

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**RADIOSURGICAL CENTER OF
MEMPHIS, L.P., d/b/a MEMPHIS
REGIONAL GAMMA KNIFE CENTER,**

Plaintiff,

v.

**METHODIST HEALTHCARE-
MEMPHIS HOSPITALS and THE WEST
CLINIC, P.C., d/b/a WEST CANCER
CENTER CO.,**

Defendants.

Case No.:

VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff, Radiosurgical Center of Memphis, L.P., d/b/a Memphis Regional Gamma Knife Center (“RCM”), brings this Complaint against Defendants, Methodist Healthcare-Methodist Hospital, (the “Hospital” or “Methodist”) and The West Clinic, P.C., d/b/a West Cancer Center Co. (“West” and, together with the Hospital, “Defendants”). In support hereof, RCM alleges as follows:

INTRODUCTION

1. RCM owns and operates a state-of-the-art radiosurgery center (the “Center”) in Memphis, Tennessee that features a Leksell Gamma Knife®—a sophisticated tool that permits physicians to treat brain tumors and other life threatening brain conditions without making a single incision. Gamma Knife patients can be treated in a single session, and on an outpatient basis.

2. Gamma Knife treatment has significant benefits over the alternative treatments, which include traditional brain surgery (craniotomy) and whole brain radiation therapy. The benefits to patients include far less side-effects and lower out-of-pocket expenses. Third-party payors also benefit from reduced expenses when patients undergo Gamma Knife treatment instead of the alternatives.

3. RCM's Gamma Knife is housed in a special-purpose facility that was built on the Hospital's premises. It was located there at the invitation of the Hospital, which gave RCM a 25-year lease. RCM spent roughly \$750,000 to construct the Gamma Knife building, which belongs to the Hospital. RCM also entered into ancillary agreements with the Hospital to obtain services related to the operation of the Gamma Knife.

4. Since its opening in 1995, the Center has treated over 3,200 patients, the majority of which are from the greater-Memphis area. However, with the end of the lease approaching, late in 2014, RCM, the Hospital and Defendant West entered into discussions about the future of the Gamma Knife and the Center.

5. As set forth in detail below, after RCM rejected Defendants' attempts to purchase the Center at a price far below its value, Defendants embarked on a strategy to force RCM to sell at unfavorable terms.

6. For its part, the Hospital has breached its obligations under the ancillary service agreements with RCM. Moreover, the Hospital and Defendant West have orchestrated a change in referral practices by their affiliated physicians.

7. Since negotiations between RCM and Defendants stalled, the number of patients referred to the Center has dropped by nearly 40 percent. From 1996 through 2014, the Center treated an average of 13.5 patients per month. For the last ten months, however, that number has

decreased to just 8.5 patients per month. This group boycott of the Center violates the Sherman Act, 15 U.S.C. § 1.

8. By this action, RCM seeks injunctive relief to permit it to operate the Center without unlawful interference from Defendants. RCM also seeks an award of its substantial money damages resulting from Defendants' violation of federal antitrust law, Defendants' tortious interference with their prospective commercial relationships, and the Hospital's breach of its agreements with RCM, together with its attorneys' fees and costs as provided by the antitrust laws.

THE PARTIES

9. RCM is an Indiana limited partnership with its principal place of business in Indianapolis, Indiana.

10. None of RCM's limited and general partners reside in the state of Tennessee.

11. The Hospital is one of several medical facilities owned and operated by Methodist LeBonheur Healthcare, also known as Methodist Healthcare, formerly known as Methodist Hospitals of Memphis. The Hospital operates a medical treatment facility, and maintains its principal place of business, in Memphis, Tennessee.

12. West is a Tennessee professional corporation. It was formed in 1993 as The West Clinic, P.C. In 2012, it started doing business as West Cancer Center Co. as part of a joint venture with Methodist and The University of Tennessee Health Science Center.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1337, as Plaintiff's Sherman Act claim arises under federal statute and necessarily involves adjudication of one or more federal questions.

14. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, as this action involves citizens of different States and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

15. This Court has personal jurisdiction over the parties because Plaintiff submits to the jurisdiction of this Court and each Defendant systematically and continuously conducts business in this State and otherwise has minimum contacts with this State sufficient to establish personal jurisdiction over each of them.

16. Venue is proper in this Court under 28 U.S.C. § 1391(b), as Defendants conduct business in this District and a substantial part of the events giving rise to this claim occurred in this District.

