BARBARA J. NELSON
PHILLIP R. MALONE
CARLA G. ADDICKS
Antitrust Division
U.S. Department of Justice
450 Golden Gate Avenue
Box 36046, 10th Floor
San Francisco, California 94102
(415) 556-6300

Attorneys for the United States

GRANT WOODS, Attorney General
SYDNEY K. DAVIS, Chief Counsel, ID#004041
SUZANNE M. DALLIMORE, ID#014151
LISA L. GLOW, ID#013232
Consumer Protection & Antitrust Section
Department of Law Building, Room #259
1275 West Washington Street
Phoenix, Arizona 85007-2997
(602) 542-3702

Attorneys for the State of Arizona

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, and STATE OF ARIZONA, by and through its Attorney General Grant Woods, Plaintiffs, vs. DELTA DENTAL PLAN OF ARIZONA, INC., AN ARIZONA CORPORATION, Defendant.	Civil No. 94-1793 PHX PGR Filed: August 30, 1994

COMPLAINT

COUNT ONE

The United States of America, acting under the direction of the Attorney General of the United States, and the State of

Arizona, acting under the direction of the Attorney General of the State of Arizona, bring this civil action to obtain equitable and other relief against the defendant named herein, and complain and allege as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed by the United States under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, and by the State of Arizona under 15 U.S.C. § 26, to prevent and restrain a continuing violation by the Defendant of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. The Defendant maintains an office, transacts business, and is found within the District of Arizona, within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

DEFENDANT

3. Delta Dental Plan of Arizona, Inc. ("Delta" or "the Defendant"), is an Arizona corporation with its principal place of business in Phoenix, Arizona. The Defendant is a non-profit corporation whose participating providers consist of dentists licensed to practice in Arizona and who execute participating provider agreements with Delta. At material times, dentists comprised the majority of the Board of Directors of the Defendant.

4. At material times, approximately eighty-five percent of dentists licensed to practice in Arizona were participating providers of the Defendant with power and authority to vote on matters concerning their payment for services rendered.

5. Whenever this Complaint refers to any corporation's act, deed, or transaction, it means that such corporation engaged in the act, deed, or transaction by or through its members, officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

III.

CO-CONSPIRATORS

6. Various firms and individuals, not named as defendants in this Complaint, have participated as co-conspirators with the Defendant in the violations alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

IV.

TRADE AND COMMERCE

7. At material times, the Defendant has engaged in the business of providing dental insurance coverage for patients in the state of Arizona. The Defendant contracts directly with individual dentists and groups of dentists for the provision of dental services to persons covered by the Defendant's dental insurance plans. The Defendant compensates contracting dentists on the basis of submitted fee schedules. Dentists agree to comply with the terms of the contractual agreements with the Defendant.

8. At material times, the confidential fee listings and participating dentist agreements between dentists and the Defendant contained provisions known as "most favored nation" clauses. These provisions stated that, for example, the dentists' "'usual fee' shall be deemed to be the lowest fee charged or

offered and received as payment in full," or "I agree to charge to Delta Dental my usual fees charged to all my other patients or the amount accepted as payment in full, whichever is less. . . ." In this case, the Defendant's most favored nation clauses had the effect of requiring participating dentists to charge fees to all other group dental care programs or non-Delta patients that were the same as or higher than the fees they charged to the Defendant.

9. At material times, payments from the Defendant constituted a significant portion of most individual dentist's receipts from the provision of dental services to patients having some form of dental insurance or coverage.

10. After the Defendant began actively enforcing the most favored nation clauses in its agreements with participating dentists, most of those dentists refused to discount their fees to non-Delta patients or competing dental plans because the most favored nation clauses would have required them to also lower all of their charges to the Defendant to the same level. Because most participating dentists receive such a significant portion of their income from serving Delta patients, the costs of having to lower their Delta fees would have been too great. Consequently, the effect of the Defendant's most favored nation clauses is to require participating dentists to charge all other patients or dental plans fees as high as or higher than those charged to the Defendant.

11. The Defendant's most favored nation clauses have caused large numbers of dentists who had previously chosen to reduce their fees to participate in competing discount dental plans to

drop out of or resign from such plans. Participating dentists also have refused to join such plans.

12. Because such a large percentage of Arizona dentists participate in the Defendant's plan, and because revenue from serving the Defendant's patients is a significant part of many of those dentists' receipts, among other reasons, the Delta most favored nation clauses have resulted in many competing dental plans being unable to attract and/or retain sufficient numbers of dentists to serve their members. Many competing plans have had their ability to attract and serve groups of patients severely restricted and may be forced out of business.

13. Most dentists who are participants with the Defendant are in independent, private practices and are in actual or potential competition with other participating dentists for the provision of dental services to patients.

14. The Defendant is a member of Delta Dental Plans Association, located in the state of Illinois, which is a nationwide network of dental insurance providers. The Defendant pays annual dues and an advertising assessment to this organization, and participates in a nationwide advertising campaign.

