

ORIGINAL



**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

)
In the matter of)
)
Evanston Northwestern Healthcare)
Corporation,)
)
and)
)
ENH Medical Group, Inc.,)
Respondents.)
_____)

Docket No. 9315
Public Version

**COMPLAINT COUNSEL’S ANSWERS AND OBJECTIONS TO
RESPONDENTS’ FIRST SET OF INTERROGATORIES**

Complaint Counsel submit the following answers and objections to Respondents Evanston Northwestern Healthcare Corporation’s (“ENH”) and ENH Medical Group, Inc.’s (“ENHMG”) (collectively “Respondents”) First Set of Interrogatories, in accordance with section 3.35 of the Federal Trade Commission’s (“Commission”) Rules of Practice, 16 C.F.R. § 3.35. The full text of each interrogatory is set forth below, single-spaced and *in italics*, followed by the respective answers and objections. The provision of a response to any interrogatory shall not constitute a waiver of any applicable objection, privilege, or other right.

Complaint Counsel have answered each interrogatory as completely and accurately as is reasonably possible, in light of the information of which Complaint Counsel has had available to evaluate and to include in these answers. Therefore, Complaint Counsel expressly reserve the right to modify these answers to Respondents’ interrogatories upon the completion of discovery to include additional responsive information obtained through the discovery in this litigation,

including the Initial Disclosures, through discovery requests directed to Respondents and through the third party discovery. Further, Complaint Counsel's responses should not be construed as an admission that other facts that have been or may be learned in the course of this proceeding do not support a particular proposition or are irrelevant.

General Objections

1. Complaint Counsel object to Respondents' First Set of Interrogatories ("Respondents' Interrogatories") to the extent that they seek to impose obligations or requirements beyond those contained in the Commission's Rules of Practice.
2. Complaint Counsel object to Respondents' Interrogatories to the extent that they may require disclosure of information protected from discovery by the attorney-client privilege, the work-product doctrine, the investigational privilege, or any other doctrine, immunity, or privilege. Nothing contained in these responses is intended, or may be construed, as a waiver of the work-product doctrine, or any other privilege, immunity, or doctrine.
3. Complaint Counsel object to Respondents' Interrogatories to the extent that responsive information is contained in, or can be derived, from documents previously produced in the Initial Disclosure, or Respondents' own documents, and the burden of deriving or ascertaining the information is substantially the same for Respondents as it is for Complaint Counsel.
4. Complaint Counsel object to Respondents' Interrogatories as being premature to the extent that many of its subjects of inquiry will be addressed in our pre-trial papers.

5. Complaint Counsel object to these interrogatories to the extent they call for the disclosure of information relating to the testimony of Complaint Counsel's expert witnesses, which shall be produced at the time and pursuant to the standards set forth in paragraph 11 of the Scheduling Order dated March 24, 2004, as revised by the Second Revised Scheduling Order dated June 15, 2004.
6. Complaint Counsel object to these interrogatories to the extent that Respondents have exceeded the number of interrogatories permitted under the Court's Scheduling Order dated March 24, 2004, as amended.

Answers and Specific Objections

Subject to the general objections, Complaint Counsel provide the following responses:

Interrogatory No. 1

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 1 of the Complaint that: "The price increases that resulted from the merger are large and far beyond those achieved by comparable hospitals during this time period." Your answer should include a detailed description of the prices that allegedly increased, separately by payer, the amount of such increase, the "comparable hospitals" at issue, and the precise "time period" referenced in the allegation.

Response to Interrogatory No. 1

Complaint Counsel object to Interrogatory No. 1 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegations at the time the Commission issued its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 1 below by

referring Respondents to documents and information that Complaint Counsel have provided to Respondents in the Initial Disclosures and in the response to Respondents' requests for production of documents, including FTC VHS 0000001; FTC-Disk 0000001 - 0000031; FTC ZIP Disk 000001; and FTC CD 0000001 - 0000113. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that Respondents' conduct had the purpose and effect, during the period 1999 and later, of raising prices for general acute inpatient hospital services to private payers.

These documents and information include, but are not limited to, the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

• [REDACTED]

[REDACTED]

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• [REDACTED]

[REDACTED]

• [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

• [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

• [REDACTED]

opportunity to control this market individually,” and that referring to a possible merger with ENH, states “there are ways to at least, I think, to push back on the managed care phenomenon and get the rates back where they ought to be, if you are a big enough,

[REDACTED]

- [REDACTED]

- [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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- [REDACTED]
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- [Redacted]

[Redacted text block containing approximately 25 lines of obscured content]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Interrogatory No. 2

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 3 of the Complaint that: “After merging the hospitals and the physician groups, ENH conducted negotiations with private payers by offering hospital services and physician services as a package. In many instances, ENH required private payers to accept

its terms for both hospital and physician services or face termination of both hospital and physician contracts.” Your answer should identify the “private payers,” “hospital services,” “physician services” and “terms” at issue, and describe the method by which ENH purportedly required private payers to accept terms.