FACTUAL BACKGROUND

The Gamma Knife

17. Stereotactic radiosurgery is surgery using radiation; it involves the treatment of precisely selected areas of tissue using ionizing radiation rather than an invasive surgical procedure.

18. At the Center, RCM uses the Leksell Gamma Knife® 4C (“Gamma Knife”), a sophisticated tool that allows neurosurgeons to treat brain tumors, lesions, AV malformations and other indications of the brain and the nervous system without making an incision. The Gamma Knife utilizes a single session of highly focused radiation directed through the ports of a helmet to specific targets within the brain.

19. Unlike conventional radiation therapy requiring multiple treatment sessions, the Gamma Knife Model 4-C is so exact it treats abnormal tissue only and leaves the adjacent normal tissue essentially intact.

20. The Gamma Knife has a table and an automatic positioning system, which keeps the patient in a stationary position during treatment. This provides enhanced safety, accuracy, reliability and reproducibility. Because of its accuracy, the Gamma Knife allows doctors to treat tumors previously thought inoperable, including tumors near the cranial nerves, optic apparatus and those tumors located within the brainstem, a capability unique to the Gamma Knife. Generally, patients are treated and released within the same day.

21. Gamma Knife treatment offers patients substantial benefits over conventional neurosurgery in terms of results, reduced costs, and significantly reduced pain and recovery effects.

22. The Gamma Knife relies on a radioactive core of Cobalt-60, which requires supervision and calibration by a nuclear physicist familiar with, and trained on, the Gamma Knife system.

23. Gamma Knife operators must obtain a Radioactive Material License (“RML”) from the Tennessee Department of Environment and Conservation Division of Radiological Health in order to operate in the State of Tennessee.

Alternatives to the Gamma Knife

24. There are three primary alternatives to the stereotactic radiosurgery treatment process provided by the Gamma Knife: (1) open cranium surgery; (2) whole brain radiation therapy; and (3) other radiosurgery devices such as the “CyberKnife” and the “Brainlab” linear accelerator device.

25. As compared to open cranium surgery, the Gamma Knife procedure offers fewer risks of complications, dramatically reduced post-operative recovery and rapid return to pre-treatment activities, along with little or no rehabilitation therapy. The Gamma Knife procedure

also allows for treatment of critical areas of the brain otherwise inaccessible to open surgery, or where open surgery would result in damage to these areas.

26. The Gamma Knife procedure also costs patients and insurance providers substantially less than open surgery.

27. As compared to whole brain radiation, Gamma Knife treatment provides patients a single treatment session instead of multiple exposure sessions, and significantly reduced risk of cognitive impairment. The Gamma Knife procedure also costs patients and insurance providers less than repeated radiation therapy.

28. As compared to radiosurgery using the CyberKnife and the Brainlab linear accelerator, the Gamma Knife guarantees accuracy during treatment and allows physicians to treat patients where tumors and malformations are located in or adjacent to particularly sensitive structures in the brain. The Gamma Knife is also more effective in treating certain other indications such as trigeminal neuralgia.

The Gamma Knife Center Is Created

29. In the mid-1990s, RCM began exploring the possibility of opening a stereotactic radiosurgery center with a Gamma Knife in Memphis, Tennessee. RCM knew this would entail a substantial, multi-million dollar investment and the attendant risk of a loss of this investment. However, RCM estimated that there would be more than adequate patient demand for a Memphis-based Gamma Knife facility to provide enough revenue to recoup the initial investment over time.

30. On April 26, 1994, RCM entered into a lease agreement (the "Lease Agreement") with Methodist, whereby Methodist agreed to lease to RCM certain real property adjacent to the

Hospital so that RCM could construct and operate a Gamma Knife surgical facility. A true and correct copy of the Lease Agreement, as amended, is attached hereto as Exhibit A.

31. The Lease had an initial term of 15 years (from the “Opening Date,” subsequently defined as August 14, 1995), with an option for RCM to renew for an additional 10-year term. RCM subsequently exercised its renewal option, meaning the Lease will not expire until August 14, 2020. The parties specifically negotiated for this 25-year lease period, knowing that it could take RCM years to recoup its initial investment, as well as because RCM possessed the specialized skill and core competency to manage and launch a medical facility of this nature.

32. Section 3.06 of the Lease provides, “The parties hereto understand and agree that a separate operating agreement (“Operating Agreement”) will be needed between the parties to address such issues as purchase of services from the Lessor at competitive price and quality, billing arrangements for patient care services, licensure and other issues.”

