

Seventh Circuit OKs Exclusive Network Agreements Between “Must-Have” Hospital and Health Insurers

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In an opinion written by Judge Posner, the Seventh Circuit on Friday gave its stamp of approval to a “must-have” hospital’s bargaining to exclude competitors from certain narrow-network payor contracts in and around Peoria, Illinois. The Court affirmed OSF Saint Francis Medical Center’s summary judgment win in a \$300 million antitrust suit brought by a smaller competitor alleging unlawful exclusive dealing and attempted monopolization. *Methodist Health Svcs. Corp. v. OFS Healthcare System, d/b/a Saint Francis Med. Ctr.*, Case No. 16-3791 (7th Cir. June 9, 2017). In his opinion affirming the legality of the exclusive contracts, Judge Posner observed that “competition for the contract is a form of competition that antitrust laws protect rather than proscribe.” The decision is a notable precedent for hospitals and provider networks—particularly those with substantial market shares—that wish to negotiate narrow and exclusive network agreements with payors.

The Relevant Contracts Covered More Than Half of All Patients in the Area

Methodist Health Services Corporation (“Methodist”) filed suit in 2013 against Saint Francis, its larger rival, accusing it of entering into contracts with payors that required those payors to exclude Methodist from their networks. Saint Francis and Methodist allegedly “dominate” the Peoria market for inpatient medical services. Saint Francis is the largest of the six hospitals in the relevant geographic market, and Methodist—at half the size of Saint Francis—is the second largest. Saint Francis offers many high-end, tertiary services that Methodist and other hospitals in Peoria do not offer, allegedly making Saint Francis a “must-have” hospital for payors. Methodist alleged that Saint Francis’s contracts with payors unreasonably restrained trade in violation of the Sherman Act by substantially foreclosing Methodist’s ability to compete for commercially insured patients.

The contracts at issue involve payor plans that use restricted-provider networks in which a plan has a network of hospitals and other providers that agree to charge specified rates. Each plan encourages its members to use its “in-network” providers, rather than “out-of-network” providers, by charging plan members higher prices for treatment by out-of-network providers. The exclusive contracts between Saint Francis and the payors required that Saint Francis be an in-network hospital and

Methodist an out-of-network one. Saint Francis's exclusive contracts covered more than half of all commercially insured patients in the area, and Methodist asserted that as a result it could not obtain a sufficiently high volume of patients to enable it to invest in quality-improving projects it otherwise would have undertaken.

“But what is more common than exclusive dealing?”

The Seventh Circuit likened Saint Francis's exclusive contracts with payors to “common and legal” requirements contracts in which a buyer is obligated to purchase all, or a substantial portion of, its requirements of specific goods or services from one supplier. The Court acknowledged that if the exclusive contracts at issue were long-term and with every payor in the market, then competition might be harmed and competing providers, such as Methodist, might be bankrupt. But here, the contracts were for fixed terms—typically just one to two years—at the end of which competing hospitals, including Methodist, could bid for the contracts with the payors. When remarking on the importance of “competition for the contract,” the Seventh Circuit inferred that Methodist's inability to outbid Saint Francis for payor contracts must be due to Saint Francis offering better deals—likely based on its ability to offer broader and deeper services—than Methodist. In short, Judge Posner saw no antitrust issue with Methodist using its “must-have” services as a way for it to capture exclusive network status for competitive services. The Court also found no evidence that Methodist could not duplicate some of the special “must-have” services offered by Saint Francis, citing Methodist's ability to raise hundreds of millions of dollars for new investments.

In affirming summary judgment for Saint Francis, the Seventh Circuit observed the absence of other plaintiffs in this case, noting in particular that none of the other hospitals in the market had joined as plaintiffs, nor had any of the payors that Methodist alleged were also harmed by the exclusive contracts. In fact, the Court noted that payors may also benefit from exclusive contracts, by obtaining better rates from a hospital in exchange for the exclusive arrangement.

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