

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

CIVIL ACTION NO.

**GEISINGER HEALTH SYSTEM
FOUNDATION AND LEWISTOWN
HEALTH CARE FOUNDATION,**

Defendants.

COMPLAINT

The Commonwealth of Pennsylvania, through its Office of Attorney General, brings this action under the federal and state antitrust laws alleging the proposed acquisition of Lewistown Health Care Foundation (“LHF”) and its affiliates including, Lewistown Hospital (“LH”) and Family Health Associates of Lewistown Hospital (“FHA”) by the Geisinger Health System Foundation (“GHSF”) is unlawful.

This combination is likely to substantially lessen or eliminate competition in the provision of primary care physician services and primary and secondary inpatient acute care hospital services in Mifflin and Juniata Counties. Further, this

combination would reduce the number of competitive alternatives available to health care consumers and enable GHSF to raise prices with no competitive constraint, resulting in higher prices for primary care physician services and for primary and secondary inpatient acute care hospital services in Mifflin and Juniata Counties. These higher prices will be borne by health care purchasers, particularly Health Plans, employers and unions, and will likely result in an increase in prices that individual consumers pay for health insurance coverage.

I. Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 15 U.S.C. §§ 4 and 26, and 28 U.S.C. §§ 1331 and 1337.

2. Defendants are found and transact business within this district and the claims in substantial part arise in this district. Venue is proper in the Middle District of Pennsylvania under sections 12 and 16 of the Clayton Act, 15 U.S.C. §§ 22 and 26, and under 28 U.S.C. §§ 1391(b) and (c).

3. The Plaintiff also brings this action pursuant to its pendent state antitrust claims under the Pennsylvania common law doctrine against monopolies and unreasonable restraints of trade. Under its state claims, the Plaintiff seeks permanent injunctive relief.

4. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. §1367(a). The causes of action set forth in this complaint under both the

federal and state antitrust laws derive from a common set of operative facts that raise substantially identical factual issues.

II. Parties

5. The Commonwealth of Pennsylvania is represented by its Attorney General, Kathleen G. Kane. Attorney General Kane is the chief law enforcement officer of the Commonwealth of Pennsylvania and is authorized under the Commonwealth Attorneys Act to bring actions on behalf of the Commonwealth and its citizens for violations of the antitrust laws pursuant to 71 P.S. § 732-204(c). The Commonwealth of Pennsylvania brings this action as *parens patriae* to protect its general economy and as a direct purchaser of hospital services from defendants through its Medicaid and Pennsylvania Employee Benefits Trust Fund programs.

6. Geisinger Health System Foundation (“GHSF”) is a non-profit, tax-exempt corporation based in Danville, Pennsylvania, which is the parent corporation of Geisinger Medical Center, Geisinger Clinic, Geisinger Health Plan and other Health Care Providers and related healthcare companies in central and northeastern Pennsylvania. GHSF is a corporation organized under the laws of the Commonwealth of Pennsylvania, having its principal address at 100 North Academy Avenue, Danville, PA 17822.

7. The Lewistown Health Care Foundation (“LHF”) is a non-profit, tax exempt, corporation based in Lewistown, Pennsylvania which owns and controls

Lewistown Hospital, Family Health Associates of Lewistown Hospital, Health Enterprises, Inc. and Lewistown Ambulatory Care Corporation. LHF is a corporation organized under the laws of the Commonwealth of Pennsylvania, having its principal address at 400 Highland Avenue, Lewistown, PA 17044.

III. Definitions

8. "Acquire" means to purchase the whole or the majority of the assets, stock, equity, capital, or other interest of a corporation or other business entity, or to receive the right or ability to designate or otherwise control the majority of directors or trustees of a corporation or other business entity.

9. "Diagnosis Related Group" ("DRG") is a statistical system of classifying any hospital inpatient stay into groups for the purposes of payment.

10. "Family Health Associates of Lewistown Hospital" ("FHA") is a multi-specialty physician group practice with approximately ten primary care and nine specialty physicians. FHA is a non-profit, tax exempt, corporation with its principal address at 400 Highland Avenue, Lewistown, PA 17044.

