IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

BRADLEY A. CHICOINE, D.C., DR. BRADLEY A. CHICOINE, D.C., P.C., MARK A. NILES, D.C., NILES CHIROPRACTIC, INC., and ROD R. REBARCAK, D.C., on behalf of themselves and those like situated, Plaintiffs, vs. WELLMARK, INC. d/b/a WELLMARK BLUE CROSS AND BLUE SHIELD OF IOWA, an Iowa corporation, and WELLMARK HEALTH PLAN OF IOWA, INC., an Iowa corporation, Defendant.	No. CVCV050638 **ORDER DENYING CLASS CERTIFICATION**

Plaintiffs are chiropractors and chiropractic practices who have brought an antitrust monopsony claim as a purported class action against Defendant health insurance companies. The Plaintiffs' Motion for Class Certification was first argued 1/29/2021, but did not receive a ruling. On 10/27/2021 the case was accepted into the business court and assigned to the undersigned. A renewed hearing on the Motion for Class Certification was held on 11/19/2021. The Court has reviewed a transcript from the 1/29/2021 hearing and reviewed the written arguments of the Parties, in addition to the legal argument at the 11/19/2021 hearing.

I. BACKGROUND FACTS AND PROCEDURAL POSTURE.

Plaintiffs allege a combination and conspiracy to restrain trade or commerce in the purchase of health care from Iowa chiropractors pursuant to Iowa Code section 553.4. Self-funded employers pay their employee's health insurance claims, but enter into an Administrative Services Agreement by which Wellmark administers the health insurance plan. (12/21/2019 3d. Am. Pet.

at ¶43-45). Plaintiffs allege Defendants entered into Administrative Services Agreements with other potential price competitors, primarily private and governmental self-funded Iowa employers, to artificially fix a lower price for chiropractic services and limit chiropractic coverage from health plans. (See 12/21/2019 3d. Am. Petition at ¶2(a)). Plaintiffs seek to certify a class of:

> All Iowa licensed doctors of chiropractic (1) who are citizens of the state of Iowa as of October 2015, and/or (2) who have been citizens of Iowa at all times during their Iowa licensure as doctors of chiropractic after May 20, 2004.

This case has a lengthy procedural background in Iowa's courts. In Mueller v. Wellmark, Inc., 818 N.W.2d 244 (Iowa 2012) ("Mueller I"), the Iowa Supreme Court affirmed summary judgment on some of the chiropractor's claims state antitrust claims against Wellmark Defendants and denied judgment on others. The Court affirmed dismissal of claims against Wellmark for its unilateral decisions to pay contractors less because there must be some prohibited conspiracy or exclusionary conduct to violate antitrust laws. The Court also affirmed dismissal of three specific antitrust claims raised in Mueller. However, the Court found that a plaintiff alleging injury under a monopsony theory (claims that Defendants conspired to restrain trade in their role as buyers) has stated an antitrust injury and remanded any remaining state antitrust claims for further proceedings.

On remand from Mueller I, the plaintiffs stipulated that their only remaining antitrust claims were being asserted on a per se theory only. These were claims alleging conspiracies between Wellmark Defendants and self-funded employers that hire Wellmark to administer their plans and also between Wellmark Defendants and out-of-state Blue Cross Blue Shield affiliates. Mueller v. Wellmark, Inc., 861 N.W.2d 563, 566 ("Mueller II"). In Mueller II, the Iowa Supreme Court held that the alleged conspiracies are governed by the rule of reason, not the per se rule. Therefore, the Court dismissed the per se claims, affirming a grant of summary judgment.

In Wellmark, Inc. v. Iowa District Court for Polk County, 890 N.W.2d 636 (Iowa 2017), the Iowa Supreme Court held that the per se stipulation in Mueller II was binding on the named

plaintiffs in Mueller and the case was closed. The Court clarified that the stipulation was not binding on putative class members who could and did file a separate lawsuit to pursue a rule-of-reason claim and the Court expressed no opinion on the merits of such other cases.

This case is one such separate law suit brought by the prior putative class members of Mueller asserting a rule-of-reason claim regarding Wellmark's alleged conspiracy with self-funded employers to restrain trade. The case was subject to various preliminary motions and an interlocutory appeal that are not at issue here. The current matter is proceeding under the Third Amended Petition, filed as an attachment to a Motion for Leave on 12/20/2019 and granted on 1/3/2020. Defendants moved to dismiss the Third Amended Petition and the District Court denied the motion on 3/9/2020. Plaintiffs moved to certify the class.

