

[PUBLIC]

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)

EVANSTON NORTHWESTERN HEALTHCARE)
CORPORATION,)

) Docket No. 9315

and)

) Honorable Stephen J. McGuire

ENH MEDICAL GROUP, INC.,)
Respondents:)
_____)

**NON-PARTY UNICARE'S RENEWED MOTION FOR *IN CAMERA* TREATMENT
OF CERTAIN DESIGNATED HEARING EXHIBITS**

Non-Party UniCare Health Plans of the Midwest, UniCare Health Insurance Company of the Midwest, and UniCare Life & Health Insurance Company ("UniCare") hereby files its Renewed Motion for *In Camera* Treatment of Certain Hearing Exhibits that Evanston Northwestern Healthcare Corporation and EHN Medical Group, Inc. ("Respondents") and the Federal Trade Commission ("FTC") have designated for possible introduction in the administrative trial in this matter. Each of these documents was treated by UniCare as "Confidential Discovery Material" or "Restricted Confidential Discovery Material" in accordance with the terms of the Protective Order Governing Discovery Material entered by Stephen J. McGuire, Chief Administrative Law Judge, on March 24, 2004. UniCare respectfully requests that the Administrative Law Judge enter an Order pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), granting *in camera* treatment, as discussed below, for periods of time ranging from no less than five (5) years to no less than ten (10) years (with indefinite protection afforded to two internal memoranda), to the documents

listed in Exhibit 1 attached to this Motion and the proposed Order. The documents are secret and material to UniCare's on-going and future business, public disclosure of which would harm UniCare. In support of this Motion, UniCare respectfully refers the Court to the accompanying Declaration of Lenore Holt-Darcy and states as follows:

I. Introduction

A description of each document identified by Complaint Counsel and counsel for Respondents as potential trial exhibits for which UniCare seeks *in camera* treatment is attached hereto as Exhibit 1. (The documents themselves are submitted in a separate version of Exhibit 1 for *in camera* review). Each of the subject documents was treated as "Confidential Discovery Material" or "Restricted Confidential Discovery Material" under the March 24, 2004 Protective Order Governing Discovery Material ("Protective Order") entered by Stephen J. McGuire, Chief Administrative Law Judge.¹ The information contained in these documents is secret, commercially sensitive, and material to UniCare's current and prospective business. Accordingly, UniCare respectfully requests that the Administrative Law Judge enter an Order pursuant to Section 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), granting *in camera* treatment to the designated contracts and correspondence for a period of time ranging from no less than five (5) years to no less than ten (10) years, and protecting two internal memoranda for an indefinite period of time. (The time period of protection requested for each specific document is discussed in detail herein).

¹ Each of the documents at issue were originally produced to the FTC in response to its investigative subpoena as "Confidential Discovery Material" under the Protective Order and/or were subsequently produced to the Respondents during the discovery proceedings of the above-captioned matter and marked as either "Confidential" or "Restricted Confidential-Attorney Eyes Only" in accordance with the terms of the Protective Order.

II. Standard for *In Camera* Treatment

Materials merit *in camera* treatment when their public disclosure of the documents “will result in a clearly defined, serious injury to the person or corporation whose records are involved.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). Such serious injury can be established by showing that the information at issue is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In the Matter of Bristol Meyers Co.*, 90 F.T.C. 455, 456 (1977). The following factors should be weighed in considering both secrecy and materiality: (1) the extent to which the information is known outside the applicant’s business; (2) the extent to which the information is known by employees and others involved in the applicant’s business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *In the Matter of Bristol Meyers Co.*, 90 F.T.C. at 456.

A showing of injury may consist of extrinsic evidence or, in certain instances, may be inferred from the nature of the documents themselves. *In the Matter of E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116 (1981). Administrative law judges have broad discretion in applying these factors to determine whether information warrants *in camera* treatment. See *In re General Foods Corp.*, 95 F.T.C. 352 (1980). Moreover, the Commission has stated that a request for *in camera* treatment by a non-party company to the FTC proceeding (such as UniCare) should be given “special solicitude.” *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967). (“[P]etitioner’s plea

warrants special solicitude coming as it does from a third-party bystander in no way involved in the proceedings whose records, if *in camera* treatment is denied, will be open to the scrutiny of its competitors”); accord *Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (requests for *in camera* treatment by third parties should be given special solicitude because, as a policy matter, such treatment encourages the third party to cooperate with future adjudicative discovery requests).