11. "Geisinger Clinic" ("GC") is a multi-specialty physician group practice with more than 1000 primary care and specialty physicians. GC is a non-profit, tax exempt, corporation with its principal address at 100 North Academy Avenue, Danville, PA 17822 and includes employed physicians who provide

healthcare service at various physician offices located in central and northeastern Pennsylvania for primary and specialty care.

12. "Geisinger Health Plan" ("GHP") is a health plan licensed by the Pennsylvania Insurance Department. GHP is a non-profit, tax exempt, corporation with its principal address at 100 North Academy Avenue, Danville, PA 17822.

GHP provides insurance coverage in 43 counties in Pennsylvania.

13. "Geisinger Medical Center" ("GMC") is a non-profit hospital organized under the laws of the Commonwealth of Pennsylvania with its principal address at 100 North Academy Avenue, Danville, PA 17822. GMC is licensed for 485 beds and provides a comprehensive array of highly specialized medical and surgical services including, neurosciences, cardiovascular services, transplantation, women's health, pediatrics and oncology.

14. "Health Care Provider" means any physician, hospital, clinic, laboratory or physician network.

15. "Health Plan" means any type of organized health-service purchasing programs or third party payment program, including, but not limited to, health insurance and managed-care plans, whether offered by government, for-profit or non-profit, third-party payors, Health Care Providers or any other entity including, Commercial, Medicare Advantage and Medicaid Managed Care Health Plan

contracts for health care services including, inpatient and outpatient hospital services, physician services and other ancillary services.

16. "Hospital" means a health care facility, licensed as a hospital, having a duly organized governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care as well as outpatient services and having as a primary function the provision of inpatient services for medical diagnosis, treatment and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

17. "Inpatient Acute Care" and "Acute Care" includes room and board, medical or surgical diagnostic and treatment services, around-the-clock monitoring and observation, nursing care, laboratory, x-ray and support services for physically injured or sick persons with short-term or episodic health problems or infirmities.

18. "Lewistown Hospital" ("LH") is a non-profit hospital organized under the laws of the Commonwealth of Pennsylvania, with its principal address at 400 Highland Avenue, Lewistown, PA 17044. LH is licensed for 123 beds. Geisinger-Lewistown Hospital refers to LH after Closing.

19. "Managed-Care Plan" means a health maintenance organization ("HMO"), preferred provider organization ("PPO") or other health-service purchasing program which uses financial or other incentives to prevent unnecessary services and includes some form of utilization review.

20. “Primary Care Physician” means a physician practicing internal medicine, family practice and general practice to patients eighteen years of age and older or are otherwise deemed non-pediatric patients.

21. “Primary and Secondary” means low acuity Inpatient Acute Care Hospital services with a DRG weight under 2.0.

22. “Relevant Geographic Market” means all or parts of Mifflin and Juniata Counties.

IV. Trade and Commerce

23. According to data published by the Pennsylvania Health Care Cost Containment Council, total net patient revenues for LH in 2012 were \$94 million and total operating expenses were also \$94 million. Total net patient revenues of GHSF for its Danville, Bloomsburg and Shamokin facilities in 2012 were \$906 million and total operating expenses were more than \$895 million. Each hospital is engaged in interstate commerce and their activities are in the flow of, and substantially affect interstate commerce.

24. The provision of Inpatient Acute Care occurs, at least in part, through various channels of interstate communication and transportation.

25. Each Defendant also owns and operates Primary Care Physician practices in Juniata and Mifflin Counties. LHF employs physicians through FHA. It currently employs ten Primary Care Physicians. GHSF through GC currently

employs eleven Primary Care Physicians in Mifflin and Juniata Counties. LHF and GHSF are engaged in interstate commerce through their employment of Primary Care Physicians and their activities are in the flow of and substantially affect interstate commerce.

V. Relevant Product Markets

A. The Primary Care Physician Market

26. Primary Care Physicians are defined by their training in the primary care specialties of family medicine and general internal medicine.

27. Primary Care Physicians serve as the first point of contact for patients and take continuing responsibility for providing patients' care.

