

No. 25-2969

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**United States Court of Appeals  
for the Third Circuit**

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READING HOSPITAL,

*Plaintiff-Appellant,*

v.

HILL-ROM HOLDINGS, INC., *et al.*,

*Defendants-Appellees.*

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On Appeal from the United States District Court for the  
Eastern District of Pennsylvania, Case No. 5:24-cv-02715-JMG  
The Honorable John M. Gallagher

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**BRIEF OF *AMICUS CURIAE* AMERICAN ANTITRUST  
INSTITUTE IN SUPPORT OF APPELLANT**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Appellate Rule 26.1(a), the American Antitrust Institute states that it is a nonprofit, non-stock corporation. It has no parent corporations, and no publicly traded corporations have an ownership interest in it.

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## **INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The American Antitrust Institute (“AAI”) is an independent nonprofit organization devoted to promoting competition that protects consumers, businesses, and society. It serves the public through research, education, and advocacy on the benefits of competition and the use of antitrust enforcement as a vital component of national and international competition policy. AAI enjoys the input of an Advisory Board that consists of over 130 prominent antitrust lawyers, law professors, economists, and business leaders. *See* <http://www.antitrustinstitute.org>.<sup>2</sup>

## **INTRODUCTION & SUMMARY OF ARGUMENT**

“One form of potentially anticompetitive conduct [under the antitrust laws] is an exclusive dealing arrangement, which is an express or *de facto* agreement in which a buyer agrees to purchase certain goods

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<sup>1</sup> All parties have consented to the filing of this *amicus* brief. No counsel for a party has authored this brief in whole or in part, and no party, party’s counsel, or any other person—other than *amicus curiae* or its counsel—has contributed money that was intended to fund preparing or submitting this brief.

<sup>2</sup> Individual views of members of AAI’s Board of Directors or Advisory Board may differ from AAI’s positions. Members of AAI’s Advisory Board represent Plaintiffs, but those members played no role in AAI’s deliberations with respect to the filing of the brief.

or services only from a particular seller for a certain period of time.” *Eisai, Inc. v. Sanofi Aventis U.S., LLC*, 821 F.3d 394, 403 (3d Cir. 2016) (cleaned up). While exclusive dealing arrangements are beneficial when firms in competitive markets use them to reduce costs or facilitate long-term planning, they are harmful and violate the antitrust laws when monopolists use them to further entrench a dominant position. *ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 270 (3d Cir. 2012). To account for both possibilities, courts judge the legality of exclusive dealing arrangements under the “rule of reason,” which “is designed and used to eliminate anticompetitive transactions from the market.” *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 898 (2007). Under this longstanding test, the plaintiff bears the initial burden of demonstrating that the challenged conduct is anticompetitive, meaning it leads to higher prices, reduced quality, or reduced output. *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018).

For exclusive dealing specifically, the rule of reason analysis contains an additional element: the challenged conduct must cause a “substantial foreclosure” of competition. *McWane, Inc. v. FTC*, 783 F.3d 814, 835 (11th Cir. 2015) (citing *Standard Oil Co. of Cal. and Standard*

*Stations, Inc. v. United States*, 337 U.S. 293, 314 (1949)). To determine whether conduct has resulted in substantial foreclosure, courts assess whether the conduct excluded rivals from a substantial share of the relevant market. *Tampa Elec. Co. v. Nashville Coal Co.*, 365 U.S. 320, 328 (1961).

Of particular relevance to this case are three guideposts this Court has laid out for district courts evaluating exclusive dealing claims. First, the Court has observed that “[t]here is no fixed percentage at which foreclosure becomes ‘substantial,’ and courts have varied widely in the degree of foreclosure they consider unlawful.” *Eisai*, 821 F.3d at 403 (citation omitted). Second, and relatedly, in considering whether an exclusive deal is anticompetitive, courts should look at the level of concentration in the relevant market, *ZF Meritor*, 696 F.3d at 284, and recognize that “a lesser degree of foreclosure is required when the defendant is a monopolist,” *McWane*, 783 F.3d at 837 (citing *United States v. Microsoft*, 253 F.3d 34, 70 (D.C. Cir. 2001)). Third, because the purpose of the inquiry is to determine whether the defendant’s exclusive deal “deprive[d] customers of the ability to make a meaningful choice,” *ZF Meritor*, 696 F.3d at 285, courts must look at other realities of the