15. Certain corporate employers remit from outside the state of Arizona not insubstantial premium payments to the Defendant for providing dental care insurance to their employees.

16. Many businesses that remit premiums to the Defendant for providing dental care insurance to their employees are involved in

selling products and services outside the state of Arizona. The premium levels paid by such businesses affect the prices of such products and services.

17. At material times, the Defendant and co-conspirators have utilized interstate banking facilities and purchased not insubstantial quantities of goods and services from outside the state of Arizona, for use in providing dental insurance coverage or dental services to patients.

18. The activities of the Defendant that are the subject of this Complaint, and the activities of their co-conspirators, have been within the flow of, and have substantially affected, interstate trade and commerce.

V.

VIOLATION ALLEGED

19. Beginning at a time unknown to the Plaintiffs and continuing through at least July 1994, the Defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to recur unless the relief hereinafter sought is granted.

20. This combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the Defendant and co-conspirators to restrain or eliminate the discounting of fees for dental services to competing dental plans or to other consumers of dental services.

21. For the purpose of forming and effectuating this combination and conspiracy, the Defendant and co-conspirators did the following things, among others:

(a) agreed to adopt and enforce most favored nation clauses in the contracts and other agreements with dentists, for the purpose and with the effect of restraining or eliminating discount fees for dental services and restricting the ability of dentists to discount fees for dental services;

(b) enforced most favored nation clauses; and

(c) coerced participating dentists into dropping out of dental plans that competed with the defendant.

22. This combination and conspiracy had the following effects, among others:

(a) price competition among dentists for the provision of dental services has been unreasonably restrained;

(b) price competition among dentists for the provision of dental services to plans in competition with the defendant has been unreasonably restrained, in that, to recruit and retain a marketable panel of dentists, competing dental plans would have had to increase fees paid to dentists to the level charged by defendant;

(c) price competition among dental insurance plans has been unreasonably restrained, in that, most competing dental insurance plans have been unable to obtain or retain a sufficient number of dentists to provide services to their clients, because dentists have

withdrawn from or refused to participate in dental insurance plans that pay them less than the defendant; and (d) consumers of dental services in Arizona have been deprived of the benefits of free and open competition.

COUNT TWO

The State of Arizona, acting under the direction of the Attorney General of the State of Arizona, complains and alleges as follows:

23. Each and every allegation contained in paragraphs 3 - 22 of this Complaint is here re-alleged with the same force and effect as though said allegations were here set forth in full detail.

VI.

JURISDICTION AND VENUE

24. Count Two of this Complaint is filed by the State of Arizona pursuant to the Uniform Arizona Antitrust Act, A.R.S. §§ 44-1402, et. seq., and is properly before this Court under the doctrine of pendent jurisdiction, 28 U.S.C. § 1367.

VII.

VIOLATION ALLEGED

25. The conduct alleged in paragraphs 20 through 22 of this Complaint is in violation of the Uniform Arizona Antitrust Act, A.R.S. § 44-1402.

VIII.

PRAYER

WHEREFORE, the Plaintiffs pray:

1. That the Court adjudge and decree that the Defendant and co-conspirators engaged in an unlawful agreement, combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, as alleged in Count One of the Complaint.

2. That the Court adjudge and decree that the Defendant and co-conspirators engaged in an unlawful agreement, combination and conspiracy in unreasonable restraint of Arizona trade and commerce in violation of the Uniform Arizona Antitrust Act, A.R.S. § 44-1402, as alleged in Count Two of the Complaint.

3. That the Defendant, its members, officers, directors, agents, employees, and successors and all other persons acting or claiming to act on its behalf be enjoined, restrained and prohibited for a period of five years from, in any manner, directly or indirectly, continuing, maintaining, or renewing the alleged combination and conspiracy, or from engaging in any other combination, conspiracy, agreement, understanding, plan, program, or other arrangement having a similar purpose or effect as the alleged combination and conspiracy.

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4. That the United States and the State of Arizona have such other relief as the nature of the case may require and the Court may deem just and proper.

DATED:

GRANT WOODS
Attorney General
SYDNEY K. DAVIS, Chief Counsel
Consumer Protection & Antitrust Section

SUZANNE M. DALLIMORE,
Antitrust Unit Chief,
Civil Division

LISA L. GLOW
Attorney
Antitrust Unit
State of Arizona

JANET A. NAPOLITANO
United States Attorney
District of Arizona

ANNE K. BINGAMAN
Assistant Attorney General

ROBERT E. LITAN
Deputy Assistant Attorney General

MARK C. SCHECHTER
Deputy Director of Operations

GARY R. SPRATLING
Chief

BARBARA J. NELSON
PHILLIP R. MALONE
CARLA G. ADDICKS
Attorneys
Antitrust Division
U.S. Department of Justice
Box 36046
450 Golden Gate Avenue
San Francisco, California 94102
(415) 556-6300