28. Primary Care Physicians are visited by consumers for check-ups and physicals and treatment of diseases which are usually short-term in nature, or if chronic, have been diagnosed and prescribed a treatment regimen by a specialist.

29. Primary Care Physicians are also defined by Health Plans which set differing co-pays for office visits by consumers, depending on whether a physician is a Primary Care Physician or a specialist.

30. Consumers view Primary Care Physicians as providing services distinct from specialists.

31. Outside of an emergency, consumers do not view specialist physicians as substitutes for Primary Care Physicians.

32. The provision of Primary Care Physician services sold to Health Plans constitutes a line of commerce, or a relevant product market, within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

B. Primary and Secondary Inpatient Acute Care Hospital Services

33. Hospitals sell Primary and Secondary Inpatient Acute Care Hospital services to a variety of purchasers including, Health Plans such as HMOs, PPOs and Medicare Advantage Plans. Health Plans reduce healthcare costs by encouraging Hospitals to compete vigorously on price and quality. These plans contract with a select number of Hospitals and employ financial incentives to encourage plan enrollees to use the contracted facilities.

34. Through competition for the provision of Hospital services to their Health Plan, these price-sensitive health-care purchasers secure Hospital services at competitive rates, which constrain the overall cost of Hospital care. This, in turn, permits Health Plans to offer health insurance to consumers at lower prices. Health Plans constitute a significant percentage of Hospitals' revenues from patient care.

35. The availability or non-availability of key healthcare facilities, such as Hospitals, has a significant effect on the viability of a Health Plan. Access to certain Hospitals is an important factor for employers choosing a Health Plan.

36. Patients whose treatment or condition requires an overnight hospital stay, however, cannot be safely or effectively treated on an outpatient basis. Additionally, Primary and Secondary Inpatient Acute Care Hospital services cannot be offered in an outpatient facility due to the complex nature of this level of care. For these reasons, health-care purchasers, including Health Plans, do not view outpatient services as substitutes for Primary and Secondary Inpatient Acute Care Hospital services. Primary and Secondary Inpatient Acute Care Hospitals could profitably increase the price of their services without causing a significant number of health care purchasers to switch to outpatient services.

37. The provision of Primary and Secondary Inpatient Acute Care sold to Health Plans constitutes a line of commerce, or a relevant product market, within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. Relevant Geographic Market

A. Primary Care Physician Services

38. Consumers prefer to stay local for health care services. Primary Care Physicians are the first point of contact for consumers and provide the most basic of health care services for consumers. As such, the geographic market served by Primary Care Physicians is small.

39. LHF, through FHA, employs ten Primary Care Physicians in four office locations in, and serving, Mifflin and Juniata Counties.

40. GHSF, through GC, employs eleven Primary Care Physicians in two office locations in, and serving, Mifflin and Juniata Counties.

41. The Relevant Geographic Market for Primary Care Physicians is no larger than Mifflin and Juniata Counties and is likely a subset of zip codes for each FHA and GC Primary Care Physician practice.

B. Primary and Secondary Inpatient Acute Care Hospital Services

42. LH is 123 bed general Acute Care Hospital and is the only hospital in Mifflin County. LH primarily serves patients in Mifflin and Juniata Counties. Approximately 92% of its patients come from Mifflin and Juniata Counties.

43. LH's largest competitors are GMC, located in Montour County and Mount Nittany Medical Center in Centre County. Other hospitals outside the Relevant Geographic Market provide negligible competition to LH for the provision of Primary and Secondary Inpatient Acute Care services.

44. While GHSF does not have a hospital in Mifflin and Juniata Counties, it does have a significant physician presence with primary and specialty care physicians located in several offices in Mifflin and Juniata County. GHSF also provides Hospitalist Services at LH through a contract with LH.

45. The Relevant Geographic Market for Primary and Secondary Inpatient Acute Care Hospital Services is Mifflin and Juniata Counties.

46. In the event of a significant price increase, Health Plans cannot turn to hospitals outside this Relevant Geographic Market as substitutes to successfully market a product in Mifflin and Juniata Counties.

