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## FTC Drops Philadelphia-area Hospital Merger Challenge

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After a years-long run of successfully challenging hospital mergers, the Federal Trade Commission (“FTC”) has voted to withdraw an appeal related to its attempt to block the merger of two healthcare providers in the greater Philadelphia area, Jefferson Health (“Jefferson”) and Albert Einstein Healthcare Network (“Einstein”). The FTC initially brought this action against Jefferson and Einstein in February 2020, claiming the transaction would reduce competition.<sup>1</sup>

In December 2020, the Eastern District of Pennsylvania refused to grant the FTC’s request for a preliminary injunction to enjoin the merger until the resolution of an administrative proceeding to determine the merits of the case.<sup>2</sup> The court found that the FTC had not met the burdens required to establish its case and denied its request.<sup>3</sup> The FTC appealed to the Third Circuit and filed an Emergency Motion for an Injunction Pending Appeal.<sup>4</sup> The Third Circuit denied the Motion.<sup>5</sup>

Following this losing streak, as of March 2, 2021, the FTC’s webpage tracking its administrative proceeding against Jefferson and Einstein reflects that the Commissioners voted 4-0 to voluntarily dismiss the FTC’s Third Circuit appeal.<sup>6</sup> This signals that the FTC is dropping its attempts to block the merger of Einstein and Jefferson, its first unsuccessful attempt to block a hospital merger in years. Although this does not mean the FTC will lose focus on the healthcare industry, it provides favorable precedent for healthcare providers hoping to merge in the future.



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<sup>1</sup> Complaint, In the Matter of Thomas Jefferson Univ. (No. 9392); Complaint, FTC v. Thomas Jefferson Univ. et al. (E.D.P.A. 2020) (No. 20-cv-1113).  
<sup>2</sup> FTC v. Thomas Jefferson Univ. et al., (E.D.P.A. 2020) (No. 20-1113).  
<sup>3</sup> *Id.*  
<sup>4</sup> Emergency Mot. of FTC for Inj. Pending Appeal, FTC v. Thomas Jefferson Univ. et al., (3d Cir. 2020) (No. 20-3499).  
<sup>5</sup> Order, FTC v. Thomas Jefferson Univ. et al., (3d Cir. 2020) (No. 20-3499).  
<sup>6</sup> *Thomas Jefferson University, In the Matter of*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/enforcement/cases-proceedings/181-0128/thomas-jefferson-university-matter>.