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U.S. DISTRICT COURT
 AT ROANOKE, VIRGINIA
FILED
 MAY 27 88
 JOYCE F. WITZ, Clerk
 By: *J. D. Smith*
 Deputy Clerk

UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF VIRGINIA
 ROANOKE DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 88-0249-R
)	
v.)	Filed:
)	
CARILION HEALTH SYSTEM and)	SUIT FOR PRELIMINARY
COMMUNITY HOSPITAL OF)	AND PERMANENT INJUNCTION
ROANOKE VALLEY,)	AGAINST ACQUISITION
)	15 U.S.C. §§ 1 and 18
Defendants.)	
_____)	ANTITRUST

VERIFIED COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain the violation by defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. Carilion Health System ("Carilion"), formerly known as Roanoke Hospital Association ("RHA"), transacts business, maintains offices, and is found within the Western District of Virginia.

3. Community Hospital of Roanoke Valley ("CHRV") transacts business, maintains offices, and is found within the Western District of Virginia.

4. Carilion and CHRV have adopted an Agreement in Principle, dated July 30, 1987, by which Carilion proposes to acquire sole membership and control of CHRV. This merger is scheduled to be consummated after the close of business on June 8, 1988. The United States alleges that this merger would violate Section 7 of the Clayton Act and Section 1 of the Sherman Act.

II.

DEFINITIONS

5. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

6. "Roanoke Valley" means the independent cities of Roanoke and Salem, all of Roanoke County, and adjoining parts of the six counties (Montgomery, Craig, Floyd, Franklin, Bedford and Botetourt) that immediately surround Roanoke County, Virginia.

7. "Carilion" means Carilion Health System, and any division, subsidiary, or affiliate of it.

III.

THE DEFENDANTS

8. Carilion is made a defendant herein. Carilion is a nonprofit corporation organized and existing under the laws of the Commonwealth of Virginia. It maintains its principal offices in Roanoke, Virginia. Carilion is engaged in a variety of health care-related enterprises, including owning or managing several general acute care hospitals located in southwestern and central Virginia. Carilion owns and operates Roanoke Memorial Hospitals, a general acute care hospital in Roanoke, Virginia, with 677 licensed acute care hospital beds. In its 1987 fiscal year, Carilion's total operating revenues were about \$177 million.

9. CHRV is made a defendant herein. CHRV is a nonprofit corporation organized and existing under the laws of the Commonwealth of Virginia. It maintains its principal offices in Roanoke, Virginia. CHRV owns and operates Community Hospital of Roanoke Valley, a general acute care hospital in Roanoke, Virginia, with 400 licensed acute care hospital beds. In 1987, CHRV's total operating revenues were about \$42.6 million.

IV.

TRADE AND COMMERCE

10. General acute care hospitals provide a wide variety of services in connection with the diagnosis, care, and treatment of patients. They provide some of these services to patients in an outpatient setting. General acute care hospitals, however, usually provide most of their services for, and derive the bulk of their revenues from, the diagnosis, care, and treatment of patients who, because of the seriousness of their illness or condition, require at least an overnight hospital stay. The services provided to patients admitted to general acute care hospitals are referred to herein as "acute inpatient hospital services."

11. The provision of acute 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. Most other health care facilities do not treat patients who require an overnight stay, and none provide services that are comparable to the acute inpatient hospital services provided by general acute care hospitals. Patients are usually admitted to a general acute care hospital only when they cannot be safely, effectively, or economically treated by other types of health care facilities. Sellers and purchasers of acute inpatient hospital services do not view the

services offered by other types of health care facilities as good substitutes for acute inpatient hospital services.

12. The provision of acute inpatient hospital services by general acute care hospitals constitutes a line of commerce, or relevant product market, for antitrust purposes. In 1986, total revenues from the provision of acute inpatient hospital services in the Roanoke Valley were approximately \$200 million.

13. Persons in need of acute inpatient hospital services must be admitted to a general acute care hospital by a physician who has hospital admitting privileges. In order to minimize travel time, admitting physicians prefer to treat patients at general acute care hospitals located in the community in which they practice. Patients also desire to be hospitalized in their local community so that their families or friends can visit conveniently. Geographic markets for the provision of acute inpatient hospital services are therefore highly localized.

14. The overwhelming majority of the residents of the Roanoke Valley depend upon the general acute care hospitals located in the Roanoke Valley for acute inpatient hospital services. In addition, the majority of patients admitted to general acute care hospitals located in the Roanoke Valley are residents of the Roanoke Valley. In the Roanoke Valley, sellers and purchasers of acute inpatient hospital services do

not view hospitals outside the Roanoke Valley as good substitutes for the provision of acute inpatient hospital services.

15. The Roanoke Valley constitutes, for antitrust purposes, a section of the country, or relevant geographic market, for the provision of acute inpatient hospital services.

16. Carilion and CHRV compete in the provision of acute inpatient hospital services in the Roanoke Valley. They operate the largest and third largest general acute care hospitals in this market, which, aside from a Veterans' Administration hospital, has only three such hospitals. (The Veterans' Administration hospital, by law, provides acute inpatient hospital services only to certain veterans.)

