210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3143'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS [5].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR §§ 201.10, 210.8(c)).

By order of the Commission.

Issued: April 20, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–09611 Filed 4–25–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Charleston Area Medical Center, Inc. and St. Mary's Medical Center, Inc.: Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of West Virginia in *United States of America* v. *Charleston Area Medical Center, Inc. and St. Mary's Medical Center, Inc.,* Civil Action No. 2:16–cv–03664. On April 14, 2016, the United States filed a Complaint alleging that Charleston Area Medical Center, Inc. and St. Mary's Medical Center, Inc. unlawfully agreed to allocate territories for the marketing of competing healthcare services and unlawfully limited competition. The proposed Final Judgment, filed at the same time as the Complaint, enjoins Defendants from limiting competition in this manner and requires Defendants to institute comprehensive antitrust compliance programs to ensure that Defendants do not establish similar unlawful agreements and similar limitations on competition in the future.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the Southern District of West Virginia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Peter Mucchetti, Chief, Litigation I, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–0001).

Patricia A. Brink

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. *CHARLESTON AREA MEDICAL CENTER, INC. and ST. MARY'S MEDICAL CENTER, INC., Defendants.*

CASE NO.: 2:16–cv–03664

JUDGE: John T. Copenhaver, Jr.

FILED: 04/14/2016

COMPLAINT

The United States of America brings this civil antitrust action to enjoin an agreement by Charleston Area Medical Center, Inc. (''CAMC'') and St. Mary's Medical Center, Inc. (''St. Mary's) (collectively, ''Defendants'') that unlawfully allocated territories for the marketing of competing healthcare services and limited competition between the Defendants.

NATURE OF THE ACTION

1. Defendants CAMC and St. Mary's are healthcare providers that operate general acute-care hospitals in Charleston, Kanawha County, West Virginia, and Huntington, Cabell County, West Virginia, respectively. CAMC and St. Mary's compete with each other to provide healthcare services. Marketing is a key component of this competition and includes both print and outdoor advertising, such as newspaper advertisements and billboards.

2. CAMC and St. Mary's agreed to limit marketing of competing healthcare services. According to St. Mary's Director of Marketing, St. Mary's ''had an agreement with CAMC that St. Mary's would not advertise on billboards or in print in Kanawha County and that CAMC would not advertise on billboards or in print in Cabell County.'' He also testified that ''the agreement between St. Mary's and CAMC is still in place today.''

3. Defendants' agreement has disrupted the competitive process and harmed patients and physicians. Among other things, the agreement has deprived patients of information they otherwise would have had when making important healthcare decisions and has denied physicians working for the Defendants the opportunity to advertise their services to potential patients.

4. Defendants' agreement is a naked restraint of trade that is *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1.

JURISDICTION, VENUE, AND INTERSTATE COMMERCE

5. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, to prevent and restrain Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. 1.

6. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and 28 U.S.C. 1331, 1337(a), 1345, and 1367.

7. Venue is proper in the Southern District of West Virginia, Charleston Division, under 28 U.S.C. 1391 and Section 12 of the Clayton Act, 15 U.S.C. 22. Each Defendant transacts business within the Southern District of West Virginia, and all Defendants reside in the Southern District of West Virginia.

8. Defendants engage in interstate commerce and in activities substantially affecting interstate commerce. Defendants provide healthcare services to patients for which employers, health plans, and individual patients remit payments across state lines. Defendants

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

also purchase supplies and equipment from out-of-state vendors that are shipped across state lines.

DEFENDANTS AND THEIR MARKETING

9. CAMC is a nonprofit West Virginia corporation headquartered in Charleston, Kanawha County, West Virginia. It operates four general acute-care hospitals (CAMC General Hospital, CAMC Memorial Hospital, CAMC Women and Children's Hospital, and CAMC Teays Valley Hospital) with a total of 908 beds and a medical staff of over 120 employed physicians.

10. St. Mary's is a nonprofit West Virginia corporation headquartered in Huntington, Cabell County, West Virginia. It operates a general acute-care hospital located in Cabell County with 393 beds and a medical staff of over 50 employed physicians. St. Mary's also serves as a teaching hospital for medical students and residents from Marshall University School of Medicine.

