

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

STEWARD HEALTH CARE :  
SYSTEM, LLC, et al. :  
 :  
v. : C.A. No. 13-405S  
 :  
BLUE CROSS & BLUE SHIELD :  
OF RHODE ISLAND :

**MEMORANDUM AND ORDER**

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) is Defendant’s Motion to Compel Further Production of Documents from Plaintiffs (collectively “Steward”). (Document No. 45). Steward opposes the Motion. (Document No. 50). A hearing was held on the Motion on January 15, 2015.

**Background**

This case arises out of Steward’s failed attempt to acquire Landmark Medical Center. Steward alleges that its proposal to acquire Landmark triggered a series of anti-competitive steps by Defendant aimed at blocking Steward’s entry into the Rhode Island market. In the “Factual Background” section of its Complaint, Steward touts its past success in reviving community-based hospital care and offering lower-cost health insurance. (Document No. 1 at p. 5). It asserts that the benefits of its “approach to health care have been demonstrated in Massachusetts, where Steward has acquired and revitalized a number of community hospitals that were in financial distress.” Id. at p. 6.

Steward identifies the relevant geographic market as Rhode Island and the relevant product market as the market for the sale of commercial health insurance. (Document No. 1 at p. 24).

Steward claims that Defendant's anti-competitive actions prevented it "from acquiring Landmark, from fulfilling its plans to form an efficient network of community hospitals in Rhode Island and from participating in the market for the sale of commercial health insurance in Rhode Island by partnering with insurance companies to offer lower-cost limited provider network products." *Id.* at p. 23.

### **Discussion**

Defendant seeks to compel further production from Steward as to four general categories of documents: (1) documents related to contracts with other insurers and reimbursement rates; (2) documents related to hospital acquisitions; (3) documents related to hospital and insurer competition in Massachusetts; and (4) documents in the possession, custody, or control of employees of the Massachusetts hospitals owned by Steward.<sup>1</sup> Defendant contends that Steward's experience and business dealings in Massachusetts are relevant to its claim that Defendant's conduct prevented Steward from "replicating" its Massachusetts system in Rhode Island. Defendant also argues that the reimbursement rates accepted by Steward in Massachusetts are relevant to Steward's claim that Defendant refused to enter into a contract with it providing for "reasonable reimbursement rates" at Landmark. Steward counters that this case is about the Rhode Island market and that Defendant is making "grossly overbroad discovery demands" as to Steward's business operations in Massachusetts as a weapon to drive up its costs of litigation. (Document No. 50 at p. 8). Steward also contends that it has already agreed to produce documents concerning its Massachusetts

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<sup>1</sup> Defendant acknowledges that Steward has agreed to produce documents from Saint Anne's Hospital employees in response to requests directly related to Plaintiff's claims regarding that Massachusetts hospital.

operations<sup>2</sup> that are more than sufficient to address the limited relevance that such operations may have to this case. Further, Steward argues that, even if this information has any marginal relevance, the burden and expense of production would significantly outweigh its likely benefit. See Rule 26(b)(2)(C)(iii), Fed. R. Civ. P.

First, as to reimbursement rates, Steward alleges that Defendant's anti-competitive conduct included its refusal to enter into a contract with Steward for "reasonable reimbursement rates" at Landmark. (Document No. 1 at ¶¶ 4 and 66). In reviewing Steward's refusal to deal claim in connection with Defendant's Motion to Dismiss, Chief Judge Smith found it "sufficient for Steward to have pled facts suggesting that [Defendant] rejected proposed reimbursement rates significantly lower than the statewide average that [it] accepted at other hospitals." (Document No. 34 at p. 16). He also found Plaintiff's allegations sufficient to suggest that Defendant "refused to purchase hospital services from Steward at or around the same price points that it was willing to pay other providers for similar services." Id. at p. 17. In analyzing the refusal to deal claim, Chief Judge Smith focused on the reasonableness of the rates offered to Steward by Defendant in the context of the Rhode Island market and not in the context of what Steward may have accepted from another insurer in another state. However, the issue of the reasonableness of the rates offered by Defendant does not end that inquiry. There is also the issue of causation. Steward plainly alleges that Defendant's actions, including the failure to offer reasonable and competitive reimbursement rates at Landmark, "did in fact cause Steward's attempted acquisition of Landmark and RHRI to fail and thereby excluded Steward from entering the [Rhode Island] market..." (Document No. 1 at ¶ 44) (emphasis added). Accordingly, Defendant is entitled to probe that causation allegation and evidence

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<sup>2</sup> Steward operates eleven community hospitals in Massachusetts.