market when determining whether an exclusive deal is anticompetitive. *See McWane*, 783 F.3d at 837 (“[F]oreclosure is one of several factors [courts] examine in determining whether the conduct harmed competition.”). Courts analyzing exclusive dealing claims thus should look at “the degree of rivals’ exclusion, the duration of the exclusive deals, and the existence of alternative channels of distribution,” *id.* at 835, as well as whether the exclusivity foreclosed other “key players” from being able to compete, *United States v. Dentsply Int’l, Inc.*, 399 F.3d 181, 189 (3d Cir. 2005); *see also LePage’s, Inc. v. 3M*, 324 F.3d 141, 159–161 (3d Cir. 2003) (finding anticompetitive effect where 3M’s exclusive deal “cut [competitors] off from key retail pipelines necessary to permit [competitors] to compete profitably”).

In the decision under review, the district court did none of that. By ignoring numerous allegations supporting a conclusion that Hill-Rom’s scheme had resulted in substantial foreclosure and anticompetitive effects, Appx020, the district court effectively adopted a strict 40% foreclosure threshold and erroneously afforded it dispositive weight. The court failed to evaluate the structure of the relevant markets for hospital

beds<sup>3</sup>—all of which are alleged to be highly concentrated, with Hill-Rom having between a 70 and 75 percent market share, and facing competition from only two, much smaller competitors, Appx100 (¶103). Worse still, the district court ignored the Complaint’s allegations that Hill-Rom imposes exclusivity requirements on effectively all of the hospitals it sells to (*i.e.*, 70-75 percent of the market) and instead zeroed in on the two contracts that Hill-Rom allegedly used as a “beta test” before expanding the strategy nationwide. *See* Appx020. Because these two contracts allegedly covered “only” as much as 20 percent of the market, and “twenty percent is far less than ... forty percent,” *id.*, the district court held that the Complaint failed as a matter of law to plead substantial foreclosure.

The district court committed at least three critical errors, which independently and collectively warrant reversal. First, the district court failed to credit Reading’s well-pled allegations throughout the Complaint

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<sup>3</sup> Reading’s Complaint identifies three separate product markets in which Hill-Rom is a monopolist and uses exclusive dealing, all covering the entire United States: (1) standard hospital beds, (2) intensive care unit (“ICU”) beds, and (3) birthing beds. Appx087-088 (¶¶16-23), Appx090-093 (¶¶37-44, 53-60).

of more severe disclosure, and instead demanded specificity in pleading far beyond what Rule 8 requires. The district court should have considered Hill-Rom's "conduct taken as a whole rather than considering each aspect in isolation." *LePage's*, 324 F.3d at 162 (citing *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962)). Indeed, the Supreme Court has unequivocally rejected the idea of "heightened fact pleading of specifics" in antitrust cases. *Twombly*, 550 U.S. 544, 555–57, 569–70. The Court's subsequent decisions have confirmed this interpretation. *Erickson*, 551 U.S. at 93; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also W. Penn Allegheny Health Sys. v. UPMC*, 627 F.3d 85, 98 (3d Cir. 2010). The district court's laser focus on the two Beta Test contracts, out of the hundreds alleged in the Complaint, violated these rules and prevented it from performing the required inquiry.

Second, properly analyzed, the Complaint's allegations plausibly plead substantial foreclosure. More than just allegations about the percentage share of the market foreclosed, the Complaint alleges that Hill-Rom entered exclusive contracts of abnormally long duration compared to industry norms, and that Hill-Rom "unilaterally imposed" the exclusivity arrangements "by fiat" rather than through a competitive

bidding process. *McWane*, 783 F. 3d at 834. Given such allegations, the court erroneously dismissed Reading's claims based on Reading's supposed failure to "prove" a 40% degree of foreclosure. Appx20-21. The district court's rigid approach directly contradicts the Supreme Court's express guidance in *Tampa Electric* that "a purely quantitative measure of [foreclosure] is inadequate," 365 U.S. at 328, and that courts must weigh the foreclosure percentage alongside other factors, *id.* at 329-30.

