in 2012 for allegedly engaging in a monopolistic scheme to get small hospitals to purchase sutures, stitches and similar merchandise only through them by bundling the sales with other wares.

Schuylkill and Cardinal Health reached a \$1.2 million settlement deal last month that Judge Sanchez is currently considering.

The case has already survived a dismissal motion lodged by Cardinal and Owens & Minor, as Judge Sanchez ruled in July 2014 that Schuylkill made sufficiently specific allegations of injury to establish standing under the Sherman Act.

However, the judge threw out Schuylkill's conspiracy claims after concluding that the nonprofit stated in a "conclusory fashion" only that the defendants worked together to allocate markets or employ identical contractual terms. Judge Sanchez also said the fact the medical supply companies are members of a trade association that hosts annual conferences does not alone support the conclusion their parallel conduct amounts to a conspiracy.

Owens & Minor lashed out at Schuylkill's claims once again during Friday's hearing.

Shari Lahlou, a Crowell & Moring LLP partner representing the distributor, told the judge that prices for

the disputed products had actually gone down during the course of the litigation, and that the market share of another competitor who was not a party to the suit had gone up.

“The fact that we see competitors ... [growing] dramatically over the past several years, that evidence alone tells us that the costs are not so high that it prevents entry to the market or growth, because we’ve seen the growth,” Lahlou said.

Landau, however, said that a decision on class certification would not preclude the company from making similar arguments at the summary judgment stage.

“Certifying this class isn’t going to deprive them of making all these arguments on summary judgment,” Landau said.

Judge Sanchez said he would take the matter under advisement, but urged the parties to see if there was any way to reach resolution before a scheduled trial in March.

The case was argued for Schuylkill Health by Brent Landau of Hausfeld LLP.

The case was argued for Owens & Minor by John Gibson and Shari Lahlou of Crowell & Moring LLP.

The case is Schuylkill Health System v. Cardinal Health Inc. et al., case number 2:12-cv-07065, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Edrienne Su.