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Antitrust Alert

Ohio District Court Deems Hospital Alliance a Single Entity Incapable of Conspiring Under the Antitrust Laws

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On October 21, 2014, the U.S. District Court for the Southern District of Ohio granted Defendants' motion for summary judgment, holding that Premier Health Partners ("Premier") and its affiliate hospitals, Atrium Health Systems, Catholic Health Initiatives, MedAmerica Health Systems, Samaritan Health Partners, and Upper Valley Medical Center (collectively, "Defendants"), operating under a joint operating agreement ("JOA"), constituted a single entity incapable of conspiring in violation of Section 1 of the Sherman Act. *The Medical Center at Elizabeth Place v. Premier Health Partners, et al.*, Case No. 3:12-cv-26 (S.D. Ohio, Oct. 21, 2014).

Plaintiff, a 26-bed acute-care hospital in Dayton, Ohio, alleged that Defendants orchestrated a per se illegal group boycott to deny it access to the physicians, physician referrals, and managed care contracts it needed to compete. Defendants moved for summary judgment, arguing that their actions under the JOA constituted conduct by a single entity, and thus, under *Copperweld Corp. v. Independent Tube Corp.* ("*Copperweld*"), 467 U.S. 752 (1984), they were incapable of conspiring in violation of Section 1 of the Sherman Act, which applies only to joint conduct.

Copperweld is a seminal antitrust decision in which the Supreme Court held that a parent corporation and its wholly owned subsidiary are not legally capable of conspiring with each other under Section 1 of the Sherman Act. The *Copperweld* doctrine has subsequently been extended to other arrangements beyond a parent and its wholly owned subsidiary, including partially owned subsidiaries, partial ownership arrangements, joint venture arrangements, and joint operating agreements between entities that are not under common ownership of a single parent.

Plaintiff argued that Defendants are not a single entity and not protected under *Copperweld* because they (1) do not share ownership assets and remain independently owned and operated; (2) are actual and potential competitors (as evidenced by comments of senior management related to the issues of separateness and the competitive dynamic among the hospitals); (3) made statements in public disclosures that support a finding that Defendants are separate (e.g., statements in IRS Form 990s that the JOA members agreed to jointly operate separate healthcare systems pursuant to the terms of the JOA, and statements in bond documents that affiliate hospitals were separately responsible for their assets and liabilities); and (4) conducted themselves in the market as if they were separate (e.g., entering into contracts with payers under the affiliate hospital's name rather than under Premier's name).

The District Court disagreed. Citing the Supreme Court's decisions in *Copperweld* and *American Needle, Inc. v. National Football League*, 560 U.S. 183 (2010), the court declined to use a bright-line rule regarding asset ownership and the corporate form to assess the parties' conspiratorial capacity, focusing instead on the economic realities and how the parties actually functioned and operated in the market.

According to the court, "contractual control is sufficient to demonstrate that the Defendants are a single entity." Thus, the fact that the JOA participants did not share ownership of assets did not cause the court to deem them separate entities, because the participants delegated operational, strategic, and financial control to Premier under the Alliance Agreement, much like the hospitals in *Health America Pennsylvania, Inc. v. Susquehanna Health System*, 278 F. Supp. 2d 423 (M.D. Pa. 2003) (where the court deemed the hospitals a

single economic actor under *Copperweld*). The court also gave little credence to statements in certain documents regarding competition among JOA participants. The court did not believe the Defendants could be considered "actual or potential competitors" because they were not pursuing separate economic interests. The court defined the Defendants as "a single, unified economic unit" because "all of the money goes to the bottom line – the Network Net Income" and the Defendants' "actions are guided or determined by one corporate consciousness." Similarly, the statements in IRS and bond documents and Defendants' contracting conduct did not support a finding of separateness because there was evidence that Premier had the power over all system activities, including (1) developing and approving strategic plans, business plans, and budgets; (2) controlling the hospitals' debt incurrence; (3) assessing costs to the hospitals to implement new technologies and programs; (4) allocating the system's income and losses to the hospitals' four parent holding companies; (5) establishing credentialing criteria under which decisions on medical staff admissions, privileges, and membership would be determined; and (6) negotiating all managed care contracts and managing all relationships with payers.

As health care providers and health industry participants seek to find innovative ways to collaborate, this case is an important reminder that courts place significant emphasis on how joint venture participants function and operate rather than the corporate form of the organization. Thus, the existence of a joint operating agreement does not provide an automatic shield from antitrust scrutiny if the activities of the joint arrangement are challenged. In addition, as this case demonstrates, the examination of conspiratorial capacity involves a highly factual inquiry where principal considerations include a parent's or general partner's ability to control the actions of the affiliates or members and the resultant unity of interest between the joint venture participants.

If you have any questions about this topic, please contact the author or your principal Mintz Levin attorney.

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