IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

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| JACKSON, TENNESSEE HOSPITAL COMPANY, LLC, | ) | |
| Plaintiff, | ) | |
| VS. | ) | No. 1-03-1166-T |
| WEST TENNESSEE HEALTHCARE, INC., JACKSON-MADISON COUNTY GENERAL HOSPITAL DISTRICT, and BLUECROSS BLUESHIELD OF TENNESSEE, INC., | ) | |
| Defendants. | ) | |

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ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

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On July 3, 2003, Plaintiff filed suit against Defendants West Tennessee Healthcare, Inc., Jackson-Madison County General Hospital District, and BlueCross BlueShield of Tennessee, Inc., alleging that the Defendants' conduct in the West Tennessee hospital and health care services market is anticompetitive and violates the Sherman Act, 15 U.S.C. §§ 1, 2, the Tennessee Constitution, Art. I, § 22, and the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 et seq. Defendants West Tennessee Healthcare, Inc. ("WTH, Inc."), and Jackson-Madison County General Hospital District ("the District") (collectively "the WTH Defendants") move to dismiss Plaintiff's complaint on the basis that they are immune from antitrust liability under the state action doctrine and the Local Government

Antitrust Act of 1984, 15 U.S.C. § 34 et seq. These defendants also contend that Plaintiff has failed to state a claim under either the Tennessee Constitution or the Tennessee Consumer Protection Act. Defendant BlueCross BlueShield of Tennessee, Inc. ("BlueCross"), moves to dismiss Plaintiff's complaint on the basis that, in this case, it is also immune from suit under federal and state antitrust laws.

Plaintiff has responded to these motions and Paul G. Summers, Attorney General of the State of Tennessee, has filed a brief as amicus curiae in support of Plaintiff. Defendants have replied to both Plaintiff's response and the Attorney General's brief. For the reasons set forth below, the WTH Defendants' motion to dismiss is GRANTED and BlueCross' motion to dismiss is GRANTED.

## I. Background

In 1995, the Tennessee State legislature enacted the Private Act Metropolitan Hospital Authorities Act of 1995, Tenn. Code Ann. § 7-57-501 et seq. (the "1995 Act"). The 1995 Act grants private act metropolitan hospital authorities, or public hospital authorities, broad powers to own, operate and manage health care facilities. The legislature enacted the statute in response to changes in demand for health care services and to remove legal constraints which hindered public hospital authorities' ability to effectively compete with private hospital authorities. See Tenn. Code Ann. § 7-57-501(b).[1] To achieve its goal of making

[1] Section 7-57-501(b) provides:

> The general assembly hereby finds that the demand for hospital, medical and health care services is rapidly changing as is the way and manner in which such services are purchased and delivered; that the market for hospital and health care services is becoming increasingly competitive; and that the

public hospital authorities competitive with private hospital authorities, the legislature gave public hospital authorities the same operating and organizational powers enjoyed by private hospital authorities. See Tenn. Code Ann. § 7-57-502(a).[2] The 1995 Act also contains supplemental powers which enable public hospital authorities to more effectively compete

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hospital and other health care providers need flexibility to be able to respond to changing conditions by having the power to develop efficient and cost-effective methods to provide for hospital, medical and health care needs. The general assembly also finds that the increasing competition and changing conditions force hospitals and other health care providers to develop market strategies and strategic plans to effectively compete. The general assembly further finds that public hospitals in metropolitan areas are presently at a competitive disadvantage, and that significant investments in the public assets of private act metropolitan hospital authorities could be jeopardized by inability to compete with private hospitals because of legal constraints upon the scope of their operations and limitations upon the power granted to public hospitals under existing law.

[2] Section 5-57-502(a)(1) gives public hospital authorities the powers granted to private hospital authorities in Section 5-57-302, which include the power to:

(3) Prepare, carry out and operate hospital projects;

(4) Provide and operate outpatient departments, maternity clinics, decentralized primary health care facilities, and any other clinics customarily operated in or by hospitals in metropolitan centers;

. . .

