

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA
555 4th Street, N.W.
Washington, D.C. 20001, and

STATE OF FLORIDA,
by and through its Attorney General
Robert A. Butterworth
The Capitol
Tallahassee, Florida 32399-1050,

Plaintiffs,

v.

MORTON PLANT HEALTH SYSTEM, INC.
323 Jeffords Street
Clearwater, Florida 34616, and

TRUSTEES OF MEASE HOSPITAL, INC.
601 Main Street
Dunedin, Florida 34698,

Defendants.

Civil Action No.

94-748-CIV-T-23E

5/5/94

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF
AGAINST COMBINATION IN VIOLATION OF
SECTION 7 OF THE CLAYTON ACT, 15 U.S.C. § 18

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Florida, acting under the direction of the Attorney General of the State of Florida as parens patriae under 15 U.S.C. § 15c and on behalf of state and local government entities in Pinellas County under Section 542.27, Florida Statutes, bring this civil action to obtain equitable and other relief against the defendants and allege as follows:

1. This antitrust case is brought to block the proposed combination of the two largest general acute care hospital competitors in North Pinellas County, Florida: Morton Plant Health System, Inc. ("MPHS") and the Trustees of Mease Hospital, Inc. ("TMH"). MPHS owns and operates Morton Plant Hospital in Clearwater, Florida ("Morton Plant"), the largest general acute care hospital in North Pinellas County. TMH owns and operates the Mease hospitals in Dunedin and Safety Harbor, Florida ("Mease"), and is the second largest general acute care hospital competitor in North Pinellas County.

2. Morton Plant and Mease are each other's principal competitors in the provision of acute inpatient hospital services. If Morton Plant combines with its principal competitor, Mease, the combination will dominate the North Pinellas County market, controlling nearly 60 percent of all general acute care hospital beds there.

3. Unless prevented, this combination is likely to substantially lessen competition in the provision of acute inpatient hospital services, reduce the number of competitive alternatives available to health care consumers, and result in higher prices for acute inpatient hospital services in North Pinellas County. These higher prices will be paid by health care purchasers, particularly health insurance plans, employers, and unions, and would likely result in an increase in prices individual consumers pay for health insurance coverage.

I.

JURISDICTION, VENUE AND DEFENDANTS

4. This action is filed under Sections 15 and 16 of the Clayton Act, as amended, 15 U.S.C. §§ 25 and 26, to prevent and to restrain the violation by defendants of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. This Court has jurisdiction over the subject matter and the defendants pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

5. MPHS and TMH, Florida not-for-profit corporations, both transact business, maintain offices and are found within the Middle District of Florida, Tampa Division. Venue is proper in the Middle District of Florida under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

6. MPHS and TMH are engaged in interstate commerce and in activities substantially affecting interstate commerce. MPHS and TMH routinely receive insurance reimbursement payments, equipment, and supplies from outside Florida.

II.

TRADE AND COMMERCE

7. General acute care hospitals receive the bulk of their revenues from the provision of acute inpatient hospital care, services provided for diagnosis and treatment of patients who require an overnight hospital stay. Acute inpatient hospital services include room and board, medical and surgical services, around-the-clock monitoring and observation, nursing care, and laboratory, x-ray, and support services.

8. Morton Plant and Mease are the two largest general acute care hospitals in North Pinellas County. Morton Plant, with 672 licensed acute care hospital beds, generated about \$130 million in net inpatient revenues in fiscal year 1993. Mease, with a total of 358 licensed acute care hospital beds on two campuses, generated about \$75 million in net inpatient revenues in fiscal year 1993.

9. Like many general acute care hospitals, Morton Plant and Mease sell acute inpatient hospital services to a variety of purchasers, including managed care plans such as health maintenance organizations ("HMOs") and preferred provider organizations ("PPOs"). Managed care plans reduce health care 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. Hospitals reduce the prices of services provided to managed care plans in return for the plans' commitment to increase the volume of patients hospitals receive.

10. Through competition for the provision of hospital services to their managed care plans, these price-sensitive health care purchasers secure hospital services at competitive rates, which substantially contains costs of hospital care. This, in turn, permits managed care plans to offer health insurance to consumers at lower prices. Managed care plans constitute a significant, and growing, percentage of Morton Plant's and Mease's revenues from patient care.

11. In addition to providing acute inpatient hospital services, general acute care hospitals also treat patients on an outpatient basis and, for those services, compete with other types of providers such as clinics, ambulatory surgery centers, and physicians' offices. Patients whose treatment or condition requires an overnight hospital stay, however, cannot be safely or effectively treated on an outpatient basis. And for that reason, health care purchasers, including managed care plans, do not view outpatient services as substitutes for acute inpatient hospital services. General acute care hospitals could profitably increase the price of acute inpatient hospital services without causing a significant number of health care purchasers to switch to outpatient services.

12. The provision of acute inpatient hospital services constitutes a line of commerce, or relevant product market, within the meaning of Section 7 of the Clayton Act.

13. Patients who require acute inpatient hospital services must be admitted to a general acute care hospital by a physician who maintains admitting privileges at that facility. Physicians, as a rule, maintain admitting privileges only at hospitals close to their office to avoid disrupting their practice to conduct rounds at distant hospitals. Patients also strongly prefer to be admitted to a general acute care hospital close to their homes, families and friends, and they perceive conveniently located hospitals as the only acceptable providers of acute inpatient hospital services.

14. Pinellas is the most densely-populated county in Florida. It is a long, narrow peninsula, surrounded on three sides by two large bodies of water, the Gulf of Mexico and Tampa Bay. Automobile traffic in Pinellas County is frequently congested, especially during winter months, when the county's population swells with a seasonal influx of tourists and winter residents. Because few major highways connect communities in the northern and southern ends of Pinellas, travel between North and South Pinellas County is especially difficult and time-consuming.