33. On August 1, 1995, RCM and Methodist executed an operating agreement (the “Operating Agreement”), whereby Methodist agreed to grant RCM the exclusive right to provide radiosurgical procedures, including Gamma Knife services, to Methodist’s patients. A true and correct copy of the Operating Agreement is attached hereto as Exhibit B.

34. Pursuant to the Operating Agreement, RCM agreed to “be responsible for compliance of the gamma-knife operations with all federal, state and local laws, regulations, and ordinances.” (Ex. B at § I.B(a).)

35. Pursuant to the Operating Agreement, Methodist agreed to provide nuclear physicist services to RCM at a rate of \$90 per hour, effective January 1, 1998, utilities at \$355 a month, and a surgical technician at the rate of \$35 an hour, effective January 1, 1998. (Ex. B at Schedule A.)

36. The Operating Agreement allows Methodist to terminate “any individual service upon at least ninety (90) days’ prior written notice to [RCM].” (Ex. B at § IV.A.)

37. In 1995, RCM received an RML from the Tennessee Department of Environment and Conservation’s Division of Radiological Health. The RML requires RCM to comply with the Tennessee Regulations for Protection Against Radiation.¹

38. On January 1, 2000, RCM and Methodist executed a Gamma Knife Services Agreement (the “Services Agreement”), whereby Methodist agreed to provide billing and accounts receivable management for Gamma Knife services performed by RCM. A true and correct copy of the Services Agreement, as amended July 1, 2002, is attached hereto as Exhibit C.

39. Pursuant to section 6(a) of the Services Agreement, Methodist agreed to provide various billing services to RCM in connection with the medical services provided by RCM, in exchange for a fee of \$300 per outpatient gamma knife procedure performed by RCM.

40. The Services Agreement grants RCM the right to “audit [Methodist’s] books and records as they relate to the Services.” (Ex. C at § 6f.)

To Date, the Gamma Knife Has Been Successful

41. The Center started treating patients in 1995, even before all the ancillary agreements between the Center and the Hospital were fully negotiated and executed.

42. RCM operates the Gamma Knife at the Center pursuant to a Certificate of Need (“CON”) issued by the State of Tennessee. The CON recognizes that the Center services a primary and secondary market of roughly five million people in the greater-Memphis area. The

¹ RCM subsequently amended and renewed its RML. The most recent version, License No. R-79245-G17, was issued on July 5, 2007, and does not expire until July 31, 2017.

State of Tennessee issued the CON only after RCM submitted significant documentation, including sophisticated financial analysis and projections.

43. The Center was one of the first ten Gamma Knives put in service in the United States. Since it opened, Gamma Knives were placed in operation in Little Rock, Arkansas (approximately 140 miles from Memphis) and Knoxville, Tennessee (approximately 390 miles from Memphis).

44. Since opening the Center in 1995, RCM has with great success treated more than 3,200 patients, all suffering from serious brain or nerve conditions, many of whom had otherwise inoperable medical conditions.

45. From 1996 through 2014, the Center treated an average of 162 patients each year. This consistent business has allowed RCM to slowly recoup its initial investment.

46. The vast majority of the Center's patients are referred to it by neurosurgeons, radiation oncologists and medical oncologists associated with the Hospital or West.

47. The vast majority of the Center's patients come from the Memphis area. Since 2012, nearly 70% of patients receiving treatment were residents of the Memphis Metropolitan Statistical Area, which consists of nine counties—Fayette, Shelby and Tipton, Tennessee; Benton, DeSoto, Marshall, Tate and Tunica, Mississippi; and Crittenden, Arkansas.

48. On information and belief, the majority of patients served by Defendants and receiving alternative treatments to the Gamma Knife reside in this same geographic area.

49. RCM's patients have not only received cutting-edge medical treatment, but they have saved money by using the Gamma Knife rather than more expensive treatment options such as open cranium surgery.

50. The Center is the only Gamma Knife surgical facility in Memphis and it is independently owned and operated by RCM. Although West claims on its website to be able to treat cancer with state-of-the-art services including the Gamma Knife, only the Center has the capability of performing Gamma Knife radiosurgery procedures. West thus gains significant reputational advancement by advertising the Gamma Knife as its own.

