

UNITED STATE DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

Case Number

STATE OF FLORIDA  
EX REL. CHARLES J. CRIST, JR.,  
ATTORNEY GENERAL,

Plaintiff,

v.

HCA, INC. (formerly known as Columbia/HCA Healthcare Corporation),  
BIG CYPRESS MEDICAL CENTER, INC.,  
CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION),  
CLEVELAND CLINIC FLORIDA HOSPITAL (A NONPROFIT CORPORATION), and  
CLEVELAND CLINIC FLORIDA HOSPITAL NAPLES NON PROFIT CORPORATION,

Defendants.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, the State of Florida, by and through Attorney General Charles J. Crist, Jr., sues defendants HCA, Inc. (formerly known as Columbia/HCA Healthcare Corporation), Big Cypress Medical Center, Inc., Cleveland Clinic Florida (A Nonprofit Corporation), Cleveland Clinic Florida Hospital (A Nonprofit Corporation), and Cleveland Clinic Florida Hospital Naples A Non Profit Corporation, and avers:

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**Jurisdiction and Venue**

1. Count I of this Complaint is a civil antitrust action arising under Section 1 of the Sherman Act, 15 U.S.C. § 1, for treble damages in accordance with Section 4 of the Clayton Act, 15 U.S.C. § 15, and for permanent injunctive relief in accordance with Section 16 of the Clayton Act, 15 U.S.C. § 26. This Court has jurisdiction of this action under 28 U.S.C. § 1337.

2. Count II of this Complaint is an action for treble damages arising under Section 542.18, Florida Statutes, in accordance with Section 542.22, Florida Statutes, and for injunctive relief in accordance with Section 542.23, Florida Statutes. This Court has jurisdiction of this claim arising under Florida law pursuant to the doctrine of pendent jurisdiction and 28 U.S.C. § 1367.

3. Count III of this Complaint is brought under Section 542.18, Florida Statutes, for civil penalties in accordance with Section 542.21, Florida Statutes. This Court has jurisdiction of this claim arising under Florida law pursuant to the doctrine of pendent jurisdiction and 28 U.S.C. § 1367.

4. Venue in the Middle District of Florida, Fort Myers Division, is founded on Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. 1391(b), and (c).

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Plaintiff

5. Plaintiff, the State of Florida, through Attorney General Charles J. Crist, Jr., brings this action.

Defendants

6. Defendant HCA, Inc. (formerly known as Columbia/HCA Healthcare Corporation), owns and operates health care facilities around the country, including in Florida, and is incorporated in the State of Delaware with its principal place of business in Nashville, Tennessee.

7. Defendant Big Cypress Medical Center, Inc., was formed to own and operate a health care facility in Florida, and is incorporated in the State of Florida with its principal place of business in Nashville, Tennessee.

8. Defendant Cleveland Clinic Florida (A Nonprofit Corporation) owns and operates health care facilities in Florida, and is incorporated in the State of Florida with its principal place of business in Weston, Florida.

9. Defendant Cleveland Clinic Florida Hospital (A Nonprofit Corporation) owns and operates health care facilities in Florida, and is incorporated in the State of Florida with its principal place of business in Weston, Florida.

10. Defendant Cleveland Clinic Florida Hospital Naples Non Profit Corporation owns and operates health care facilities in Florida, and is incorporated in the State of Florida with its principal place of business in Naples, Florida.

**Definitions**

11. Defendants HCA, Inc. (formerly known as Columbia/HCA Healthcare Corporation), and Big Cypress Medical Center, Inc., will be referred to as the "Columbia/HCA Defendants".

12. Defendants Cleveland Clinic Florida (A Nonprofit Corporation), Cleveland Clinic Florida Hospital (A Nonprofit Corporation), and Cleveland Clinic Florida Hospital Naples Non Profit Corporation will be referred to as the "Cleveland Clinic Defendants".

13. The term "health care facilities" is a term of art that is defined in Section 408.032(8), Florida Statutes.

**Acts in Furtherance of the Conspiracy**

14. On or about March 23, 1998, the Columbia/HCA Defendants were competitors or potential competitors of the Cleveland Clinic Defendants in the acute care hospital market in Collier County, Florida, in the open heart surgery market in Broward County, Florida, and in the health care facilities markets in Lee, Hendry, Glades, Charlotte, Sarasota, Manatee, Hillsborough, and Pinellas Counties.

15. On or about March 23, 1998, the Columbia/HCA Defendants and the Cleveland Clinic Defendants entered into an agreement to settle certain administrative litigation, a copy of which it attached as Exhibit A and referred to herein as the "Agreement". The agreement had the effect of unlawfully allocating among the Defendants certain geographic and product markets.

