

## LSU Hospital Operator May Proceed with Antitrust Suit Against Competing Health System

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The antitrust suit against Willis Knighton Medical Center will continue following the denial of its motion to dismiss. *BRFHH Shreveport v. Willis Knighton Med. Ctr.*, case number 5:15-cv-02057 (W.D. La. Mar. 31, 2016). The case was filed last July by BRFF Shreveport, a competing healthcare provider, and Vantage Health Plan, a health insurer. The district court held that plaintiffs had sufficiently pled anticompetitive conduct and injury relating to Willis Knighton's acquisitions of competing providers.

Plaintiff BRFHH Shreveport is the operator of University Health Hospital in Louisiana. Plaintiff Vantage specializes in lower-cost HMO coverage. Defendant Willis Knighton operates four hospitals and six clinics in the Shreveport area. According to plaintiffs, Willis Knighton's share of hospital admissions in the Shreveport area is approximately 60% overall, and approximately 75% among commercially insured patients.

Plaintiffs previously sought a preliminary injunction to block the joint venture, which the district court denied. Willis Knighton then sought to dismiss all claims against it. Ruling from the bench, the district court previously denied the motion to dismiss on all but one ground—Vantage's Sherman Act Section 2 claim. Specifically, Vantage alleged that Willis Knighton's prior acquisitions of competitors, physician referral practices, and non-compete employment contracts violated Section 2. That claim was addressed in the district court's 50-page order.

Defendant Willis Knighton moved to dismiss the Section 2 claim pursuant to Rule 12(b)(6), which requires that "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). Willis Knighton argued that Vantage: (i) failed to allege a cognizable theory of anticompetitive conduct; (ii) did not establish antitrust injury; and (iii) based its claims on conduct that is so vague and conclusory that it is speculative and not plausible.

The district court found that Willis Knighton's acquisition of a competing hospital and a previously independent physician group could plausibly constitute anticompetitive conduct. However, its acquisitions of physicians from competitors—which allegedly resulted in the weakening of those competitors—were not found to give rise to potential Section 2 liability because the complaint had not alleged that Willis Knighton hired them not for its own use but to deny them to any of its competitors.

Regarding the physician referral and non-compete agreements, the district court found that Vantage did not provide any authority suggesting such behavior is anticompetitive under Section 2. Furthermore, Willis Knighton had presented a rational business purposes—to treat more patients—for the non-competes and its control over the referrals.

On the antitrust injury argument, the district court found that Vantage's allegation that it was injured by Willis Knighton refusing to contract with it does not qualify as an antitrust injury. However, the district court did find that Vantage had plead an antitrust injury to the extent it alleged that it was injured by Willis Knighton demanding exorbitant reimbursement rates. The district court further opined, however, that although Vantage survived the 12(b)(6) motion to dismiss, it might not ultimately be able to show antitrust injury if Vantage cannot demonstrate that Willis Knighton increased prices as a result of its anticompetitive acts.

Willis Knighton also argued that all of Vantage's claims should be dismissed because of a lack of specificity as required under *Twombly*. The district court found that Vantage alleged facts sufficient to provide the necessary causal links between Willis Knighton's actions and the alleged future harm. As to the claims of past antitrust injury, the district court found that the reference to Willis Knighton's current high market shares in the complaint provided sufficient information to make past monopoly power plausible.

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