11. CAMC and St. Mary's compete with each other to provide hospital and physician services to patients. Hospitals compete through price, quality, and other factors to sell their services to patients, employers, and insurance companies.

12. Marketing is an important tool that hospitals use to compete for patients, and this competition can lead hospitals to invest in providing better care and a broader range of services. Hospitals use marketing to inform patients about a hospital's quality, scope of services, and the expertise of its physicians. An executive of each Defendant testified at deposition that marketing is an important strategy through which hospitals seek to increase patient volume and market share.

13. Defendants' marketing methods include print advertisements, such as newspaper advertisements, and outdoor advertisements, such as billboards.

UNLAWFUL AGREEMENT BETWEEN ST. MARY'S AND CAMC

14. Since at least 2012, CAMC and St. Mary's have agreed to limit their marketing for competing services. CAMC agreed not to place print or outdoor advertisements in Cabell County, and St. Mary's agreed not to place print or outdoor advertisements in Kanawha County. Defendants' marketing departments have monitored and enforced this agreement.

15. For example, in January 2012, a CAMC urology group asked CAMC's marketing department to advertise its physicians in *The Herald Dispatch,* a Cabell County newspaper. In response, a CAMC marketing department employee emailed the CAMC Director of Marketing, noting that CAMC does not typically advertise in *The Herald Dispatch* because of its '' 'gentleman's agreement' '' with St. Mary's. Consistent with its agreement with St. Mary's, CAMC did not place the newspaper advertisement.

16. In May 2013, St. Mary's Director of Marketing complained to CAMC's Director of Marketing after CAMC ran a newspaper ad promoting a CAMC physicians' group in *The Herald Dispatch,* and succeeded in getting CAMC to agree to remove the advertisement. In an email from St. Mary's Director of Marketing to other St. Mary's senior executives, he wrote, ''I talked with CAMC and they agreed this ad violated our agreement not to advertise in Charleston paper if they didn't advertise in Huntington paper. Their director of marketing Says she pulled the ad but was concerned it might still run again one more time this Sunday. I can't call the HD [*Herald Dispatch*] and make sure because they could challenge this type of handshake agreement That [sic] prevents them from getting advertising dollars from a different advertiser. We'll see and I'll follow up from there but after Sunday I am confident we won't see CAMC again in HD.'' Consistent with its agreement with St. Mary's, and as described by St. Mary's Director of Marketing, CAMC asked the *Herald Dispatch* to remove the advertisement.

17. In June 2014, when a CAMC-owned physicians' group requested marketing in Cabell County, a CAMC marketing department employee responded by telling the group's representative that CAMC does not market specialist physicians in Cabell County and St. Mary's does not market specialists in Kanawha County. Consistent with its agreement with St. Mary's, CAMC refused to market that physicians' group in Cabell County.

18. In August 2014, when another CAMC-owned physicians' group requested billboard advertising in Cabell County, a CAMC marketing representative wrote to CAMC's Director of Marketing, ''They had asked for print and billboard placement in Huntington. I explained our informal agreement. They understood.'' CAMC's Director of Marketing replied, ''Just watch the county line my friend.'' Consistent with its agreement with St. Mary's, CAMC did not place print or billboard advertising for the physician practice in Cabell County.

19. The agreement between CAMC and St. Mary's has eliminated a significant form of competition to attract patients by depriving patients in Kanawha and Cabell Counties of information regarding their healthcare-provider choices and physicians in those counties the opportunity to advertise their services to potential patients.

NO PROCOMPETITIVE JUSTIFICATIONS

20. The Defendants' anticompetitive agreement is not reasonably necessary to further any procompetitive purpose.

VIOLATION ALLEGED

Violation of Section 1 of the Sherman Act

21. The United States incorporates paragraphs 1 through 20.

22. CAMC and St. Mary's compete to provide healthcare services. Defendants' agreement is facially anticompetitive because it limits competition between the Defendants by allocating territories for the marketing of competing healthcare services. As a result, the agreement eliminates a significant form of competition to attract patients.

23. The agreement constitutes an unreasonable restraint of trade that is *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. 1. No elaborate analysis is required to demonstrate the anticompetitive effect of this agreement.

