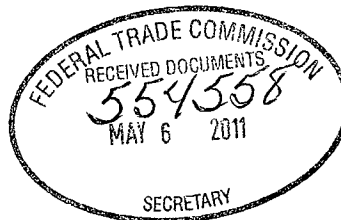




Jessica T. Sorrels  
Direct 502.587.3720 Fax 502.540.2149 E-mail jts2@gdm.com

ORIGINAL



May 5, 2011

Donald S. Clark  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW, H-106  
Washington, DC 20580

Re: *In the Matter of ProMedica Healthy System, Inc.*, Federal Trade Commission Docket No. 9346

Dear Secretary:

Please find enclosed the original version and two copies of **Non-Party Humana, Inc.'s Motion for In Camera Treatment of Proposed Evidence** for filing. The original is to be filed with your office. Please file-stamp the copy and return it in the enclosed self-addressed envelope.

Your assistance with this matter is greatly appreciated.

Sincerely,

Jessica T. Sorrels

Enclosures



Humana respectfully moves for *in camera* treatment of the confidential data, documents, and testimony listed above and in the Declaration of Helen Thompson in support of this Motion (“Thompson Decl.”), attached hereto as Exhibit “A.”

**HUMANA’S CONFIDENTIAL INFORMATION DESERVES *IN CAMERA*  
TREATMENT UNDER THE FEDERAL TRADE COMMISSION’S RULES OF  
PRACTICE**

The information described in this motion warrants *in camera* treatment as provided in 16 C.F.R. § 3.45(b). Under 16 C.F.R. § 3.45(b), requests for *in camera* treatment must show that public disclosure of the information “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). That showing can be made by establishing that the document in question 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 this context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *Hood*, 58 F.T.C. at 1188. Furthermore, the Commission has held that “special solicitude” should be given to a request for *in camera* treatment by non-party to an FTC proceeding. *See In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984). Under this standard, *in camera* treatment of the information in question is warranted.

**A. Humana Has Preserved the Confidentiality of the Data, Documents, and Testimony**

Humana has taken significant steps to protect the confidential nature of the data, documents, and testimony, which were produced in response to subpoenas issued by ProMedica and the FTC. This information was produced under compulsory process and pursuant to the Protective Order Governing Discovery Material issued in this matter on January 6, 2011 (the “Protective Order”). The purpose of the Protective Order was to expedite discovery while

ensuring that materials produced would receive sufficient protection from disclosure to competitors and to ProMedica business personnel and providers.

In addition to these measures, Humana has taken substantial measures to guard the secrecy of the information, limiting the dissemination of such information and taking every reasonable step to protect its confidentiality. (Thompson Decl., at 3). Indeed, such information is disclosed only to particular employees of Humana. (*Id.*). Therefore, the data, documents, and testimony deserve *in camera* treatment.

**B. Disclosure of the Information Would Result in Serious Competitive Injury to Humana**

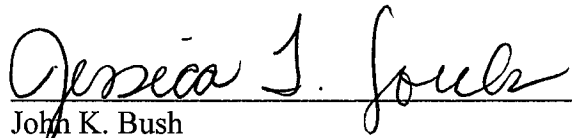
The testimony contained in Exhibit No. PX02073 contains highly confidential and commercially sensitive business information. Disclosure of this testimony would reveal how Humana internally analyzes various contract negotiations with providers. If forced to disclose, competitors would be able to gain an unfair competitive advantage against Humana in the marketplace.

The data provided to the FTC by Humana contained in Exhibit No. PX01804 is highly confidential and commercially sensitive. The large amount of data contains every inpatient admission for patients residing in Lucas County, Ohio from 2007 to present. The data includes identifying information of the hospital, healthcare facility, or physician practice at which the patient was treated, identifying information of the patient including the patient's residence zip code, age, gender, date of admission, date of discharge, the primary diagnosis, the source of the patient referral, the specific name of the entity and type of health plan that was the principal source of payment, the billed charges, the identity of the patient's admitting physician and treating physician, and the patient's status upon discharge. Again, disclosure of such information could result in a serious competitive injury to Humana.

