



# Federal Trade Commission v. Phoebe Putney Health System, Inc., 133 S.Ct. 1003 (2013)

Topics Covered: Antitrust

**Outcome: Very Favorable**

## Issue

The issue in this case was whether the “state action” doctrine should immunize a state created hospital authority from liability under the federal antitrust laws.

## AMA Interest

The AMA supports and encourages competition between and among health facilities as a means of promoting the delivery of high-quality, cost-effective care.

## Case Summary

The Georgia Hospital Authorities Law, O.G.C.A. § 31-7-70, *et seq.*, empowered cities and counties in Georgia to create hospital authorities. These authorities could take such actions as they deem appropriate to meet the public health needs of their respective communities, including the purchase of real and personal property, execution of contracts, and “exercise [of] any or all powers now or hereafter possessed by private corporations performing similar functions.” O.G.C.A. § 31-7-75(21).

The Hospital Authority of Albany-Daugherty County, Georgia owned Phoebe Putney Memorial Hospital (PPMH) and since 1990 has leased the facility to Phoebe Putney Memorial Hospital, Inc., a private not-for-profit corporation. Palmyra Park Hospital (Palmyra) was the principal PPMH competitor. PPMH contracted to purchase Palmyra.

The FTC determined that the proposed acquisition would substantially lessen competition, in violation of Clayton Act § 7, 15 USC § 18, and it sued for an injunction to prevent the merger. It characterized the purchase as “a transfer engineered by a private party and only rubber-stamped by a governmental entity.” Notwithstanding the claim of anticompetitiveness, however, the hospitals and the hospital authority moved to dismiss under Fed. Rule Civ. Proc. 12(b)(6), contending that they were entitled to state action immunity, which made the FTC claim invalid on its face. The federal district court granted the motion and dismissed the case without hearing evidence.

On appeal, the Eleventh Circuit acknowledged that on the facts alleged the challenged transaction would substantially lessen competition or tend to create, if not create a monopoly. However the court concluded that the transaction was exempted from the antitrust laws by the state action doctrine, and it affirmed the dismissal. The court reasoned that the Georgia legislature had given hospital authorities the power to acquire and lease out

hospitals. Therefore, according to the court, the legislature “must have anticipated that such acquisitions would produce anticompetitive effects.”

The United States Supreme Court reversed the Eleventh Circuit on February 19, 2013. It held that the state action doctrine should not apply, because the general grant of power to the hospital authority under the Georgia Hospital Authorities Law was not a clear articulation by the state of an intent to restrict competition.

### **Litigation Center Involvement**

The Litigation Center, along with the Georgia Medical Association filed an *amicus* brief in the Supreme Court in support of neither party. The brief made two distinct points: first, hospital competition is important to physicians and patients, and second, a caution to the Supreme Court that it should not interpret the state action doctrine so narrowly as to impede the ability of professional licensure boards (particularly state medical boards) to perform their functions.

United States Supreme Court brief