REQUESTED RELIEF

The United States requests that the Court:

(A) judge that Defendants' agreement limiting competition constitutes an illegal restraint of interstate trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

(B) enjoin Defendants and their members, officers, agents, and employees from continuing or renewing in any manner the conduct alleged herein or from engaging in any other conduct, agreement, or other arrangement having the same effect as the alleged violations;

(C) enjoin each Defendant and its members, officers, agents, and employees from communicating with any other Defendant about any Defendant's marketing, unless such communication: is related to the legitimate joint provision of services; is part of normal due diligence relating to a merger, acquisition, joint venture, investment, or divestiture; or is related to claims or statements made in a Defendant's Marketing that the other Defendant believes are false or misleading;

(D) require Defendants to institute a comprehensive antitrust compliance program to ensure that Defendants do

not enter into or attempt to enter into any similar agreements and that Defendants' members, officers, agents, and employees are fully informed of the application of the antitrust laws to the Defendants' businesses; and

(E) award Plaintiff its costs in this action and such other relief as may be just and proper.

Dated: April 14, 2016

Respectfully Submitted,

For Plaintiff United States of America:

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. *CHARLESTON AREA MEDICAL CENTER, INC. and ST. MARY'S MEDICAL CENTER, INC., Defendants.*

CASE NO.: 2:16–cv–03664
JUDGE: John T. Copenhaver, Jr.
FILED: 04/14/2016

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On April 14, 2016, the United States filed a civil antitrust Complaint alleging that Defendants Charleston Area Medical Center (''CAMC'') and St. Mary's Medical Center (''St. Mary's'') violated Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that CAMC and St. Mary's agreed to unlawfully allocate territories for the marketing of competing healthcare services and to limit competition between themselves. Specifically, according to the Complaint, CAMC and St. Mary's entered into an agreement under which they agreed not to advertise on billboards or in print in each others' home counties in West Virginia. The agreement eliminated a significant form of competition to attract patients and overall substantially diminished competition to provide healthcare services. Defendants' agreement to allocate territories for marketing is *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. 1.

With the Complaint, the United States filed a Stipulation and proposed Final Judgment that, as explained more fully below, enjoins Defendants from (1) agreeing with any healthcare provider to prohibit or limit marketing or to allocate any service, customer, or geographic market or territory, and (2) communicating with each other about marketing, subject to narrow exceptions.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS VIOLATIONS

A. Background on Defendants and Their Marketing Activities

Defendants CAMC and St. Mary's are healthcare providers that operate general acute-care hospitals in Charleston, Kanawha County, West Virginia, and Huntington, Cabell County, West Virginia, respectively. CAMC and St. Mary's compete with each other to provide hospital and physician services to patients. Hospitals compete through price, quality, and other factors to sell their services to patients, employers, and insurance companies.

Marketing is an important tool that hospitals use to compete for patients. Hospitals use marketing to inform patients about a hospital's quality, scope of services, and the expertise of its physicians. Defendants' marketing methods include print advertisements, such as newspaper advertisements, and outdoor advertisements, such as billboards. Healthcare provider advertisements on billboards and newspapers helps enable patients to make more informed healthcare choices, including choosing healthcare providers that offer higher quality care and more convenient services. Advertising also spurs competition for patients, which can lead hospitals to invest in providing better care and a broader range of services.

B. Defendants' Unlawful Agreement to Limit Marketing

Since at least 2012, CAMC and St. Mary's have agreed to limit their marketing for competing services. CAMC agreed not to place print or outdoor advertisements in Cabell County, and St. Mary's agreed not to place print or outdoor advertisements in Kanawha County. Defendants' marketing departments have monitored and enforced this agreement. Defendants' documents show the impact of this agreement on the Defendants' marketing.

In January 2012, a CAMC urology group asked CAMC's marketing department to advertise its physicians in *The Herald Dispatch,* a Cabell County newspaper. In response, a CAMC marketing department employee emailed the CAMC Director of Marketing, noting that CAMC does not typically advertise in *The Herald Dispatch* because of its '''gentleman's agreement''' with St. Mary's. Consistent with its agreement with St. Mary's, CAMC did not place the newspaper advertisement.