(7) Establish rates, fees, charges and other compensation to be paid by patients for any services rendered in its hospital facilities;

. . .

(14) Do all things necessary in connection with the construction, repair, reconstruction, management, supervision, and control of its operation and facilities, including, but not limited to, the hospital and all departments thereof;

. . .

(16) Determine and regulate the conditions under which the privilege of practicing within any hospital operated by the authority may be available to physicians, and promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in the hospital;

. . .

(20) Provide for the construction, reconstruction, improvement, alteration or repair of any hospital project or any part thereof, subject to the budget limitations which may be imposed by the creating municipality and/or any participating municipality;

. . .

(29) Sue and be sued;

. . .

(32) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.

with private hospital authorities. See Tenn. Code Ann. § 7-57-502(b).[3] Shortly after enacting the 1995 Act, the Tennessee General Assembly enacted the Private Act Hospital Authority Act of 1996, Tenn. Code Ann. § 7-57-601 et seq. (the "1996 Act"), which extended the application of the 1995 Act to non-metropolitan private act hospital authorities.

The District, a private act hospital authority,[4] and WTH, Inc., a subsidiary entity of the District, own and operate the Jackson-Madison County General Hospital ("JMCGH") and other health care facilities in West Tennessee. BlueCross is the largest managed care

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[3] Section 7-57-502(b) provides that public hospital authorities may:

> (1) Participate as a shareholder in a corporation, as a joint venturer in a joint venture, as a general partner in a general partnership, as a limited partner in a limited partnership or a general partnership, as a member in a nonprofit corporation or as a member of any other lawful form of business organization, which provides hospital, medical or health care or engages in any activity supporting or related to the exercise of any power granted to a private act metropolitan hospital authority;
> . . .
> (4) Create, establish, acquire, operate or support subsidiaries and affiliates, either for profit or nonprofit, to assist such private act metropolitan hospital authority in fulfilling its purposes;
> . . .
> (9) Exercise in any other county either within or without this state any power that may be exercised in the county in which the private act metropolitan hospital authority's principal hospital, medical and health care facilities and programs are located, notwithstanding any other statute to the contrary, whenever in the judgment of its board of trustees the operation of the hospital authority's hospital, medical and health care or program facilities, or the quality of medical or health care for its citizens in the county of its principal hospital operations will be enhanced through economic interest in or contractual arrangements with hospital, medical and health care facilities or programs located outside the county;
>
> (10) Have and exercise all powers necessary or convenient to effect any or all the purposes for which a private act metropolitan hospital authority is organized.

[4] The Private Act of Jackson-Madison County General Hospital District, 1949 Tenn. Priv. Acts ch. 686, § 1, created the District for and in behalf of the City of Jackson, Madison County, Tennessee. The Act, as amended, authorizes the District "to provide, on a fee-for-service basis with due regard for the needs of low-income and indigent patients, the full range of health care (including mental health), illness prevention and allied and incidental services and operations." Id.

organization operating in West Tennessee.[5] Plaintiff owns and operates the only other hospital located in Madison County, the Regional Hospital, a private, for-profit hospital that offers virtually all of the services of JMCGH.

Plaintiff alleges that the WTH Defendants and BlueCross have conspired to, attempted to and succeeded in monopolizing the hospital and health care services market in Madison County and parts of West Tennessee. According to Plaintiff, the WTH Defendants have: entered into exclusive contracts with managed care organizations, including BlueCross, and other third parties which prohibit those parties from engaging in business with Regional Hospital; entered into contracts with physicians that prohibit the physicians from practicing at Regional Hospital or admitting patients there; acquired real estate surrounding Regional Hospital in an effort to land-lock it to prevent expansion; participated in managed care organization networks whose members boycott Regional Hospital; charged prices that were too high or too low; acquired other community hospitals, as well as physician practices and ancillary providers; used the certificate-of-need process to expand its services and restrain Regional Hospital from expanding its services; granted most-favored-nation pricing to BlueCross; and tied or bundled its services when contracting with managed care organizations. Plaintiff also alleges that the WTH Defendants and BlueCross have prevented physicians from admitting patients to Regional Hospital.