Response to Interrogatory No. 2

Complaint Counsel object to Interrogatory No. 2 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegations at the time the Commission issued its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 2 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents’ requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that Respondents’ conduct had the purpose and effect of offering hospital and physician services as a non-divisible package.

These documents and information include, but are not limited to, the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [REDACTED]

Interrogatory No. 3

Describe in detail the product market alleged in paragraph 16 of the Complaint and identify each and every fact (including, but not limited to, all documents) upon which you rely in support of such product market. Your answer should define all terms used in paragraph 16, including “general acute care inpatient hospital services,” “basic medical and surgical diagnostic and treatment services that include an overnight stay in the hospital by the patient,” and “tertiary services.” To the extent the alleged product market purports to distinguish between primary and secondary hospital services, define those terms as well.

Response to Interrogatory No. 3

Complaint Counsel object to Interrogatory No. 3 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegations at the time the Commission issued its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony of Complaint Counsel’s expert witnesses, or information that is subject to expert analysis.

Subject to these objections, Complaint Counsel note “[m]arket definition focuses solely on demand substitution factors--i.e., possible consumer responses A market is defined as a product or group of products and a geographic area in which it is produced or sold such that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future producer or seller of those products in that area likely would impose at least a ‘small but significant and non-transitory’ increase in price, assuming the terms of sale of all other products

are held constant. A relevant market is a group of products and a geographic area that is no bigger than necessary to satisfy this test.” 1992 Horizontal Merger Guidelines, § 1.0.

In this litigation, the Complaint alleges that the relevant product market is “general acute care inpatient hospital services sold to private payers, including commercial payers, managed care plans, and self-insurance plans (collectively, “private payers”).” The Complaint explains that “general acute care inpatient hospital services are a broad cluster of basic medical and surgical diagnostic and treatment services that include an overnight stay in the hospital by the patient.” The Complaint further defines the alleged product market by identifying services that are not included in general acute care inpatient hospital services.

It is sufficient to support the existence of the alleged product market to show that the test of the Merger Guidelines was met, that the seller of the products that are alleged to make up the product market likely would, and in this case did, impose a significant and non-transitory increase in price. The group of products that constitute the relevant product market are the general acute care inpatient hospital services sold to private payers by both ENH and Highland Park Hospital prior to the merger between those two entities. This market definition includes all the services that ENH and Highland Park offered prior to the merger that required an overnight stay in the hospital, that are not specifically excluded as tertiary services, psychiatric, substance abuse, and rehabilitation services. Complaint Counsel make no distinction between primary and secondary hospital services.

As noted, this market definition excludes tertiary services, services such as open heart surgery, transplants, and certain burn treatments. ENH offered a limited number of such services

prior to the merger with Highland Park Hospital. While those services are excluded from the product market alleged here, because of the manner in which ENH contracts for the sale of its inpatient hospital services sold to private payers, including both general acute care inpatient services and tertiary services in the same contracts to third party payers, ENH may have had the ability to and may in fact have raised the prices of the tertiary services it offered following the merger with Highland Park Hospital.

Complaint Counsel refer Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. In addition, Complaint Counsel refer Respondents to documents and information available to the general public. These documents and information demonstrate that the relevant product market is general acute care inpatient hospital services sold to private payers, which includes basic medical and surgical diagnostic and treatment services that include an overnight stay in the hospital by the patient.

Interrogatory No. 4

Describe in detail the geographic market alleged in paragraph 17 of the Complaint and identify each and every fact (including, but not limited to, all documents) upon which you base your allegation that: "The existence of this relevant geographic market is evidenced, among other things, by the ability of ENH, once it controlled Highland Park as well as the Evanston and Glenbrook hospitals, profitably to impose significant and non-transitory price increases upon private payers in their purchase of acute care hospital services at those hospitals." Your answer should identify the "significant and non-transitory price increases," "private payers" and "acute care hospital services" at issue. Your answer should further identify the exact geographic boundaries of the alleged geographic market, including all zip code areas or portions thereof in such market, as well as each hospital that falls within that geographic market.

Response to Interrogatory No. 4

Complaint Counsel object to Interrogatory No. 4 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issued its Complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony. Complaint Counsel further object to this interrogatory to the extent that it requires Complaint Counsel to “identify the exact geographic boundaries of the alleged geographic market, including all zip code areas or portions thereof in such market,” a burden which Complaint Counsel need not meet to prove its case.