## CONCLUSION

The information provided by Humana satisfies the standard for *in camera* protection under the Commission's Rules of Practice and relevant FTC precedent. Accordingly, this Court should extend *in camera* protection to this confidential information for an indefinite and perpetual period because the competitive sensitivity of the information will not likely diminish with the passage of time.

Respectfully submitted,



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John K. Bush

Jessica T. Sorrels

GREENEBAUM DOLL & McDONALD, PLLC

3500 National City Tower

101 South Fifth Street

Louisville, Kentucky 40202

Phone: (502) 589-4200

COUNSEL FOR HUMANA INC.

CERTIFICATE OF SERVICE

It is hereby certified that a complete and true copy of the foregoing was served on this 5<sup>th</sup> day of May, 2011, to the following:

***Via E-mail (dmarx@mwe.com)***

David Marx, Jr.  
McDermott Will & Emery LLP  
227 W. Monroe Street, Suite 4400  
Chicago, IL 60606  
(312) 984-7668  
(312) 277-6734  
dmarx@mwe.com

*Counsel for ProMedica Health System, Inc.*

***Via Federal Express and E-mail  
(oalj@ftc.gov)***

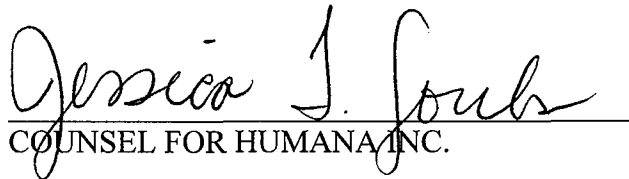
The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
Room H-104  
600 Pennsylvania Avenue, NW, H-106  
Washington, D.C. 20580  
oalj@ftc.gov

***Via Federal Express and E-mail  
(dclark@ftc.gov)***

Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, H-106  
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***Via E-mail (jliu@ftc.gov)***

Jeanne Liu  
Attorney, Bureau of Competition  
Federal Trade Commission  
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Washington, D.C. 20001  
(202) 326-3572  
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jliu@ftc.gov

  
COUNSEL FOR HUMANA INC.



ORDERED: \_\_\_\_\_

D. Michael Chappell  
Administrative Law Judge

DATED: \_\_\_\_\_

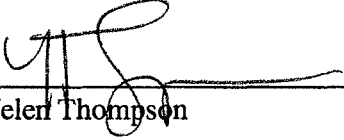


# **EXHIBIT A**



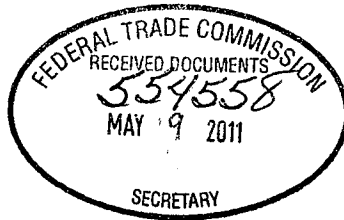
I declare under penalty of perjury, pursuant 28 U.S.C. §1746 that the foregoing is true and correct.

Date: May 5, 2011

  
Helen Thompson



**ORIGINAL**



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May 9, 2011  
BY HAND

The Hon. Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**Re: In re ProMedica Health System, Inc. – Docket No. 9346**

Dear Secretary Clark:

As requested by your staff, we submit additional copies of the following highly confidential materials on behalf of Ambac Assurance Corporation in the above-referenced matter:

1. A hard copy of the non-public version of the Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Proposed Evidence, with accompanying Declaration of Stephen P. Rochford in Support of Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Proposed Evidence, Exhibits 1 through 27, and Proposed Order;
2. A CD-ROM containing a PDF version of the non-public version of the Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Proposed Evidence, with accompanying Declaration of Stephen P. Rochford in Support of Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Proposed Evidence, Exhibits 1 through 27, and Proposed Order.

Please acknowledge receipt of these materials by date-stamping the enclosed copy of this letter as "received" and returning it with our messenger. Thank you.

Very truly yours,

**DLA Piper LLP (US)**

Paolo Morante