West Penn Allegheny Health System, Inc. v. UPMC: Third Circuit Finds Conspiracy and Attempt to Monopolize Claims Meet the Test

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Allegations of depressed reimbursement rates paid by Highmark, the dominant insurer in the Pittsburgh area, to West Penn Allegheny Health System, Inc. allegedly pursuant to a conspiracy with the area's dominant hospital system were sufficient to state an antitrust claim, according to the Third Circuit Court of Appeals in the *West Penn Allegheny Health System* decision filed November 29, 2010. The Court also held that West Penn Allegheny sufficiently alleged anticompetitive conduct for purposes of an attempted monopoly case by describing a variety of acts by University of Pittsburgh Medical Center ("UPMC") "taken as a whole."

This recent decision reflects the Court's dim view of the "sweetheart" relationship between two major players in the health care industry which are more often at odds—an insurer and a hospital system. The Court begins by addressing the standard for judging the sufficiency of pleading in an antitrust case, finding that the Supreme Court's plausibility standard does not apply with "extra bite" in antitrust cases.

The opinion recounts allegations that pursuant to the conspiracy the insurer refused to refinance an earlier loan made to West Penn Allegheny, UPMC refused to enter into provider agreements with the insurer's rivals, the insurer paid "supra-competitive" reimbursement rates to its conspiracy partner and artificially depressed rates to the other hospital and also refused to award the non-favored hospital grants to improve medical care. The opinion also details the unilateral acts of the dominant hospital in physician raiding, even describing unsuccessful attempts.

The Court acknowledges that had the insurer acted alone, the disfavored hospital would have "little basis for challenging the reimbursement rates." However, "when a firm exercises monopoly power pursuant to a conspiracy, its conduct is subject to more rigorous scrutiny." The Court did not buy the argument that depressed reimbursements allowed the insurer to set low insurance premiums, thus benefitting consumers. In the Court's view, lower premiums could only have been achieved at the expense of quality and availability of hospital services.

Given the Court's references throughout to the defendants' own internal analyses and emails, the opinion is a reminder of the dangers that lurk in documents the authors may consider private. For example, internal analyses of the unprofitability of physician "raiding," while not actionable standing alone, appear to have impacted the outcome of the case. The case provides a reminder that activities which may not themselves violate antitrust laws, such as false statements about rivals, may be problematic when combined with other acts allegedly undertaken to put a competitor out of business.
