

CLIENT ALERT

Ambulatory Surgery Center Can Press Antitrust Claim against Hospital

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A New York federal court has ruled that an ambulatory surgery center may proceed with its antitrust claims that a hospital monopolistically forced it from the market. *Rome Ambulatory Surgical Center, LLC v. Rome Memorial Hospital, Inc.*, No. 5:01-CV-23 (N.D.N.Y. Dec. 21, 2004). The decision came in a closely watched case involving allegations that a dominant community hospital used its power in the local market and its relationships with physicians to improperly foreclose competition from a freestanding outpatient provider.

Rome Ambulatory Surgical Center (RASC) sued Rome Memorial Hospital and its corporate parent, Greater Affiliates, Inc., alleging violations of sections 1 and 2 of the Sherman Act and state law claims, including tortious interference with business relations and intentional interference with contractual relations. RASC contended that the Hospital conspired with area physicians so that the physicians would not make referrals to RASC, and intimidated physicians who did refer patients to RASC. In addition, RASC alleged that the Hospital entered into illegal exclusive contracts with commercial third party payors that foreclosed RASC from serving patients covered by those payors. Defendants sought summary judgment on the issue of standing and on the merits, and RASC sought summary judgment on some of its claims.

The District Court for the Northern District of New York determined that RASC met the Clayton Act section 4 standing requirements of causation and an antitrust injury. It noted that RASC satisfied the causation requirement because RASC set forth facts sufficient to support an inference that the Hospital was a substantial factor in causing RASC's injury. The court determined that RASC's allegations that the Hospital acted to limit the number of patient referrals to RASC satisfied the antitrust injury requirement, in that the Hospital's conduct was designed to prevent RASC from competing with the Hospital.

On the merits, of the twelve claims brought by RASC, the District Court determined there were triable issues of fact with respect to three of RASC's claims under the Sherman Act. It granted the Hospital's motion for summary judgment with respect to the other nine claims, including the two state law claims.

The court found that there was a triable issue of fact with respect to RASC's Sherman Act § 1 claim that the Hospital engaged in illegal exclusive contracts with third party payors. The court found evidence of anticompetitive effects in that during RASC's operation, commercial payors paid lower rates and patients had greater choice with respect to ambulatory surgical services than after RASC's closure. RASC also alleged that the Hospital foreclosed 65% of an alleged relevant market, which, if true, would constitute an unreasonable restraint of trade. The court rejected the Hospital's procompetitive justification arguments for its conduct.

The District Court dismissed the Hospital's motion for summary judgment on RASC's claim for attempted monopolization of the outpatient surgery market. It found that RASC presented sufficient evidence to demonstrate that the Hospital engaged in anticompetitive conduct with a specific intent to monopolize and that there was a significant likelihood of achieving monopoly

power. The court observed that allegations of conspiracy and physician intimidation to limit referrals to RASC and the exclusive contracts with commercial payors satisfied the anticompetitive conduct prong, and also permitted an inference of intent to monopolize. It then noted that RASC's allegation that the Hospital had a 70% share of the outpatient surgery market before RASC opened, if true, could support a finding of monopoly power.

The District Court dismissed both parties' motions for summary judgment with respect to RASC's claim that the Hospital engaged in a conspiracy to monopolize the outpatient surgery market. While the court found that RASC sufficiently alleged the elements of conspiracy to monopolize: concerted action, overt acts in furtherance of conspiracy and specific intent to monopolize, it determined that neither party conclusively proved its version of the facts and that thus a triable issue of fact existed.

To see the PDF version of the case decision, please [click here](#).

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