Subject to these objections, Complaint Counsel notes that one delineates “the geographic market to be a region such that a hypothetical monopolist that was the only present or future producer of the relevant product at locations in that region would profitably impose at least a ‘small but significant and nontransitory’ increase in price. . . .” 1992 Horizontal Merger Guidelines, § 1.21. The 1992 Horizontal Merger Guidelines go on to explain how the geographic market is arrived at. “In defining the geographic market or markets affected by a merger, the Agency will begin with the location of each merging firm (or each plant of a multiplant firm) and ask what would happen if a hypothetical monopolist of the relevant product at that point imposed at least a ‘small but significant and nontransitory’ increase in price, but the terms of sale at all other locations remained constant. If, in response to the price increase, the reduction in sales of the product at that location would be large enough that a hypothetical monopolist producing or

selling the relevant product at the merging firm's location would not find it profitable to impose such an increase in price, then the Agency will add the location from which production is the next-best substitute for production at the merging firm's location.” 1992 Horizontal Merger Guidelines, § 1.21.

In the current suit, consistent with the 1992 Horizontal Merger Guidelines, one begins with the locations of the merging firms, the Evanston and the Glenbrook Hospitals operated by EHN pre-merger and the Highland Park Hospital. The three hospitals form a triangle on a map of the northern suburbs of Chicago. There are no other hospitals within the triangle formed by the locations of the three hospitals. One then asks the question whether hypothetical monopolist of general acute care inpatient hospital services at those locations would find it profitable to impose a small but significant and nontransitory price increase on its customers, private payers, at those three locations. In the instant case, a hypothetical monopolist would find it profitable to do so, since ENH did find it profitable to do so following the merger with Highland Park Hospital. Following the merger with Highland Park Hospital, ENH did impose a significant price increase on its private payer customers. The private payer customers did not find it profitable to move their business to another hospital outside of the Evanston/Glenbrook/Highland Park triangle rather than pay the higher prices being charged by ENH.

The 1992 Horizontal Merger Guidelines specify that the “smallest market” principle will be applied to defining geographic markets. 1992 Horizontal Merger Guidelines, § 1.21. Thus the relevant geographic market in this case may be limited to the triangular area marked by the three locations of the hospitals operated by ENH, Evanston Hospital, Glenbrook Hospital and

Highland Park Hospital.

Complaint Counsel refer Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that the geographic market is the area directly proximate to the three ENH hospitals and contiguous geographic areas in northeast Cook County and southeast Lake County, Illinois. In addition, Complaint Counsel refer Respondents to the response to Interrogatory No. 1 above on the imposition of a significant and non-transitory price increase upon private payers in their purchase of acute care hospital services from Respondents' hospitals.

Interrogatory No. 5

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 18 of the Complaint that: "The merger of ENH and Highland Park created the largest hospital system in the relevant market. This market is highly concentrated and the combination significantly increased market concentration. The merger resulted in a post-merger HHI increase in excess of 500 points to a level exceeding 3000 points." Your answer should explain in detail how this alleged HHI increase was calculated, including, the specific hospitals in the "relevant market" and the methodology used to calculate their market shares, and the time period from which the data was used to calculate the post merger HHI.

Response to Interrogatory No. 5

Complaint Counsel object to Interrogatory No. 5 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issued its Complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from

anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel refer to the answer to Interrogatory No. 4, which explains that, following the 1992 Horizontal Merger Guidelines analysis, the relevant geographic market in which to evaluate the merger of ENH and Highland Park Hospital is the triangular area defined by the locations of the three ENH hospitals, Evanston, Glenbrook, and Highland Park. Within this triangular area, ENH is the only operator of inpatient hospitals, giving it a monopoly within that geographic area. Thus the geographic area is highly concentrated and ENH operates the largest network in the relevant geographic market.

As noted above in the Response the Interrogatory No. 4, the 1992 Horizontal Merger Guidelines specify that the smallest geographic market be used. However, it is likely that ENH was able to exercise market power over a larger area than the triangular area defined by the locations of its three hospitals. Hypothetically, for example, if the geographic market were expanded to encompass a larger geographic area in which additional hospitals are located, such as Holy Family Medical Center, St. Francis Hospital, Lake Forest Hospital, Lutheran General Hospital, and Rush North Shore Hospital, then when measured by the dollar revenues of net inpatient acute care hospital services, Complaint Counsel estimates that the post-merger HHI is well in excess of 1800 and the increase in the HHI on account of the merger is well in excess of 50. If a surrogate measurement of market share – such as discharges or patient days -- is used, the three ENH hospitals had a combined market share of approximately 43% in 1999, and the HHI increased by over 500 points based on the 1999 market shares to over 3000. The source of this surrogate data is the State of Illinois data base which has been turned over to Respondents

including all discharges and patient days for the named hospitals for the year 1999.

Complaint Counsel refer Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that the relevant market, as defined within the Complaint, is highly concentrated and that this concentration increased following the merger of ENH and HPH.

