



## St. Luke's Health System Ordered to Unwind Acquisition of Physician Group

As healthcare reform continues to incentivize the consolidation of the healthcare industry in order to further integrate and coordinate care, courts have had to then evaluate these consolidations under federal antitrust laws to prevent anticompetitive effects. On January 24, 2014, a federal judge in Idaho sided with the *Federal Trade Commission (FTC)* in ruling that Idaho's largest health system, *St. Luke's Health System*, violated federal antitrust law when it acquired one of the largest physician multi-specialty groups in the state in 2012, and ordered the parties to unwind the acquisition.<sup>1</sup>

In the years leading up to the acquisition, *Saltzer Medical Group* was the largest independent multispecialty physician group in Idaho, consisting of 41 physicians, three quarters of whom were adult and pediatric *primary care physicians (PCPs)*.<sup>2</sup> Thirty-four of the Saltzer physicians practice in Nampa, Idaho's second largest city.<sup>3</sup> Saltzer physicians sought to coordinate care with a health system out of concern that the traditional fee-for-service reimbursement model would become unsustainable.<sup>4</sup>

In 2009, after failed attempts to coordinate care with other Idaho health systems under informal affiliations, Saltzer executed a *Memorandum of Understanding (MOU)* with St. Luke's, a private, integrated, exempt organization health system, based in Boise, Idaho, that operates seven Idaho hospitals.<sup>5</sup> This MOU established an informal partnership between the entities to improve access to care, enhance coordination of care, and outline five core areas of improvement.<sup>6</sup> After executing the MOU, Saltzer initiated discussions with St. Luke's regarding a closer affiliation, and acquisition negotiations continued to progress throughout the next three years.<sup>7</sup> Effective December 31, 2012, St. Luke's acquired the assets of Saltzer, including Saltzer's goodwill and other intangible assets, personal property, and equipment.<sup>8</sup> Saltzer, on behalf of its physicians, also entered into an exclusive five-year *Professional Services Agreement (PSA)* with St. Luke's.<sup>9</sup>

In March 2012, eight months before the deal closed, the FTC and Idaho Attorney General filed an antitrust claim in the United States District Court for the District of Idaho to enjoin the acquisition.<sup>10</sup> Two of St. Luke's competitors, Saint Alphonsus Health System and Treasure Valley Hospital, were also plaintiffs in the suit. Both providers filed suit before the FTC, but the claims were consolidated in March.<sup>11</sup> The plaintiffs argued that

the acquisition violated Section 7 of the Clayton Act, which prohibits an acquisition when "*the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly,*" as well as the Idaho Competition Act, Idaho's counterpart to Section 7 of the Clayton Act.<sup>12</sup> The plaintiffs argued that the acquisition would reduce competition among primary care physicians in Nampa by creating a single dominant provider of Adult PCP services in Nampa.<sup>13</sup> As a result, the plaintiffs claimed that St. Luke's could exploit its bargaining leverage to obtain even higher rates from health plans.<sup>14</sup>

The district court, utilizing a "*rule-of-reason*" analysis, ultimately sided with the FTC in ordering the divestiture of the acquisition as a violation of Section 7 of the Clayton Act and the Idaho Competition Act.<sup>15</sup> The court found that the combined entity included 80% of primary care physicians in Nampa.<sup>16</sup> The size of the entity, as well as the "*sterling reputations*" of Saltzer and St. Luke's, gave the combined entity "*significant bargaining leverage*" over *health insurance plans*.<sup>17</sup> The court noted it was "*highly likely*" that healthcare costs would rise as a result of the combined entity's ability to: (1) negotiate higher reimbursement rates from health insurance plans that would be passed on to the consumer; and, (2) raise rates for ancillary services to the higher hospital-billing rates.<sup>18</sup>

One of the main points of contention in this case revolved around the definition of the *relevant geographic market*. Nampa is located approximately 20 minutes from Boise, Idaho's largest city.<sup>19</sup> St. Luke's argued for a broad definition of the relevant market to include PCPs located in Boise and surrounding areas, while the plaintiffs argued for a narrow definition, which would include only Nampa PCPs.<sup>20</sup> Evidence at trial established that 68% of Nampa residents receive primary care from providers in Nampa, while 15% of Nampa residents obtain primary care in Boise.<sup>21</sup> The court reasoned that health plans need to include Nampa PCPs in their networks to offer a competitive product, citing to evidence establishing that Nampa residents strongly prefer local PCPs, and only Nampa residents who work outside of Nampa obtain primary care outside of the city.<sup>22</sup> Accordingly, the court sided with the plaintiffs in defining the relevant geographic market narrowly to include only Nampa PCPs.<sup>23</sup>