Third, the district court departed from foundational antitrust principles regarding exclusive dealing claims when it required Reading to "attach, quote, or otherwise reference" particular contract language rather than analyzing the "practical effect" of the agreements if they were indeed utilized by Hill-Rom market-wide. In effect, the court inappropriately treated factual allegations that were not pled with specificity as not pled at all. Yet a plaintiff need not ferret out and plead specific confidential contract terms "peculiarly within the defendant's knowledge or control." *In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). In any event, the Supreme Court was unequivocal in *Tampa Electric*: an exclusivity arrangement need "not contain specific agreements not to use the goods of a competitor, if the

practical effect ... is to prevent such use,” *id.* at 326 (internal quotations omitted), and courts have consistently held that express exclusivity language is not a requirement for finding anticompetitive harm. *See, e.g., ZF Meritor*, 696 F.3d at 282; *LePage’s*, 324 F.3d at 180; *FTC v. Surescripts, LLC*, 424 F. Supp. 3d 92, 101 (D.D.C. 2020).

As was the case in *LePage’s*, the competitive harm from Hill-Rom’s bundled rebates allegedly results from Hill-Rom’s decision to leverage its size to “foreclose portions of the [relevant markets] to a potential competitor who [did] not manufacture an equally diverse group of products and who therefore [could not] make a comparable offer.” 324 F.3d at 155. By leveraging its broader product portfolio to compress buying decisions across multiple markets into a single purchasing decision, the Complaint plausibly alleges that Hill-Rom competed “on some basis other than the merits.” *Id.* at 141. The Complaint alleges that customers chose Hill-Rom products not based on quality or value in individual markets but based on aggregate discounts available only from

the largest, most diversified supplier, rendering any lingering illusion of choice effectively “meaningless.” *Eisai*, 821 F.3d at 404.<sup>4</sup>

If these allegations are borne out by discovery and raise material disputes, this case should be tried to ensure that competition is protected in a critical healthcare market. The might-equals-right dynamic

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<sup>4</sup> Although this brief focuses principally on the district court’s errors in applying the appropriate pleading standard, we note that it also erred as a matter of substantive antitrust law in setting aside *LePage’s*. Appx020. This Court in *ZF Meritor* said that *LePage’s* “reasoning” was limited to cases “in which a single-product producer is excluded through a bundled rebate program offered by a producer of multiple products,” 696 F.3d at 274 n.11, but the district court here thought it was dispositive that “[t]he two named competitors of Defendants” were “multi-product producers.” Appx022. This misses the point. This Court in *ZF Meritor* may have been suggesting that a single-product rival is sufficient to impose liability under *LePage’s*, but it was not suggesting that it is necessary. *Id.* That’s clear not least because the *ZF Meritor* Court applied *LePage’s* and imposed liability for exclusion of a multi-product rival *in that case*. 696 F.3d 254, 303.

The district court’s reading is baffling because *LePage’s* itself also imposed liability where a multi-product competitor challenged another multi-product firm’s rebate scheme. 324 F.3d at 155. The same is true of *SmithKline Corp. v. Eli Lilly & Co.*, 575 F.2d 1056 (3d Cir. 1978), cited approvingly in *LePage’s*. In each instance—just as here—multi-product producers were plausibly alleged to have been foreclosed. The district court’s inexplicable reading thus would arbitrarily immunize exclusionary conduct that this Court has already condemned. When the evidence shows that a bundled rebate is capable of foreclosing a diversified rival in addition to an undiversified one, that fact is inculpatory. It shows that the exclusionary potential of the bundled rebate is *more* potent and dangerous.

engendered by a monopolist's exclusionary bundling may yield price-savings for purchasers in the short term, but in the long run it yields an inefficient market where size and incumbency—not merit—determine success, and consumers eventually pay later via having to endure a monopoly price. As the Sherman Act recognizes, such exclusionary behavior perpetuates harmful consolidation and leads to lower quality, supracompetitive prices, and diminished choice. Particularly in a case like this one, where the Defendant is already a monopolist and recidivist antitrust offender, district courts are obligated to discern whether the defendant plausibly alleged to have engaged in systematic exclusive dealing is leveraging its size rather than competing on the merits of its products.