Interrogatory No. 6

State what you maintain to be the current market shares of each participant in what you maintain to be the relevant markets under Count I of the Complaint, the manner in which those market shares should be calculated and the present HHI in such relevant markets.

Response to Interrogatory No. 6

Complaint Counsel object to Interrogatory No. 6 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issued its Complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

ENH is still the only operator of general acute care inpatient hospitals with the triangular area that is defined by the locations of the three hospitals operated by ENH. As such, ENH has 100% of the market within that area, and the appropriate HHI is 10,000.

Interrogatory No. 7

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 25 of the Complaint that: “Prior to the merger, ENH’s Evanston and Glenbrook hospitals had operating costs comparable to area hospitals and other comparable hospitals. Following the merger, the operating costs at the Evanston and Glenbrook hospitals increased substantially, and much more than experienced by area hospitals and other comparable hospitals.” Your answer should identify the referenced “operating costs,” “area hospitals” and “other comparable hospitals.” Your answer should also quantify what is meant by “increased substantially” as well as the increases in operating costs “experienced by area hospitals and other comparable hospitals.”

Response to Interrogatory No. 7

Complaint Counsel object to Interrogatory No. 7 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issued its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 7 by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents’ requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter, including the data submission of Respondents dated July 28, 2003. These documents contain the relevant information regarding ENH’s and Glenbrook’s operating costs in comparison to other hospitals in the area.

In addition, Complaint Counsel refer to the following documents:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Interrogatory No. 8

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 26 of the Complaint that: “Following the merger, salary expenses at ENH’s Evanston and Glenbrook hospitals increased substantially, and much more than experienced by area hospitals and other comparable hospitals.” Your answer should identify the referenced “salary expenses,” “area hospitals” and “other comparable hospitals.” Your answer should also quantify what is meant by “increased substantially” as well as the increases in salary expenses “experienced by area hospitals and other comparable hospitals.”

Response to Interrogatory No. 8

Complaint Counsel object to Interrogatory No. 8 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issued its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 8 by referring Respondents to documents and information that Complaint Counsel have provided to

Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents, including Respondents' financial data. Complaint Counsel also refer Respondents to documents and information that are contained in the Healthcare Cost Report Information System, produced by the Centers for Medicare and Medicaid Services, which is publicly available. These materials document contain the relevant information regarding Evanston's and Glenbrook's salary expenses in comparison to other hospitals in the area.

In addition, Complaint Counsel refer to the following documents:

- [REDACTED]

Interrogatory No. 9

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 29 of the Complaint that: "Following the merger, ENH established a strategy of negotiating with private payers on behalf of the three hospitals as a single system. In many instances, this policy, with the addition of Highland Park to ENH, effectively forced private payers to accept price increases that were significantly higher than the price increases of other comparable hospitals, or face the loss of all three hospitals from their networks. Such a loss would have a significant adverse impact on their ability to market their managed care products." Your answer should identify the referenced "strategy," "private payers," "price increases," "other comparable hospitals," "networks," "significant adverse impact on their ability to market their managed care products" and "managed care products." Your answer should also specifically quantify, in detail, the alleged post-merger ENH "price increases" as well as the referenced price increases "of other comparable hospitals."

Response to Interrogatory No. 9

Complaint Counsel object to Interrogatory No. 9 on the grounds that it is premature to the

extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 9 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. In addition, Complaint Counsel refer Respondents to the response to Interrogatory No. 1 above on the imposition of price increases upon private payers in their purchase of acute care hospital services from Respondents' hospitals. These documents and information demonstrate that ENH established a single system strategy of negotiating contracts with private payers.

These documents and information demonstrating this single system strategy along with its resultant higher prices include, but are not limited to, the following:

- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- See Response to Interrogatory No. 1.

Interrogatory No. 10

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 30 of the Complaint that: “Following the merger, ENH raised prices more than the price increases implemented by other comparable hospitals. Private payers regarded the ENH price increases as unwarranted.” Your answer should identify the referenced “prices” raised by ENH, the “price increases implemented by “other comparable hospitals,” the identities of these “other comparable hospitals” and the referenced “[p]rivate payers.”

Response to Interrogatory No. 10

Complaint Counsel object to Interrogatory No. 10 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer that the prices raised by ENH are

the prices that ENH charged third party payers for general acute care inpatient hospital services following the merger with Highland Park Hospital. The delineation of the comparable hospitals is province of economic experts and it is premature to answer this part of the interrogatory. The price increases implemented by comparable hospitals refers to changes in the prices the other hospitals charged third party payers for general acute care inpatient hospital services following the merger with Highland Park Hospital. The private payers referred to are the private payers identified in Complaint, as well as the other private payers to which ENH sold general acute care inpatient hospital services.