Plaintiff further alleges that BlueCross has: penalized its subscribers who received

[5] Approximately 80% of the potential patients in the relevant market are covered by one of BlueCross's health insurance or managed care products or receive health care exclusively from BlueCross's panel of providers through other arrangements.

services from Regional Hospital; permitted Regional Hospital to compete only for non-profitable patients covered under a program applicable to the State's Medicaid program; obtained favorable contract concessions from the WTH Defendants, such as most-favored-nations clauses, which impedes BlueCross's potential competitors from attracting subscribers; refused to deal with Regional Hospital, or any other managed care organization that deals with Regional Hospital; and threatened or coerced physicians into not admitting patients to Regional Hospital.

Plaintiff contends that, as a result of the three Defendants' alleged anticompetitive conduct, JMCGH's share of the Madison County hospital and health care services market is approximately 80% while Regional Hospital's share is about 10%.[6] Plaintiff also alleges that because of the three Defendants' illegal, exclusive contracts, the WTH Defendants have 99% of the managed care organization business and Regional Hospital has only the remaining 1%.

## II. Analysis

Motions to dismiss are governed by Rule 12 of the Federal Rules of Civil Procedure. When deciding a 12(b)(6) motion to dismiss, the court "must construe the complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of [the] claims that would entitle [the plaintiff] to relief." Cline v. Rogers, 87 F.3d 176, 179 (6th Cir. 1996).

### A. The Sherman Antitrust Act

[6] Plaintiff alleges that County General and Regional Hospital's respective shares for the larger geographic market of Madison County and the surrounding counties are approximately 65% and 15%

The Sherman Antitrust Act declares illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." 15 U.S.C. § 1. The Act also makes it a illegal to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations." Id. § 2. The state action immunity doctrine, however, exempts states, acting as sovereigns, from antitrust liability under the Sherman Antitrust Act. Parker v. Brown, 317 U.S. 341, 352 (1943); Michigan Paytel Joint Venture v. City of Detroit, 287 F.3d 527, 534 (6th Cir. 2002). Although a political subdivision is not a sovereign, a state may immunize such an entity from antitrust liability by authorizing it to engage in anticompetitive conduct. Hallie v. City of Eau Claire, 471 U.S. 34, 46-47 (1985); Michigan Paytel, 287 F.3d at 534.

1. The WTH Defendants

When a political subdivision, such as the District,[7] seeks immunity from antitrust liability under the state action immunity doctrine, it must show that its challenged conduct is authorized by a "clearly articulated" state policy to displace competition. Hallie, 471 U.S. at 46; Michigan Paytel, 287 F.3d at 534. "'[E]xplicit authorization' by state legislatures to

[7] The District is a political subdivision of the State of Tennessee. The parties do not dispute the District's status as a political subdivision of the state, and this court has previously recognized the District as a political subdivision for state action immunity purposes. See Spencer v. Jackson-Madison County General Hospital District, No. 97-1165 (W.D. Tenn. 1999) ; see also Scara v. Bradley Memorial Hospital, 1993 U.S. Dist. LEXIS 19908 at *9 (E.D. Tenn. Feb. 4, 1993) (holding that Bradley Memorial Hospital, which was created by Chapter 846 of the Private Acts of the State of Tennessee for 1947, was a "municipal agent" for state action immunity purposes).

displace competition [is] not necessary to pass the clear articulation test." Michigan Paytel, 287 F.3d at 535 (quoting Hallie, 471 U.S. at 44). The state action immunity doctrine applies if "the suppression of competition is the foreseeable or logical result of what the state authorizes." Id. (citations omitted).

