

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BICK HOLDINGS, INC., and BICK)
GROUP INC., MARY FRANCES)
CALLAHAN, MARY CLARE BICK,)
JAMES PATRICK BICK, JR.,)
WILLIAM JOSEPH BICK,)
MARY PATRICIA DAVIES,)
JOSEPH JOHN BICK, FRANCIS)
XAVIER BICK, MARY MARGARET)
JONZ, MARY SARAH ALEXANDER,)

Case No. 4:13-cv-462

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT)
OF HEALTH AND HUMAN SERVICES;)
KATHLEEN SEBELIUS, in her official)
Capacity as the Secretary of the United)
States Department of Health and Human)
Services; UNITED STATES)
DEPARTMENT OF THE TREASURY;)
JACOB J. LEW, in his official)
capacity as the Secretary of the)
United States Department of the Treasury;)
UNITED STATES DEPARTMENT OF)
LABOR; and SETH D. HARRIS, in his)
official capacity as Acting Secretary of the)
United States Department of Labor,)

Defendants.)

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION**

Before this court is Plaintiffs' motion for preliminary injunction. The court, having considered the arguments of counsel in support of, and in opposition to, the motion, hereby finds as follows:

1. Plaintiffs, the Bicks, are individuals and citizens of the State of Missouri and the United States. The Bicks hold 91% of the voting interest in Plaintiff, Bick Holdings, Inc. (“BHI”). The individual Plaintiffs have ultimate responsibility and authority for setting and organizing all phases and policies of the businesses of the corporate Plaintiffs.

2. Plaintiff, BHI, a Missouri corporation, is the holding company for and 100% owner of the BHI operating companies, Bick Group Inc., Bick Properties, Inc., and SEALCO, LLC.

3. Plaintiff, Bick Group Inc. (“Bick Group”), a Missouri corporation, is a wholly-owned subsidiary of BHI and maintains the group health plan for the employees of BHI’s operating companies.

4. Plaintiff BHI and its subsidiaries currently have approximately 196 full-time employees. 143 employees are covered by a group policy of health insurance offered through Bick Group and underwritten by United Healthcare Insurance Company.

5. Plaintiffs allege that regulations promulgated by Defendants require Plaintiffs to provide, as part of a company-funded health insurance plan, all FDA-approved methods of contraception, sterilization and patient education and counseling related thereto, referred to hereafter as “the Mandate.”

6. Defendants’ Mandate is contained in 42 U.S.C. § 300gg-13(a)(4), 75 Fed. Reg. 41726-60 (July 19, 2010), and Health Resources and Services Administration guidelines *available at* <http://www.hrsa.gov/womensguidelines>. *See also* 76 Fed. Reg. 46621, 46622 (Aug. 3, 2011); 45 C.F.R. § 147.130, adopted “without change” at 77 Fed. Reg. 8725, 8729. In addition, provisions regarding grandfathered plans are at 75 Fed.

Reg. 41726, 41731, and provisions regarding small employer and other exemptions are at 26 U.S.C. § 4980H(c)(2)(A) and 26 U.S.C. §§ 5000A(d)(2)(a)(i), (ii), (b)(ii).

7. The Plaintiffs believe that paying for all FDA-approved methods of contraception, sterilization and patient education and counseling related thereto is sinful and in violation of their religious beliefs.

8. BHI's group health plan was renewed on January 1, 2013 and currently contains the mandated contraceptive and abortifacient coverage objected to by the Bicks and their companies.

9. Plaintiffs wish to exclude from their company-funded plan coverage for contraception, sterilization and related patient education and counseling.

10. Defendants' Mandate will not permit Plaintiffs to create a company-funded plan that excludes the aforementioned services.

11. Defendants' Mandate currently would permit exemptions for some classes of religious objectors but not Plaintiffs.

12. Employers of some 98 million employees with "grandfathered" health plans are not required to comply with Defendants' Mandate.

13. Plaintiffs are requesting a preliminary injunction against Defendants' application of the Mandate to them. Plaintiffs contend that the Mandate violates Plaintiffs' rights under the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb *et seq.* Plaintiffs raise additional claims in their complaint, which they preserve.

14. The requirements of the Mandate substantially burden Plaintiffs' exercise of their religious beliefs.

15. The Mandate is not justified by a compelling governmental interest.

16. The Mandate is not the least restrictive means to further any compelling governmental interest.

17. Plaintiffs have demonstrated a strong likelihood of success on the merits of their claims under RFRA.

18. Plaintiffs will suffer irreparable harm in the absence of preliminary injunctive relief.

19. Defendants will not suffer any harm or costs by the granting of Plaintiffs' motion for preliminary injunction.

20. The balance of equities tips in Plaintiffs' favor.

21. The public interest will be served and not harmed by the granting of the requested relief.

22. Plaintiffs have no adequate remedy at law other than obtaining a declaratory judgment and injunctive relief.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' motion for preliminary injunction is GRANTED;
2. Defendants, their officers, agents, servants, successors in office, employees, attorneys, and those acting in concert or participation with them, and including any insurance carriers, or third party insurance plan administrators with whom Plaintiffs may contract for group health benefits are ENJOINED from applying and enforcing against Plaintiffs any statutes or regulations that require Plaintiffs to include in their employee health benefit plan coverage for all FDA-approved emergency contraceptive methods, and related patient education and counseling for women with reproductive capacity, including the application of any penalties and fines, including

those found in 26 U.S.C. § 4980D and § 4980H, and any determination that the requirements are applicable to Plaintiffs; and

3. No bond shall be required of Plaintiffs.

IT IS SO ORDERED in Chambers on _____, 2013.

Hon. Audrey G. Fleissig
United States District Court Judge