Complaint Counsel refer Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents, including FTC VHS 0000001; FTC-Disk 0000001 - 0000031; FTC ZIP Disk 000001; and FTC CD 0000001 - 0000113. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. In addition, Complaint Counsel refer Respondents to the responses to Interrogatories 1 and 9 set forth above on the imposition of price increases upon private payers in their purchase of acute care hospital services from Respondents' hospitals. These documents and information demonstrate that ENH raised prices greater than increases implemented by comparable hospitals.

Interrogatory No. 11

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 30 of the Complaint that: "ENH also required many private payers to agree to pay prices set at a discount off of ENH's list prices in lieu of predetermined per diem prices for each day of inpatient care, a feature of many of the hospitals' pre-merger contracts with

their major payers.” Your answer should identify the referenced “private payers,” and “major payers.”

Response to Interrogatory No. 11

Complaint Counsel object to Interrogatory No. 11 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 11 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents’ requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that ENH converted many of its per diem contracts into discount off list charges agreements.

These documents and information include, but are not limited to, the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]

■

Interrogatory No. 12

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 30 of the Complaint that: “ENH raised its list prices several times following the merger.” Your answer should identify each and every such increase in list price, if any, that Complaint Counsel alleges supports its allegations that the merger substantially lessened competition in a line of commerce in a section of the country in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

Response to Interrogatory No. 12

Complaint Counsel object to Interrogatory No. 12 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 12 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents’ requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that ENH raised its list prices several times after the merger.

These documents and information include, but are not limited to, the following:

- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Interrogatory No. 13

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 31 of the Complaint that: “Following the merger, ENH proposed large price increases to its major private payers. All but one of these large customers accepted ENH’s significant postmerger increases rather than try to sell a health plan without any of the three ENH hospitals.” Your answer should identify, separately for each payer, the referenced “proposed large price increases,” “major private payers,” “large customers” and “significant postmerger increases,” and all facts (including, but not limited to, all documents) that purportedly support the allegations regarding the amount of the prices increases. Your answer should also include a detailed explanation of the methodology used to calculate the alleged rate increases to each payer identified in paragraph 31 of the Complaint.

Response to Interrogatory No. 13

See Answers to Interrogatories 1, 9, 10, 11, and 12.

Interrogatory No. 14

To the extent that you maintain that the “private payers” referenced in paragraph 31 of the Complaint increased premiums charged to their customers as a result of ENH’s post-merger price increases, identify each such private payer and the purported premium increases. If you do not make this allegation then so state.

Response to Interrogatory No. 14

Complaint Counsel object to Interrogatory No. 14 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Complaint Counsel also object to Interrogatory No. 14 on the ground that, to demonstrate a violation of the antitrust laws, it is unnecessary to prove that the price increases Respondents charged private payers were passed on to the private payers’ customers. *See Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977); *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968). Therefore, and to this extent, this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence relevant to a proof of a violation of the antitrust laws.

Subject to these objections, Complaint Counsel answer Interrogatory No. 11 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents’ requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter.

These documents and information include information that indicates, but is not limited to, the following:

- Most payers referred to in the Complaint and in the answers to Interrogatories 1-2 marketed their services, in whole or in part, as third party administrators of self-insured plans, under which the plan funded or operated by the employer, union, and/or enrollees directly bore all costs of the covered medical services under the contract between the payer and the specific provider which rendered the services. Therefore, ENH's post-merger price increases were reflected in the bills for services that ENH rendered to enrollees of these plans, and the increased prices were borne directly by these entities rather than the payers.
- Many payers referred to in the Complaint and in the answers to Interrogatories 1-2 also marketed their services, in whole or in part, as traditional health insurance plans, under which the payers assumed some or all of the actuarial risk embodied in such plans. In these instances, Complaint Counsel maintain that ENH's post-merger price increases may have been reflected, in whole or in part, in the premiums ultimately charged by the payers. To date, Complaint Counsel has not quantified the costs of any inputs purchased by the private payers – here, the health care services covered under their various plans – that were reflected in the specific changes in the premiums charged by the payer for the plans covering the cost of those services.
- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

Interrogatory No. 15

Describe in detail the relevant market (product and geographic), if any, that you maintain is alleged in Count II of the Complaint.

Response to Interrogatory No. 15

Compliant Counsel object to Interrogatory No. 15 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel contend that it is unnecessary to define a product or geographic market for the purposes of a claim under section 7 of the Clayton Act. Further, to the extent a product and geographic market definition is required, Complaint Counsel contend that such a definition need not be precise and that it is sufficient to identify general acute care hospital services sold to private payers as the product market and the area in and around Evanston, Illinois, in which Respondents do business, as the geographic market. See Complaint

Counsel's Response to Motion to Dismiss Count II of the Complaint dated April 2, 2004.