In May 2013, St. Mary's Director of Marketing complained to CAMC's Director of Marketing after CAMC ran a newspaper ad promoting a CAMC physicians' group in *The Herald Dispatch,* and succeeded in getting CAMC to agree to remove the advertisement. In an email from St. Mary's Director of Marketing to other St. Mary's senior executives, he wrote, ''I talked with CAMC and they agreed this ad violated our agreement not to advertise in Charleston paper if they didn't advertise in Huntington paper. Their director of marketing Says she pulled the ad but was concerned it might still run again one more time this Sunday. I can't call the HD [*Herald Dispatch*] and make sure because they could challenge this type of handshake agreement That [sic] prevents them from

getting advertising dollars from a different advertiser. We'll see and I'll follow up from there but after Sunday I am confident we won't see CAMC again in HD.'' Consistent with its agreement with St. Mary's, and as described by St. Mary's Director of Marketing, CAMC asked the *Herald Dispatch* to remove the advertisement.

In June 2014, when a CAMC-owned physicians' group requested marketing in Cabell County, a CAMC marketing department employee responded by telling the group's representative that CAMC does not market specialist physicians in Cabell County and St. Mary's does not market specialists in Kanawha County. Consistent with its agreement with St. Mary's, CAMC refused to market that physicians' group in Cabell County.

In August 2014, when another CAMC-owned physicians' group requested billboard advertising in Cabell County, a CAMC marketing representative wrote to CAMC's Director of Marketing, ''They had asked for print and billboard placement in Huntington. I explained our informal agreement. They understood.'' CAMC's Director of Marketing replied, ''Just watch the county line my friend.'' Consistent with its agreement with St. Mary's, CAMC did not place print or billboard advertising for the physician practice in Cabell County.

Defendants' anticompetitive agreement is not reasonably necessary to further any procompetitive purpose. Defendants' agreement allocates territories for marketing and constitutes a naked restraint of trade that is *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1. *See United States* v. *Topco Assocs., Inc.,* 405 U.S. 596, 607–08 (1972) (holding that naked market allocation agreements among horizontal competitors are plainly anticompetitive and illegal per se); *United States* v. *Cooperative Theatres of Ohio,* Inc., 845 F.2d 1367, 1371, 1373 (6th Cir. 1988) (holding that the defendants' agreement to not ''*actively* solicit[ ] each other's customers'' was ''undeniably a type of customer allocation scheme which courts have often condemned in the past as a *per se* violation of the Sherman Act''); *Blackburn* v. *Sweeney,* 53 F.3d 825, 828 (7th Cir. 1995) (holding that the ''[a]greement to limit advertising to different geographical regions was intended to be, and sufficiently approximates[,] an agreement to allocate markets so that the *per se* rule of illegality applies'').

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment will prevent the continuation and recurrence of the violations alleged in the Complaint and restore the competition restrained by Defendants' anticompetitive agreement. Section VIII of the proposed Final Judgment provides that these provisions will expire five years after its entry.

A. Prohibited Conduct

Under Section IV of the proposed Final Judgment, Defendants cannot agree with any healthcare provider to prohibit or limit marketing or to allocate any service, customer, or geographic market or territory, unless such agreement is reasonably necessary to further a procompetitive purpose concerning the joint provision of services. The joint provision of services is any past, present, or future coordinated delivery of any healthcare services by two or more healthcare providers. Defendants also are prohibited from communicating with each other about any Defendant's marketing, subject to three narrow exceptions. There is an exception for communication about joint marketing if the communication is related to the joint provision of services. In addition, there are exceptions for communications about marketing that are part of customary due diligence relating to a merger, acquisition, joint venture, investment, or divestiture, and communications about false or misleading statements made in a Defendant's marketing.

These prohibited conduct provisions will restore the competition lost as a result of CAMC's and St. Mary's unlawful agreement to allocate territories for the marketing of competing healthcare services.

