

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UPMC,

Plaintiff,

v.

HIGHMARK INC. and WEST PENN
ALLEGHENY HEALTH SYSTEM INC.,

Defendants.

Civil Action No. 2:12-cv-00692-JFC

Electronically Filed

**DEFENDANT HIGHMARK INC.'S MOTION TO DISMISS
ALL CLAIMS IN UPMC'S COMPLAINT**

Pursuant to Fed. R. Civ. P. 12(b)(6), defendant Highmark Inc. respectfully moves to dismiss UPMC's complaint in its entirety because all claims fail as a matter of law. As set forth more fully in the accompanying memorandum of law, the grounds for this motion are as follows:

1. In Counts V-VII, UPMC alleges that Highmark and West Penn Allegheny Health System conspired to violate the antitrust laws in violation of both Section 1 and Section 2 of the Sherman Act, 15 U.S.C. §§ 1, 2. The Court should dismiss all three of these counts because UPMC has not met its burden to plausibly allege an unlawful agreement between Highmark and West Penn. Even if UPMC had plausibly alleged the necessary agreement, Counts V-VII would still fail because UPMC has not plausibly alleged that the purported conspiracy had an actual adverse effect on competition in any market.¹

2. In Counts I-IV, UPMC alleges that Highmark has monopolized and attempted to monopolize certain purportedly relevant markets in violation of Section 2 of the Sherman Act.

¹ Highmark assumes solely for purposes of this motion that the product and geographic markets that UPMC alleges are the relevant ones because UPMC's claims fail regardless. Compl. ¶¶ 21-28. Highmark reserves its right to challenge these market definitions at a later appropriate time, if necessary.

The Court should dismiss Counts I-IV because UPMC has failed to plausibly allege that Highmark has market power in the health insurance markets that UPMC claims are the relevant markets.

3. In Count VIII, UPMC alleges that Highmark violated Section 1 of the Sherman Act because it purportedly is a member of a horizontal conspiracy among competitors (other Blue Cross Blue Shield plans) to eliminate competition among them and therefore to lower reimbursement rates to UPMC and other providers in Western Pennsylvania. The Court should dismiss Count VIII, because UPMC has not plausibly alleged a conspiracy among the Blue Cross Blue Shield plans.

4. All of UPMC's claims separately fail because UPMC has not plausibly alleged that it has suffered "antitrust injury" from the purported antitrust misconduct that it asserts.

Therefore, Highmark respectfully requests that the Court grant Highmark's motion and dismiss all claims in UPMC's complaint. A proposed order is attached.

Dated: August 24, 2012

Respectfully submitted,

/s/ Margaret M. Zwisler
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CERTIFICATE OF SERVICE

The undersigned certifies that, on August 24, 2012, a true and correct copy of the forgoing Defendant Highmark Inc.'s Motion to Dismiss All Claims in UPMC's Complaint was served on all counsel of record by the Court's electronic filing system (CM/ECF).

/s/ Margaret M. Zwisler
Margaret M. Zwisler (*pro hac vice*)