15. Because of the quality, convenience and accessibility of the general acute care hospitals in Northern Pinellas County, residents of North Pinellas strongly prefer to seek acute inpatient hospital services from hospitals in that area. In 1992, over 85 percent of North Pinellas County residents who were hospitalized were admitted to general acute care hospitals in North Pinellas.

16. Because of their quality, convenience and accessibility, general acute care hospitals in North Pinellas are uniquely situated to service local physicians. Very few physicians who practice at hospitals in North Pinellas admit patients to general acute care hospitals in other areas.

17. For these reasons, health care purchasers such as managed care plans strongly prefer to contract with general acute care hospitals in North Pinellas to service the needs of

their area enrollees, and they do not consider hospitals in other areas to be acceptable substitutes. General acute care hospitals in North Pinellas County could profitably increase the price of acute inpatient hospital services without losing a significant number of enrollees of health care purchasers to hospitals in other areas.

18. North Pinellas County is a section of the country, or relevant geographic market, within the meaning of Section 7 of the Clayton Act.

19. Morton Plant and Mease are the largest general acute care hospitals in North Pinellas County and control respectively about 38% and 20% of all general acute care hospital beds. Together, Morton Plant and Mease would dominate the market for the provision of acute inpatient hospital services with a combined share of 58%. The market is highly concentrated by any measure of hospital capacity or output, and market concentration would increase substantially as a result of the proposed combination of Morton Plant and Mease. Using a measure of market concentration called the "HHI" (defined and explained in Appendix A), the transaction would increase the HHI by 1559 points to a post-consolidation level of 3903.

20. Morton Plant and Mease currently are each other's most direct and most significant competitors and closest substitutes for the provision of acute inpatient hospital services to

health care purchasers. As Mease's managed care coordinator explained in April 1992:

In our service area competition for managed care business is strongest between Morton Plant Hospital (MPH) and Mease Health Care (MHC). MHC and MPH are viewed by managed care payers as the two most desirable north Pinellas components of their HMO and PPO networks. Predictably, the payers make every attempt to pit one against the other to achieve the greatest discount and level of commitment/cooperation.

21. Managed care plans have benefitted from the vigorous rivalry between Morton Plant and Mease, which has resulted in competitive rates for acute inpatient hospital services. A combination of Morton Plant and Mease would eliminate that competitive rivalry, significantly reduce the ability of managed care plans to bargain for competitive rates, and give the combination the ability to increase prices for the provision of acute inpatient hospital services.

22. In the foreseeable future, no new general acute care hospital is likely to enter the North Pinellas County market and established hospitals are unlikely to expand significantly in this market.

III.

VIOLATION ALLEGED

23. Pursuant to their Letter of Intent dated October 19, 1993, MPHS and TMH have agreed to consolidate ownership of Morton Plant and Mease under a common entity.

24. The effect of the consolidation may be substantially to lessen competition for the provision of acute inpatient hospital services in North Pinellas County in violation of Section 7 of the Clayton Act in the following ways, among others:

- a. Actual and potential competition between Morton Plant and Mease in the provision of acute inpatient hospital services in North Pinellas County will be eliminated; and
- b. Competition generally in the provision of acute inpatient hospital services in North Pinellas County will be substantially lessened.

REQUEST FOR RELIEF

Plaintiffs request:

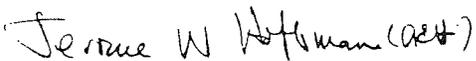
- a. That the proposed consolidation of MPHS and TMH be adjudged a violation of Section 7 of the Clayton Act, and preliminary and permanent injunctions be issued preventing the defendants and all persons acting on their behalf from consummating the agreement to consolidate or from going forward with any other plan or agreement by which Morton Plant would be combined with Mease;
- b. That the United States and the State of Florida have such further relief as the Court may deem proper;
- c. That the State of Florida recover its attorneys fees in this action; and

d. That the United States and the State of Florida
recover the costs of this action.

Dated: May 5, 1994



ROBERT A. BUTTERWORTH
Attorney General

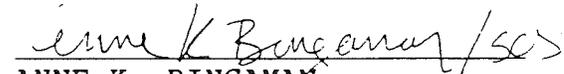


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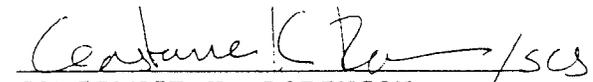
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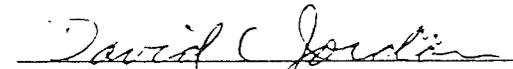
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VERIFICATION

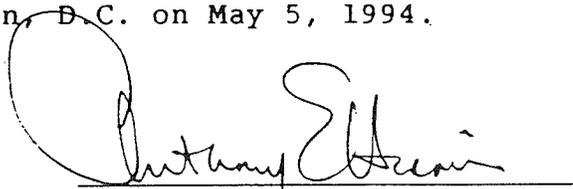
I, Anthony E. Harris, declare:

1. I am a trial attorney employed by the United States Department of Justice, Antitrust Division.

2. I verify that the foregoing Verified Complaint for and on behalf of the United States of America and the State of Florida was duly prepared under the direction of the Attorney General of the United States and with assistance and supervision from the Office of the Attorney General of the State of Florida; that the facts stated therein have been assembled by authorized employees and counsel for the United States of America and by authorized employees and counsel for the State of Florida; and that the allegations therein are true and correct to the best of my knowledge, information, and belief.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. on May 5, 1994.



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