Interrogatory No. 16

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 31 of the Complaint that: "ENH also negotiated with the payer hospital and physician services as a package, requiring each payer to accept ENH's terms for the package or otherwise lose both contracts[.]"

Response to Interrogatory No. 16

Complaint Counsel object to Interrogatory No. 16 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 16 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. Finally, Complaint Counsel incorporate response to Interrogatory No. 2 above, including the cites to, e.g., [REDACTED]

[REDACTED]

[REDACTED]

Interrogatory No. 17

Identify each and every fact (including, but not limited to, all documents) upon which you base your

allegation in paragraph 39 of the Complaint that: "The salaried physicians and the independent physicians have not engaged in any meaningful efficiency-enhancing integration. They do not share information technology systems to enhance services. Nor do they comply or seek to comply with common performance standards or clinical protocols to enhance services." Your answer should define "meaningful efficiency-enhancing integration," "common performance standards," and "clinical protocols."

Response to Interrogatory No. 17

Complaint Counsel object to Interrogatory No. 17 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its Complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 17 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that Respondents' salaried physicians and independent physicians have not engaged in meaningful efficiency-enhancing integration.

These documents and information include, but are not limited to, the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[Redacted]

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Interrogatory No. 18

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 44 of the Complaint that: “By establishing these and other price increases on behalf of the salaried physicians and the independent physicians, ENH Medical Group engaged in illegal price fixing in restraint of trade. This conduct deprived commercial payers, employers, and individuals of the benefits of competition among physicians.”

Response to Interrogatory No. 18

Complaint Counsel object to Interrogatory No. 18 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 18 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents’ requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that ENHMG fixed the prices for the services of its salaried and affiliated physicians.

These documents and information include, but are not limited to, the following:

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
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- [Redacted]

[REDACTED]

Interrogatory No. 19

State whether Complaint Counsel intends to introduce evidence of what you believe to be the relevant product and geographic market or markets for the purpose of Count III of the Complaint at any time during the trial (including any rebuttal case that may be permitted) and, if so, identify these markets and all facts (including, but not limited to all documents) upon which the definition of such markets definition is based.

Response to Interrogatory No. 19

Complaint Counsel object to Interrogatory No. 19 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for the identification of evidence that Complaint Counsel intend to introduce at trial. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony. Complaint Counsel further object to this interrogatory to the extent it seeks to require Complaint Counsel to identify what evidence Complaint Counsel intend to offer in rebuttal when Respondents have yet to put forth Respondents' case so Complaint Counsel do not yet know what, if anything there is to rebut.

Subject to these objections, Complaint Counsel answer Interrogatory No. 19 by stating

that the paragraphs in Count III of the Complaint allege that Respondents and others engaged in activities that constitute a per se violation of the antitrust laws. It is unnecessary for Complaint Counsel to either identify a relevant product or geographic market or to offer evidence on those markets for Complaint Counsel to prevail on Count III. Respondents reserve the right to amend this answer based on further discovery in this litigation and the analysis of Respondents' position in this litigation.

Interrogatory No. 20

Describe in detail what you maintain to be the proper methodology for comparing the contracted prices paid by each payer identified in the complaint or whom you expect to call as a witness to Highland Park Hospital or ENH with contracted prices paid by each such payer to other hospitals in Lake, Cook, Kendall, McCane and Henry Counties. Your answer should include a detailed explanation of all data used in such calculations including, for example, contractual prices, claims data, impact of stop loss provisions, case mix adjustments, and any other factor that you deem relevant.

Response to Interrogatory No. 20

Complaint Counsel object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Interrogatory No. 21

To the extent that you maintain that the price increases referenced in paragraph 44 of the Complaint caused the "private payers" referred to in the Complaint to increase premiums charged to their customers, identify each such private payer and the purported premium increases. If you do not make this allegation then so state.

Response to Interrogatory No. 21

Complaint Counsel incorporate their answer to Interrogatory No. 14.

Interrogatory No. 22

State in detail each and every item of relief that you seek in connection with Counts I and II of the Complaint.

Response to Interrogatory No. 22

Complaint Counsel refer Respondents to the Notice of Contemplated Relief attached to the Complaint in this matter. Without limiting the Notice of Contemplated Relief, additional relief may include a requirement that Respondents replace any of the acquired assets that no longer exist at any of the hospitals and to restore clinical services to any of the hospitals that have been terminated or consolidated to other locations since the merger. In addition, the asset package defined for divestiture would include Respondents' rights in any contracts, including contractual rights relating to the entity that succeeded the Highland Park Hospital Foundation. Complaint Counsel may also seek an order that Respondents provide certain services (with appropriate confidentiality safeguards) to an acquirer of the divested hospital for a transitional period of time. Such services would include those that are currently provided by respondents to Highland Park Hospital from locations other than Highland Park Hospital. Complaint Counsel may also seek order provisions that would require Respondents to take steps to assist an acquirer of the divested hospital to enter into managed care contracts and to employ certain key individuals currently employed by, or associated with, Respondents.