For these reasons, explained more fully below, the district court's decision should be reversed.

## **ARGUMENT**

### **I. THE DISTRICT COURT FAILED TO CONSTRUE THE FACTUAL ALLEGATIONS IN PLAINTIFF'S FAVOR AND IMPROPERLY DEMANDED HEIGHTENED SPECIFICITY.**

At the outset, the district court mischaracterized the scope of Reading's factual allegations. Reading does not allege that Hill-Rom's

exclusive dealing scheme is narrowly confined to only the Corporate Enterprise Agreements (“CEAs”) executed with two specific hospital providers (Providence and HCA). Rather, the Complaint alleges that those agreements were a “beta test,” Appx112 (¶148), for a market-wide “contracting strategy” aimed at “lock[ing] up more and more” of Hill-Rom’s estimated 70% share of each hospital bed market, Appx113 (¶152). The district court acted as if Reading’s only allegations of foreclosure were limited to the share of the market represented by the Beta Test Contracts. The Complaint alleges that Hill-Rom’s exclusive deals extended to a much broader swath of the market, but the district court did not consider these factual allegations (or accept them as true). Instead, it dismissed Reading’s claims for failing to plead a foreclosure percentage beyond the 20% covered by the Beta Test Contracts. Appx020 (“The Court credits Defendants’ argument that, at most, Plaintiff has plead foreclosure of no more than twenty percent of any market.”). On this basis alone—an unduly narrow focus on just two contracts out of dozens alleged—the Court could reverse the district court.

The federal pleading rules require only “a short and plain statement of the claim showing that the pleader is entitled to relief[.]”

Fed. R. Civ. P. 8(a)(2). Whereas Rule 9 imposes heightened pleading standards for certain types of claims and defenses, antitrust claims are not among them. *See* Fed. R. Civ. P. 9(b). An antitrust complaint therefore is sufficient at the motion-to-dismiss stage if the plaintiff's non-conclusory allegations give the defendant "fair notice of what the ... claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *see also Leatherman v. Tarrant Co. Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993) (rejecting heightened pleading standards for claims not listed in Rule 9(b)).

Under Federal Rule of Civil Procedure 12(b)(6), a complaint survives a motion to dismiss if it contains sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the plaintiff pleads factual content permitting the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

In antitrust cases in particular, "plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various

factual components and wiping the slate clean after scrutiny of each.” *Cont’l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962). The proper inquiry required the district court “to look at the whole picture and not merely at the individual figures in it.” *LePage’s*, 324 F.3d at 162 (quoting *Cont’l Ore Co.*, 370 U.S. at 699). The salient questions are whether, considering the Complaint’s allegations holistically, (i) it is plausible that Hill-Rom imposed the anticompetitive rebate scheme evident in the Beta Test Contracts more broadly across the market; and (ii) such broader use would have the “probable effect” of substantially lessening competition. *Tampa Elec.*, 365 U.S. at 329. At the pleading stage, Reading only needed to plead facts establishing “that the program ‘reasonably appeared to be a significant contribution to maintaining [Hill-Rom]’s monopoly power.” *McWane*, 783 F.3d. at 839 (citing *Dentsply*, 399 F.3d at 187).

Further, the Supreme Court in *Twombly* took pains to note that an antitrust plaintiff is not to be penalized for a lack of specificity in the factual content of its pleadings. It unequivocally rejected a heightened burden on plaintiffs to plead specific facts. 550 U.S. at 555–57, 569–70 (“[W]e do not require heightened fact pleading of specifics.”). The Court’s