RCM and Methodist and West Negotiate about the Future of the Gamma Knife

51. In the fall of 2014, Methodist and West began exploring the possibility of purchasing the Center from RCM.

52. At that time, the Gamma Knife was nearing its first service interval and RCM was exploring the replacement of the whole Gamma Knife unit instead of just an update to the existing unit. Erich Mounce, CEO of West, said that West wanted to explore acquisition of the Center *before* RCM replaced the unit so that West would not have to pay an additional return on capital over RCM's investment in the replacement unit.

53. Mr. Mounce also stated that the Hospital might be interested in purchasing the Center if West decided to pass on the opportunity.

54. In order to further discussion on the contemplated purchase, RCM set up a data room with documents evidencing the financial condition of the Center. On October 20, 2014, RCM provided Mr. Mounce with access to this data room.

55. These purchase discussions stalled because RCM would not agree to the unreasonable price and terms demanded by Defendants.

Defendants Begin to Interfere with the Operations of the Center

56. Instead of negotiating a fair purchase price, Methodist, under the direction of Chris McLean, executive vice president of Finance for Methodist, and West, under the direction

of Mr. Mounce, began taking steps to impair and impede RCM's business operations and reduce its financial stability in an apparent bid to acquire the Center at a reduced price.

57. On March 24, 2015, Methodist sent RCM a letter stating that it was terminating the Services Agreement, effective May 25, 2015. A true and correct copy of the termination letter is attached hereto as Exhibit D. Methodist provided no rationale for this decision.

58. On May 12, 2015, Jeffrey Liebman, the Chief Executive Officer of the Hospital, met with RCM's President, John Wellhausen, and Dr. David Cunningham, Medical Director of at the Center. At the meeting, the three discussed the future of the Center and RCM's relationship with Methodist. Mr. Liebman said the Hospital was interested in buying the Center.

59. Following that meeting, on May 5, 2015, Mr. Wellhausen sent Mr. Liebman a letter outlining various options for the future of the Center. One such option involved Methodist purchasing the Center from RCM at a price of \$6,205,000, which RCM believed to be a fair and appropriate purchase price.

60. Methodist responded to RCM's purchase price suggestion by counter-offering just \$500,000. RCM did not accept this unreasonably low offer.

61. Subsequently, Mr. Mounce suggested that RCM "donate" the Center to the Hospital for free. RCM also rejected this proposal.

62. On May 22, 2015, Methodist sent RCM a letter outlining certain changes that Methodist intended to implement. A true and correct copy of the May 22, 1995 letter is attached hereto as Exhibit E.

63. The May 22, 2015 letter stated that, as of July 31, 2015, Methodist would no longer provide medical physicist support to RCM.

64. Under the Operating Agreement, RCM is “responsible for compliance of the gamma-knife operations with all federal, state and local laws, regulations, and ordinances.” (Ex. B at § I.B(a).) Without a nuclear physicist, RCM would be unable to meet its contractual obligation to Methodist and could face an action for breach of contract.

65. The notice of termination of the physicist services did not comply with the ninety (90) day notice requirement contained in ¶ VI (A) of the Operating Agreement.

66. The May 22, 2015 letter further stated that Methodist was increasing the cost of pre-procedure MRI scans it would provide to RCM’s patients to “90% of hospital charges.” (Ex. E at ¶ 1.) This means RCM would pay close to \$4,000 per patient even though Methodist would ordinarily only receive between \$234 and \$550, depending on whether the payment is made by Medicare or a commercial payor.

67. Pre-procedure MRI scans are essential for accurately targeting the brain lesions to be treated by the Gamma Knife. The targeting data from the MRI scans are transmitted into the Gamma Knife unit. The effect of the attempted charge to RCM by Methodist in pre-procedure MRI scans would not only be improper, as RCM is an ambulatory surgical center and therefore cannot bill or seek reimbursement for services it does not order or provide, but also would effectively increase the price of such patient scans by approximately 1600%, which cost would eventually have to be passed on to the patients and/or absorbed by RCM.

68. The May 22, 2015 letter further advised RCM that Methodist would no longer provide pre or post procedure care at Methodist.

69. The May 22, 2015 letter further stated that Methodist would no longer allow physicians treating patients at the Center to use the Hospital’s dictation equipment to dictate their reports.

70. On June 26, 2015, RCM sent Methodist a letter regarding payments purportedly owed to RCM by Methodist. A true and correct copy of the June 26, 2015 letter is attached hereto as Exhibit F.

