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Court Applies Single Entity Antitrust Doctrine to Not-for-Profit Health System

In a recent decision, *HealthAmerica Pennsylvania, Inc. v. Susquehanna Health System,* a United States District Court in Pennsylvania found that a health care system jointly contracting on behalf of its participating hospitals and physicians does not violate antitrust law. 2003 WL 219955207 (M.D. Pa. 2003). The case involved the "virtual" merger of Williamsport Hospital & Medical Center and Divine Providence Hospital (the "Hospitals"), the only two hospitals in Lycoming County, Pennsylvania. In 1994, the direct parents of the Hospitals formed the Susquehanna Regional Healthcare Alliance (the "Alliance"), a not-for-profit entity whose members are those direct parents, each of which appoints and controls half of the directors of the Alliance.

Although there would be no formal merger or consolidation, the Alliance became responsible for most economic decisions affecting the Hospitals. The Alliance was given responsibility for management and operation of the Hospitals, "including the establishment of overall policy, oversight of the management, long range planning, coordination of managed care plans, and responsibility for programs and services and a unified budget." However, each of the respective Hospitals retained authority and responsibility for "mission and values, governance, credentialing, medical staff issues and quality assurance." The Alliance must approve any transfers of property, capital indebtedness, merger, consolidation, reorganization or entry into any other joint venture, management or alliance agreement by the Hospitals. No Hospital may terminate a program or service without the prior approval of the Alliance.

After the formation of the Alliance, the Hospitals had one risk manager, one facilities manager, one chief nursing officer, one human resources department, one set of human resource policies, one pension plan, one defined contribution plan, one Section 403(b) plan, one vice president of human resources, one set of administrative policies, one compliance officer, one manager for each separate clinical department, one operating budget, one capital budget and one health insurance program. Marketing is centralized, as is the handling of personnel matters, but each Hospital funds its respective workers' salaries and pension benefits. Although not obligated to do so, the Alliance shifted cash between the Hospitals to avoid bond defaults. The Alliance set charges for the Hospitals. Finally, under the agreement forming the Alliance, the Hospitals were to "share equally in the financial risks and rewards of the joinder."

At the time of the "merger," the Hospitals submitted information to the Pennsylvania Attorney General and the United States Department of Justice. After the Pennsylvania Attorney General challenged the formation of the Alliance, the Hospitals entered into a consent decree that, among other things, expressly required the Hospitals to obtain and pass along savings to their payors and patients. The consent decree expired in 1999. During its five-year term, the Attorney General determined that the Alliance saved over $105 million and returned $117 million to the community.

In response to the antitrust complaint brought by *HealthAmerica Pennsylvania, Inc.,* a health maintenance organization, the defendants argued that they had become a single entity incapable of conspiring to violate the antitrust laws. The plaintiff argued that the Alliance was nothing more than a joint operating arrangement between separate and independent hospital systems. At issue was how to interpret and apply *Copperweld Corp. v. Independence Tube Corp.,* 467 U.S. 752 (1984), in which the Supreme Court of the

United States held that a for-profit corporation and its wholly-owned subsidiary were incapable of conspiring to violate the antitrust laws because they were a single entity.

In *Copperweld*, the Supreme Court explained that Section 1 of the Sherman Antitrust Act ("Section 1") "reaches unreasonable restraints of trade effected by a 'contract, combination . . . or conspiracy' between separate entities. It does not reach conduct that is 'wholly unilateral.'" Thus, single entities are incapable of conspiring to violate Section 1. In *Copperweld*, the Supreme Court held that a parent and its wholly-owned subsidiary are a single entity because they "have a complete unity of interest" and "share a common purpose." The Supreme Court noted that "the parent may assert full control at any moment if the subsidiary fails to act in the parent's best interest." Federal district courts and courts of appeals have extended the *Copperweld* holding to partially-owned subsidiaries and sibling-subsidiaries under the same parent corporation. Some courts have applied the single entity doctrine to bar antitrust claims against not-for-profit entities where there was no ownership of one entity by another. *HealthAmerica* is the first case to apply *Copperweld* protection to not-for-profit hospital networks.

Noting that in *Copperweld*, the Supreme Court had stated that "'substance, not form, should determine whether a separately incorporated entity is capable of conspiring under [Section] 1,'" the court in *HealthAmerica* looked to see whether, in fact, the Hospitals were a single entity "in substance, not form." Finding it readily apparent that defendants' actions are guided "'not by two separate corporate consciousness, but one,'" (quoting the Supreme Court in *Copperweld*), the court noted that "the composition [of the Alliance system] is akin to a corporate parent (Susquehanna Alliance) and its subsidiaries (the hospitals and [a]ffiliates)." Although in *Copperweld*, the inchoate ability of the parent to control the subsidiary was sufficient to establish single entity status, the *HealthAmerica* court focused on the operational integration of the entities (noted above) rather than the Alliance's inchoate control, perhaps because the Alliance itself was controlled by the Hospitals' parent entities.

The court distinguished *New York ex rel. Spitzer v. Saint Francis Hospital*, 94 F.Supp.2d 399 (S.D.N.Y. 2000), which involved a joint operating agreement that was arguably quite different. The court noted that in *Saint Francis*, the hospitals remained independent decision-makers. In *HealthAmerica*, the defendant Hospitals were subject to a single decision-maker, the Alliance. The court also noted that the Hospitals not only integrated internal operations, but held themselves out to the public as a single entity. Indeed, the court noted that the hospitals in *Saint Francis* never claimed that they were a single entity.

The *HealthAmerica* decision is significant because it applies *Copperweld* principles to hospitals within a not-for-profit health care system based on common control of the system by a single entity, even where that entity is controlled by the respective hospital boards.

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