II. CLASS CERTIFICATION STANDARDS.

Under the Iowa Rules of Civil Procedure, a court may certify a class action if it finds all of the following:

a. The requirements of rule 1.261 have been satisfied.

b. A class action should be permitted for the fair and efficient adjudication of the controversy.

c. The representative parties fairly and adequately will protect the interests of the class.

Iowa R. Civ. P. 1.262(2). The requirements of Rule 1.261 are:

(1) The class is so numerous or so constituted that joinder of all members, whether or not otherwise required or permitted is impracticable.

(2) There is a question of law or fact common to the class.

Iowa R. Civ. P. 1.261(1-2). The rules provide a list of criteria to consider regarding whether Rule 1.262(2)(b)'s consideration of whether a class action should be permitted for the "fair and efficient adjudication of the controversy:"

a. Whether a joint or common interest exists among members of the class.

b. Whether the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for a party opposing the class.

c. Whether adjudications with respect to individual members of the class as a practical matter would be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

d. Whether a party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole.

e. Whether common questions of law or fact predominate over any questions affecting only individual members.

f. Whether other means of adjudicating the claims and defenses are impracticable or inefficient.

g. Whether a class action offers the most appropriate means of adjudicating the claims and defenses.

h. Whether members who are not representative parties have a substantial interest in individually controlling the prosecution or defense of separate actions.

i. Whether the class action involves a claim that is or has been the subject of a class action, a government action, or other proceeding.

j. Whether it is desirable to bring the class action in another forum.

k. Whether management of the class action poses unusual difficulties.

l. Whether any conflict of laws issues involved pose unusual difficulties.

m. Whether the claims of individual class members are insufficient in the amounts or interests involved, in view of the complexities of the issues and the expenses of the litigation, to afford significant relief to the members of the class.

Iowa R. Civ. P. 1.263(1). In addition, Rule 1.263 provides criteria to consider to determine whether the representative parties will fairly and adequately protect the interests of the class:

a. The attorney for the representative parties will adequately represent the interests of the class.

> b. The representative parties do not have a conflict of interest in the maintenance of the class action.
>
> c. The representative parties have or can acquire adequate financial resources, considering rule 1.276, to ensure that the interests of the class will not be harmed.

Iowa R. Civ. P. 1.263(2).

"It is the plaintiffs' burden to prove certification of the putative class is both permissible and proper." Butts v. Iowa Health System, 863 N.W.2d 36 (Iowa 2015). At the class certification stage, the plaintiff's burden is "light" and the class action rules "should be liberally construed and the policy should favor maintenance of class actions." Freeman v. Grain Processing Corporation, 895 N.W.2d 105, 114 (Iowa 2017). Although the District Court has "considerable discretion" in weighing the thirteen factors relevant to Rule 1.262(2)(b), the Iowa Supreme Court has also emphasized that factor 1.263(1)(e), whether common questions of law or fact predominate is a "key factor" and "a fundamental requirement for class certification." Freeman, 895 at 115, 109.

"Certification of a class action does not depend on a determination of whether the plaintiffs will ultimately prevail on the merits." Id. at 120. "However, determining whether the requirements for class certification are met will entail some overlap with the merits of the plaintiff's underlying claim." Id. It is clear from recent caselaw that the appropriate method to consider class certification is to identify the elements of the plaintiff's claim and consider whether the elements are capable of being proven on a class wide basis. See Freeman, 895 N.W.2d at 121-122 (considering the elements of nuisance and finding the relevant factual determination was capable of being made on a classwide basis); Roland v. Annett Holdings, Inc., 940 N.W.2d 752 (Iowa 2020) (noting that the validity of a particular Memorandum of Understanding was the common denominator to the plaintiffs' bad faith claim and that it must be determined based on individual factual circumstances); Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc. 259 F.3d 154, 172 (3d Cir. 2001) ("[W]e must first examine the underlying cause of action …. If proof of

the essential elements of the cause of action requires individual treatment, then class certification is unsuitable."). As the Iowa Court of Appeals recently summarized, the class certification inquiry requires "delving into the elements of the legal claims and considering how the plaintiffs will establish those elements as to the class as a whole." Detmer et al v. La'James College of Hairstyling, Inc. of Fort Dodge et al, 2021 WL 5919050, Case No. 21-0220 (Iowa Ct. App. Dec. 15, 2021) (analyzing the class certification issue by claim and considering the elements of each claim). However, individualized issues as to the element of damages typically will not prevent class certification. "[T]he fact that a potential class action involves individual damage claims does not preclude certification when liability issues are common to the class." Freeman, 895 N.W.2d at 125.