71. The June 26, 2015 letter included RCM's notice of a request, pursuant to section 6 of the Services Agreement, for an audit of Methodist's books and records related to the services rendered by Methodist under the Services Agreement.

72. The June 26, 2015 letter also included RCM's request that, pursuant to section 5(d) of the Services Agreement, Methodist process all accounts receivable outstanding as of the termination date for the agreed "Runoff Period" of six (6) months.

73. On July 24, 2015, RCM responded directly to Methodist's May 22, 2015 letter. A true and correct copy of RCM's July 24, 2015 letter is attached hereto as Exhibit G. In its letter, RCM advised Methodist that Methodist's notice of termination of the physicist services did not comply with the ninety (90) day notice requirement in the Operating Agreement.

74. RCM also informed Methodist that RCM had just learned that Methodist had been apparently charging RCM \$150.00 per hour for physicist services, when the Operating Agreement only permitted Methodist to charge RCM \$90.00 an hour for such services.

75. RCM also advised Methodist that Methodist had not responded to RCM's request for an audit of Methodist's books and records related to the services rendered by Methodist under the Services Agreement.

76. Finally, RCM advised Methodist that Methodist had failed to collect payments from ten (10) patients who were treated at the Center either before or during May 2015.

77. On July 28, 2015, Methodist wrote to RCM to advise it that, notwithstanding Methodist's obligation under the Services Agreement to process all accounts receivable

outstanding on the termination date for a period of six months, “[t]here will not be a runoff period.” A true and correct copy of Methodist’s July 28, 2015 letter is attached hereto as Exhibit H.

78. In order to avoid the six month runoff period, Methodist advised RCM that it would pay to RCM all of the outstanding accounts receivable in a lump sum payment, by August 15, 2015, and would provide RCM with “the complete methodology for calculating this payment by the end of next week.” To date, Methodist has not paid to RCM the outstanding accounts receivable, totaling not less than \$85,000.

79. In its July 28, 2015 letter, Methodist agreed that its notice of termination of physicist services had been less than 90 days and was, therefore, inadequate, but it only agreed to continue to provide physicist services until August 31, 2015 (approximately 30 additional days).

80. Finally, Methodist advised RCM that it was “discontinuing all other services (not previously discontinued) identified under the Operating Agreement effective October 31, 2015.”

81. On August 12, 2015, Methodist proposed to enter into an agreement with RCM for MRI services. A true and correct copy of Methodist’s letter of August 12, 2015 is attached hereto as Exhibit I. In its August 12, 2015 letter, Methodist reiterated its proposal to bill RCM for MRI services at 90% of charges. At the same time, Methodist informed RCM that the total owed Methodist for MRI services, for the period May 26, 2015 through July 31, 2015, already amounted to \$97,230.60.

82. RCM advised Methodist that its proposal regarding MRI services was both inappropriate and outrageous, and on September 21, 2015, Methodist advised counsel for RCM that it would bill Medicare directly for MRI services. A true and correct copy of Methodist’s September 21, 2015 letter is attached hereto as Exhibit J.

83. In its September 21, 2015 letter, Methodist further advised that, as of October 31, 2015, it was discontinuing “any services [Methodist] provided under the Operating or Gamma Knife Service Agreements.” These services apparently included the physicist services, which Methodist had already discontinued, along with all utilities.

84. To date, Methodist has not complied with RCM’s audit request. Methodist has stated that it will comply with RCM’s audit request, but Methodist has attempted to limit the look back period of the audit to six (6) years only.

85. More recently, Methodist has begun to withdraw essential ancillary services from the Center, including sterilization services, which Methodist had supplied to RCM in the past.

86. In May of 2015, Methodist and West, under the direction of Messrs. McLean and Mounce, conspired and agreed to severely limit radiation oncology at RCM such that radiation oncologists were pressured to not provide radiation oncology services to patients undergoing gamma knife treatment. Since that time radiation oncology coverage by West has been extremely limited, forcing RCM to engage an outside radiation oncologist familiar with the gamma knife treatment procedure in order to provide services to its patients.

Defendants’ Scheme to Limit Patient Referrals to the Center

87. Around the same time, in a further effort to reduce the Center’s operating revenue and thereby devalue the Center so that it could be purchased from RCM at a reduced price, Defendants conspired and agreed to limit doctor referrals to the Center. In doing so, Defendants effectively forced patients, insurance providers and the government to pay for more expensive treatment options.

