

Company. Columbia/HCA Healthcare Corporation's proposed acquisition of the stock or other share capital or the assets of Healthtrust, Inc. -- The Hospital Company would violate § 15.05(d) of the Texas Antitrust Act in that the effect of said acquisition may be to lessen competition substantially in one or more lines of trade or commerce.

II **DEFENDANT**

2. Defendant Columbia/HCA Healthcare Corporation ("Columbia") is a Delaware corporation with its principal place of business at One Park Plaza, Nashville, Tennessee 37203. At all times material hereto Defendant Columbia engaged in the business of providing acute care inpatient hospital services in Texas, and owned and controlled a number of acute care hospitals in Texas. Defendant Columbia is represented by Stephen T. Braun, Senior Vice President and General Counsel, Columbia/HCA Healthcare Corporation, One Park Plaza, Nashville, Tennessee 37203. No citation is necessary at this time as Mr. Braun (or his designee) has agreed to accept service, appear and answer on behalf of Defendant Columbia.

III **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to Sections 15.20 (b) and 15.26 of the Texas Antitrust Act. Venue is proper in this Court pursuant to Sections 15.20 (b) and 15.26 of the Texas Antitrust Act.

4. At all times relevant herein, Columbia and Healthtrust, Inc. -- The Hospital Company have been and are now engaged in or affecting trade and commerce within the State of Texas.

IV.
DEFINITIONS

5. "Acquisition" means the transaction contemplated by the October, 1994, agreement between Columbia and Healthtrust, Inc. -- The Hospital Company ("Healthtrust"), whereby Columbia will acquire 100 percent of the stock of Healthtrust, a wholly-owned subsidiary of Columbia (COL Acquisition Corporation) will be merged with and into Healthtrust, and Healthtrust will be the surviving corporation in the merger and will operate as a wholly-owned subsidiary of Columbia.

6. "Acute care hospital" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, that may also provide 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.

7. "Acute care inpatient hospital services" means 24-hour inpatient health care, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities, provided by an acute care hospital. In Texas, acute care inpatient hospital services are provided only by health care institutions licensed as hospitals and further licensed or certified to provide acute care (as opposed to other types of hospital care such as psychiatric, rehabilitation, substance abuse, or subacute skilled nursing care).

8. "Corpus Christi Market" means the combined area consisting of the Texas counties of Nueces, San Patricio, Jim Wells, and Kleberg.

9. "Denton Market" means the combined area consisting of the Texas counties of Denton and Cooke (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas State Highway 121).

V.
PRODUCT AND GEOGRAPHIC MARKETS

10. The State would show that the relevant product market for the purpose of this action is the production and sale of acute care inpatient hospital services. The production and sale of acute care inpatient hospital services is distinct from the production and sale of services by other types of health-care facilities such as clinics, ambulatory surgery centers, physicians' offices, nursing homes or rehabilitation or psychiatric hospitals. There are no substitutes for the acute care inpatient hospital services provided by Defendant Columbia and Healthtrust.

11. The State would show that one relevant geographic market for the purpose of this action is the combined area consisting of the Texas counties of Denton and Cooke (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas State Highway 121)("Denton Market").

12. The State would show that another relevant geographic market for the purpose of this action is the combined area consisting of the Texas counties of Nueces, San Patricio, Jim Wells, and Kleberg ("Corpus Christi Market").

VI.
NATURE OF ANTICOMPETITIVE ACTIVITY

A. Factual Allegations

13. In October, 1994, Columbia and Healthtrust announced their intention to merge, with Columbia acquiring all of Healthtrust's stock (the "acquisition").

14. Columbia is the largest private hospital chain in the United States. As of October 1994, Columbia had annual revenues of \$11 billion, 135,000 employees, and owned and operated approximately 190 hospitals (44,000 beds) in the United States, including 37 hospitals in Texas (7,400+ beds).

15. The state with the largest concentration of Columbia hospitals is Texas. There are approximately 500 hospitals in Texas; Columbia will own 71 Texas hospitals if the proposed acquisition is completed.

16. Among the acute care hospitals Columbia owns and operates in Texas are Denton Community Hospital ("Denton Community") in Denton, Texas, and Bay Area Medical Center ("Bay Area") and Doctors Regional Medical Center ("Doctors Regional") in Corpus Christi, Texas. Denton Community, Bay Area, and Doctors Regional provide acute care inpatient hospital services.

17. As of October 1994, Healthtrust had annual revenues of \$4 billion, 37,000 employees, and owned and operated approximately 120 hospitals (16,000 beds) in the United States, including 34 hospitals in Texas (5,300+ beds).

18. At all times material hereto Healthtrust engaged in the business of providing acute care inpatient hospital services in Texas, and owned and controlled a number of acute care hospitals in Texas.