17. The market for the provision of acute inpatient hospital services in the Roanoke Valley is highly concentrated by any measure of capacity or output of the competitors, and concentration would increase substantially as a result of the merger of Carilion and CHRV. As measured by total capacity, Carilion and CHRV have, respectively, about 46 and 27 percent of all licensed general acute care hospital beds in the Roanoke Valley (not including the beds of the Veterans' Administration hospital). Carilion's acquisition of CHRV would create a firm with a market share of approximately 73 percent and would increase the HHI for the market by 2463 points to 6023.

This merger would result in similarly high increases in concentration if other measures of the firms' market shares of acute inpatient hospital services were used, such as admissions, inpatient days, or inpatient revenues.

18. Entry into the provision of acute inpatient hospital services in the Roanoke Valley is unlikely to occur. Among the reasons why entry is unlikely are state laws that require an entrant to demonstrate a community need for additional acute care hospital beds in order to obtain a certificate of public need ("COPN") to construct them; an excess supply of existing acute care hospital beds in the Roanoke Valley that would make it difficult for an entrant to satisfy that requirement; a state-imposed, one-year moratorium on the issuance of any new COPNs (except for extraordinary reasons); and the substantial time and expense required to construct a general acute care hospital facility.

19. Carilion and CHRV regularly purchase substantial quantities of equipment and material from sources outside Virginia for use in connection with their provision of acute inpatient hospital services in the Roanoke Valley. Carilion and CHRV regularly receive substantial revenue from governmental and private payers (e.g., insurance companies) located outside Virginia in payment for acute inpatient hospital services provided by their general acute care hospitals in the Roanoke Valley. Carilion and CHRV

each are engaged in interstate commerce and their activities are in the flow of, and substantially affect, interstate commerce.

V.

VIOLATIONS ALLEGED

20. Under the terms of an Agreement in Principle, dated July 30, 1987, between RHA (now Carilion) and CHRV, Carilion proposes to acquire sole membership in (or ownership and authority to control) CHRV, in exchange for which CHRV will be provided minority representation on the board of directors of Carilion. As a result of this merger, one corporation will own and control two of the three general acute care hospitals in the Roanoke Valley that are now independent competitors.

21. The effect of the merger of CHRV and Carilion may be substantially to lessen competition in the provision of acute inpatient hospital services in the Roanoke Valley in violation of Section 7 of the Clayton Act in the following ways, among others:

- a. Actual and potential competition between Carilion and CHRV will be eliminated; and
- b. Competition generally in the provision of acute inpatient hospital services in the Roanoke Valley may be substantially lessened.

22. By entering into the Agreement in Principle, dated July 30, 1987, Carilion and CHRV have agreed to restrain trade unreasonably in the provision of acute inpatient hospital services in the Roanoke Valley in violation of Section 1 of the Sherman Act.

23. This agreement, if carried out, will have the following effects, among others:

- a. Actual and potential competition between Carilion and CHRV will be eliminated; and
- b. Competition generally in the provision of acute inpatient hospital services in the Roanoke Valley will be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That pending final adjudication of the merits of this Verified Complaint, a temporary restraining order and a preliminary injunction be issued against the defendants preventing and restraining each of them and all persons acting on their behalf from taking any action, either directly or indirectly, in furtherance of the proposed merger of Carilion and CHRV;

2. That the proposed merger of CHRV and Carilion be adjudged to be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1;

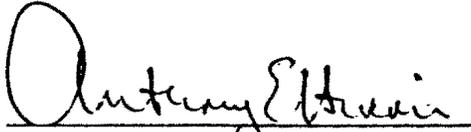
3. That defendants be permanently enjoined from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to combine Carilion and CHRV;

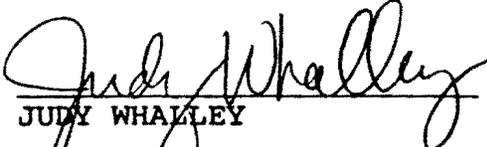
4. That plaintiff have such other further relief as the Court may deem just and proper; and

5. That plaintiff recover the costs of this action.

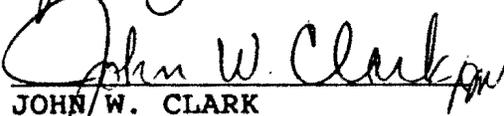
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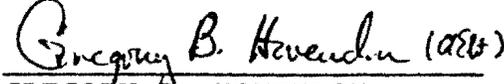

CHARLES F. RULE
Assistant Attorney General

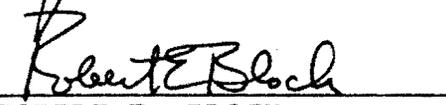

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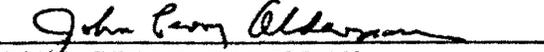

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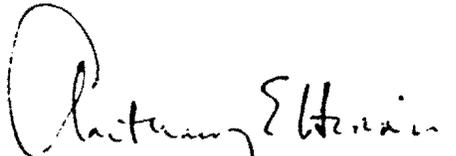
VERIFICATION

I, Anthony E. Harris, declare:

1. I am an attorney with 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 was duly prepared under the direction of the Attorney General of the United States; that the facts stated therein have been assembled by authorized employees and counsel for the United States of America; 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 26, 1988.



ANTHONY E. HARRIS