88. In early 2015, Mr. McLean advised Dr. Cunningham that, should RCM move the Center to another hospital, Methodist would tell the physicians in the Methodist network not to use the Gamma Knife.

89. On or about the first week of June 2015, Dr. Matthew Ballo, a radiation oncologist and chair of the Department of Radiation Oncology at Methodist, reported that, at a meeting with Mr. Mounce, Mr. McLean and other Methodist administrators, Mr. McLean advised that “the [referring] physicians should not be referring as many cases for gamma knife procedures.”

90. This conversation was documented in the minutes of a subsequent meeting with Dr. Ballo, which took place on June 8, 2015. A true and correct copy of the minutes is attached hereto as Exhibit K.

91. Mr. McLean’s instruction in the presence of the physicians under the direction of Mr. Mounce was designed to advance a group boycott of the Center and thus evidences an unlawful conspiracy among the Hospital, West and the non-party referring physicians who have significantly reduced sending patients to the Center.

92. As a result of Defendants’ instruction to the referring physicians, the Center has seen a dramatic decline in patient referrals. Indeed, the Center has treated just 75 patients through September of 2015, a 38% drop from its historical average.

93. Upon information and belief, the physicians who used to regularly refer patients to the Center for Gamma Knife procedures are now recommending other, more expensive treatments such as open cranium surgery and repeated radiation therapy.

94. Defendants' scheme has effectively limited the treatment options available to patients suffering from brain tumors, lesions, malformations and other indications of the brain and increased the amounts paid by patients and third-party payors for treatment of these conditions.

95. Defendants' scheme has also caused RCM economic harm in the form of reduced operating revenue.

96. If allowed to continue, Defendants' scheme will also cause the Center to cease operations, imposing significant injury on the Center. Indeed, the Center will be required by both federal and state law to decommission the Gamma Knife and remove the radioactive Cobalt 60 from the machine, at a cost well in excess of \$1,000,000.

COUNT I – VIOLATION OF SECTION 1 OF THE SHERMAN ACT

97. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 96 as though fully set forth herein.

98. The agreement among Methodist, West and non-party referring physicians to boycott the Center and attempt to drive RCM out of business through anticompetitive means represents a contract, combination or conspiracy within the meaning of Section 1 of the Sherman Act.

99. Defendants' conduct has had an adverse effect on the relevant market which consists of services for the treatment of tumors and other brain legions, malformations, nerve conditions and indications in Memphis and the surrounding multi-state region.

100. As a direct and proximate result of Defendants' continuing violations of Section 1 of the Sherman Act, RCM has suffered and continues to suffer injury and damages of the type that the federal antitrust laws were designed to prevent. Such damages consist of having fewer Gamma Knife procedures performed at the Center, otherwise having business diverted to

competitors, and/or having access to far fewer patients than they would have with fair competition but for Defendants' anticompetitive agreements and practices.

101. RCM seeks money damages for Defendants' violations of Section 1 of the Sherman Act.

102. Defendants' unlawful conduct threatens to continue to injure RCM. RCM seeks a permanent injunction prohibiting Defendants from entering into, or from honoring or enforcing, any agreements that have been entered into in restraint of trade.

COUNT II – BREACH OF CONTRACT (SERVICES AGREEMENT)

103. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 102 as though fully set forth herein.

104. Since entering into the Services Agreement, Methodist has regularly and systematically overbilled RCM for services it provided to RCM pursuant to the Services Agreement.

105. As compensation for the services rendered by Methodist under the Services Agreement, Methodist was entitled to a fixed fee per patient. On information and belief, Methodist overbilled RCM for the services it provided under the Services Agreement.

106. The exact amount of Methodist's overbilling cannot be determined without RCM's review of Methodist's books and records concerning the Gamma Knife patients. RCM has repeatedly requested the opportunity to audit Methodist's books and records concerning the Gamma Knife patients, but Methodist has not yet produced any of its records.

107. The amount Methodist has overbilled RCM for the services provided to RCM will be proven at trial, but in no event is less than \$800,000.

108. In addition, pursuant to the Operating Agreement, the applicable charge for physicist services is \$90 an hour. The scheduled rate for any service provided under the Operating Agreement, including the physicist services, may be increased only upon not less than sixty (60) days prior written notice.

109. Approximately 4 ½ years ago, without any notice to RCM, Methodist began charging RCM \$150 per hour for physicist services.

110. The amount Methodist has overbilled RCM for physicist services will be proven at trial, but in no event is less than \$150,000.

