

## Illinois ASC's Antitrust Claims Against Hospital Survive Summary Judgment

On December 30, 2009, Judge Michael M. Mihm of the United States District Court for the Central District of Illinois denied summary judgment with respect to Peoria Day Surgery Center's (PDSC) claims alleging that OSF Healthcare System (OSF), d/b/a Saint Francis Medical Center (SFMC), violated the Sherman Act and tortiously interfered with the prospective economic advantages between PDSC and Midwest Orthopedic Center (MOC), which was considering entering into a joint venture with PDSC. Accordingly, Judge Mihm's decision permits PDSC to pursue these claims against SFMC at trial.<sup>1</sup>

Judge Mihm's December 30<sup>th</sup> decision also granted summary judgment with respect to PDSC's claims alleging SFMC tortiously interfered with the contractual relationships and prospective economic advantages between PDSC and Caterpillar, and PDSC and Humana, dismissing these claims.<sup>2</sup>

PDSC's second amended complaint, which was filed on April 7, 2009, alleged that SFMC engaged in illegal tying by entering into an exclusive contract with Caterpillar in 2001 under which SFMC would be reimbursed at an in-network rate for the provision of inpatient and outpatient ambulatory surgery services to members of Caterpillar's self-insured health policy.<sup>3</sup> Under the agreement, Caterpillar would reimburse other ambulatory surgery centers (ASCs), including PDSC, at an out-of-network level of 70%, requiring members to pay the remaining 30%.<sup>4</sup>

In addition, PDSC claimed that SFMC violated the Illinois Antitrust Act by tortiously interfering with: (1) the contractual relationships and prospective economic advantages between PDSC and Caterpillar; (2) PDSC's prospective economic advantages with MOC; and, (3) the contractual relationships and prospective economic advantages between PDSC and Humana.<sup>5</sup>

In response to PDSC's complaint, SFMC filed a motion for summary judgment, claiming that there exist no genuine issues of material fact, and therefore, SFMC is entitled to judgment as a matter of law.<sup>6</sup>

Judge Mihm's decision is the latest development in litigation between PDSC and SFMC, which first commenced in September 2006.<sup>7</sup> However, similar antitrust suits have been brought by physician-owned facilities against hospitals in Kansas, Texas, and Arkansas.<sup>8</sup> Litigation in these cases centers on alleged

attempts by hospitals to restrict competition from physician-owned facilities. These practices are receiving increased attention because such anticompetitive actions by hospitals may result in higher costs and lower quality for patients.<sup>9</sup> Judge Mihm's December 30, 2009 decision to allow PDSC to pursue its antitrust claims against SFMC, along with increased antitrust litigation against hospitals nationwide, may cause some hospitals to reexamine potential anticompetitive behaviors and take steps to ensure their facilities comply with both state and federal antitrust laws.<sup>10</sup>

<sup>1</sup> *Peoria Day Surgery Center v. OSF Healthcare System, d/b/a Saint Francis Medical Center*, No. 06-1236, (C.D. Ill. Dec. 30, 2009) (order granting in part and denying in part motion for summary judgment).

<sup>2</sup> *Peoria Day Surgery Center v. OSF Healthcare System, d/b/a Saint Francis Medical Center*, No. 06-1236, (C.D. Ill. Dec. 30, 2009) (order granting in part and denying in part motion for summary judgment).

<sup>3</sup> *Peoria Day Surgery Center v. OSF Healthcare System, d/b/a Saint Francis Medical Center*, No. 06-1236, (C.D. Ill. Dec. 30, 2009) (order granting in part and denying in part motion for summary judgment).

<sup>4</sup> *Peoria Day Surgery Center v. OSF Healthcare System, d/b/a Saint Francis Medical Center*, No. 06-1236, (C.D. Ill. Dec. 30, 2009) (order granting in part and denying in part motion for summary judgment).

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<sup>7</sup> "Court Refuses to Dismiss Sherman Act Claim Brought Against Hospital by Competing ASC," BNA's Health Law Reporter, Bureau of National Affairs, January 14, 2010,

[http://news.bna.com/hlln/display/batch\\_print\\_display.adp?searchid=10266455](http://news.bna.com/hlln/display/batch_print_display.adp?searchid=10266455) (Accessed January 27, 2010); "Peoria Day Surgery Center in Illinois Wins Dismissal Against Hospital's Complaint," Becker's ASC Review, December 11, 2008, <http://www.beckersasc.com/news-analysis-asc/antikickback-legal-regulatory/peoria-day-surgery-center-in-illinois-wins-dismissal-against-hospitals-complaint.html?q=peoria+day+surgery+center+illinois+wins+dismissal+against+hospital%5C%5C%5C%27s+complaint> (Accessed January 27, 2010).

<sup>8</sup> "Surgery Center Wins Right to Pursue Antitrust Claim" By Amy Lynn Sorrel, American Medical News, February 1, 2010, <http://www.ama-assn.org/amednews/2010/02/01/gvsb0201.htm> (Accessed February 2, 2010).

<sup>9</sup> "Surgery Center Wins Right to Pursue Antitrust Claim" By Amy Lynn Sorrel, American Medical News, February 1, 2010, <http://www.ama-assn.org/amednews/2010/02/01/gvsb0201.htm> (Accessed February 2, 2010).

<sup>10</sup> "Surgery Center Wins Right to Pursue Antitrust Claim" By Amy Lynn Sorrel, American Medical News, February 1, 2010, <http://www.ama-assn.org/amednews/2010/02/01/gvsb0201.htm>



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