

FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CASCADE HEALTH SOLUTIONS FKA  
McKENZIE-WILLIAMETTE HOSPITAL,  
an Oregon nonprofit corporation,  
*Plaintiff-Appellant,*  
v.  
PEACEHEALTH, a Washington State  
nonprofit corporation,  
*Defendant-Appellee.*

No. 05-35627  
D.C. No.  
CV-02-06032-ALH  
District of Oregon,  
Portland

CASCADE HEALTH SOLUTIONS FKA  
McKENZIE-WILLIAMETTE HOSPITAL,  
an Oregon nonprofit corporation,  
*Plaintiff-Appellee,*  
v.  
PEACEHEALTH, a Washington State  
nonprofit corporation,  
*Defendant-Appellant.*

No. 05-35640  
D.C. No.  
CV-02-06032-HA  
District of Oregon,  
Portland

CASCADE HEALTH SOLUTIONS FKA  
McKENZIE-WILLIAMETTE HOSPITAL,  
an Oregon nonprofit corporation,  
*Plaintiff-Appellee,*  
v.  
PEACEHEALTH, a Washington State  
nonprofit corporation,  
*Defendant-Appellant.*

No. 05-36153  
D.C. No.  
CV-02-06032-HA  
District of Oregon,  
Portland

CASCADE HEALTH SOLUTIONS FKA  
McKENZIE-WILLIAMETTE HOSPITAL,  
an Oregon nonprofit corporation,  
*Plaintiff-Appellant*,  
v.  
PEACEHEALTH, a Washington State  
nonprofit corporation,  
*Defendant-Appellee.*

No. 05-36202  
D.C. No.  
CV-02-06032-HA  
District of Oregon,  
Portland  
**ORDER**

Filed March 20, 2007

Before: Ronald M. Gould, Richard A. Paez, and  
Johnnie B. Rawlinson, Circuit Judges.

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### **ORDER**

The court invites supplemental briefs by any amicus curiae addressing the following issue raised in this appeal: Whether a plaintiff who seeks to establish the predatory or anticompetitive conduct element of an attempted monopolization claim under § 2 of the Sherman Act by showing that the defendant offered bundled discounts to the defendant's customers must prove that the defendant's prices were below an appropriate measure of the defendant's costs. If so, what is the appropriate measure of costs and how should the trial court instruct the jury on the matter of costs? If not, what standard should the trial court instruct the jury to use to determine whether the bundled discounts are predatory or anticompetitive?

Any briefs responding to this order shall be filed no later than thirty days from the filed date of this order. All briefs shall comply with the page or type-volume limitations set forth in Federal Rules of Appellate Procedure 29(d) and

32(a)(7). Any person or entity wishing to file a brief as an amicus curiae in response to this order is granted leave to do so pursuant to Federal Rule of Appellate Procedure 29(a).

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