subsequent decisions have confirmed this principle. *Erickson*, 551 U.S. at 93 (“Specific facts are not necessary”); *Ashcroft*, 556 U.S. at 678 (“As the Court held in *Twombly*, the pleading standard Rule 8 announces does not require ‘detailed factual allegations’”) (quoting *Twombly*, 550 U.S. at 555); see also *W. Penn Allegheny Health Sys. v. UPMC*, 627 F.3d 85, 98 (3d Cir. 2010) (noting *Twombly* “expressly rejected the notion that a ‘heightened pleading standard’ applies in antitrust cases, and *Iqbal* made clear that Rule 8’s pleading standard applies with the same level of rigor in ‘all civil actions.’”) (citing *Twombly*, 550 U.S. at 569, n.14). In antitrust cases in particular, because Congress drafted the antitrust laws “with the express purpose of encouraging private enforcement,” *Reiter v. Sonotone Corp.*, 442 U.S. 330, 344 (1979), the “pleading standard must take into account the fact that a complaint will ordinarily be limited to allegations pieced together from publicly available information.” *In re Broiler Chicken Antitrust Litig.*, 290 F. Supp. 3d 772, 804 (N.D. Ill. 2017). “[P]rivate plaintiffs ... do not have access to inside information” before discovery. *Id.* (citing *Reiter*, 442 U.S. at 344).

## II. THE DISTRICT COURT IMPROPERLY RELIED ON A PURELY QUANTITATIVE MEASURE OF FORECLOSURE.

Contrary to the effective 40-percent-foreclosure requirement applied by the district court, *see* Appx020-021, exclusive dealing analysis does not turn on a “fixed percentage,” *Eisai*, 821 F.3d at 403. Indeed, “courts have varied widely in the degree of foreclosure they consider unlawful,” *id.*, and the Supreme Court has long held that “a purely quantitative measure of [foreclosure] is inadequate,” *Tampa Elec.*, 365 U.S. at 328. Instead, fact finders must “weigh all of the circumstances of a case” when deciding whether an exclusive dealing arrangement is anticompetitive. *United States v. Brown Univ.*, 5 F.3d 658, 668 (3d Cir. 1993) (quoting *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 49 (1977)). Rather than representing a dispositive metric, foreclosure share “serves a useful screening function as a proxy for anticompetitive harm.” *McWane*, 783 F.3d at 835. It is “one of several factors” courts should consider alongside others, including: evidence of increased price, *see, e.g., id.*; coercion, *Race Tires Am., Inc. v. Hoosier Racing Tire Corp.*, 614 F.3d 57, 77-78 (3d Cir. 2010); the duration of the arrangements, *ZF Meritor*, 696 F.3d at 287; whether the key customers, dealers or

distributors were parties to the arrangement, *LePage's*, F.3d at 159; and, whether alternative channels remained viable, *Dentsply*, 399 F.3d at 193.

**A. The District Court Erred by Failing to Consider Other Indicia of Anticompetitive Harm the Complaint Alleges While Assessing Substantial Foreclosure.**

Here, the other indicia of anticompetitive harm are substantial. Reading alleged that Hill-Rom executives boasted about their ability to increase prices and expand profit margins—all while “leverag[ing]” their market dominance to impose exclusivity on “every major [health system] in North America.” Appx100 (¶101-102). The Complaint further alleges that Hill-Rom, rather than the purchasers, was the “impetus for the exclusivity provisions” and that the Integrated Delivery Networks (“IDNs”) would have preferred not to make such commitments. Appx116 (¶167). These allegations indicate an absence of any “form of rivalry,” *ZF Meritor*, 696 F.3d at 270, where sellers “compete for exclusivity by offering procompetitive inducements (e.g., lower prices, better service),” *McWane*, 783 F.3d at 834.

Reading also points to the unusually long contract durations that departed sharply from industry norms. Appx111-112 (¶147). As in *ZF Meritor*—where the court noted that the duration of the exclusivity

arrangement was “unprecedented” for the industry, 696 F.3d at 288—the Beta Test Contracts allegedly “sent tremors through the U.S. Hospital bed industry.” Appx112 (¶148). “Indeed,” Plaintiff alleges, “the Providence deal was more than double the length of any prior IDN deal and effectively locked up the nation’s third-largest not-for-profit health system for nearly three-quarters of a decade,” while Hill-Rom executives allegedly boasted that the exclusivity arrangement with HCA made Hill-Rom—as the firm allegedly described itself—the “sole-source” for the nation’s largest healthcare system. Appx111-112 (¶145-148).

