

2009-04609

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
MEMORIAL HERMANN	§	
HEALTHCARE SYSTEM,	§	
	§	
Defendant.	§	<u>291</u> JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

The State of Texas brings the following action against Memorial Hermann Healthcare System:

I.  
**DISCOVERY CONTROL PLAN**

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.

II.  
**JURISDICTION AND VENUE**

2:1 Jurisdiction and venue are proper in this Court pursuant to Article 5, Section 8 of the Texas Constitution and Sections 15.20 and 15.26 of the Texas Business and Commerce Code.

80238384.1

**FILED**

Loren Jackson  
District Clerk

JAN 26 2009

Time: \_\_\_\_\_  
Harris County, Texas

By \_\_\_\_\_  
Deputy

III.  
PLAINTIFF

3.1 Plaintiff is the State of Texas, which is represented by its Attorney General, Greg Abbott. The Texas Attorney General brings this action as *parens patriae* on behalf of the citizens of the State of Texas, and in his capacity as the designated enforcer of the Constitution and the statutes of the State of Texas. The violations of state law alleged herein have caused loss and damage and threaten loss and damage to the general welfare and economy of the State of Texas.

IV.  
DEFENDANT

4.1 Memorial Hermann Healthcare System (Memorial Hermann) is incorporated under the laws of Texas with its principal place of business is Houston, Texas. Among other things, Memorial Hermann owns hospitals and offers acute care in-patient hospital services.

V.  
RELEVANT MARKETS

5.1 The relevant product market is the provision of acute care in-patient hospital services.

5.2 The relevant geographic market is no larger than the Houston Metropolitan Statistical Area (MSA).

VI.  
RELEVANT FACTS

6.1 Memorial Hermann owns and operates acute care in-patient hospitals throughout the Houston MSA. It is the largest hospital system in the Houston MSA, with a market share of approximately 20% during the relevant time period. Among the hospitals Memorial Hermann owns is Memorial City Hospital, located near the intersection of I-10 and the Sam Houston Tollway in West Houston.

6.2 Houston Town and Country Hospital (“Town and Country”) was a physician-owned hospital which opened in November, 2005. It was also located near the intersection of I-10 and the Sam Houston Tollway in West Houston.

6.3 Town and Country’s proximity to Memorial Hermann’s Memorial City hospital resulted in competition between those two facilities for patients.

6.4 Before opening its doors, representatives of Town and Country sought to enter into contracts with health insurers in the Houston market in order to be included in those insurers’ hospital networks.

6.5 Despite some initially promising signs, Town and Country did not succeed in obtaining an in-network contract with any of the major health insurers in the Houston market except CIGNA.

6.6 Meanwhile, Memorial Hermann took action to discourage health insurers from contracting with Town and Country. For example:

6.7 On learning of CIGNA's contract with Town and Country, Memorial Hermann notified CIGNA of its intention to terminate its CIGNA contract as to all Memorial Hermann facilities. Memorial Hermann subsequently re-negotiated its contract with CIGNA, resulting in substantial rate concessions from CIGNA, far in excess of any reasonably foreseeable economic impact on Memorial Hermann from CIGNA's inclusion of Town and Country within its network.

6.8 Memorial Hermann notified the other health insurers in the Houston market of its termination of CIGNA as an example of what would happen to any other health insurer that contracted with Town and Country.

6.9 Similarly, on learning that Aetna was considering entering into a contract with Town and Country, Memorial Hermann notified Aetna that entry into such a contract would result in Memorial Hermann imposing a 25% rate increase on Aetna, a rate increase far in excess of any reasonably foreseeable impact on Memorial Hermann from Aetna's addition of Town and Country to its network. Aetna did not enter into a contract with Town and Country.

6.10 After failing to obtain contracts with all of the health plans in the Houston market but CIGNA, Town and Country went out of business.

VII.  
FIRST CAUSE OF ACTION

7.1 The State incorporates and adopts by reference the allegations contained in every paragraph of this petition.

7.2 Beginning in 2005 and continuing into 2006, Memorial Hermann entered into agreements with health plans not to do business with Town and Country and orchestrated an agreement among health plans not to do business with Town and Country.

7.3 These agreements unreasonably restrained trade in the relevant product and geographic markets in violation of Texas Business & Commerce Code Section 15.05(a).

VIII.  
PRAYER

**WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

- a) Adjudging and decreeing that Memorial Hermann engaged in conduct in violation of Section 15.05(a) of the Texas Business & Commerce Code;
- b) Awarding the State of Texas injunctive relief to remedy the violations alleged in this petition;
- c) Awarding the State of Texas its costs of this action, including reasonable attorneys' fees and costs, as provided in Business & Commerce Code Section

15.20(b) and Texas Government Code section 402.006(c); and

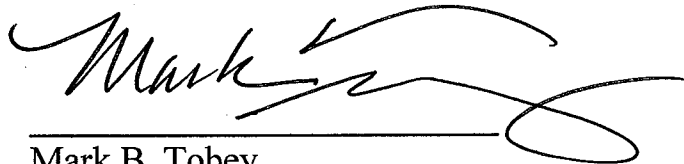
d) Directing such other and further relief as the Court deems just and proper.

Respectfully submitted,

**GREG ABBOTT**  
Attorney General of Texas

**C. ANDREW WEBER**  
First Assistant Attorney General

**JEFF L. ROSE**  
Deputy First Assistant Attorney General



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Mark B. Tobey  
Texas Bar Number 20082960  
Chief, Antitrust Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548  
(512) 463-1262  
(512) 320-0975 Facsimile

**KIM VAN WINKLE**  
Assistant Attorney General

**JOHN T. PRUD'HOMME**  
Assistant Attorney General

**ATTORNEYS FOR PLAINTIFF**  
**STATE OF TEXAS**

**SPIN No. 99999928**