Nos. 11-1984/2279

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 23, 2012
LEONARD GREEN, Clerk

UNITED STATES OF AMERICA; STATE OF MICHIGAN,

Plaintiffs - Appellees,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant - Appellant.

O R D E R

Before: BOGGS, GILMAN, and GRIFFIN, Circuit Judges.

The United States and the State of Michigan brought this civil antitrust action against Blue Cross Blue Shield of Michigan ("Blue Cross") seeking to enjoin Blue Cross from the use of most-favored-nation clauses in its contracts with Michigan hospitals. Blue Cross appeals the denial of its motion to dismiss the action.* The government moves to dismiss for lack of a final appealable order. Blue Cross responds that the denial of its claim of state-action immunity from antitrust liability should be immediately appealable as a collateral order. The government replies in support of its motion to dismiss.

Under 28 U.S.C. § 1291, this court has jurisdiction in appeals from "all final decisions" of the district courts. "Denials of summary judgment usually may not be appealed immediately because they are not 'final decisions of the district courts.'" *Huron Valley Hosp., Inc. v. City of Pontiac*, 792

*The first appeal, No. 11-1984, was filed after the district court announced its decision to deny the motion. The second appeal, No. 11-2279, was filed as a cautionary measure after the district court issued its written opinion. We conclude that both appeals must be dismissed.

F.2d 563, 566 (6th Cir. 1986). But under the collateral order doctrine, a "'small class' of prejudgment orders may be appealed immediately." *Id*. (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)). The "three conditions" for a collateral order are that the order "conclusively determine[s] the disputed question," resolves an "important issue completely separate from the merits" of the case, and is "effectively unreviewable on appeal from a final judgment." *Will v. Hallock*, 546 U.S. 345, 349 (2006) (citations omitted).

In *Huron Valley*, we held that "a denial by the district court of th[e state action] defense does not satisfy the three requirements necessary for an appeal under the collateral order doctrine." 792 F.2d at 567. We must apply *Huron Valley* and dismiss this appeal for lack of an appealable order. "A published prior panel decision 'remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision.'" *Rutherford v. Columbia Gas*, 575 F.3d 616, 619 (6th Cir. 2009) (quoting *Salmi v. Sec'y of Health & Human Servs.,* 774 F.2d 685, 689 (6th Cir.1985)); *see also* 6th Cir. R. 206(c) ("Reported panel opinions are binding on subsequent panels. Thus, no subsequent panel overrules a published opinion of a previous panel. Court en banc consideration is required to overrule a published opinion of the court.")

Therefore, the motion to dismiss is **GRANTED**, and these appeals are dismissed for lack of a final appealable order.

ENTERED BY ORDER OF THE COURT

Clerk