Interrogatory No. 23

State in detail each and every item of relief that you seek in connection with Count III of the Complaint and from whom that relief is sought. Your answer should specifically state whether complaint counsel will seek disgorgement, restitution, or any other financial payment from Respondents in connection with Count III; the contents of the requested cease and desist order; the nature of the “periodic compliance reports” to be filed with the Commission; and all other “measures of steps” purportedly “appropriate . . . to correct or remedy, or prevent the recurrence of, the [alleged] anti-competitive practices engaged in by ENH Medical Group.”

Response to Interrogatory No. 23

Complaint Counsel refers Respondents to the Notice of Contemplated Relief attached to the Complaint in this matter. Without limiting the Notice of Contemplated Relief, the Commission may also seek an order requiring Respondents to provide an opportunity for managed care payers to terminate their contracts. In addition, Complaint Counsel may seek an order requiring Respondents to distribute the order to certain persons and to file reports on compliance pursuant to § 2.41 of the Commission’s Rules of Practice, 16 CFR § 2.41.

Interrogatory No. 24

Identify the sources for all quotations contained in Complaint Counsel’s presentation for the March 24, 2004, Status Conference. Your answer should include the identities of Payers A through I and Physicians #1 through # 3 discussed in that presentation.

Response to Interrogatory No. 24

Without limitation, Complaint Counsel identifies the following sources for the above-referenced materials:

██
██
██

[REDACTED]

Interrogatory No. 25

Identify each and every fact (including, but not limited to, all documents) upon which you rely to support any assertion by you that ENH and Highland Park were competitors before the merger. If you do not make any such assertion then so state.

Response to Interrogatory No. 25

We object to Interrogatory No. 25 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 25 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that ENH and HPH were competitors prior to the merger.

These documents and information include, but are not limited to, the following:

- [REDACTED]

- [REDACTED]
- [REDACTED]

Interrogatory No. 26

Identify each and every fact (including, but not limited to, all documents) upon which you rely to support any assertion by you that private payers (as that term is used in the complaint) referred to or relied in any way on competition between ENH and Highland Park during contract negotiations before the merger. If you do not make any such assertion then so state.

Response to Interrogatory No. 26

We object to Interrogatory No. 26 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 26 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter.

These documents and information include, but are not limited to, the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Interrogatory No. 27

Identify each payer/employer that the FTC staff has communicated with in this matter and describe fully (including identifying all facts and documents) each such communication between staff and such payers/employers.

Response to Interrogatory No. 27

Complaint Counsel object to Interrogatory No. 27 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegations at the time the Commission issued its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony. Complaint Counsel further object to this interrogatory on the grounds of the work product and investigational privilege. Complaint Counsel further object to this interrogatory on the grounds that it calls for information the disclosure of which would reveal the identify of confidential

informants. Complaint Counsel further object to this interrogatory on the grounds that it calls for information the disclosure of which would invade the deliberative process of the Commission.

Subject to these objections, Complaint Counsel states that we have communicated with various insurance companies and companies with self-insurance plans for their employees and state and federal government agencies, all of which have been identified in Complaint Counsel's Initial Disclosures. While Complaint Counsel object to the disclosure of specific conversations with named individuals on the basis of the work product and investigational privileges, Complaint Counsel states, without a waiver of any privilege, that we discussed, among other things, issues relating to the impact of the merger and the pre-and post-merger activities of Respondents, on the price, cost, and provision of healthcare services in the Evanston, Illinois, area. This includes, but is not limited to, the following general information which supports Complaint Counsel's allegations that the merger of Highland Park Hospital and Evanston Northwestern Hospital violated section 7 of the Clayton Act, 15 U.S.C. § 18, and that the activities of ENH Medical Group violated section 5 of the FTC Act, 15 U.S.C. § 45:

- The amounts that prices increased at the Respondent Hospitals after the merger.
- The contract negotiations between the payers and the Respondent Hospitals before and after the merger.
- The different types of formulas in contracts between payers and hospitals for calculating the payment of acute care hospitals services.

- The preferences of payers for per diem contracts, discount of charges contracts, stop loss provisions, inpatient and outpatient rates, and other provisions of contracts between hospitals and payers.
- The viability of contracting with only ENH or Highland Park Hospital.
- The identification of hospitals and physicians with which payers want to contract.
- The contractions between the payers and ENH Medical Group before and after the merger.
- The participation of the independent physicians, including physicians on the medical staff of Highland Park Hospital, in the contracts negotiated by ENH Medical Group.
- The efforts undertaken by ENH Medical Group to ensure that physicians on the medical staff of Highland Park Hospital were paid at the rates negotiated by the ENH Medical Group.
- The negotiation strategies of Respondents and payers in the contract negotiations in 1999 through 2001.