III. The UniCare Documents Meet the Standard for *In Camera* Treatment

The documents for which UniCare seeks *in camera* treatment relate almost exclusively to one of the most critical and commercially sensitive aspects of UniCare’s business: the prices and terms on which UniCare contracts for healthcare services for its members. Specifically, the documents at issue consist of 1) contracts with various healthcare providers in the Chicago metropolitan area, including Evanston Northwestern Healthcare, as well as in other Illinois markets; 2) correspondence regarding the terms of such contracts, and 3) internal documents and assessments concerning the contracts. The information contained in the documents is the very foundation of UniCare’s business and is precisely the type of material that the Protective Order recognized as highly confidential and deserving of protection from disclosure. The contracts themselves, of course, are the product of negotiations over extended periods of time and reflect the contracting strategies, financial modeling, and actuarial analysis invested by UniCare into its contractual relationships with its providers.² Indeed, under the Illinois Insurance Code, an insurer or HMO’s fee arrangements or capitation schedule are considered confidential, proprietary and trade secret information pursuant to the Illinois Trade Secrets Act. *See* 215 ILCS 5/368b(b) and 765 ILCS 1065/1 *et seq.*

² These contracts include contracts between healthcare providers in Illinois and UniCare’s predecessor companies. UniCare assumed the relevant business of these entities, including Rush Prudential HMO, Rush Prudential Insurance Company, Anchor, and others identified in the contracts listed in Exhibit 1.

Similarly, the correspondence and internal documentation reflect proposed contract terms as well as the terms upon which agreement was ultimately reached. These records reveal not only the contract terms themselves, but also the negotiating and pricing strategies employed by UniCare. In the same manner as the contracts themselves, these documents contain confidential and proprietary information, the public disclosure of which would result in material harm to UniCare.

Each of the subject documents has been maintained internally by UniCare in a confidential manner, only being shared with those individuals requiring knowledge of the information contained within the document. The information was not made available to UniCare's competitors or other outside persons. As such, when legally compelled to produce the information under subpoena, the documents were treated as "Confidential Discovery Material" or "Restricted Confidential Discovery Material" in accordance with the terms of the Protective Order.

As described in more detail in the Declaration of Lenore Holt-Darcy (attached hereto as Exhibit 2), which Declaration is incorporated herein, these documents merit *in camera* treatment because they are commercially sensitive and highly confidential business information relating to the terms of UniCare's contracts with providers, fee schedules, and rates paid by UniCare to various provider groups for healthcare services. UniCare's fee schedules and rate information are vital to UniCare's competitive position and business strategy. UniCare has expended thousands of hours of research and development implementing methods by which it analyzes and values provider groups and determines the rates it pays for physician services. Furthermore, to the extent the documents contain fee and rate schedules, they clearly constitute "trade secrets" under Section 368b of the Illinois Trade Secrets Act as a matter of law. 215 ILCS 5/368b(b)

("The fee schedule, the capitation schedule, and the network provider administration manual constitute confidential, proprietary, and trade secret information and are subject to the provisions of the Illinois Trade Secrets Act").

In addition, if disclosed to the public and to competitors of UniCare, this highly sensitive, confidential, and proprietary information would cause serious competitive injury to UniCare. Specifically, the disclosure of the subject documents would reveal how UniCare evaluates and compensates its various provider groups and how UniCare determines the rates it pays for healthcare services and the terms on which it contracts for such services -- a process that UniCare has invested many man-hours over many years to develop. UniCare's efforts in this regard have allowed it to gain a competitive advantage in the marketplace and better service its members. The public disclosure of any of this critically sensitive information would be highly detrimental to UniCare as it would provide both the healthcare providers with whom UniCare does or may contract and UniCare's competitors with sensitive pricing and contracting terms, causing serious and irreparable harm to UniCare and resulting in significant loss of business advantage. Were competitors to know with certainty the pricing and contract terms of UniCare's contracts with providers, UniCare's competition would gain an unfair advantage at UniCare's expense. At the same time, UniCare would not have parallel information about its competitors. Moreover, healthcare providers armed with UniCare's pricing and contracting information could use it to their advantage in future negotiations with UniCare. The dangers of this type of competitive injury resulting from public disclosure of similar contracts in the managed healthcare context was previously recognized by the court in *In the Matter of Hoechst Marion Roussel, Inc.*, 2000 WL 33534760 (FTC)(October 4, 2000) (granting *in camera* treatment to managed healthcare provider contracts).