19. Among the acute care hospitals Healthtrust owns and operates in Texas are Denton Regional Medical Center ("Denton Regional") in Denton, Texas, Alice Physicians & Surgeons Hospital ("Alice") in Alice, Texas, Coastal Bend Hospital ("Coastal Bend") in Aransas

Pass, Texas, and Riverside Hospital ("Riverside") in Corpus Christi, Texas. Denton Regional, Alice, Coastal Bend, and Riverside provide acute care inpatient hospital services.

20. Individual consumers generally seek to obtain acute care inpatient hospital services from hospitals located near their residence or workplace.

21. Likewise, employers and third-party payors generally seek to obtain acute care inpatient hospital services for their employees and/or subscribers near their employees' and/or subscribers' residence or workplace.

22. The provision of acute care inpatient hospital services is distinct from the provision of services by other types of health-care facilities such as clinics, ambulatory surgery centers, physicians' offices, nursing homes or rehabilitation or psychiatric hospitals.

23. There are no substitutes for the acute care inpatient hospital services provided by Columbia and Healthtrust.

24. Upon approval of the merger Healthtrust will become a wholly-owned subsidiary of Columbia, whereby Columbia will acquire 100 percent of the stock of Healthtrust. The total value of the Healthtrust stock to be acquired by Columbia is estimated at \$2.9 billion dollars. The merged entity will own over 300 hospitals in the United States, including 71 Texas hospitals, making it about five times larger than its nearest competitor. This acquisition may substantially lessen competition in an important line of trade or commerce in certain geographic regions in Texas. Should the acquisition be completed, the consumers in those areas of the State of Texas would lose the benefit of that competition.

B. Market Concentration

1. Denton Geographic Market

25. Denton Community, owned by Columbia, and Denton Regional, owned by Healthtrust, are direct actual competitors and potential competitors in the product market for acute care inpatient hospital services in the Denton Market.

26. Significant barriers to entry, specifically state regulatory requirements and construction constraints such as substantial lead times required to establish a new hospital, exist in the Denton Market with respect to the provision of acute care inpatient hospital services.

27. The services provided by the two acute care hospitals, Denton Community and Denton Regional, are local in nature. The Denton Market for acute care inpatient hospital services is already highly concentrated, and the proposed acquisition of Healthtrust by Columbia increases market concentration significantly. Columbia would own the only two hospitals in the City of Denton, and three of the four hospitals in Denton County. Within the relevant geographic Denton Market, which consists of Denton County and Cooke County excluding the incorporated city of Lewisville and that part of Denton County south of Texas State Highway 121, Columbia would own the two largest hospitals, Denton Community (110 licensed beds) and Denton Regional (297 licensed beds), leaving only two small government-owned hospitals, Gainesville Memorial Hospital (88 licensed beds) and Muenster Memorial Hospital (18 licensed beds), as the remaining competitors in the market. Competition for acute care inpatient hospital services would be lessened substantially, and consumers in the Denton Market would be denied the benefit of free and open competition between Columbia and Healthtrust.

2. **Corpus Christi Geographic Market**

28. Bay Area and Doctors Regional, owned by Columbia, are direct actual competitors and potential competitors of Healthtrust-owned Alice, Coastal Bend, and Riverside in the product market for acute care inpatient hospital services in the Corpus Christi Market.

29. Significant barriers to entry, specifically state regulatory requirements and construction constraints such as substantial lead times required to establish a new hospital, exist in the Corpus Christi Market with respect to the provision of acute care inpatient hospital services.

30. The services provided by the Columbia and Healthtrust acute care hospitals in the Corpus Christi Market are local in nature. The Corpus Christi Market for acute care inpatient hospital services is already highly concentrated, and concentration will increase significantly as a result of the proposed Columbia acquisition of Healthtrust. Columbia will own five acute care hospitals, leaving only two other major competitors in the market, Spohn Health System (Spohn Hospital and Spohn Hospital South in Corpus Christi, Spohn Kleberg Memorial Hospital in Kingsville, Texas) and Memorial Hospital in Corpus Christi. Competition for acute care inpatient hospital services would be lessened substantially, and consumers in the Corpus Christi Market would be denied the benefit of free and open competition between Columbia and Healthtrust.

VII.
ANTICOMPETITIVE EFFECTS

31. The effects of the aforesaid acquisition, if consummated, may be to lessen competition substantially in the relevant product market for acute care inpatient hospital services in the Denton Market in the following ways, among others:

- (a) it would virtually eliminate actual and potential competition between Denton Community (Columbia) and Denton Regional (Healthtrust);
- (b) it would significantly increase the already high level of concentration in the market;
- (c) it would eliminate Denton Regional (Healthtrust) as a substantial independent competitive force;
- (d) it may enhance the possibility of collusion or interdependent coordination by the remaining firms in the relevant market; and
- (e) it may deny patients, physicians, third-party payors, and other consumers of acute care inpatient hospital services in the relevant market the benefits of free and open competition based on price, quality, and service.