B. Compliance and Inspection

The proposed Final Judgment sets forth various provisions to ensure Defendants' compliance with the proposed Final Judgment. Section V of the proposed Final Judgment requires each Defendant to appoint an Antitrust Compliance Officer within 30 days of the Final Judgment's entry. The Antitrust Compliance Officer must furnish copies of this Competitive Impact Statement, the Final Judgment, and an approved notice explaining the obligations of the Final Judgment to each Defendant's officers, directors, and marketing managers, and to any person who succeeds to any such position. The Antitrust Compliance Officer must also obtain from each recipient a certification that he or she has read and agreed to abide by the terms of the Final Judgment, and must maintain a record of all certifications received. Recipients must also certify that they are not aware of any violation of the Final Judgment. Additionally, each Antitrust Compliance Officer shall annually brief each person required to receive a copy of the Final Judgment and this Competitive Impact Statement on the meaning and requirements of the Final Judgment and the antitrust laws. Each Antitrust Compliance Officer shall also annually communicate to all employees that any employee may disclose, without reprisal, information concerning any potential violation of the Final Judgment or the antitrust laws.

For a period of five years following the date of entry of the Final Judgment, the Defendants separately must certify annually to the United States that they have complied with the provisions of the Final Judgment. Additionally, upon learning of any violation or potential violation of the terms and conditions of the Final Judgment, Defendants must within thirty days file with the United States a statement describing the violation or potential violation, and must promptly take action to terminate or modify the activity in order to comply with the Final Judgment.

To facilitate monitoring of the Defendants' compliance with the Final Judgment, Section VI of the proposed Final Judgment requires each Defendant to grant the United States access, upon reasonable notice, to Defendant's records and documents relating to matters contained in the Final Judgment. Defendants must also make their employees available for interviews or depositions and answer interrogatories and prepare written reports relating to matters contained in the Final Judgment upon request.

These provisions are designed to prevent recurrence of the type of illegal conduct alleged in the Complaint.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in

any subsequent private lawsuit that may be brought against the Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and, under certain circumstances, published in the **Federal Register.**

Written comments should be submitted to:

Peter J. Mucchetti
Chief, Litigation I Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW., Suite 4100
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendants. The United States is satisfied, however, that the relief proposed in the Final Judgment will prevent the recurrence of the violation alleged in the Complaint and ensure that patients and physicians benefit from competition between the Defendants. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, because the government is entitled to ''broad discretion to settle with the Defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion over the adequacy of the relief at issue); *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (describing the public-interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').[1]

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. One court explained:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of [e]nsuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''').

the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted); *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft,* 56 F.3d at 1461); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As a court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language captured Congress's intent when it enacted the Tunney Act in 1974. Senator Tunney explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3] A court can make its public-interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 14, 2016

Respectfully submitted,

For PlaintiffUnited States of America

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system and sent it via email to the following counsel at the email addresses below.

Counsel for Defendant Charleston Area Medical Center, Inc.:

Robert W. McCann
Drinker Biddle & Reath LLP
Robert.McCann@dbr.com

Counsel for Defendant St. Mary's Medical Center, Inc.:

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. *CHARLESTON AREA MEDICAL CENTER, INC. and ST. MARY'S MEDICAL CENTER, INC., Defendants.*

CASE NO.: 2:16–cv–03664
JUDGE: John T. Copenhaver, Jr.
FILED: 04/14/2016

[PROPOSED] FINAL JUDGMENT

Whereas, Plaintiff the United States of America filed its Complaint on April 14, 2016, alleging that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1;

And whereas, Plaintiff and Defendants Charleston Area Medical Center, Inc. and St. Mary's Medical Center, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And whereas, Plaintiff requires the Defendants to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

Now therefore, before any testimony is taken, without this Final Judgment constituting any evidence against or admission by Defendants regarding any issue of fact or law, and upon consent of the parties to this action, it is *ordered, adjudged, and decreed:*

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the Defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II. DEFINITIONS

As used in this Final Judgment:

(A) ''Agreement'' means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

(B) ''CAMC'' means Defendant Charleston Area Medical Center, Inc., a nonprofit hospital system organized and existing under the laws of West Virginia with its headquarters in Charleston, West Virginia, its successors and assigns, and its controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

(C) ''Communicate'' means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner.

(D) ''Joint Provision of Services'' means any past, present, or future joint health education campaign or coordinated delivery of any healthcare services by two or more healthcare providers, including a clinical affiliation, joint venture, management agreement, accountable care organization, clinically integrated network, group purchasing organization, management services organization, or physician hospital organization.