Moreover, Hill-Rom is alleged to have targeted the most important channels of distribution: IDNs, which function as the gatekeepers for member hospitals’ purchasing decisions. Appx110 (¶139-142). Foreclosing rivals from access to key customers, even without precise percentage calculations, is precisely the type of exclusionary conduct condemned in cases like *LePage’s*, *Microsoft*, *Dentsply*, *McWane*, and others. *See, e.g., LePage’s*, 324 F.3d at 141 (“The *Microsoft* opinion does not specify what percentage of the browser market Microsoft locked up—merely that, in one of the two primary distribution channels for browsers, Microsoft had exclusive arrangements with most of the top

distributors.”); *id.* at 160 (“Similarly, in this case, the jury could have reasonably found that 3M’s exclusionary conduct cut LePage’s off from key retail pipelines necessary to permit it to compete profitably.”); *Dentsply*, 399 F.3d at 189 (“By ensuring that the key dealers offer Dentsply teeth either as the only or dominant choice, Dealer Criterion 6 has a significant effect in preserving Dentsply’s monopoly.”); *McWane*, 783 F.3d at 837 (“Although the Commission did not quantify a percentage, it did note that the two largest distributors, who together controlled approximately 50-60% of distribution,” applied an exclusivity requirement).

Finally, Reading’s Complaint plausibly alleges the absence of meaningful alternative channels of distribution. It notes that while Group Purchasing Organizations (“GPOs”) may exist in theory as an alternative to IDN sales, Reading alleges that they function merely as “hunting licenses,” Appx120 (¶186), ineffective once Hill-Rom “clog[g]ed” distribution at the IDN level. As this Court explained in *Dentsply*, the relevant inquiry is not whether the alternative channels *technically* exist but whether the alleged alternatives are “practical or feasible in the market as its exists and functions.” 399 F.3d at 193.

**B. The Relevant Market’s Concentration, Existing Barriers to Entry, and Hill-Rom’s Alleged Monopoly Power Lower the Requisite Foreclosure Threshold.**

Exclusive dealing arrangements are of special concern when imposed by monopolists in highly concentrated markets with substantial barriers to entry. *E.g.*, *LePage’s*, 324 F. 3d at 162-63; *Dentsply*, 399 F.3d at 187 (“Behavior that otherwise might comply with antitrust law may be impermissibly exclusionary when practiced by a monopolist.”). The Complaint alleges exactly that scenario: a monopolist with a history of anticompetitive conduct operating in an industry with high capital requirements, regulatory hurdles, entrenched relationships, and patent barriers, Appx100 (¶106)—all coupled with consolidation that intensified after Hill-Rom’s exclusivity strategy took hold, Appx121 (¶186). Other than noting that Hill-Rom has between 70 and 75 percent market share in the relevant markets, the district court entirely ignored how this dominance necessarily changes the analysis of how an exclusive deal imposed by such a juggernaut affects competition.

In such markets, courts have repeatedly recognized that a lesser degree of foreclosure may suffice to establish anticompetitive harm. *See, e.g.*, *Dentsply*, 399 F.3d at 187; *ZF Meritor*, 696 F.3d at 284; *McWane* 783

F.3d at 837 (citing *Microsoft*, 253 F.3d at 70.). But the district court failed to account for this principle, ignoring Reading's well-pled allegations that Hill-Rom functioned as a monopolist in all three relevant markets and treating foreclosure thresholds as static rather than context-dependent.

**C. Foreclosure Percentages Are a Merits Question Not Properly Resolved at the Pleading Stage.**

Even setting aside the district court's erroneous requirement of a precise foreclosure percentage, requiring that a pre-discovery pleading allege that such a specific threshold is met conflicts with a growing body of precedent within this Circuit. District courts in the Third Circuit have repeatedly held that the sufficiency of the degree of foreclosure is a factual question inappropriate for resolution on a motion to dismiss. *See, e.g., Rightline, LLC v. FMC Corp.*, 2025 WL 1550234, at \*5 (E.D. Pa. May 30, 2025); *Mylan Pharms. Inc. v. Teva Pharms. Indus. Ltd.*, 2025 WL 756793, at \*21 (D.N.J. Feb. 27, 2025); *In re Ductile Iron Pipe Fittings (DIPF) Direct Purchaser Antitrust Litig.*, 2013 WL 812143, at \*19 (D.N.J. Mar. 5, 2013).