16. The Agreement allocated the acute care hospital market in Collier County, Florida, to the Cleveland Clinic Defendants for a minimum of three years.

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17. The Agreement allocated a portion of the open heart surgery market in Broward County, Florida, to the Columbia/HCA Defendants for a minimum of three years.

18. The Agreement allocated the health care facilities markets of Lee, Hendry, Charlotte, Sarasota, Manatee, Hillsborough and Pinellas Counties, Florida, to the Columbia/HCA Defendants for seven years.

19. The Columbia/HCA Defendants have honored the terms of the Agreement by not entering the markets allocated to the Cleveland Clinic Defendants.

20. The Cleveland Clinic Defendants have honored the terms of the Agreement by not entering the markets allocated to the Columbia/HCA Defendants.

Effects of the Conspiracy

21. Among other things, the effects of such concerted action to allocate markets have been that:

- (a). The number of market participants and potential market participants has been reduced;
- (b). The price competition among market participants has been unreasonably reduced;
- (c). Public entities in Florida and other Florida consumers have been deprived of the benefits of free and open competition for their use of health care facilities; and
- (d). Prices for the use of health care facilities to public entities and other Florida consumers have been unlawfully increased.

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COUNT I

(Violations of § 1 of the Sherman Act)

22. Paragraphs 1 through 21 are realleged and incorporated by reference herein.

23. The Defendants' business activities are within interstate commerce and/or affect interstate commerce, in that:

(a) Money flowed to and from banks outside the State of Florida and the Defendants' operations in the State;

(b) Agents of the various Defendants entered the State of Florida for business purposes and to meet within the State.

24. Beginning at a time uncertain, but at least as early as March 1998, and continuing on through the present time, the Defendants have entered into and engaged in a conspiracy, combination or concert of action in unreasonable restraint of trade or commerce within the State of Florida in violation of § 1 of the Sherman Act, 15 U.S.C. § 1, by agreeing to allocate markets for health care facilities within the State of Florida.

25. As a result of this unlawful conduct, the Defendants' customers, including public entities and natural persons in Florida, suffered an antitrust injury resulting in damages in an amount yet undetermined. The Defendants' agreement resulted in higher prices paid by public entities and natural persons in Florida for the use of health care facilities than would have been paid in a competitive market.

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26. Defendants' unlawful conduct is continuing and unless equitable relief is granted artificially inflated prices for the use of health care facilities will continue unabated.

COUNT II

**(Damages and Injunctive Relief for Violation of § 542.18, Florida Statutes)**

27. Paragraphs 1 through 21 are realleged and incorporated by reference.

28. Sections 542.22(2) and 542.27(2), Florida Statutes, authorize the Attorney General to institute and maintain an antitrust action on behalf of public entities and natural persons in Florida.

29. Beginning at a time uncertain, but as least as early as March 1998, and continuing on through the present time, the Defendants have entered into and engaged in a conspiracy, combination, or concert of action in unreasonable restraint of trade and commerce within the State of Florida and elsewhere with effects in the State of Florida in violation of § 542.18, Florida Statutes, by agreeing to allocate markets for health care facilities within the State of Florida. Engaging in the business of owning and operating health care facilities within the State of Florida constitutes trade or commerce within the meaning of Chapter 542, Florida Statutes.

30. As a result of the unlawful conduct, the Defendants' customers, including public entities and natural persons in Florida, suffered an antitrust injury resulting in damages in an amount as yet undetermined. This Agreement resulted in higher prices paid by public entities and natural persons for the use of health care facilities than would have existed in a competitive market.

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31. Defendants' unlawful conduct is continuing and unless equitable relief is granted artificially inflated prices for the use of health care facilities will continue unabated.

**COUNT III**

**(Civil Penalties for Violation of § 542.18, Florida Statutes)**

32. Paragraphs 1 through 21 are realleged and incorporated by reference herein.

33. The unlawful conduct described in paragraphs 1 through 21 of this complaint constitute a violation of § 542.18, Florida Statutes.

34. A violation of § 542.18, Florida Statutes, subjects corporations to civil penalty outlined in § 542.21(1), Florida Statutes.

35. Engaging in the business of owning and operating health care facilities within the State of Florida constitutes trade or commerce within the meaning of Chapter 542, Florida Statutes.

36. The above-described conspiracy resulted in considerably higher prices paid by customers of health care facilities in Florida than would have existed in a competitive market.

**Prayer for Relief**

WHEREFORE, Plaintiff requests the following relief:

- A. A jury verdict for compensatory damages.
- B. A judgment against all defendants, jointly and severally, by the Court for treble the amount of the jury verdict and for attorney's fees, cost and interest as allowable by law for violations of the Sherman Act and the Florida Antitrust Act.