The WTH Defendants argue that they are entitled to immunity under the state action doctrine because the Tennessee State legislature, through its enactment of the 1995 and 1996 Acts, authorized them to engage in the challenged, allegedly anticompetitive, conduct and the suppression of competition is the logical or foreseeable result of what the state authorized. The WTH Defendants also contend that the legislature clearly articulated a state policy to displace competition between public and private hospital authorities by stating that private act hospital authorities could exercise the powers conferred in the 1995 Act "regardless of the competitive consequences thereof." Tenn. Code Ann. § 7-57-603 (incorporating Tenn. Code Ann. § 7-57-502(c)).

Plaintiff and the Tennessee Attorney General contend that the 1995 Act does not manifest a legislative intent to displace competition or immunize private act hospital authorities from federal antitrust liability.[8] Plaintiff and the Attorney General point to the stated purpose of the 1995 Act, the Tennessee Constitution's anti-monopoly clause, and other Tennessee health care statutes, to show that Tennessee's health care policy promotes

[8] In its brief, the Tennessee Attorney General's Office ignores and, apparently, repudiates the contrary position it previously expressed in a 1995 Attorney General Opinion. See Tenn. Att'y Gen. Op. U95-040 (April 13, 1995) (opining that the exercise of the increased powers and privileges set forth in the 1995 Act qualifies for state action immunity from federal antitrust law).

competition among hospitals and other health care providers. See Tenn. Code Ann. § 7-57-501(b); Tenn. Const., Art. I, § 22; The Tennessee Health Services and Planning Act, Tenn. Code Ann. § 68-11-1625, et seq., The Hospital Cooperation Act, Tenn. Code Ann. § 68-11-1303 et seq. Plaintiff also argues that the authority granted to private act hospital authorities in the 1995 and 1996 Acts are only broad operating powers which do not demonstrate a state policy to displace competition.

The United States Court of Appeals for the Sixth Circuit has recently visited the state action antitrust immunity issue in Michigan Paytel Joint Venture v. City of Detroit, 287 F.3d 527 (6th Cir. 2002). In that case, the City of Detroit Police Department awarded a private entity, Ameritech, an exclusive contract to install and service pay telephones at its city prison. Id. at 533. The City acted under the Home Rule City Act which authorizes Michigan cities to bid out public contracts for improvements in city prisons.[9] Id. at 536. The plaintiffs, all of whom were unsuccessful bidders to the contract, alleged that Ameritech's exclusive

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[9] The Michigan Home Rule City Act, in relevant part, states that city charters shall provide for:

> The public peace and health and for the safety of persons and property. In providing for the public peace, health, and safety, a city may expend funds or enter into contracts with a private organization, the federal or state government, a county, village, or township, or another city for services considered necessary by the legislative body.

Mich. Comp. Laws. Ann. § 117.3(j)(1) (West 2001). The Act also states, in relevant part, that city charters may provide for:

> Public buildings, grounds, acquisition. For the acquisition by purchase, gift, condemnation, lease, construction or otherwise, either within or without its corporate limits and either within or without the corporate limits of the county in which it is located, of the following improvements including the necessary lands therefor, viz.: . . . city prisons and work houses . . .; and for the costs and expenses thereof . . ..

Mich. Comp. Laws. Ann. § 117.4e (West 2001).

contract resulted from an anticompetitive conspiracy between the City and Ameritech. Id. at 535. The Sixth Circuit held that the City was immune from antitrust liability under the state action immunity doctrine, stating that:

> [Although] [n]o Michigan statute expressly authorizes the City to execute an exclusive contract with a telephone service provider for telephone service in its prisons[,] . . . the Home Rule City Act does grant the City the authority to bid out public contracts and to contract for the maintenance of its prisons. Under the Michigan Constitution, these provisions must be "liberally construed in the[ ] favor" of municipalities. We therefore conclude that the City is immune from antitrust liability because anticompetitive effects are the logical and foreseeable result of the City's broad authority under state law and the Michigan Constitution to bid out public contracts for the maintenance of City prisons.

Id. at 535-36 (citations omitted).