A number of the contracts for which UniCare seeks *in camera* treatment are current contracts. (See Tab Nos. 2, 3 and 14 to the Exhibits to this motion). For all of the reasons discussed above, disclosure of these current contracts would cause serious competitive injury to UniCare. In addition, UniCare seeks *in camera* protection for a select number of recent contracts, all of which were entered into between March of 1998 and September of 2000. (See Tab Nos. 6, 7, 8, 10, 13 and 15). The recent rate information and fee schedules contained in these contracts, even if not current, would, if disclosed, provide a significant advantage to UniCare's competitors. Such competitors could extrapolate current rates from the recent information, again giving them a distinct advantage not available to UniCare. Disclosure of such recent information could also hurt UniCare's relationship with the providers with whom it contracts. Finally, in many cases a recent contract is made current by simple amendment to rates or discreet terms. The disclosure of a recent version of a contract, therefore, will allow UniCare's competitor to have access to current contract terms which UniCare maintains as confidential.

IV. *In Camera* Treatment of the Contracts and Correspondence Should Extend for a Period of Five (5) or Ten (10) Years While *In Camera* Treatment of Internal Memoranda Should be Indefinite

As a non-party seeking *in camera* treatment for its confidential business information, UniCare's request should be treated with "special solicitude." *In the Matter of Kaiser Aluminum & Chemical Corporation*, 103 F.T.C. 500, 5000 (1984) (order directing *in camera* treatment for sales statistics over five years old). Reasonable periods of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* At great expense, UniCare has cooperated with the discovery demands of both parties to this case, producing thousands of pages of documents and a witness for deposition. The subject

documents have been made available for use by Complaint counsel and Respondents in accordance with the terms of the Protective Order. Disclosing documents containing UniCare's highly confidential business information now will not materially promote the resolution of this matter, nor will these documents lend measurable public understanding of these proceedings. The balance of interests clearly favors *in camera* treatment for the subject documents. See *In re Bristol-Myers*, 90 F.T.C. at 456.

For those contracts that are current (Tab Nos. 2, 3, and 14) (CX05080/UN000013-23; CX0591/UN000034-36; RX1030/WLP003128-3147), UniCare requests that *in camera* treatment be maintained for a period of no less than ten (10) years. For those contracts that are recent (Tab Nos. 6, 7, 8, 10, 13 and 15) (RX0568/FTC-NB-110000124-140; RX0810/FTC-NB-110000110-123; RX0811/FTC-NB-110000243-249; RX0690/WLP003029-3031; RX0937/WLP000705-743; RX0321/WLP002890-2914), UniCare requests that *in camera* treatment be maintained for a period of no less than five (5) years.

UniCare's request that *in camera* treatment for these contracts be maintained for these periods is reasonable in light of the commercial realities of the managed care industry. Provider contracts typically continue in force for a number of years and are often renegotiated and renewed with substantial incorporation of the terms of preceding contracts. The subject documents themselves establish the frequency of amendments of such contracts and the duration of such contracts. Under these circumstances, it is uncertain as to when the documents will no longer reflect current pricing and contract terms. Moreover, the market is such that even disclosure of terms of contracts no longer in force creates an unreasonable and unnecessary risk of competitive harm to UniCare such that *in camera* treatment for a significant period of time.

For the same reasons, UniCare also seeks *in camera* treatment for a period of time of no less than five (5) years for that correspondence that discusses rate proposals or fee schedule changes. (See Tab Nos. 9, 11 and 12) (RX0682/WLP001518-1519; RX0722/WLP001716-1719; RX0802/WLP001299-1300). Such a period of protection is reasonable to insure that the confidential nature of those communications is maintained during the time that their disclosure could most harm UniCare.

Finally, UniCare seeks indefinite protection for two internal memoranda that discuss UniCare's negotiating strategies and contain confidential communications regarding contract negotiations. (See Tab Nos. 1, 4 and 5) (CX00129/WLP000929; CX02203/WLP000823; CS05909/WLP000823 (duplicate)). These documents were drafted for internal use only. Absent the subpoenas issued in this matter, they would never have been provided to any outside party. They contain discussions about contract negotiations and reveal negotiating tactics that will not "go stale" or "expire." They were clearly prepared with the expectation that they would never be disclosed to third parties. UniCare's interest in maintaining their confidentiality is of crucial importance to its competitive position in the marketplace. In contrast, disclosure of these memoranda will neither promote the resolution of this matter nor will it provide significant understanding to the public. For these reasons, UniCare's internal memoranda should be afforded indefinite *in camera* treatment.