This practical rule recognizes that foreclosure percentages are rarely susceptible to precise calculation without discovery, not least

because exact numbers are often within only the defendant's control. Requiring mathematical precision at the outset not only misapplies Rule 12(b)(6), but also undermines the screening function of the plausibility standard, which is designed to weed out implausible claims—not to adjudicate factual disputes and require scientific precision in pleading.

### **III. THE DISTRICT COURT IGNORED SETTLED LAW REQUIRING ANALYSIS OF PRACTICAL EFFECTS RATHER THAN CONTRACTUAL FORMALITIES.**

The district court also erred by requiring Reading to “attach, quote, or otherwise reference” specific contractual provisions in order to plausibly plead a claim based on an exclusionary contract term. Appx022-023. The district court's insistence on specific factual provisions, to which Reading had no access and thus could not plead, violated two important principles.

*First*, often in exclusive dealing cases, the most probative evidence—contract terms, rebate structures, compliance mechanisms, and internal enforcement practices—lies almost entirely within the defendant's control, or in the control of those who are obligated to continue working with the defendant. As noted above, the “pleading standard must take into account the fact that a complaint will ordinarily

be limited to allegations pieced together from publicly available information,” as private plaintiffs “do not have access to inside information at the pleading stage.” *In re Broiler Chicken Antitrust Litig.*, 290 F. Supp. 3d at 804.

Requiring Reading to map the full web of allegedly anticompetitive agreements before discovery—particularly where, as alleged, “Hill-Rom insisted on strict confidentiality clauses with its customers,” Appx121 (¶188)—would effectively insulate secretive exclusionary conduct from antitrust scrutiny.<sup>5</sup> Indeed, Hill-Rom conceded in the related *Linet* case “that [its] agreements with IDNs are subject to confidentiality provision[s] that are standard in the industry.” Answer ¶ 389, at 57, *Linet Americas, Inc. v. Hill-Rom Holdings, Inc.*, No. 1:21-cv-6890, ECF No. 7 (N.D. Ill. Jan. 28, 2022).

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<sup>5</sup> The legal system already provides defendants with tools to dispose of unfounded exclusive dealing claims without imposing undue discovery burdens. A defendant may, for example, produce the relevant agreements under a protective order and seek early summary judgment if those contracts demonstrate that the exclusive deals were not prevalent or did not foreclose competitors from access to (*e.g.*) sufficient supply lines. The availability of such tools underscores why dismissal at the pleading stage based on the absence of specific evidence that can only be obtained through discovery is improper.

Reading was not required to “prove” the details of dozens of confidential agreements to plausibly allege that Hill-Rom deployed the same rebate-driven exclusivity evidenced by the Beta Test Contracts across its dominant market share—particularly where Reading alleges that Hill-Rom is a monopolist with a well-documented history of using similar tactics. Appx102-104 (¶113-117); see *LePage’s*, 324 F.3d at 148 (“[S]ize carries with it an opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past” (quoting *United States v. Swift & Co.*, 286 U.S. 106, 116 (1932))).<sup>6</sup>

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<sup>6</sup> The district court also overlooked the fact that Section 3 of the Clayton Act, 15 U.S.C. § 14, unlike Section 1 of the Sherman Act, does not have an agreement requirement. All that is required under Section 3 is a “condition” or “understanding” that a “price” or “rebate” is contingent on exclusivity—whether expressly stated or by “practical effect.” 15 U.S.C. § 14; see also *Tampa Elec.*, 365 U.S. at 326. The district court mistakenly collapsed the entire analysis, misreading a footnote from *ZF Meritor* to suggest that the analysis of a Section 1 claim under the Sherman Act and a Section 3 claim under the Clayton Act “proceeds the same.” Appx015 (citing *ZF Meritor*, 696 F.3d at 269 n.9). The footnote in question stated that the *ZF Meritor* Court’s “analysis regarding the applicability of the price-cost test is the same.” 696 F.3d at 269 n.9. While that holding homogenized application of the price-cost test across the two statutes, *ZF Meritor* reaffirmed Section 3’s “broader proscription” as described in *Tampa Electric*, 356 U.S. at 335. Nothing in *ZF Meritor* purports to engraft an extra-statutory agreement requirement onto Section 3 claims. Cf. *Standard Oil Co. v. United States*, 337 U.S. 293, 312