111. Methodist's practice of overbilling for services provided to RCM constitutes a material breach of the terms and conditions of the Services Agreement.

112. Since May 2015, Methodist has failed to make payments to RCM for ten (10) patients who received medical treatment at the Gamma Knife. Given current reimbursement rates and deduction of Methodist's expenses, Methodist owes RCM payment in excess of \$85,000.

113. Methodist's failure to make these payments constitutes a material breach of the terms and conditions of the Services Agreement.

COUNT III – BREACH OF CONTRACT (LEASE AGREEMENT)

114. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 113 as though fully set forth herein.

115. Section 3.06 of the Lease Agreement provides that Methodist and RCM agree that a separate operating agreement is needed between the parties to address such issues as RCM's purchase of certain services from Methodist at competitive prices during the term of the Lease Agreement.

116. In its letter dated September 21, 2015, Methodist informed RCM that, as of October 31, 2015, it will discontinue all services to RCM, including billing services, physicist services, sterilization services and utilities.

117. Methodist claims in its letter dated September 21, 2015, that the Lease Agreement and the Operating Agreement merged when the Operating Agreement was executed in August 1995. In fact, no such merger took place as there is no merger clause or other similar provision in the Operating Agreement. Otherwise, Methodist's termination of the Operating Agreement would terminate the Lease as well, which it does not.

118. Methodist further claims that section 15.c of the Services Agreement contains "the usual integration language, including that it supersedes any and all prior oral or written understandings and agreements." Again, if such a merger took place, Methodist's termination of the Services Agreement would terminate the Lease as well, which it does not.

119. Methodist's refusal to enter into a new operating agreement to address such issues as RCM's purchase of services from Methodist at competitive prices during the term of the Lease Agreement is a breach of the Lease Agreement.

COUNT IV - INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONSHIPS

120. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 119 as though fully set forth herein.

121. Despite the medical and financial benefits offered to patients by the Gamma Knife over alternative treatment options, upon information and belief, in an attempt to impair and impede the efficiency of RCM's business and service operations and thereby degrade its financial stability, one or more executives of Methodist have attempted to influence physicians to curtail patient referrals to the Center.

122. As a direct and proximate result of Defendant's intentional interference, Plaintiff has and will continue to suffer damages.

123. Plaintiff has established, based upon the allegations herein and the exhibits attached hereto, that it is likely to succeed on the merits of its claim.

124. Plaintiff does not have an adequate remedy at law. Should this Court fail to enter the injunctive relief that Plaintiff requests, Plaintiff will be unable to repair the damage done to its business relationships, and it will likely lose its RML.

125. The balance of the harms favors Plaintiff. Plaintiff has expended extensive time and effort in building a premier radiosurgery center (and the only Gamma Knife center in the entire region and the only one of two in the state of Tennessee, the other one being located in Knoxville, Tennessee, over 380 miles away), which stands in jeopardy should the Court decide not to issue an injunction in this case.

126. By contrast, Defendant has no proper justification for its unlawful attempts to sabotage Plaintiff's business relationships.

127. An injunction in this case is in the public interest. Those suffering from serious brain conditions benefit from having access to a surgical center with a Gamma Knife. Should Defendant's actions deny RCM the capability of providing the Gamma Knife treatment to patients, the public will be deprived access to this life-saving technology.

128. In fact, a patient was presented to the conference committee at the Gamma Knife Center, on Monday, August 17, 2015, for immediate treatment with the Gamma Knife. Due to the unavailability of a physicist, caused by Methodist's untimely discontinuation of physicist services, the patient could not be scheduled for treatment at the Gamma Knife Center until

October 2015. Tragically, the patient died on September 10, 2015, before she could receive treatment at the Gamma Knife Center.

COUNT V – BREACH OF NON-COMPETE AGREEMENT

129. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 128 as though fully set forth herein.

130. On information and belief, Methodist has purchased and put in service a Brainlab radiosurgery device attached to one of the Hospital's linear accelerators, which provides the ability to plan, monitor and deliver radiosurgery treatments to patients with brain tumors, lesions or other diseases of the brain which are often inoperable due to their position and the sensitivity of the surrounding tissue.

131. The linear accelerator, when combined with the Brainlab radiosurgery hardware and software, directly competes with the Gamma Knife in that they can both be used for radiosurgical procedures to treat patients with brain tumors, lesions or other similar diseases of the brain.