V. Conclusion

UniCare, in endeavoring to remain competitive and provide superior managed healthcare services for its members, has created certain highly sensitive documents relating to the terms and prices at which it contracts with providers. Disclosure of these documents would result in a clearly defined serious injury to UniCare. Accordingly, for the reasons set forth above and in the

Declaration of Lenore Holt-Darcy, UniCare respectfully requests that this Court grant its motion directing *in camera* treatment for the subject documents.

Respectfully submitted,

**UNICARE HEALTH PLANS OF THE
MIDWEST, UNICARE HEALTH INSURANCE
COMPANY OF THE MIDWEST, and
UNICARE LIFE & HEALTH INSURANCE
COMPANY**

By: Elizabeth G. Doolin
One of Their Attorneys

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
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EVANSTON NORTHWESTERN HEALTHCARE)
CORPORATION,) Docket No. 9315
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and) Honorable Stephen J. McGuire
)
ENH MEDICAL GROUP, INC.,)
Respondents.)
_____)

**ORDER GRANTING NON-PARTY UNICARE'S RENEWED MOTION
FOR *IN CAMERA* TREATMENT OF CERTAIN DESIGNATED DOCUMENTS**

Upon consideration of Non-Party UniCare's Renewed Motion for *In Camera* Treatment of Certain Designated Documents and the Declaration in support thereof, it is hereby ORDERED that UniCare's motion is GRANTED. It is further ordered that the documents identified in Exhibit 1 of UniCare's Renewed Motion for *In Camera* Treatment of Certain Designated Documents are afforded *in camera* treatment as requested in the motion, as follows:

1) For a period of five (5) years for:

RX0568
RX0810
RX0811
RX0690
RX0937
RX0321
RX0682
RX0722
RX0802

2) For a period of ten (10) years for:

CX05080 (UN000013-23)
CX0591
RX1030

3) For an indefinite period for:

CX00129

CX02203

CX05909

Dated:

The Honorable Stephen J. McGuire
Administrative Law Judge

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Exhibit 1

Exhibits Identified by Complaint Counsel

<u>Tab No.</u>	<u>Trial Exhibit No.</u>	<u>Bates No.</u>	<u>Description</u>
1	CX00129	WLP000929	Memorandum of June 15, 2000 to Lenore Holt-Darcy from Carol Peters re: Negotiations with ENH
2	CX05080	UN000013-23	Participating Hospital Agreement between UniCare Life & Health Insurance Co., UniCare Health Plans of the Midwest, Inc. and UniCare Health Insurance Co. of the Midwest and Evanston Northwestern Healthcare dated 9/16/00
3	CX0591	UN000034-36	Exhibits to Contracts between UniCare and ENH reflecting charges for cardiac services
4	CX02203	WLP000823	UniCare Internal Contracting Plan for Evanston Northwestern Healthcare and ENH Medical Group. NOTE: Identical to CX05909
5	CX05909	WLP000823	UniCare Internal Contracting Plan for Evanston Northwestern Healthcare and ENH Medical Group. NOTE: Identical to CX02203

Documents Identified by Respondents

<u>Tab No.</u>	<u>Trial Exhibit No.</u>	<u>Bates No.</u>	<u>Description</u>
6	RX0568	FTC-NB- 110000124-140	Participating Hospital Agreement between UniCare and St. John's Hospital dated 6/7/99
7	RX0810	FTC-NB- 110000110-123	Participating Hospital Agreement between UniCare and OSF Healthcare System dated 3/1/00
8	RX0811	FTC-NB- 110000243-249	Interim Agreement between UniCare and Touchette Regional Network dated 3/1/00
9	RX0682	WLP001518- 1519	Letter from Richard Wright of Provena Health to Shari A. Johnson of UniCare re: proposal of rates for in-patient and out-patient services dated 11/24/99
10	RX0690	WLP003029- 3031	Interim Agreement between UniCare and Doctors Hospital dated 12/01/99
11	RX0722	WLP001716- 1719	Letter from Richard Wright to Christine Stoll of UniCare re: proposed contract rates for Provena Hospitals dated 12/29/99