III. ANALYSIS AND CONCLUSIONS OF LAW.

The Plaintiffs assert an antitrust claim that Wellmark violated Iowa Code section 553.4 by conspiring with Iowa's self-funded employers to "artificially fix a lower price for chiropractic services and to limit or exclude chiropractic coverage from health plans." 3d Am. Pet. ¶¶ 2(a), 59(a). This is a monopsony claim: it asserts antitrust harm to plaintiffs as sellers of chiropractic services instead of as buyers. See Mueller I, 818 N.W.2d at 264.

Iowa Code section 553.4 states "A contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market." To prove they are entitled to recover on an antitrust claim, Plaintiffs will be required to establish that they have suffered an "antitrust injury," that Defendants have violated the antitrust laws, and that Plaintiffs have been damaged. Next Generation Realty, Inc. v. Iowa Realty Company, Inc., 2003 WL 25280677, Case No. EQCE038825, (Iowa Dist. Ct. Polk County Feb. 18, 2003). Defendants' primary argument against class certification is that the Plaintiffs' claim lacks commonality and

predominance at each stage: antitrust injury, liability, and damages. The Court begins with analysis of antitrust injury and whether common issues or individual issues predominate, as that issue proves fatal to class certification.

An antitrust injury requires a plaintiff to identify a causal "injury-in-fact," and also demonstrate that the injury is the kind of injury the antitrust law is designed to prevent. See Associated General Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 537-40 (1983) (noting plaintiff must allege causal connection between antitrust violation and harm and that the alleged injury "must be analyzed to determine whether it is of the type that het antitrust statute was intended to forestall."). To establish an antitrust injury:

> (1) the court must identify the practice complained of and the reasons such a practice is or might be anticompetitive, (2) the court must identify the actual injury the plaintiff alleges, which requires us to look to the ways in which the plaintiff claims it is in a 'worse position' as a consequence of the defendant's conduct, and (3) the court compares the anticompetitive effect of the specific practice at issue to the actual injury the plaintiff alleges.

IQ Dental Supply, Inc. v. Henry Schein, Inc., 924 F.3d 57, 62-63 (2d Cir. 2019) (citations omitted).

The Plaintiffs' theory of antitrust injury is that, absent the unlawful Administrative Services Agreements between Wellmark and the self-funded employers, those employers would operate as competitors in the insurance market and, therefore, negotiate and pay the chiropractors directly, resulting in higher rates than those set by Wellmark. As the Plaintiffs explain: "Absent the Administrative Services Agreements, the Iowa self-fundeds would have to negotiate such issues directly with the Plaintiff chiropractors. … Given that each of the Iowa self-fundeds on its own does not control a substantial amount of the health insurance market in Iowa, Plaintiff chiropractors would be able to negotiate more favorable rates and coverage." (Plaintiff's 3/13/2020 Motion for Class Certification at 16) (See also Ex. K to 10/23/2020 Resistance Brief, 2/21/20 Motion to Dismiss Transcript at 23-24 "John Deere, for example, would be out contracting with physicians,

DOs, chiropractors on their own, but because they're part of this huge network now that is administered by Wellmark, they don't have – they have much more leverage. Excuse me. The self-insureds have much more leverage in reducing prices to the detriment of health care providers. And again, but for the contracts, the self-insureds are competitors, so they're not agents of Wellmark.").

The Defendants assert Plaintiffs will be able unable to show that any particular class member was harmed by the allegedly unlawful Administrative Services Agreements based on common, as opposed to individualized, proof. "Predominance is not defeated by individual damages questions as long as liability is still subject to common proof." Id. However, in order to certify an antitrust class action, the Plaintiffs must demonstrate "some means of determining that each member of the class was in fact injured, even if the amount of each individual injury could be determined in a separate proceeding." In re New Motor Vehicles Canadian Export Antitrust Litigation, 522 F.3d 6, 28 (1st Cir. 2008). It is this inquiry – whether each of the putative class members was in fact injured – where Plaintiffs have failed to show common issues will predominate over individual ones and, instead, the inquiry will devolve into mini-trials. See Roland, 940 N.W.2d 752, 758-60 (Iowa 2020) (reversing certification after finding liability would need to be determined based on individual factual circumstances and devolve into mini-trials).