132. Pursuant to the Lease and the Operating Agreement RCM was granted the exclusive right to provide radiosurgical procedures, including gamma knife services, limited to applications in neurology and neurosurgery, within a 150-mile radius of Methodist.

133. In particular, section 3.06 (and section 3.03) of the Lease provides that the parties shall enter an Operating Agreement which contains an exclusive right of RCM to provide radiosurgery for neurological and/or neurosurgical applications.

134. Section V(K) of the Operating Agreement expressly restricts Methodist from owning, operating or managing radiosurgical equipment used for applications in neurology and neurosurgery, within a 150-mile radius of Methodist.

135. As a direct and proximate result of Defendant's violation of the non-compete provisions of the Lease and Operating Agreement, Plaintiff has and will continue to suffer damages.

136. Plaintiff has established, based upon the allegations herein and the exhibits attached hereto, that it is likely to succeed on the merits of its claim.

137. Plaintiff does not have an adequate remedy at law. Should this Court fail to enter the injunctive relief that Plaintiff requests, Plaintiff will be unable to repair the damage done to its business.

138. The balance of the harms favors Plaintiff. Plaintiff has expended extensive time and effort in building a premier radiosurgery center, which stands in jeopardy should the Court decide not to issue an injunction in this case.

139. By contrast, Defendant has no proper justification for its unlawful breach of the non-compete provisions in the Lease and Operating Agreement.

COUNT VI – SPECIFIC PERFORMANCE UNDER SERVICES AGREEMENT

140. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 139 as though fully set forth herein.

141. Commencing on June 26, 2015, and pursuant to section 6.f of the Services Agreement, RCM has requested an audit of Methodist's books and records as they relate to the services rendered and fees paid under the Services Agreement.

142. To date, Methodist has failed to produce the books and records needed to, among other things, verify billings and collections by Methodist and payments to RCM, including those reflecting Explanation of Benefits (EOBs), collections, adjustments, and any patient or third party refunds.

143. Money damages will not fully compensate Plaintiff for Methodist's failure to produce the books and records RCM requires to complete its audit.

144. As a result of the unique nature of the information required for the audit, Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE Plaintiff requests that the Court enter judgment on all counts in its favor and against Defendant, as follows:

- A. That a temporary restraining order and, thereafter, a preliminary and permanent injunction be entered restraining and enjoining Defendants from interfering with the operation of RCM;
- B. That a temporary restraining order and, thereafter, a preliminary and permanent injunction be entered restraining and enjoining Defendants from operating or managing radiosurgical equipment used for applications in neurology and neurosurgery, within a 150-mile radius of Methodist.
- C. That a temporary restraining order and, thereafter, a preliminary and permanent injunction be entered restraining and enjoining Defendants from interfering with Plaintiff's legal obligations pursuant to its Radioactive Material License;
- D. That a temporary restraining order and, thereafter, a preliminary and permanent injunction be entered restraining and enjoining Defendants from interfering with Plaintiff's contractual obligations to Methodist;
- E. Compel Methodist to produce the books and records needed by RCM to, among other things, verify billings and collections by Methodist and payments to RCM, including those reflecting EOBs, collections, adjustments, and any patient or third party refunds.
- F. That damages be awarded against Defendants and in favor of Plaintiff in an amount to be determined at trial;
- G. That Plaintiff be awarded treble damages, interest and its attorneys' fees pursuant to the Sherman Act, 15 U.S.C. § 1, and the Clayton Act; 15 U.S.C. § 15.
- H. That punitive damages, attorneys' fees and court costs be awarded against Defendants and in favor of Plaintiff; and

- I. That such other and further relief be awarded as this Court determines to be just and proper.

Respectfully submitted,

/s/ Clarence A. Wilbon

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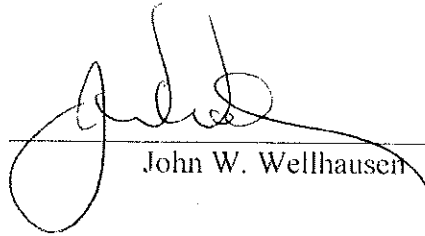
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Attorneys for Plaintiff

VERIFICATION

I, John W. Wellhausen, being duly sworn under oath state, under penalties as provided by law, that the statements set forth in this Complaint for Injunctive Relief are true and correct, except as to matters therein stated to be on information and belief or matters of law not of fact.

Executed this 28th day of October, 2015.



John W. Wellhausen