12	RX0802	WLP001299-1300	Letter from Richard Wright to Christine Stoll of UniCare re: Provena's termination of all agreements with Rush Prudential effective 5/31/2000 dated 2/22/00, with attachment
13	RX0937	WLP000705-743	Participating Hospital Agreement between UniCare and Condell Medical Center dated 9/01/00
14	RX1030	WLP003128-3147	Participating Hospital Agreement between UniCare and Northwestern Memorial Hospital dated 2/1/2001
15	RX0321	WLP002890-2914	Hospital Participation Agreement between Rush Prudential HMO, Inc., Rush Prudential Insurance Company and Loyola University Medical Center/Foster G. McGaw Hospital dated 3/1/98

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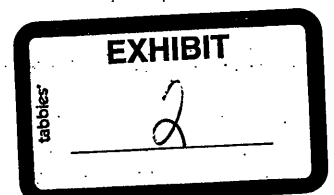
In the Matter of)
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EVANSTON NORTHWESTERN HEALTHCARE)
CORPORATION,) Docket No. 9315
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DECLARATION OF LENORE HOLT-DARCY
IN SUPPORT OF NON-PARTY UNICARE'S RENEWED
MOTION FOR *IN CAMERA* TREATMENT OF CERTAIN
DESIGNATED HEARING EXHIBITS

I, LENORE HOLT-DARCY, declare and state as follows:

1. I am Regional Vice-President of Network Services for UniCare. In this capacity, I am responsible for provider contracting on behalf of UniCare entities in Illinois.

2. I submit this declaration in support of non-party UniCare's motion requesting *in camera* treatment of certain designated hearing exhibits which were identified by Complaint counsel and counsel for Respondents Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. (hereinafter collectively referred to as "ENH" or Respondents) as potential trial exhibits. UniCare produced this material during the initial investigatory and later discovery phases of the above-captioned matter. The material includes contracts and other documentation from entities which UniCare and its predecessors acquired or assumed in the past several years. Each of the documents identified in Attachment A to this declaration contains sensitive and confidential material and/or information that would result in competitive injury to UniCare



should it be made public. Each document identified by UniCare as requiring *in camera* treatment has been maintained internally by UniCare in a confidential manner, only being shared with those individuals requiring the knowledge contained within the document. Additionally, each such document has, upon production in this case, been designated “*Confidential*” or “*Restricted Confidential, Attorney’s Eyes Only*”, pursuant to the protective order governing discovery material entered on March 24, 2004.

3. I have reviewed all of the documents for which UniCare seeks *in camera* treatment. By virtue of my current position at UniCare, I am familiar with the type of information contained in the documents at issue. Based on my review of the documents, my knowledge of UniCare’s business, and my familiarity with the confidentiality protection afforded this type of information by UniCare, it is my belief that disclosure of these documents to the public, to competitors of UniCare, and to other providers with which UniCare does business would cause serious competitive injury to UniCare.

4. Each of the documents identified in UniCare’s motion requesting *in camera* treatment of certain designated hearing exhibits and listed in Attachment A contains highly sensitive information related to the prices and terms at which UniCare contracts for healthcare services, or the manner in which UniCare negotiates those prices and terms. The disclosure of any of this critically sensitive information would be highly detrimental to UniCare as it would provide both the healthcare providers with whom UniCare does or may contract and UniCare’s competitors with sensitive pricing and contracting terms, causing serious and irreparable harm to UniCare resulting in significant loss of business advantage.

5. Documents containing information relevant to the prices and terms at which UniCare contracts for healthcare services are important to UniCare’s business, competitiveness,

and profitability. Were a competitor to know with certainty (as opposed to unverified belief) the pricing and contracting terms of UniCare, such a competitor would have gained an advantage at the expense of UniCare. Moreover, healthcare providers armed with UniCare's pricing and contracting information could use it to their advantage in future negotiations with UniCare.

6. A number of the documents for which UniCare seeks *in camera* treatment are current contracts between UniCare and various providers. (See Tab Nos. 2, 3 and 14 to the Exhibits to UniCare's Motion) As discussed below, the disclosure of UniCare's current rates, fee schedules, and contract terms would be highly detrimental to UniCare. Similarly, although some additional contracts for which UniCare seeks *in camera* treatment are not current, their disclosure would also be highly detrimental to UniCare. These contracts (Tab Nos. 6, 7, 8, 10, 13 and 15) were all entered into between March of 1998 and September of 2000. The recent rate information and fee schedules contained in those contracts could be used by UniCare's competitors to extrapolate UniCare's current rate structures, thus giving UniCare's competitors a distinct advantage that UniCare would not possess. Disclosure of these contracts would also hurt UniCare's relationships with providers by making public information which UniCare agreed to keep confidential. Finally, in many cases the contract language of prior contracts carries over to current contracts, such that disclosure of prior contracts would allow UniCare's competitors access to contract terms which UniCare maintains as confidential.