(E) ''Marketing'' means any past, present, or future activities that are involved in making persons aware of the services or products of the hospital or of physicians employed or with privileges at the hospital, including advertising, communications, public relations, provider network development, outreach to employers or physicians, and promotions, such as free health screenings and education.

(F) ''Marketing Manager'' means any company employee or manager with management responsibility for or oversight of Marketing.

(G) ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

(H) ''Provider'' means any health care professional or group of professionals and any inpatient or outpatient medical facility including hospitals, ambulatory surgical centers, urgent care facilities, and nursing facilities. A health insurance plan, health maintenance organization, or other third party payor of health care services, acting in that capacity, is not a ''Provider.''

(I) ''Relevant Area'' means the state of West Virginia; Boyd County, Kentucky; and Lawrence County, Ohio.

(J) ''St. Mary's'' means Defendant St. Mary's Medical Center, Inc., a nonprofit hospital organized and existing under the laws of West Virginia with its headquarters in Huntington, West Virginia, its successors and assigns, and its controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

III. APPLICABILITY

This Final Judgment applies to the Defendants, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

(A) Each Defendant shall not enter into, attempt to enter into, maintain, or enforce any Agreement with any other Provider that:

(1) prohibits or limits Marketing; or

(2) allocates any service, customer, or geographic market or territory between or among the Defendant and any other Provider, unless such Agreement is reasonably necessary to further a procompetitive purpose concerning the Joint Provision of Services.

(B) Each Defendant shall not communicate with the other Defendant about any Defendant's Marketing, except each Defendant may:

(1) communicate with the other Defendant about joint Marketing if the communication is related to the Joint Provision of Services;

(2) communicate with the other Defendant about Marketing if the communication is part of customary due diligence relating to a merger, acquisition, joint venture, investment, or divestiture; or

(3) communicate with the other Defendant about claims or statements made in the other Defendant's Marketing that the Defendant believes are false or misleading, or to respond to such communications from the other Defendant.

V. REQUIRED CONDUCT

(A) Within 30 days of entry of this Final Judgment, each Defendant shall appoint, subject to the approval of the United States, an Antitrust Compliance Officer. In the event such person is unable to perform his or her duties, each Defendant shall appoint, subject to the approval of the United States, a replacement within ten (10) working days.

(B) Each Defendant's Antitrust Compliance Officer shall:

(1) furnish a copy of this Final Judgment, the Competitive Impact Statement, and a cover letter that is identical in content to Exhibit 1 within 60 days of entry of the Final Judgment to that Defendant's officers, directors, and Marketing Managers, and to any person who succeeds to any such position, within 30 days of that succession;

(2) annually brief each person designated in Section V(B)(1) on the meaning and requirements of this Final Judgment and the antitrust laws;

(3) obtain from each person designated in Section V(B)(1), within 60 days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not already been reported to the Defendant; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against each Defendant and/or any person who violates this Final Judgment;

(4) maintain a record of certifications obtained pursuant to this Section; and

(5) annually communicate to all of the Defendant's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information

concerning any potential violation of this Final Judgment or the antitrust laws.

(C) Each Defendant shall:

(1) upon learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain all documents related to any violation or potential violation of this Final Judgment;

(2) file with the United States a statement describing any violation or potential violation within 30 days of a violation or potential violation becoming known. Descriptions of violations or potential violations of this Final Judgment shall include, to the extent practicable, a description of any communications constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication; and

(3) certify to the United States annually on the anniversary date of the entry of this Final Judgment that the Defendant has complied with all of the provisions of this Final Judgment.

VI. COMPLIANCE INSPECTION

(A) For the purposes of determining or securing compliance with this Final Judgment, or of any related orders, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other retained persons, shall, upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, directors, employees, or agents, who may have individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire five years from the date of its entry.