VII. Market Concentration

47. Currently there are two large Primary Care Physician practices serving Mifflin and Juniata Counties; LHF, through FHA, with ten Primary Care Physicians and GHSF, through GC, with eleven Primary Care Physicians. There are also five independent Primary Care Physicians serving this area.

48. Based on the number of Primary Care Physicians in Mifflin and Juniata Counties, pre-merger market shares are 39% for LHF, through FHA, 42% for GHSF, through GC, and 3.8% each for each of the five independent Primary Care Physicians.

49. Post-merger market shares for Primary Care Physicians in Mifflin and Juniata Counties would be 81% for the combined GHSF/LHF and 3.8% each for each of the five independent Primary Care Physicians.

50. However post-merger, three of the LHF Primary Care Physicians plan to leave LHF but will continue practicing in Mifflin and Juniata Counties. Accordingly, post-merger the combined GHSF/LHF will have almost 70% of the Primary Care Physicians in Mifflin and Juniata Counties.

51. Based on 2010 discharges for Mifflin and Juniata Counties for Primary and Secondary Inpatient Acute Care Hospital services, LH is the leader with 63% of the discharges. GMC is second with 11% of the discharges and Mount Nittany has 4%.

52. Using the 2010 discharges for Mifflin and Juniata Counties for Primary and Secondary Inpatient Acute Care Hospital services, the combined GHSF/LHF will have about 74% of the discharges.

VIII. Anticompetitive Effects

53. GHSF's acquisition of LHF will eliminate significant competition between GHSF and LHF for both the provision of Primary Care Physician services and Primary and Secondary Inpatient Acute Care Hospital services. It will increase GHSF's ability to demand higher reimbursement rates from Health Plans.

54. Additionally, GHSF, as a large regional health system with ownership of multiple Hospitals, physicians, and ancillaries over a thirty-one county service area, will be able to negotiate higher rates with Health Plans for LHF on a system-wide basis.

55. As a result of increased bargaining leverage from the elimination of significant competition and GHSF's ability to engage in system-wide bargaining for LHF, GHSF's acquisition of LHF will likely increase the overall cost of health care, thereby harming employers and consumers.

56. The costs of payment increases resulting from GHSF's acquisition of LHF will be borne directly by, or passed on to, local employers and their employees. Self-insured employers rely on Health Plans to negotiate rates and provide administrative support; the employers themselves pay the full cost of their employees' health care. As a result, self-insured employers immediately and directly bear the burden of higher rates. Fully insured employers will bear the burden of higher rates through higher premiums.

57. Employers, in turn, generally must pass on their increased health care costs to their employees, in whole or in part. Employees will bear these increased costs in the form of higher premiums, higher co-payments, co-insurance or deductibles, reduced coverage, restricted services, or reductions in wages or other benefits.

IX. Entry Barriers

58. New entry in Primary Care Physician services or Primary and Secondary Inpatient Acute Care Hospital services is unlikely to occur in a timely or sufficient manner to deter or counteract the likely anticompetitive effects of GHSF's acquisition of LHF.

59. After GHSF's acquisition of LHF, the combined GHSF/LHF will employ the majority of Primary Care Physicians in Mifflin and Juniata Counties.

It is unlikely that any new Primary Care Physician who enters the geographic market will set up an independent practice to compete against such a large entity.

60. Additionally, even if a new Primary Care Physician enters the Relevant Geographic Market, it is unlikely they would be able to attract a substantial number of patients in Mifflin and Juniata Counties in a timely manner. Most adult patients possess strong loyalties to their existing Primary Care Physicians and a new Primary Care Physician is unlikely to attract patients who already have a Primary Care Physician in the Relevant Geographic Market. Accordingly, it would take an extended period of time for a new Primary Care Physician to establish an active practice and become a competitor to the combined GHSF/LHF.

X. Efficiencies

61. GHSF and LHF have not set forth any substantial efficiencies that are merger-specific, well-founded, or competition-enhancing as justification for their merger.