The "but-for" world would require individualized consideration of how particular self-funded employers, whose employees are patients of particular chiropractors, would act in the absence of the challenged Administrative Services Agreements. There are 466 self-funded employers operating in Iowa. Each class member has a different percentage of patients who are employed by different self-funded employers. 12.1% of the proposed class did not treat any self-funded patients and, therefore, would not have suffered injury.

Individualized market factors for different communities within Iowa would impact whether class members would be better off in this "but-for" world and, therefore, have suffered antitrust injury. Differences in demographics, geographic distribution of self-funded employers, and the level of competition amongst chiropractors in any community would impact negotiations in a "but-for" world. (Terris at ¶53(a)). Those local market realities would impact whether negotiations would result in rates higher than those currently set by Wellmark or not.

Further, not all practices would receive the benefit of the self-funded employers' participation in the market as price competitors. Currently, self-funded employers participate in Wellmark's statewide network. If forced to negotiate individually, self-funded employers would likely contract with a limited number of chiropractors, meaning some chiropractors would be left without any self-funded employer patients. (Terris at ¶75, noting there would be "winners and losers" under Plaintiffs' theory because self-funded employers "would have the incentive to reduce administrative costs by contracting with as few chiropractors as possible"). Self-funded employers of different sizes may or may not have the resources to administer a network and negotiate lower prices. Some would likely sign up for fully-funded Wellmark insurance to avoid the cost of administering a health insurance program, which would mean there was no injury. (Terris at ¶53(c); 57-58). Others might contract with a different chiropractic network that offers reduced pricing and/or a narrow network, such as the Iowa Chiropractic Physicians Clinic (ICPC), to which some putative class members belong[1]. (Terris at ¶63). Plaintiffs allege that rates paid through Wellmark Health Plan of Iowa, Inc.'s HMO products, which utilize the ICPC, pay less than 50%

[1] Plaintiffs acknowledge that a subclass for ICPC members might be required. (3/13/2020 Brief at 12).

of what chiropractors received through Wellmark's other products, suggesting use of ICPC lowers rates and there would be no injury in that scenario. (See 3/13/2020 SOF at ¶37).

In Freeman, 895 N.W.2d at 121, the district court certified two subclasses, based on distance from the alleged nuisance at issue. Freeman emphasized that proof of nuisance is an objective standard based on a normal person in the community and could, therefore, be established based on testimony of witnesses in the vicinity. Id. at 124. Here, injury is more complicated, as it requires proof that the plaintiff is in a worse position due to the allegedly unlawful behavior. IQ Dental Supply, Inc., 924 F.3d at 62. Notably, Plaintiffs have not identified any sort of modeling that would allow them to prove that each chiropractor suffered an injury. See e.g. In re New Motor Vehicles Canadian Export Antitrust Litigation, 522 F.3d at 28 (noting district court should "evaluate preliminarily whether the proposed model will be able to establish, without need for individual determinations …, which consumers were impacted by the alleged antitrust violation and which were not.").

Plaintiffs urge they will be able to calculate damages by simply comparing the Wellmark rate for Medical Doctors (MD) or Doctors of Osteopathic Medicine (DO) to the Wellmark rate for chiropractors, (Reply Brief at 26, Conf. App. at 960-61; 1/29/2021 First Class Certification Hearing Transcript at 6:22-24 ("the nature our damages is a comparison between what doctors of chiropractic are paid in comparison to what M.D.s and D.O.s are paid.")). But, under this theory, Plaintiffs would first have to prove that each class member would actually be receiving the MD/DO rate. The proposal to rely on the Wellmark rate for MD/DO does not track the Plaintiffs' theory of the case. It is not correlated to the theory that self-funded employers would negotiate in the market. Notably, 63.5% of chiropractic charges from 2010-2019 were billed below the MD/DO fee schedule, so over half of the claims at issue would not have caused injury in the way the

Plaintiffs' damage model would compensate. (Terris ¶119). Whether individual chiropractors would arrive at the MD/DO fee schedule in negotiations with individual self-funded employers is not susceptible to common proof.