IX. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be filed with or provided to the United States shall be sent to the person at the addresses set forth below (or such other address as the United States may specify in writing to any Defendant):

Chief
Litigation I Section
U.S. Department of Justice
Antitrust Division
450 Fifth Street, Suite 4100
Washington, DC 20530

X. PUBLIC INTEREST DETERMINATION

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____

Hon. Dwane L. Tinsley
United States Magistrate Judge

Exhibit 1

[Letterhead of Defendant]
[Name and Address of Antitrust Compliance Officer]
Dear [XX]:

I am providing you this letter to make sure you know about a court order recently entered by a federal judge in Charleston, West Virginia. This order applies to [Defendant] and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that s/he expects you to take these obligations seriously and abide by them.

Under the order, we are prohibited from agreeing with other healthcare providers (including hospitals and physicians) to limit marketing or to divide any services, customers, or geographic markets or territories between us and other healthcare providers. This means you may not promise, tell, agree with, or give any assurance to another healthcare provider that [Defendant] will refrain from marketing our services to any customer or in any particular geographic area, and you may not ask for any promise, agreement, or assurance from them that they will refrain from marketing their services to any customer or in any particular geographic area. In addition, you may not communicate with [other Defendant] or its employees about our marketing plans or their marketing plans. (While there are a few limited exceptions to this rule, such as discussing joint projects, you must check with me before you communicate

with anyone from [other Defendant] about marketing plans.)

A copy of the court order is attached. Please read it carefully and familiarize yourself with its terms. The order, rather than the above description, is controlling. If you have any questions about the order or how it affects your activities, please contact me. Thank you for your cooperation.

Sincerely,

[Defendant's Antitrust Compliance Officer]

[FR Doc. 2016–09728 Filed 4–25–16; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On April 15, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of South Dakota, Western Division in the lawsuit entitled *United States and State of South Dakota* v. *CoCa Mines, Inc. and Thomas E. Congdon,* Civil Action No. 5:16–cv–05022–JLV.

This case was brought under Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a) and 9613(g)(2), for the recovery of response costs related to the cleanup at the Gilt Edge Mine Site (''Site'') in Lawrence County, South Dakota.

The United States and the State of South Dakota filed a Complaint in this case on April 14, 2016 alleging that the Defendants are jointly and severally liable for response costs related to the cleanup at the Site. 42 U.S.C. 9607(a) and 9613(g)(2). The Complaint requests recovery of costs that the United States and the State incurred responding to releases of hazardous substances at the Site near Lead, South Dakota. Both Defendants signed the Consent Decree and will pay a combined $10.3 million in cash, with CoCa Mines paying up to an additional $700,000 in future insurance recovery. The money will be used to help pay for response costs related to the cleanup at the Site. In return, the United States and the State of South Dakota agree not to sue the Defendants under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Consent Decree would resolve the claims against the Defendants as described in the Complaint.

The publication of this Notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of South Dakota* v. *CoCa Mines, Inc. and Thomas E. Congdon,* D.J. Ref. No. 90–11–3–11179. All comments must be submitted no later than thirty (30) days after the publication date of this Notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey K. Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–09565 Filed 4–25–16; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On April 14, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Colorado in the lawsuit entitled *United States and State of Colorado* v. *CoCa Mines, Inc.,* Civil Action No. 1:16–cv–00847WJM.

The case concerns the Nelson Tunnel/Commodore Waste Rock Pile Superfund Site (''Site'') located near Creede, Colorado, and the potential liability of CoCa Mines, Inc. under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), as a past owner or operator at the Site from 1973 to 1993. Under the settlement CoCa Mines, Inc. will pay $5.4 million to the U.S. Environmental Protection Agency (''EPA'') and $600,000 to the Colorado Department of Public Health and Environment (''CDPHE'') for response costs incurred and to be incurred at the Site. The settlement extends a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, to the Settling Defendant, CoCa Mines, Inc., and to the Settling Defendant's Related Parties a term defined, subject to specific limitations, to include Hecla Limited and Creede Resources, Inc. The settlement further extends, subject to specific limitations, to Settling Defendant's successors and assigns, and to the officers, directors, and employees of Settling Defendant and Settling Defendant's Related Parties.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Colorado* v. *CoCa Mines, Inc.,* D.J. Ref. No. 90–11–3–10841. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.75 (25 cents per page reproduction cost) payable to the United States Treasury for a copy of the Consent Decree.

Jeffrey K. Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–09564 Filed 4–25–16; 8:45 am]

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