32. The effects of the aforesaid acquisition, if consummated, may be to lessen competition substantially in the relevant product market for acute care inpatient hospital services in the Corpus Christi Market in the following ways, among others:

- (a) it would virtually eliminate actual and potential competition between Columbia and Healthtrust acute care hospitals in the Corpus Christi Market;
- (b) it would significantly increase the already high level of concentration in the market;
- (c) it would eliminate Healthtrust-owned Alice, Coastal Bend, and Riverside as a substantial independent competitive force;
- (d) it may enhance the possibility of collusion or interdependent coordination by the remaining firms in the relevant market; and

(e) it may deny patients, physicians, third-party payors, and other consumers of acute care inpatient hospital services in the relevant market the benefits of free and open competition based on price, quality, and service.

VIII.
FIRST CLAIM FOR RELIEF
SECTION 15.05 (d), TEXAS ANTITRUST ACT

33. The State repeats and realleges the facts set forth in paragraphs 1 through 32 above.

34. Columbia's proposed acquisition of Healthtrust violates or threatens to violate the prohibition against unlawful practices contained in Section 15.05 (d) of the Texas Antitrust Act in that the effect of the acquisition may be to lessen competition substantially in the market for the provision of acute care inpatient hospital services in certain geographic markets of Texas, and would cause irreparable harm to economic competition in trade or commerce occurring wholly or partly within the State of Texas for which there is no adequate remedy at law.

35. The State would show that, pursuant to Section 15.20 (b) of the Texas Antitrust Act, the State is entitled to a temporary and permanent injunction enjoining Defendant Columbia's illegal acts. No remedy other than temporary and permanent injunctions prohibiting the acquisition of Healthtrust by Columbia would eliminate the effects of the unlawful acquisition which would lessen competition substantially in certain lines of trade or commerce, namely acute care inpatient hospital services.

IX.
SECOND CLAIM FOR RELIEF
SECTION 15.05 (b), TEXAS ANTITRUST ACT

36 The State repeats and realleges the facts set forth in paragraphs 1 through 35 above.

37. By attempting to monopolize the relevant markets as described herein, Defendant Columbia violated Section 15.05 (b) of the Texas Antitrust Act.

38. The State would show that, pursuant to Section 15.20 (b) of the Texas Antitrust Act, the State is entitled to a temporary and permanent injunction enjoining Defendant Columbia's illegal acts. The State would further show that, pursuant to Section 15.20 (a) of the Texas Antitrust Act, the State is entitled to recover statutory fines from Defendant Columbia for each violation of Section 15.05 (b).

X.
THIRD CLAIM FOR RELIEF
COSTS OF INVESTIGATION, ATTORNEYS FEES, AND COURT COSTS

39. The State repeats and realleges the facts set forth in paragraphs 1 through 38 above.

40. The State would show that pursuant to Section 15.20 (b) of the Texas Antitrust Act, and Section 402.006 of the Texas Government Code, the State is entitled to recover its reasonable and necessary attorneys fees and investigative costs for the preparation, trial and appeal of this matter, and costs of court.

XL
PRAYER

WHEREFORE, PREMISES CONSIDERED, the State prays that Defendant Columbia be served with process and required to answer herein, and that upon proper notice and hearing hereof, the State obtain the following relief:

1. That the above-described conduct, agreement, and proposed acquisition be adjudged and decreed to be unlawful and in violation of Sections 15.05 (b) and (d) of the Texas Free Enterprise & Antitrust Act of 1983;

2. That Defendant Columbia and all persons acting on its behalf be preliminary and permanently enjoined from taking any action directly or indirectly in furtherance of the proposed acquisition of Healthtrust by Columbia, and specifically enjoined from carrying out any agreement, understanding, or plan, the effect of which would be to merge or otherwise combine Columbia and Healthtrust in the heretofore described relevant geographic markets;

3. That such injunctive relief, including divestiture, be ordered as is necessary and appropriate to prevent the effects of the unlawful activities alleged in the claims for relief above;

4. That the Court grant the injunctions requested above and that no bond be required of the State;

5. That the Court order Defendant Columbia to pay a civil penalty for each violation of Section 15.05(b) of the Texas Free Enterprise & Antitrust Act of 1983 it has committed;

6. That the Court award the State its reasonable investigative costs and attorneys fees for the investigation, preparation, trial and appeal of this matter;

7. That the Court grant the State all costs of this suit;

8. That the Court grant the State such other and further relief, both at law and in equity, as to which it may show itself justly entitled.

Respectfully submitted,

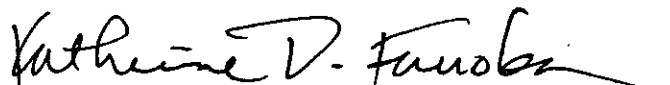
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