7. Specifically, Complaint counsel has identified a number of documents for which UniCare seeks *in camera* protection:

- a. Exhibit No. CX00129 (Tab No. 1) is an internal UniCare memorandum written to me by Carol Peters, one of the managers whom I supervise in negotiations with providers. The memo discusses in detail and comments upon contract

negotiations between UniCare and representatives of ENH, and includes details of the negotiations of the financial agreements between ENH and UniCare, as well as UniCare's negotiation strategies. Disclosure of this memo would reveal how UniCare analyzes and negotiates contracts and determines the rates it pays for hospital and physician services. Disclosure of this information could cause serious competitive injury to UniCare by providing its competitors and providers with confidential information concerning how UniCare conducts its contract negotiations.

- b. A portion of Exhibit No. CX05080 and all of Exhibit No. CX05091 (Tab Nos. 2 and 3) consist of UniCare's **current** contract with ENH. This contract contains confidential terms, including fee structures and rate information, as well as detailed contract terms which reveal the manner in which UniCare administers its relationship with providers, all of which UniCare, as discussed above, considers to be highly confidential, proprietary, and secret. As discussed above, disclosure of these documents would result in irreparable competitive injury to UniCare.
- c. Exhibit Nos. CX02203 and CX05909 (Tab Nos. 4 and 5) are identical copies of is a contracting plan prepared by UniCare in connection with its contract negotiations with ENH. This document was prepared for internal use only. The information contained in the contracting plan is highly confidential and proprietary to UniCare, as it outlines a specific negotiation strategy for contracting with a provider. Disclosure of UniCare's contracting plan to UniCare's competitors, or other providers, would result in a serious competitive

disadvantage to UniCare, as it would allow those entities access to UniCare's internal strategy for contract negotiation.

8. UniCare also seeks *in camera* protection for the following documents identified by Respondents:

- a. Exhibit No. RX0568 (Tab No. 6) is a recent contract (June 7, 1999) between UniCare and St. John's Hospital in Springfield, Illinois. This contract contains confidential terms, fee schedules, and rate information which, for the reasons discussed above, UniCare considers confidential, proprietary, and secret. Public disclosure of these terms and fee schedules would result in competitive injury to UniCare. While this contract is not current, its disclosure would still harm UniCare by disclosing recent rates from which competitors could extrapolate current rate structures. In addition, because this hospital is in a smaller market (Springfield, Illinois vs. Chicago, Illinois) its disclosure could have an even bigger negative impact for UniCare.
- b. Exhibit No. RX0810 (Tab No. 7) is a recent contract (March 1, 2000) between UniCare and OSF Healthcare System in Peoria, Illinois. This contract contains confidential terms, fee schedules, and rate information which, for the reasons discussed above, UniCare considers confidential, proprietary, and secret. Public disclosure of these terms and fee schedules would result in competitive injury to UniCare. While this contract is not current, its disclosure would still harm UniCare by disclosing recent rates from which competitors could extrapolate current rate structures. In addition, because this hospital is in a smaller market

(Peoria, Illinois vs. Chicago, Illinois) its disclosure could have an even bigger negative impact for UniCare.

- c. Exhibit No. RX0811 (Tab No. 8) is a recent Interim Agreement (March 1, 2000) between UniCare and Touchette Regional Network. This contract contains confidential terms, fee schedules, and rate information which, for the reasons discussed above, UniCare considers confidential, proprietary, and secret. Public disclosure of these terms and fee schedules would result in competitive injury to UniCare. While this contract is not current, its disclosure would still harm UniCare by disclosing recent rates from which competitors could extrapolate current rate structures.
- d. Exhibits Nos. RX0682, RX0722 and RX0802 (Tab Nos. 9, 11, and 12) all constitute confidential correspondence between UniCare and various providers regarding the terms and conditions of the contracts between UniCare and these providers. The letters shown at Tab Nos. 9 and 11 include specific rate proposals, or discuss changes in fee structure which UniCare considers to be highly confidential. The letter shown at Tab No. 12 discuss specifics of the parties' contract negotiations, and includes as an attachment an additional letter that discuss specific rate increases and contract changes proposed. In all cases, the letters disclose confidential communications between UniCare and these providers concerning the terms and conditions of their contracts with UniCare. Disclosure of this information, which UniCare considers and treats as confidential, would result in competitive injury to UniCare should it fall into the hands of its competitors or other providers.

