



# Medical Society of New Jersey v. Bakke

## 892 A.2d 728 (N.J. Super. Ct., App. Div. 2006)

Topics Covered: Antitrust

**Outcome: Very Unfavorable**

### Issue

The issue in this case was whether United Healthcare's acquisition of Oxford Health Plans was anti-competitive.

### AMA Interest

The AMA supports healthy competition among companies in the health insurance industry.

### Case Summary

This lawsuit sought to undo the already consummated acquisition of Oxford Health Plans ("Oxford") by United Healthcare ("United"). United is one of the largest health insurance companies in the United States, and until the acquisition Oxford was a medium sized health insurance company doing business primarily in the New York area. The acquisition price was just under \$5 billion. The purchase was quickly and routinely approved by the United States Department of Justice, applying federal antitrust guidelines. The acquisition was also routinely approved by several states, other than New Jersey, in which Oxford did business.

In New Jersey, regulatory oversight for HMOs rests in part with the New Jersey Department of Banking and Insurance ("DOBI"). United therefore asked DOBI to approve the merger, too. The Medical Society of New Jersey ("MSNJ") objected to the merger and presented an expert witness report opposing it as being anticompetitive. Following an evidentiary hearing, the DOBI hearing officer recommended approval, and the DOBI Commissioner then endorsed that recommendation. On the same day the DOBI Commissioner approved it, United completed the acquisition. Oxford no longer exists as a separate entity.

MSNJ sued DOBI and United, seeking review by the New Jersey courts of the DOBI Commissioner's order. MSNJ premised its case on the New Jersey Insurance Holding Company Act.

United moved to dismiss the complaint. It contended that MSNJ should have sued in the Appellate Division (which generally does not hear new evidence), rather than the Law Division

of the Superior Court (i.e., the trial court) and that MSNJ lacked standing under the New Jersey Insurance Holding Company Act to challenge the approval order.

The Law Division judge, while holding that dismissal of the case would be inappropriate, ordered the case transferred to the Appellate Division. She relied on a New Jersey procedural rule, on the constitutional doctrine of Separation of Powers, and on the apparent completeness of the evidentiary record presented to DOBI. She acknowledged, though, that her holding would be “despite the specific language set forth in the statute.” Accordingly, the MSNJ suit was transferred to the Appellate Division.

MSNJ then asked the Appellate Division to overturn the decision of the Law Division judge and remand the case to the Law Division so it could present further evidence. For its part, United asked the Appellate Division to dismiss the case for lack of standing.

The Appellate Division held that, although MSNJ had constitutional standing to bring its lawsuit, it did not have the right to sue under the New Jersey Insurance Holding Company Act. Consequently, it affirmed the trial court’s transfer of the case, and affirmed the DOBI order approving the merger.

### **Litigation Center Involvement**

The AMA, in a letter to DOBI, endorsed the MSNJ concerns.