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C. An order that each defendant be permanently enjoined from future violations of § 1 of the Sherman Act, 15 U.S.C. § 1.

D. An order that the plaintiff be awarded its costs of this suit and reasonable attorney's fees.

E. A judgment and decree that the defendants have engaged in an unlawful combination or a conspiracy restricting trade and commerce in violation of § 542.18, Florida Statutes.

F. An order that each defendant pay a civil penalty in the amount of one million dollars (\$1,000,000.00) for each violation in accordance with § 542.21, Florida Statutes.

G. An order that each defendant be permanently enjoined from future violations of Chapter 542, Florida Statutes.

H. An order of such further relief as the Court may deem just and proper under Florida law.

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**JURY DEMAND**

Plaintiff hereby requests a trial by jury on all issues triable by jury.

Respectfully submitted this 17<sup>th</sup> day of April, 2003.

**CHARLES J. CRIST, JR.**

**Attorney General**



**PATRICIA A. CONNERS**

Chief, Antitrust Section

Florida Bar No. 361275

**THOMAS GARY**

Senior Assistant Attorney General

Florida Bar No. 371742

**NICHOLAS WEILHAMMER**

Assistant Attorney General

Florida Bar No. 479322

Office of the Attorney General

Antitrust Section

PL-01, The Capitol

Tallahassee, Florida 32399-1050

(850) 414-3600 Telephone

(850) 488-9134 Fax

**COUNSEL FOR THE ATTORNEY GENERAL**

**EXHIBIT A**

SETTLEMENT AGREEMENT BETWEEN BIG CYPRESS MEDICAL CENTER, INC.  
AND CLEVELAND CLINIC FLORIDA HOSPITAL -- NAPLES  
OF DOAH CASE NO. 97-388

Big Cypress Medical Center, Inc., Columbia/HCA Healthcare Corporation, Inc. (both entities hereinafter referred to collectively as Big Cypress) Cleveland Clinic Hospital Florida -- Naples, Cleveland Clinic Hospital Florida, Cleveland Clinic Florida, and The Cleveland Clinic Foundation (all four entities hereinafter referred to as Cleveland Clinic) enter into this settlement agreement to resolve disputes and disagreements among them in a manner that reduces the expense and disruption of litigation and serves the health care needs of the populations they serve. Big Cypress and Cleveland Clinic agree as follows:

1. Big Cypress will withdraw its Certificate of Need Application Number 8610 to establish an acute care hospital in Collier County, Florida within twenty four (24) hours of execution of this agreement.
2. Neither Big Cypress or any entity owned or controlled by Big Cypress will apply for a certificate of need authorizing the establishment of an acute care hospital in Collier County or oppose an application by the Cleveland Clinic for a certificate of need authorizing the establishment of an acute care hospital in Collier County for the next six (6) "hospital batching cycles" as established by Florida Administrative Code Rule 59C-1.008, following the execution of this agreement.
3. Within 30 days of the execution of this agreement, withdrawal of the CON application of Big Cypress, and the filing of official notice of the Agency for Health Care Administration that it supports approval of Cleveland Clinic's CON Application Number 8609,

RECEIVED

APR 21 1998

CON/SUBJECT

Cleveland Clinic will pay to Big Cypress an amount equal to all expenses incurred in seeking to establish an acute care hospital in Collier County and defending litigation involving the approval of CON Number 8610. These expenses shall, include, but are not limited to, consultant fees, application fees, real estate costs, attorney fees, expert witness fees, and litigation costs. In the event that the parties are unable to agree upon the amount of expenses to be paid, either party may demand binding arbitration. Arbitration shall be conducted before a mutually agreed upon arbitrator pursuant to the rules of the American Arbitration Association. Within 30 days of issuance of a final CON to Cleveland Clinic or any entity owned or controlled by Cleveland Clinic approving CON application 8609 or any other CON application of an entity owned or controlled by Cleveland Clinic for an acute care hospital in Collier within the six (6) batching cycles described in paragraph 2, Cleveland Clinic will pay to Big Cypress the difference between \$5,000,000 and the amount previously paid pursuant to this paragraph if that amount does not equal or exceed \$5,000,000. Big Cypress will assign as allowed by law and the applicable contract all of its rights under the existing contract to purchase the land proposed for the location of the Big Cypress Medical Center, Inc.

4. Cleveland Clinic shall fund and support a community program to provide low cost health care to the people of Collier County emphasizing service to children and indigents. This shall include, at a minimum, the commitment to the Florida Health Kids Program made in the CON application. The programs and funding shall be operated and marketed as a 50/50 partnership of the Cleveland Clinic and Columbia/HCA Healthcare Corporation for the benefit of the people of Collier County.

