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## 11th Circuit Finds Standing in Private Antitrust Case against Rival Hospital

On April 29, 2010, a federal appeals court in the Eleventh Circuit overturned a district court's ruling by finding that Palmyra Park Hospital Inc. ("Palmyra") has standing to pursue antitrust claims against its largest competitor, Phoebe Putney Memorial Hospital ("Phoebe Putney"). The claims at issue allege Phoebe Putney, the largest hospital in the region, leveraged a state-granted monopoly in certain medical services to tie favorable insurance reimbursement rates for those services to exclusion of plaintiff from insurance companies' provider networks.

The state of Georgia requires hospitals to obtain a Certificate of Need ("CON") to provide certain health care services. Phoebe Putney has a CON for acute-care obstetrics, neonatology and a cardiac catheterization laboratory, but Palmyra does not. While a few other hospitals in the region also provide the CON services, Palmyra alleges that they do so on such a small scale that they do not meaningfully compete with Phoebe Putney. This allegedly enables Phoebe Putney to force private insurers, notably Blue Cross Blue Shield of Georgia, to exclude Palmyra from their provider networks with regard to services for which Palmyra does compete with

Phoebe Putney. Palmyra's complaint alleges that these illegal tying agreements are in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, which outlaw agreements in restraint of trade and monopolization.

To determine whether a private plaintiff has standing under the antitrust laws, a court will consider whether the plaintiff has an alleged antitrust injury and whether the plaintiff is an efficient enforcer of the antitrust laws. As a result of the tying agreements, Palmyra alleges it lost significant insurance contracts and that patients have fewer choices for medical services. In finding for Palmyra, the court held that "[t]his is precisely the type of harm that we allow plaintiffs to vindicate through the antitrust laws," and Palmyra "has a strong incentive to sue and is thus well suited to vindicate the alleged antitrust harm." The court therefore reversed the district court's issuance of summary judgment against Palmyra and remanded the case to the district court for further proceedings.

This case will be interesting to follow because it relates to issues arising out of a common state CON requirement and may give other providers

incentive to bring private antitrust actions in the health care industry.

Hunton & Williams has significant experience representing hospitals and insurance companies in a wide range of matters, with specific experience in health care, labor and employment, and competition law. The firm's Global

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the FTC. Working from offices in the United States and abroad, the group serves domestic and international companies in competition litigation, merger review, intellectual property matters, consumer protection and privacy, and criminal antitrust defense and related price-fixing litigation.

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