- e. Exhibit No. RX0690 (Tab No. 10) is a recent Interim Agreement (December 1, 1999) between UniCare and Doctor's Hospital. This contract contains confidential terms, fee schedules, and rate information which, for the reasons discussed above, UniCare considers confidential, proprietary, and secret. Public disclosure of these terms and fee schedules would result in competitive injury to UniCare. While this contract is not current, its disclosure would still harm UniCare by disclosing recent rates from which competitors could extrapolate current rate structures.
- f. Exhibit No. RX0937 (Tab No. 13) is a recent contract (September 1, 2000) between UniCare and Condell Medical Center in Libertyville, Illinois. This contract contains confidential terms, fee schedules, and rate information which, for the reasons discussed above, UniCare considers confidential, proprietary, and secret. Public disclosure of these terms and fee schedules would result in competitive injury to UniCare. While this contract has been amended in part, the majority of the contract terms shown at Tab No. 13 remain in effect. In addition, its disclosure would still harm UniCare by disclosing recent rates from which competitors could extrapolate current rate structures. In addition, because this hospital is in a smaller market (Libertyville, Illinois vs. Chicago, Illinois) its disclosure could have an even bigger negative impact for UniCare.
- g. Exhibit No. RX1031 (Tab No. 14) is a **current** contract (February 1, 2001) between UniCare and Northwestern Memorial Hospital in Chicago, Illinois. This contract contains confidential terms, fee schedules, and rate information which, for the reasons discussed above, UniCare considers confidential, proprietary, and

secret. Public disclosure of these terms and fee schedules would result in competitive injury to UniCare.

h. Exhibit No. RX0321 (Tab No. 15) is a recent contract (March 1, 1998) between UniCare's predecessor and Loyola University Medical Center. This contract contains confidential terms, fee schedules, and rate information which, for the reasons discussed above, UniCare considers confidential, proprietary, and secret. Public disclosure of these terms and fee schedules would result in competitive injury to UniCare. While this contract is not current, its disclosure would still harm UniCare by disclosing recent rates from which competitors could extrapolate current rate structures.

9. Furthermore, the information contained in the exhibits discussed above is essential to UniCare's business and strategic planning, and its competitors' use of such information would directly harm UniCare. If this information were to be made public, UniCare's competitors could pinpoint the rates paid by UniCare to various provider groups and could use this information to specifically target and build relationships with such provider groups for their own competitive gain, resulting in serious competitive harm to UniCare. Access to this information (whether current or recent) would also enable a competitor and other providers to understand how UniCare evaluates the relative importance of various provider groups to its provider network and therefore could be used by competitors and providers to UniCare's severe competitive disadvantage. Knowledge about how UniCare evaluates and compensates its various provider groups who are key to UniCare's networks would arm competitors and providers with information that strikes at the core of UniCare's business. This would have an immediate and detrimental effect on UniCare's ability to compete, while UniCare would enjoy

no similar advantage over its competitors, whose fee schedules and rates paid to its provider groups would remain unknown to UniCare.

10. The documents for which UniCare seeks *in camera* treatment are sensitive and material to UniCare's business, competitiveness and profitability. Disclosure of the information contained in these documents will result in loss of business advantage and serious irreparable injury to UniCare.

I declare, under penalty of perjury, that the above statements are true and correct.

EXECUTED this 1st day of February, 2005, in Chicago, Illinois.

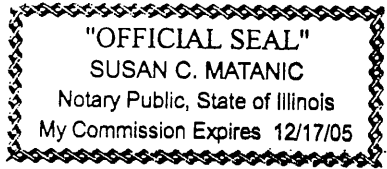


LENORE HOLT-DARCY

SUBSCRIBED AND SWORN to
before me this 1 day of
FEB, 2005.