XI. Count 1 Violation of Federal Antitrust Laws

62. As a direct result of the merger, competition for Primary Care Physician services and Primary and Secondary Inpatient Acute Care Hospital services in the Relevant Geographic Market may be substantially lessened in the following ways, among others:

- A. Existing competition and the potential for increased competition between LHF and GHSF for the provision of Primary Care Physician services and Primary and Secondary Inpatient Acute Care Hospital services in the Relevant Geographic Market will be substantially reduced;
- B. Concentration in the relevant product markets in Mifflin and Juniata Counties will be substantially increased;
- C. The likelihood of collusion in the Relevant Geographic Markets in Mifflin and Juniata Counties may be substantially increased; and
- D. Increased concentration in Mifflin and Juniata Counties may enhance the ability of the merged entities to increase prices and decrease quality of service with little fear that such price increases and decreases in quality of service will be defeated by existing fringe competitors or new market entrants;

63. The proposed acquisition violates section 7 of the Clayton Act, 15 U.S.C. § 18.

XII. Count 2
Violation of State Common Law Doctrine Against Suppression of Competition

64. Plaintiff repeats each and every preceding allegation as if fully set forth herein.

65. The effect of the acquisition of LHF by GHSF would be to suppress or lessen competition substantially for Primary Care Physician services and Primary and Secondary Inpatient Acute Care Hospital services in Mifflin and Juniata Counties, Pennsylvania, in violation of the Pennsylvania common law doctrine against the suppression of competition.

66. This acquisition threatens loss or damage to the general welfare and economy of the Plaintiff and to the citizens of the Commonwealth of Pennsylvania. The Plaintiff and its citizens will be subject to a continuing and substantial threat of irreparable injury to the general welfare, economy and competition in the Commonwealth of Pennsylvania unless the Defendant is enjoined from finalizing the acquisition.

67. The acquisition would likely have the following effects, among others:

A. Competition in the provision of Primary Care Physician services and Primary and Secondary Inpatient Acute Care Hospital services in the Relevant Geographic Market would be eliminated or substantially lessened;

B. Actual and future competition between GHSF and other competitors for Primary Care Physician services and Primary and

Secondary Inpatient Acute Care Hospital services would be eliminated or substantially lessened;

C. Prices for the provision of Primary Care Physician services and Primary and Secondary Inpatient Acute Care Hospital services would likely increase to levels above those prior to the acquisition;

D. Innovation and quality of the provision for Primary Care Physician services and Primary and Secondary Inpatient Acute Care Hospital services would likely decrease, if not disappear, below levels existing prior to the acquisition;

E. Depriving customers of the benefits of fair competition for Primary Care Physician services and Primary and Secondary Inpatient Acute Care Hospital services in Mifflin and Juniata Counties, Pennsylvania;

F. Enhancing GHSF's own interests at the expense of the citizens of the Commonwealth; and

G. Interfering with the interests of the public.

XIII. Injury

68. Unless the violations described above are enjoined, the Commonwealth of Pennsylvania will suffer direct, immediate and irreparable

damage to its general economy and as a direct purchaser of Primary Care Physician services and Primary and Secondary Inpatient Acute Care Hospital services.

XIV. Relief Requested

WHEREFORE, plaintiff prays:

(a) That the proposed acquisition of LHF by GHSF be adjudged to be in violation of section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) That the proposed acquisition of LHF by GHSF be adjudged to be in violation of the Pennsylvania common law doctrine against the suppression of competition;

(c) That defendants, their parents, subsidiaries, affiliates, directors, officers, agents, successors and assigns and all others acting on their behalf, be preliminarily and permanently enjoined from taking any action directly or indirectly to consummate the proposed acquisition of LHF by GHSF;

(d) That defendants be ordered to pay plaintiff's costs and attorneys' fees;
and

(e) That the Court grant such other relief as it deems appropriate.

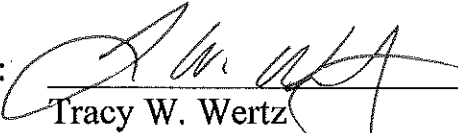
Dated: October 25, 2013

Respectfully submitted,

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