Applying Michigan Paytel to the present case, the court must conclude that the District and WTH, Inc., are immune from antitrust liability under the Sherman Act. The 1996 Act does not expressly authorize the WTH Defendants to engage in the conduct Plaintiff challenges, but does grant broad authority to own, operate and manage hospitals and other health care facilities. For example, although the 1995 Act does not explicitly authorize the District to enter into exclusive contracts with physicians, section 7-57-301(16) of the Act grants the District the power to "[d]etermine and regulate the conditions under which the privilege of practicing within any hospital operated by the authority may be available to physicians," and section 7-57-502(c) authorizes the District "to contract . . . with others in the . . . operation of hospital . . . programs . . . of any kind and nature whatsoever . . . whenever the board of trustees in its discretion shall determine it consistent with the purposes

and policies of [the 1995 Act]." The 1995 Act also provides that the broad powers it confers are to be exercised "regardless of the competitive consequences thereof." Tenn. Code Ann. § 7-57-502(c). Consistent with the Sixth Circuit's analysis and conclusion in Michigan Paytel, this court finds that anticompetitive effects are the logical and foreseeable result of the broad authority to own, operate and manage hospitals and other health care facilities that the 1995 and 1996 Acts conferred upon private act hospital authorities such as the District. Therefore, the court must conclude that the WTH Defendants are immune from antitrust liability for all of their conduct that Plaintiff has challenged.

This conclusion is also consistent with this court's previous finding that the District was immune from antitrust liability in Spencer v. Jackson-Madison County General Hospital District, No. 97-1165 (W.D. Tenn. 1999). In that case, the District's Department of Obstetrics and Gynecology granted the plaintiff, a family practice physician not affiliated with the District, obstetrical privileges at County General. Id. at 4-5. The District later revoked plaintiff's privileges after an unfavorable peer review by private obstetrician/ gynecologists associated with the District. Id. at 5-7. Plaintiff filed suit against the District alleging, among other things, that the District's peer review process and the revocation of his obstetrical privileges at County General were motivated by the District's desire to prevent competition and violated the Sherman Antitrust Act. Id. at 4.

This court found that the District was entitled to immunity because the State of Tennessee had "'clearly articulated a state policy authorizing anticompetitive conduct.'" Id.

at 57 (citation omitted). Although the state had not specifically authorized private act hospitals to restrict physicians' hospital privileges as a result of the peer review process, the state had "generally authorized the [District] and other public and private act hospitals to perform peer review actions and has clearly articulated a state policy authorizing the peer review process." Id. at 58 (citing Tenn. Code Ann. §§ 7-57-101 (the 1996 Act) and 63-6-219). The District, therefore, was found to be immune because the allegedly anticompetitive effects of the peer review process were the logical and foreseeable result of the what the state had authorized.

In light of the Sixth Circuit's decision in Michigan Paytel and this court's decision in Spencer, the court finds that the WTH Defendants are immune from antitrust liability because anticompetitive effects are the logical and foreseeable result of the broad authority to own, operate and manage hospitals and other health care facilities that the 1995 and 1996 Acts conferred upon the WTH Defendants. Accordingly, Defendants the District and WTH, Inc.'s, motion to dismiss is GRANTED on the basis that they are immune from antitrust liability under the state action immunity doctrine.[10]

2. BlueCross

The state action doctrine, in some circumstances, may also immunize private parties from antitrust liability. S. Motor Carriers Rate Conference, Inc. v. United States, 471 U.S. 48, 56-57 (1985); Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97,

[10] Because the WTH Defendants are immune from suit under the Sherman Act, their argument that the Local Government Antitrust Act prohibits Plaintiff from recovering damages from the District is pretermitted.

105 (1980); Michigan Paytel, 287 F.3d at 536. To avail itself of this immunity, a "private part[y] must establish both a clearly articulated state policy to authorize anticompetitive conduct and active state supervision of private anticompetitive conduct." Michigan Paytel, 287 F.3d at 536 (citing Midcal, 445 U.S. at 105). When determining private actor immunity in a case involving a political subdivision and a private actor, the inquiry is:

> whether the municipality or the regulated party made the effective decision that resulted in the challenged anticompetitive conduct. If the municipality or a municipal agent was the effective decision maker, then the private actor is entitled to state action immunity, regardless of state supervision. If the private actor was the effective decision maker, due to corruption of the decision-making process or delegation of decision-making authority, then it is not immune, unless it can show that it was actively supervised by the state.