Notary Public



Attachment A

Exhibits Identified by Complaint Counsel

<i>Tab No.</i>	<i>Trial Exhibit No.</i>	<i>Bates No.</i>	<i>Description</i>
1	CX00129	WLP000929	Memorandum of June 15, 2000 to Lenore Holt-Darcy from Carol Peters re: Negotiations with ENH
2	CX05080	UN000013-23	Participating Hospital Agreement between UniCare Life & Health Insurance Co., UniCare Health Plans of the Midwest, Inc. and UniCare Health Insurance Co. of the Midwest and Evanston Northwestern Healthcare dated 9/16/00
3	CX0591	UN000034-36	Exhibits to Contracts between UniCare and ENH reflecting charges for cardiac services
4	CX02203	WLP000823	UniCare Internal Contracting Plan for Evanston Northwestern Healthcare and ENH Medical Group. NOTE: Identical to CX05909
5	CX05909	WLP000823	UniCare Internal Contracting Plan for Evanston Northwestern Healthcare and ENH Medical Group. NOTE: Identical to CX02203

Documents Identified by Respondents

<i>Tab No.</i>	<i>Trial Exhibit No.</i>	<i>Bates No.</i>	<i>Description</i>
6	RX0568	FTC-NB-110000124-140	Participating Hospital Agreement between UniCare and St. John's Hospital dated 6/7/99
7	RX0810	FTC-NB-110000110-123	Participating Hospital Agreement between UniCare and OSF Healthcare System dated 3/1/00
8	RX0811	FTC-NB-110000243-249	Interim Agreement between UniCare and Touchette Regional Network dated 3/1/00
9	RX0682	WLP001518-1519	Letter from Richard Wright of Provena Health to Shari A. Johnson of UniCare re: proposal of rates for in-patient and out-patient services dated 11/24/99
10	RX0690	WLP003029-3031	Interim Agreement between UniCare and Doctors Hospital dated 12/01/99
11	RX0722	WLP001716-1719	Letter from Richard Wright to Christine Stoll of UniCare re: proposed contract rates for Provena Hospitals dated 12/29/99

12	RX0802	WLP001299- 1300	Letter from Richard Wright to Christine Stoll of UniCare re: Provena's termination of all agreements with Rush Prudential effective 5/31/2000 dated 2/22/00, with attachment
13	RX0937	WLP000705- 743	Participating Hospital Agreement between UniCare and Condell Medical Center dated 9/01/00
14	RX1030	WLP003128- 3147	Participating Hospital Agreement between UniCare and Northwestern Memorial Hospital dated 2/1/2001
15	RX0321	WLP002890- 2914	Hospital Participation Agreement between Rush Prudential HMO, Inc., Rush Prudential Insurance Company and Loyola University Medical Center/Foster G. McGaw Hospital dated 3/1/98

[PUBLIC]

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
EVANSTON NORTHWESTERN HEALTHCARE)
CORPORATION,) Docket No. 9315
)
and) Honorable Stephen J. McGuire
)
ENH MEDICAL GROUP, INC.,)
Respondents.)

**ORDER GRANTING NON-PARTY UNICARE'S RENEWED MOTION
FOR *IN CAMERA* TREATMENT OF CERTAIN DESIGNATED DOCUMENTS**

Upon consideration of Non-Party UniCare's Renewed Motion for *In Camera* Treatment of Certain Designated Documents and the Declaration in support thereof, it is hereby ORDERED that UniCare's motion is GRANTED. It is further ordered that the documents identified in Exhibit 1 of UniCare's Renewed Motion for *In Camera* Treatment of Certain Designated Documents are afforded *in camera* treatment as requested in the motion, as follows:

1) For a period of five (5) years for:

RX0568
RX0810
RX0811
RX0690
RX0937
RX0321
RX0682
RX0722
RX0802

2) For a period of ten (10) years for:

CX05080 (UN000013-23)
CX0591
RX1030

3) For an indefinite period for:

CX00129

CX02203

CX05909

Dated:

The Honorable Stephen J. McGuire
Administrative Law Judge

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CERTIFICATE OF SERVICE

I, Elizabeth G. Doolin, hereby certify that on February 1, 2005, I caused copies of:

1. Non-Party UniCare's Renewed Motion for *In Camera* Treatment of Certain Designated Hearing Exhibits; and
3. Proposed Order Granting Non-Party UniCare's Renewed Motion for *In Camera* Treatment

to be served upon the following persons:

Office of the Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580
(Original and 12 copies served via FedEx overnight delivery, and electronic copies served via e-mail)

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Room H-106
600 Pennsylvania Avenue, NW
Washington, DC 20580
(Two courtesy copies served via FedEx overnight delivery)

Thomas H. Brock, Esquire
Federal Trade Commission
Room H-374
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