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Antitrust Advisory

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Can a Hospital Alliance Constitute a Single Entity for Antitrust Purposes? It Depends, Says One District Court

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On August 30, 2012, the U.S. District Court for the Southern District of Ohio denied a motion to dismiss a complaint that alleged a per se group boycott by a managing agent and its affiliated hospitals in violation of Section 1 of the Sherman Act. *Med. Ctr. at Elizabeth Place, LLC v. Premier Health Partners*, et al., No. 3:12-cv-26 (S.D. Ohio Aug. 30, 2012). The Court examined whether hospitals operating under a joint operating agreement (JOA) constitute a single entity—and therefore are incapable of a group boycott—and concluded that since it is a "factually driven issue," it, at least on this complaint, could not be resolved on a motion to dismiss.

Plaintiff Medical Center at Elizabeth Place (MCEP) filed the complaint against Premier Health Partners (Premier) and its hospital affiliates, Atrium Health Systems, Catholic Health Initiatives, MedAmerica Health Systems, Samaritan Health Partners, and Upper Valley Medical Center (collectively, Defendants), which function under a JOA.

MCEP alleged that Defendants conspired through their managing agent, Premier, to orchestrate a per se illegal group boycott against it. Specifically, MCEP alleged that in furtherance of this conspiracy, Defendants "coerced, compelled, co-opted or financially induc[ed]" managed care plan providers to refuse to permit MCEP full access to their networks. MCEP further alleged that Defendants threatened punitive financial consequences against physicians affiliated with MCEP and offered the physicians payments in exchange for not working with MCEP.

Defendants moved to dismiss MCEP's complaint, arguing that: (1) MCEP's group boycott claim does not qualify for per se treatment; (2) MCEP failed to allege antitrust injury; and (3) Defendants are a single entity and thus incapable of conspiring under Section 1.

The Court declined to accept any of Defendants' arguments. Significantly, the Court rejected Defendants' assertion that their actions under the JOA constituted conduct by a single entity that is sufficiently integrated and therefore not covered by Section 1 (which applies only to joint conduct between multiple entities). Instead, as pled in the Complaint, the Court concluded that Defendants were not necessarily sufficiently integrated and that they remained both "actual and potential competitors in the relevant markets." *Id.* at 13. In so doing, the Court focused considerable attention on MCEP's factual allegations regarding Defendants' integrated activities. MCEP had asserted that:

1. the hospitals were independently owned and operated;
2. one defendant described Defendants' operations as "separate healthcare systems operating under the guidance of Premier";
3. the JOA was a "consolidation of revenue streams";
4. Premier had never reported any assets, liabilities, revenue, income, or expenses;
5. each hospital had independently maintained ownership of, and responsibilities for, its

respective assets, liabilities, revenue, equity, and expenses;

6. each hospital maintained separate governing boards under Ohio law that exercises authority for all business operations and decisions; and
7. each hospital made material independent decisions concerning their respective operations that are not managed by Premier.

Defendants relied upon *Healthamerica Penn. v. Susquehanna Health Sys.*, 278 F. Supp. 2d 423 (M.D. Pa. 2003) (*Healthamerica*), which similarly considered hospitals operating jointly under an alliance, and determined that it was "readily apparent that defendants' actions [were] guided 'not by two separate corporate consciousness, but one.'" (citing *Copperweld Corp. v. Independence Tube Corp*., 467 U.S. 752, 771 (1984)). The Court distinguished the *Healthamerica* ruling on the grounds that it was resolved only at the summary judgment stage after extensive discovery into whether the hospitals and the alliance actually functioned as a single entity. Moreover, the court found relevant that the alliance in *Healthamerica* was formed pursuant to a consent decree containing conditions on its operations and pricing, which had been negotiated with the Pennsylvania Attorney General. Unlike a JOA which is agreed to among the parties and self-monitored, the *Healthamerica* JOA "was subjected to considerable antitrust scrutiny at its formation," and monitoring and enforcement under the consent decree. *Med. Ctr. at Elizabeth Place*, *LLC*, at 14.

The Court also held that MCEP sufficiently alleged overt acts by Defendants as co-conspirators that were so plainly anticompetitive and lacking any redeeming value under Section 1, that the per se rule applied. *Id.* at 11-12 (noting that "the per se rule applies to conduct taken under the mantle of a joint venture when the challenged restraint is not reasonably related to any of the efficiency-enhancing benefits of a joint venture, and serves instead only as a naked restraint against competition."). These allegations included coercing health insurers to deny MCEP access to their networks and physicians to refuse to work with, or refer patients to, MCEP.

Finally, the Court rejected Defendants' argument that MCEP failed to allege an antitrust injury, holding that MCEP sufficiently pled both injury to itself and competition generally. According to the Court, MCEP's allegations that Defendants' conduct resulted in both higher prices in the Dayton area and MCEP's denial of access to managed care plans, sufficiently set forth facts asserting antitrust injury.

This case illustrates that the existence of a joint operating agreement will not automatically provide shelter from having to defend against Section 1 actions. Courts and government authorities continue to engage in a fact specific inquiry in assessing whether affiliated hospitals in fact operate as a single entity for antitrust purposes.

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Endnotes

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