Id. at 537-38.

In Michigan Paytel,[11] the plaintiffs alleged that Ameritech was the effective decision maker and, therefore not entitled to immunity, because the City's decision to award the exclusive pay telephone service contract to Ameritech was tainted by "'public corruption and private dishonesty.'" Id. at 538. The Court, however, held that there was no genuine issue as to whether the City was the effective decision maker when it decided to award the exclusive contract to Ameritech and that Ameritech was entitled to immunity. Id. at 538. The Court stated that, while it was possible that Ameritech influenced the City's decision making process, a reasonable jury could conclude, nonetheless, that the City retained control over the decision-making process. Id. at 539.

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[11] Discussed in II.A.1.

Turning to the present case, Plaintiff alleges that "WTH requires that virtually every insurance and managed care organization . . . operating in West Tennessee agree to a long term exclusive contracts that preclude them from contracting with Regional Hospital or any other potential hospital services provider in Madison County." (Compl. ¶ 14). It is clear from this allegation that the WTH Defendants were the effective decision makers when it entered into an exclusive contract with BlueCross. Applying Michigan Paytel to this case, BlueCross is entitled to immunity because the WTH Defendants were the effective decision makers, regardless of the lack of state supervision. Accordingly, Defendant BlueCross BlueShield of Tennessee, Inc.'s, motion to dismiss is GRANTED on the basis that it is immune from antitrust liability as a private actor under the state action immunity doctrine.

B. The State Claims

Plaintiff also brings claims under the Tennessee Constitution and the Tennessee Consumer Protection Act against all of the Defendants, invoking this court's supplemental jurisdiction. A district court may exercise supplemental jurisdiction over related state claims when there is some basis for original, federal jurisdiction. 28 U.S.C. § 1367(a); Blakely v. United States, 276 F.3d 853, 861 (6th Cir. 2002); Campanella v. Commerce Exchange Bank, 137 F.3d 885, 892 (6th Cir. 1998). A district court may, however, decline to exercise supplemental jurisdiction when it "has dismissed all claims over which it had original jurisdiction." 28 U.S.C. § 1367(c)(3); see also Blakely, 276 F.3d at 862-63. "If the federal claims are dismissed before trial ... the state claims should be dismissed as well." United

Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966). "In fact, the usual course is for the district court to dismiss the state-law claims without prejudice if all federal claims are disposed of on summary judgment." Brandenburg v. Housing Authority of Irvine, 253 F.3d 891, 900 (6th Cir. 2001). Because this court has dismissed all claims against Defendants over which it had original jurisdiction, Plaintiff's state law claims are DISMISSED WITHOUT PREJUDICE.

III. Summary

Defendants West Tennessee Healthcare, Inc., and Jackson-Madison County General Hospital District's motion to dismiss [Docket No. 7] is GRANTED. Defendant BlueCross BlueShield of Tennessee, Inc.'s, motion to dismiss [Docket No. 26] is GRANTED. Plaintiff's claims under the Sherman Antitrust Act against Defendants West Tennessee Healthcare, Inc., Jackson-Madison County General Hospital District, and BlueCross BlueShield of Tennessee, Inc., are DISMISSED on the basis that these parties are immune from federal antitrust liability under the state action doctrine. Plaintiff's claims under the Tennessee Constitution and the Tennessee Consumer Protection Act are DISMISSED WITHOUT PREJUDICE on the basis that this court has declined to exercise its supplemental jurisdiction. The Clerk of the court is directed to enter judgment in accordance with this order.

IT IS SO ORDERED.

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JAMES D. TODD

UNITED STATES DISTRICT JUDGE

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DATE