**Second**, the district court’s demand for specificity conflicts with longstanding Supreme Court and Third Circuit precedent making clear that the exclusivity restraint need not be explicit. *ZF Meritor*, 696 F.3d at 282 (citing *Tampa Elec.*, 365 U.S. at 326). As the Supreme Court made clear long ago, the relevant inquiry is the agreements’ “practical effect,” not the particular contract language creating the barrier. *Tampa Elec.*, 365 U.S. at 326.

It is well settled that bundled rebates, loyalty discounts, and de facto purchase requirements can function as exclusive dealing arrangements even without explicit exclusivity language. *ZF Meritor*, 696 F.3d at 275 (“Indeed, contracts in which discounts are linked to purchase (volume or market share) targets are frequently challenged as de facto exclusive dealing arrangements on the grounds that the discounts induce customers to deal exclusively with the firm offering the rebates.”). Courts therefore examine the “conduct taken as a whole”—*i.e.*,

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(1949) (“It seems hardly likely that, having with one hand set up an express prohibition against a practice thought to be beyond the reach of the Sherman Act, Congress meant, with the other hand, to reestablish the necessity of meeting the same tests of detriment to the public interest as that Act had been interpreted as requiring.”).

how a dominant firm’s practices work together in the real world—rather than isolating individual provisions or insisting on formalistic language. *LePage’s*, 324 F.3d at 162.

The district court failed to consider the conduct taken as a whole twice over. It neither evaluated the alleged foreclosure in conjunction with other indicia of anticompetitive harm, nor did it consider the practical effects of the agreements. Instead, the district court performed only a simplistic quantitative analysis and dismissed Reading’s claims for failing to tie the alleged exclusionary impact to specific contractual language.<sup>7</sup> As explained above, both of these moves conflict not only with

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<sup>7</sup> The district court’s principal support for rejecting the plausibility of anticompetitive harm flowing from the CEAs was *Larry Pitt & Assocs. v. Lundy Law*, 57 F. Supp 3d 445, 455 (E.D. Pa. 2014), which it cited as an example of a case dismissing claims for the absence of “facts from which the Court could infer that the agreements at issue were intended to result in, or would result in, restraint of trade.” Appx022. But *Larry Pitt* involved a challenge by one law firm to another law firm’s exclusive marketing arrangements with certain “key advertising venues.” 57 F. Supp. 3d at 451. The court did not reject the claims for failure to identify express exclusivity provisions; rather, it concluded that the plaintiff had “failed to plead facts from which the Court could infer that the [Defendant law firm]’s exclusive advertising contracts” had any anticompetitive effect on the “*legal* market.” *Id.* at 453 (emphasis added). The case has no resemblance to the detailed allegations of market-wide exclusion, coercion, and foreclosure set forth in Reading’s complaint.

this Court's teaching about exclusive dealing claims but also with the realities of how markets operate.

## CONCLUSION

Exclusive dealing arrangements present courts with a recurring challenge: distinguishing between procompetitive exclusive relationships that reduce costs and foster long-term planning, and anticompetitive agreements that dominant firms use to entrench their market power and foreclose rivals. The stakes are high. When courts err by dismissing meritorious claims at the pleading stage, they insulate bad actors from scrutiny and allow anticompetitive conduct to continue unchecked. Getting the balance right requires faithful application of settled legal principles—particularly at the motion to dismiss stage, where courts must accept well-pleaded allegations as true and draw all reasonable inferences in the plaintiff's favor.

The district court here failed to strike that balance. For the foregoing reasons, this Court should reverse the district court's dismissal of Reading Hospital's Complaint and remand for further proceedings.

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Respectfully submitted,

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/s/ Jamie Crooks

Jamie Crooks, Counsel of Record

Dated: February 5, 2026