Further, the Plaintiffs' proposed damages model would compensate even claims that were not the result of any antitrust injury. Plaintiffs propose to simply compare the amount actually paid by Wellmark for certain chiropractor codes to what it would have paid at the MD/DO rate. (11/13/2020 Reply Brief at 26). The problem is that each individual charge may or may not have been fully paid at the chiropractor's billed rate. Some chiropractors have set their billed rates below Wellmark's fee schedule, so they would not have been injured by Wellmark's fee schedule. (Terris at ¶91). Named Plaintiffs acknowledge that what constitutes a reasonable rate would differ based on the chiropractor (Rebarcak at 182:21-183:5, Niles at 58:5-9) and that Wellmark's reimbursement rates might be reasonable for some chiropractors. (Rebarcak at 182:21-183:5).

3.6% of the putative class was paid in full for all their billed charges from 2004 to 2019 and would not have suffered any injury at all. (Id.). Plaintiffs' counsel acknowledged at the 11/19/2021 hearing that those who set their rates below Wellmark's fee schedule would not have sustained injury and could not be included in the class. In addition, although only 3.6% of chiropractors were paid the full billed rate on every charge during the 2004-2019 class period, when analyzed on a yearly basis or considering individual claims, there will be additional chiropractors who were paid their fully billed rate for individual claims. For example, a significant number of chiropractors had 100% of their self-funded claims paid at an amount greater or equal to the chiropractor's fully billed charges within the year 2019. (Expert Report at 59-60, Exhibit 21 (each line that goes all the way up to 100% indicating a chiropractor paid the full amount charged)). If a chiropractor had all claims fully paid within a particular year, or even just some

claims fully paid, there was no antitrust injury for those particular claims. However, Plaintiffs' proposed damages model fails to identify any mechanism to sort out this issue and would compensate Plaintiffs for all claims paid by Wellmark based on the percentage of the MD/DO rate paid to chiropractors. Plaintiffs have not identified any way to sort through this issue that would not require an assessment of individualized claims by chiropractor.

This case is, therefore, governed by the analysis of Roland, as opposed to Freeman, because individualized mini-trials will be required to demonstrate antitrust injury. Plaintiffs have not identified any common analytical tool or model that could demonstrate Plaintiffs were in fact injured. Instead, the case is similar to those where class certification has been denied due to lack of common proof of injury. In Blades v. Monsanto Co., 400 F.3d 562, 572 (8th Cir. 2005), the Eighth Circuit denied class certification of farmers' antitrust claim that Monsanto had conspired with Pioneer and Syngenta to inflate the price of corn and soybean seeds. The Court held that the class members could not prove classwide injury with proof common to the class, noting the competitive price that would have prevailed varied by the locality of individual farmers, that some farmers actually paid negligible premiums or no premiums for Pioneer and Syngenta's seeds, and that plaintiffs' expert did not show that the fact or injury could be proven for the class as a whole with common evidence. Id. Here, the competitive price that would have prevailed absent the Administrative Services Agreement would also vary by locality, demographics, the size of the self-funded employer, and competition among chiropractors.

In Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 259 F.3d 154 (3d Cir. 2001), the Third Circuit denied class certification. The plaintiffs' securities claim was based on an allegation that broker-dealers had automatically executed orders at prices on the National Best Bid and Offer (NBBO) system instead of investigating better prices. Id. at 162. The Third Circuit

found, however, that whether or not plaintiffs were injured by that practice was not capable of class-wide proof. Id. at 177-79. Some class members received the best available price even at the NBBO price, thereby sustaining no economic loss at all. Id. at 178. The Court held that consideration of the claims would require analysis on a trade by trade basis and consideration of a variety of factors surrounding each trade such as the account order size, security, speed of execution, clearing costs, and the difficulty of executing a trade on any particular market. Id. at 187. Therefore, individual issues predominated. Id. at 190. Here, just as in Newton, the Plaintiffs' antitrust claim will require analysis on a charge by charge basis to determine whether the chiropractor was fully paid and then on a chiropractor by chiropractor and employer by employer basis to determine whether a higher rate would have been negotiated absent the allegedly unlawful agreements.

"While obstacles to calculating damages may not preclude class certification, the putative class must first demonstrate economic loss on a common basis. As noted, the issue is not the calculation of damages but whether or not class members have any claims at all." Newton, 259 F.3d at 189. Here, Plaintiffs have not identified a model that would demonstrate common injury to class members. Plaintiffs did not provide any expert testimony at the class certification stage. Further, Plaintiffs' own theories rely on individualized assessments of self-funded employer behavior and chiropractor rates.