In addition to refusing to adopt St. Luke’s definition of the relevant geographic market, the court also rejected St. Luke’s argument that the merger would create efficiencies that would far outweigh any anticompetitive effects. St. Luke’s first argued that it believed the best way to create a “*unified and committed*” team of physicians to practice integrated medicine was to employ the physicians directly through an acquisition.<sup>24</sup> However, the court found the evidence to demonstrate that physician employment was not the only way to achieve this level of integrated care.<sup>25</sup> The court noted that in Idaho, independent physician groups were using *risk-based contracting* to successfully provide integrated care.<sup>26</sup> Thus, creation of a “*committed team*” of physicians necessary to achieve integrated care does not necessarily require the acquisition of a physician group.<sup>27</sup> The court also rejected St. Luke’s argument that the acquisition would allow Saltzer physicians to access St. Luke’s *electronic health records (EHR)* system, which the group could not have afforded to implement on its own.<sup>28</sup> While the court recognized that access to shared EHRs was an important component of integrated care delivery, the court also noted that St. Luke’s developed plans to allow independent physicians to utilize its EHR system so long as the physicians agree to adhere to its standards of use.<sup>29</sup> Thus, the same efficiencies resulting from the use of shared EHRs could be achieved through similar affiliation agreements with Saltzer physicians.

Despite ultimately ruling the deal anticompetitive, the court commended St. Luke’s for its efforts to improve the delivery of care and highlighting the growing tension between antitrust concerns and the reform efforts to consolidate the industry. On the day of closing arguments, the presiding judge remarked that this was “*undoubtedly, one of [his] most difficult cases.*”<sup>30</sup> The opinion acknowledged that the primary objective of the acquisition was to improve patient outcomes and actually applauded St. Luke’s for its efforts to adapt to the evolving landscape of healthcare delivery.<sup>31</sup> However, the decision ultimately noted that “*there are other ways to achieve the same effect that do not run afoul of the antitrust laws and do not run such a risk of increased costs.*”<sup>32</sup>

This decision may not be the final ruling on the matter, as St. Luke’s and Saltzer filed a motion on March 4, 2014 to stay the court ruling pending an appeal.<sup>33</sup> Nevertheless, this case may lead hospitals and other healthcare providers to closely examine potential antitrust issues before a merger or acquisition. While the primary intention behind many consolidations is to integrate care in compliance with the *Patient Protection and Affordable Care Act (ACA)*, this case establishes that compliance with the ACA alone may not be a defense against antitrust prosecutions.

1 “Memorandum Decision and Order,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 1,

<http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).

2 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 7, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).

3 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 7, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).

4 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 7-8, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).

5 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 8, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).

6 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 8, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).

7 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 9, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).

8 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 9, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).

9 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 9, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).

10 “Complaint for Permanent Injunction,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, March 26, 2013, p. 8, <http://www.ftc.gov/sites/default/files/documents/cases/2013/03/130312stlukescmpt.pdf> (Accessed 4/8/2014).

11 “The St. Luke’s Antitrust Case: 10 Things to Know,” Molly Gamble, Becker’s Hospital Review, January 30, 2014, <http://www.beckershospitalreview.com/legal-regulatory-issues/the-st-luke-s-antitrust-case-10-things-to-know.html> (Accessed 4/8/2014).

12 “Complaint for Permanent Injunction,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, March 26, 2013, p. 8, <http://www.ftc.gov/sites/default/files/documents/cases/2013/03/130312stlukescmpt.pdf> (Accessed 4/8/2014).

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- 15 “Memorandum Decision and Order,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 51, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 16 “Memorandum Decision and Order,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 3, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 17 “Memorandum Decision and Order,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 3, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
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- 20 “The Antitrust Challenge to the St. Luke’s/Saltzer Medical Group Transaction” Robert F. Leibenluft & Leigh L. Oliver, Bloomberg BNA Health Law Resource Center, February 27, 2014, [http://healthlawrc.bna.com/hlrc/display/batch\\_print\\_display.adp?searchid=22469682](http://healthlawrc.bna.com/hlrc/display/batch_print_display.adp?searchid=22469682) (Accessed 4/8/2014).
- 21 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 15, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 22 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 15, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 23 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 16, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 24 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 34, 47, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 25 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 34, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 26 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 34, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 27 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 34, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 28 “Findings of Fact and Conclusions of Law,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 35-38, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
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- 31 “Memorandum Decision and Order,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 2-3, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 32 “Memorandum Decision and Order,” Federal Trade Commission v. St. Luke’s Health System, Case No. 1:13-CV-00116-BLW, United States District Court in the District of Idaho, January 24, 2014, p. 3, <http://www.ftc.gov/system/files/documents/cases/140124stlukesfindings.pdf> (Accessed 4/8/2014).
- 33 “St. Luke’s, Saltzer file stay to maintain relationship,” Idaho Press-Tribune, March 5, 2014, [http://www.idahopress.com/news/st-luke-s-saltzer-file-stay-to-maintain-relationship/article\\_5c4bfa6e-a42e-11e3-934d-001a4bcf887a.html](http://www.idahopress.com/news/st-luke-s-saltzer-file-stay-to-maintain-relationship/article_5c4bfa6e-a42e-11e3-934d-001a4bcf887a.html) (Accessed 4/9/2014).





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