of the reimbursement rates acceptable to Steward in Massachusetts is relevant to that inquiry. While a comparison of rates from hospital to hospital (regardless of state) is not an apples to apples one due to the “complexity underlying hospital contracting,” (see Document No. 34 at p. 17), that does not make the rates immune from discovery and expert analysis. Just as Steward is entitled to discover and analyze the rates agreed to by Defendant with other Rhode Island hospitals to support its refusal to deal claim, Defendant is entitled to discover the rates acceptable to Steward in Massachusetts to defend that claim and test Steward’s causation and damages claim. Although I find that Defendant is entitled to production of Steward’s insurer contracts and reimbursement rates (Request Nos. 14 and 15), Defendant has not convinced me that the documents sought in Request Nos. 16, 18 and 21 seek relevant information or, if relevant, that the burden of production outweighs the likely benefit.<sup>3</sup>

Second, as to hospital acquisitions, Defendant relies upon Steward’s allegations regarding its “aim[ ] to develop in Rhode Island the same type of health care network it had successfully started in Massachusetts to offer lower-cost, high quality healthcare in Rhode Island” and that Defendant’s anti-competitive conduct prevented it “from fulfilling [such] plans.” (Document No. 1 at ¶¶ 26 and 61) (emphasis added). Defendant contends it is entitled to conduct discovery showing that its conduct was not the cause of Steward’s failure to replicate its Massachusetts system in Rhode Island, and discovery related to whether and why Steward’s business in Massachusetts has succeeded or failed and whether and why it might succeed or fail in Rhode Island. (Document No. 45 at p. 4).

While I agree generally that Steward’s operational performance in Massachusetts has some relevance to the claims and defenses in this case, Defendant has not convinced me that an order

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<sup>3</sup> In its Motion to Compel, Defendant concedes that “Steward is correct that Request No. 21, which seeks 18 fields of claims data..., may be burdensome.” (Document No. 45 at p. 12).

compelling further production from Steward is warranted. Steward represents that it has already agreed to produce documents that appear to me to be sufficient to allow Defendant to evaluate the success or failure of Steward's Massachusetts operations. See Document No. 50 at pp. 5-6. Accordingly, Defendant's Motion to Compel further production as to Request Nos. 3, 4, 5 and 24 is DENIED.

Defendant seeks to compel further production as to Request Nos. 36 and 37. These requests broadly seek documents regarding competition and market forces for both hospital services and health insurance in Massachusetts and Rhode Island. Steward represents that it has already agreed to produce documents regarding market conditions and competition that also contain words related to Rhode Island which are "more than sufficient for purposes of this case because any relevant documents concerning market conditions or geographic market would necessarily relate to Rhode Island or involve some contrast or comparison to market conditions in Rhode Island." (Document No. 50 at p. 16). Defendant has not convinced me that further production in response to these broad requests is necessary to allow it "to evaluate Steward's claim that it could replicate its Massachusetts 'model' in Rhode Island." (Document No. 51 at p. 13). While Steward's Complaint references the past "success" of its approach in Massachusetts, it does not use the term "replicate"<sup>4</sup> likely because the geographical and market differences between Rhode Island and Massachusetts would make that impossible. Accordingly, Defendant's Motion to Compel further production as to Request Nos. 36 and 37 is DENIED.

Finally, there is a dispute regarding Steward's General Objection No. 9 to Defendant's First Request for Production. (Document No. 50-1 at p. 5). In particular, Steward objects to Defendant's

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<sup>4</sup> Replicate is generally defined as duplicating or reproducing something.

requests to the extent they call for the production of documents from the eleven (11) hospitals owned and operated by Steward and advises that “[u]nless specifically indicated in [its] Responses to these Requests, Steward will not produce documents from [its] hospitals, except to the extent that such documents are located in the files of Steward management.” Id. Defendant objects to Steward’s unilateral limitation of searchable custodians to only Steward personnel and asks for an order overruling the general objection and compelling steward to meet and confer with it in good faith regarding any additional documents from Steward’s hospital employees that would be necessary to satisfy Steward’s discovery obligations as to the requests in dispute. (See Document No. 51 at pp. 14-15). While this particular dispute is mostly mooted by the rulings herein on the underlying discovery disputes, I agree with Defendant that Steward’s blanket assertion of a general objection to searching beyond Steward personnel for responsive documents is inconsistent with its obligations to diligently search for responsive documents within its possession, custody or control. Thus, Steward’s General Objection No. 9 is overruled. While there may be merit to Steward’s arguments that a search of documents from the Steward custodians is sufficient and that a broader search would be unreasonably cumulative or duplicative, Steward should meet and confer in good faith with Defendant regarding the scope of its document search rather than unilaterally drawing a line at Steward personnel.

For the foregoing reasons, Defendant’s Motion to Compel (Document No. 45) is GRANTED in part and otherwise DENIED as provided herein.

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
February 4, 2015