5. Cleveland Clinic will permit Big Cypress to include any hospital in Collier

County owned or controlled by the Cleveland Clinic in any network or managed care agreement.

6. Cleveland Clinic or any entity owned or controlled by it will not establish health care facilities including, but not limited to, physicians' offices, out patient care centers, clinics, and hospitals in Lee, Hendry, Glades, Charlotte, Sarasota, Manatee, Hillsborough, and Pinellas Counties for a period of seven (7) years beginning with the date of execution of this agreement.

7. For a period of seven (7) years beginning with the date of the execution of this agreement, the Cleveland Clinic, through its Professional Staff and/or Columbia/HCA Medical Staff members with whom it may contract, shall exclusively utilize the facilities and services of facilities owned or controlled by Columbia/HCA in Lee County for all non-emergent and elective medical services, including invasive cardiology and open heart surgery, that the Cleveland Clinic is unable to provide at its facilities in either Collier or Broward County.

8. Big Cypress and Cleveland Clinic agree that they will enter into a joint venture or other mutually agreed upon relationship for the continued development and operation of the Parry Berg Cancer Center located in Ft. Myers, Florida upon reasonable terms the Cleveland Clinic and Big Cypress agree they shall negotiate in good faith.

9. Cleveland Clinic shall withdraw its CON application number 8927 for authority to establish an open heart surgery Center in Broward County and withdraw its Administrative Petition in DOAH case Number 98-1113 at any time requested by Big Cypress after execution of this agreement and the filing of official notice of the Agency for Health Care Administration that it supports approval of Cleveland Clinic's CON Application Number 8609 or final approval of CON application number 8609 or any other application of Cleveland Clinic or any entity owned or controlled by it to establish a hospital in Collier County, whichever occurs first.

10. Columbia/HCA or any related entity reserves the right to object to or contest any shared services proposal for an open heart surgery program or the division or splitting of an existing open heart surgery program at any Broward County facility that would result in the Cleveland Clinic instituting open heart surgery services at any facility in Broward County.

11. Cleveland Clinic shall not perform open heart surgery services at its existing or newly approved hospitals in Broward County for a period of three (3) years following the first January anniversary of completion of the first open heart surgery procedure performed under the authority of CON Number 8928. In the event CON Number 8928 is finally denied or expires this provision does not take effect.

12. The obligations of this agreement, other than that in paragraph one (1), take effect upon the filing of official notice of the Agency for Health Care Administration that it supports approval of Cleveland Clinic's CON Application Number 8609 or final approval of CON application number 8609 or any other application of Cleveland Clinic or any entity owned or controlled by it to establish a hospital in Collier County, whichever occurs first.

13. Multiple copies of this agreement may be signed and signatures on separate copies shall have the same force and effect as if the signatures on several copies all appeared upon the same copy.

14. This agreement shall be governed by the law of the State of Florida and may only be enforced in the courts and other tribunals of the State.

15. The individuals signing this agreement represent that they have full authority to bind all the parties indicated.


16. This Settlement Agreement records all terms of the agreement among the parties.

and may only be modified by written agreement of the parties.

17. If the provisions of paragraphs six (6) and (7) are determined in violation of state or federal law and not enforceable by final non-appealable judgment of a state or federal court, those provisions shall be null and void. Cleveland Clinic shall use its best efforts, including if necessary defending or joining in litigation, to uphold the provisions of paragraphs six (6) and seven (7) if they are the subject of legal challenge.

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J. Daniel Miller, President, CEO      Date  
Big Cypress Medical Center, Inc.  
Columbia/HCA Healthcare Corporation,  
West Florida Division

  
Harry K. Moon, M.D.      Date 3/23/98  
Cleveland Clinic Hospital Florida -- Naples,  
Cleveland Clinic Hospital Florida  
Cleveland Clinic Florida



and may only be modified by written agreement of the parties.

17. If the provisions of paragraphs six (6) and (7) are determined in violation of state or federal law and not enforceable by final non-appealable judgment of a state or federal court, those provisions shall be null and void. Cleveland Clinic shall use its best efforts, including if necessary defending or joining in litigation, to uphold the provisions of paragraphs six (6) and seven(7) if they are the subject of legal challenge.

  
\_\_\_\_\_  
Daniel Miller, President, CEO     Date  
Big Cypress Medical Center, Inc.  
Columbia/HCA Healthcare Corporation,  
West Florida Division

\_\_\_\_\_  
Harry E. Moon, M.D.     Date  
Cleveland Clinic Hospital Florida -- Naples,  
Cleveland Clinic Hospital Florida  
Cleveland Clinic Florida