During the hearing, Plaintiffs' Counsel conceded that class certification would not be appropriate under the theory asserted in Plaintiff's class certification motion:

> It doesn't – we're not saying that we're – that we would contract with individual self-fundeds.
>
> …

> So we're not going to put on evidence that but for this, that, or the other thing, doctor so-and-so in some place in Iowa with a contract with a self --- with an employer there and get paid more.
>
> Now, I would agree with you that if that was our theory that we have an individual situation that is not proveable class-wide. That is real clear, and that is what Wellmark is trying to say is that – is that we must prove that the self-funded – the self-funded itself would pay us more than what Wellmark is paying. But, I mean, how speculative can you get? The self-fundeds probably wouldn't be paying for insurance at all for its employees.

(11/19/2021 Hearing on Motion for Class Certification). Plaintiffs' Counsel then offered a different theory and argued self-funded employers would still have agreements with Wellmark absent the alleged unlawful antitrust behavior, but Wellmark would instead apply the MD/DO rate in the implementation of those agreements.

The problem with this argument is that Plaintiffs disavowed it earlier to survive a motion to dismiss. Earlier in the proceeding of this case, Defendants moved to dismiss, arguing that Wellmark acts as the self-funded employers' agent to administer their self-funded plans and, therefore, no conspiracy claim exists under the single-entity doctrine. (3/9/2020 Ruling on MTD at 4). In ruling on the Motion to Dismiss, the Court noted that:

> It appears the plaintiffs agree that when Wellmark enters into and enforces the practitioner service agreements with health care providers, including chiropractors, they are administering the self-funded employers' plans and are acting as their agents. If plaintiffs' anti-trust argument was based solely upon Wellmark's enforcement of the practitioner service agreements, the court might agree dismissal under the single-entity doctrine would be appropriate.

(3/9/2021 Ruling on MTD at 4). Instead, the Plaintiffs argued they were challenging the decision to enter into the Administrative Services Agreement. (Id). The Court's Ruling Denying the Motion to Dismiss emphasized that the Plaintiffs' theory is that "the Iowa self-funded employers would, absent their contractual relationship with Wellmark, be price competitors." (Id.). "Taken as true, the plaintiffs are arguing that the alleged illegal activity occurs when Wellmark and the self-funded employers enter into their contracts, and, thus, before Wellmark acts as the self-funded employers'

agent." Id. This is the theory of the case identified in the petition (12/20/2019 3d Am. Pet. at ¶54(a) (referring to self-funded employers as "potential price competitors")), set forth in the Plaintiff's briefing on the motion to dismiss (1/31/2020 Resistance to Motion to Dismiss 3d Am. Pet. ("Absent the agreements between the Iowa self-fundeds and Wellmark… the Iowa self-fundeds would have to negotiate such issues directly with the Plaintiff Chiropractors")), and argued in the Plaintiff's application to certify a class. (3/13/2020 Motion for Class Certification at 8, 16 ("Absent the Administrative Services Agreements, the Iowa self-fundeds would have to negotiate such issues directly with the Plaintiff chiropractors. … Plaintiff chiropractors would be able to negotiate more favorable rates and coverage."). The Plaintiff's new theory is inconsistent with their prior arguments: it would not challenge the decision to enter into the Administrative Services Agreements, but seek to change the manner in which Wellmark sets chiropractic rates while operating under those Administrative Services Agreements.

Plaintiffs are judicially estopped from this late change of theory. "[J]udicial estoppel prevents a party from changing its position after it has successfully urged a different position to obtain a certain litigation outcome." Godfrey v. State, 962 N.W.2d 84, 100 (Iowa 2021). The Plaintiffs previously framed their case in a particular way to survive a motion to dismiss, an effort that was successful. The Court relied on those arguments, noting she might otherwise have dismissed the case. Notably, the Plaintiffs also framed their case in that same way in their 3/13/2020 Motion for Class Certification. The Plaintiffs cannot now abandon their theory.

IT IS THEREFORE ORDERED that class certification is DENIED.

IT IS SO ORDERED.

State of Iowa Courts

Case Number	**Case Title**
CVCV050638	BRADLEY CHICOINE AND STEVEN MUELLER ET AL V WELLMARK ET AL
Type:	OTHER ORDER

So Ordered

Sarah Crane, District Court Judge
Fifth Judicial District of Iowa

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