Respondents can identify the payers with which Complaint Counsel communicated and the substance of those communications by reviewing the transcripts of the Investigational Hearings, copies of which were furnished to Respondents as part of the initial disclosures. In addition, various documents reflect the information sought in this interrogatory, including but not limited to [REDACTED]

[REDACTED]

[REDACTED]

Interrogatory No. 28

Identify each person with whom FTC staff has communicated regarding the potential purchase of Highland Park Hospital if divestiture were ordered as a form of relief pertaining to Count I and/or Count II of the Complaint and describe fully (including identifying all facts and documents) each such communication.

Response to Interrogatory No. 28

Complaint Counsel object to Interrogatory No. 28 to the extent that it calls for information relating to conversations among the FTC staff or between the staff and the Commission on this matter. Subject to this objection, the FTC staff has had no communications with any person outside the Commission regarding the potential purchase of Highland Park Hospital if divestiture of the hospital were ordered as a form of relief pertaining to Count I and/or Count II of the Complaint.

Interrogatory No. 29

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 6 of the Complaint that: "Highland Park was pursuing the offering of open heart surgery through regulatory filings with the state of Illinois and through formation of a joint venture with Evanston."

Response to Interrogatory No. 29

Complaint Counsel object to Interrogatory No. 29 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony.

Subject to these objections, Complaint Counsel answer Interrogatory No. 29 below by referring Respondents to documents and information that Complaint Counsel have provided to Respondents in our Initial Disclosures and in our response to Respondents' requests for production of documents. Complaint Counsel also refer Respondents to documents and information that they submitted to the Commission during the pre-complaint investigation of this matter. These documents and information demonstrate that HPH was seeking to offer open heart surgery through several channels.

These documents and information include, but are not limited to, the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Interrogatory No. 30

Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 12 of the Complaint that: "In August 1999, ENH estimated the fair market value of Highland Park at \$233,528,000."

Response to Interrogatory No. 30

Complaint Counsel has reviewed the materials produced during the Initial Investigation and, based on that review, has determined that the allegation regarding fair market value of Highland Park Hospital in paragraph 12 of the Complaint may be incorrect. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Interrogatory No. 31

Identify any expert witnesses who you have retained in anticipation of testifying as a rebuttal expert in this case, if permitted to do so by the Court, and summarize such expert's expected areas of testimony.

Response to Interrogatory No. 31

Complaint Counsel object to this interrogatory in that the disclosure of information regarding rebuttal experts is set by the Court's Scheduling Order dated March 24, 2004, as amended.

Interrogatory No. 32

Identify all written communications between the Federal Trade Commission (including Complaint Counsel) and any expert listed on Complaint Counsel's Expert Witness List and identify any documents provided to the Federal Trade Commission (including Complaint Counsel) by such

experts, in connection with any matter involving health care; including, but not limited to, hospitals, physicians, managed care contracting, quality, and clinical integration.

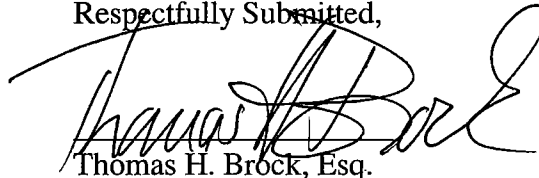
Response to Interrogatory No. 32

Complaint Counsel object to Interrogatory No. 32 on the grounds that it is premature to the extent it asks, prior to the completion of discovery, for information other than the basis for the allegation at the time the Commission issues its complaint. Complaint Counsel further object to this interrogatory on the grounds that it is premature to the extent it asks for information from anticipated testimony, or information that is subject to expert testimony. Complaint Counsel further object to this interrogatory on the grounds of the work product and investigational privilege. Complaint Counsel further object to this interrogatory on the grounds that it calls for information the disclosure of which would reveal the identify of confidential informants. Complaint Counsel further object to this interrogatory on the grounds that it calls for information the disclosure of which would invade the deliberative process of the Commission. Complaint Counsel further object to this interrogatory in that the disclosure of information regarding rebuttal experts is set by the Court's Scheduling Order dated March 24, 2004, as amended.

Date:

9/3/04

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing documents were served on counsel for the respondent by electronic mail and first class mail delivery:

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Chicago, IL 60601-9703

Charles B. Klein
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Washington, DC 20005

and the delivery of two copies to:

The Honorable Stephen J. McGuire
Federal Trade Commission
600 Pennsylvania Avenue
Room 113
Washington, DC 20580

9/3/04

Date



Thomas H. Brock
Complaint Counsel