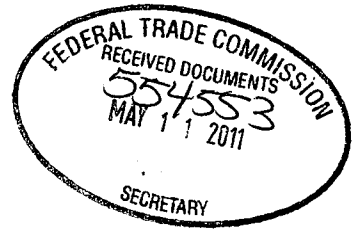


ORIGINAL



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

---

In the matter of

PROMEDICA HEALTH SYSTEM, INC.

---

\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. 9346  
PUBLIC

**NON-PARTY WELLPOINT, INC.'S UNOPPOSED  
MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS**

Non-Party WellPoint, Inc. ("WellPoint") respectfully moves this Court to grant *in camera* treatment of: (1) certain documents and excerpts of testimony that Complaint Counsel on behalf of the Federal Trade Commission ("FTC") has designated for introduction into evidence at the administrative trial, and (2) additional documents and testimony excerpts designated by Respondent's Counsel on behalf of ProMedica Health System, Inc. ("ProMedica") for introduction at the trial.<sup>1</sup> By letter dated April 27, 2011, the FTC notified WellPoint that it intends to introduce into evidence fifty-six (56) documents produced by WellPoint<sup>2</sup> as well as extensive portions of the deposition testimony<sup>3</sup> given by James Pugliese, Regional Vice President of Contracting and Provider Relations for Anthem Blue Cross and Blue Shield.<sup>4</sup> By

---

<sup>1</sup> Both the FTC and ProMedica consent to the granting of this Motion.

<sup>2</sup> WellPoint produced documents to the FTC in response to both its August 18, 2010 Civil Investigative Demand and its February 28, 2011 Subpoena Duces Tecum.

<sup>3</sup> Mr. Pugliese's February 1, 2011 deposition was taken in the related Ohio District Court action entitled Federal Trade Commission, et al v. ProMedica Health System, Inc., Civil Action No. 3:11cv000473 (DAK) and his subsequent April 6, 2011 deposition was taken in this pending administrative matter (Docket No. 9346).

<sup>4</sup> Anthem Blue Cross and Blue Shield is a trade name, under which Community Insurance Company ("CIC") does business in Ohio ("Anthem"). CIC is a subsidiary of WellPoint.

letter dated April 28, 2011, ProMedica notified WellPoint of its intention to introduce an additional seventy-four (74) documents along with many excerpts from the Pugliese depositions.

After careful review of all of the Parties' designations of documents and testimony excerpts, WellPoint narrowed the Exhibits for which it seeks *in camera* treatment to those identified in Appendices 1 through 5 to the Declaration of James Pugliese, which is attached hereto as Exhibit A in support of this Motion. Each of the evidentiary items identified in Appendices 1 through 5 has been considered and treated by the Parties throughout this litigation as either "Confidential" or "Restricted Confidential-Attorney Eyes Only" by agreement and in accordance with the protective orders issued in the Ohio District Court action and in this administrative proceeding. The information contained in these documents – as well as the related testimony at issue – is competitively sensitive and is held in strict confidence by Anthem. Public disclosure of these documents and testimony is likely to cause direct, serious harm to Anthem's competitive position and in turn, to its members. Therefore, pursuant to 16 C.F.R. § 3.45(b), Anthem respectfully moves for *in camera* treatment of the confidential documents and testimony identified in Appendices 1 through 5 of the Pugliese Declaration (Exhibit A).

**ANTHEM'S CONFIDENTIAL DOCUMENTS AND TESTIMONY  
WARRANT *IN CAMERA* TREATMENT UNDER THE  
FEDERAL TRADE COMMISSION'S RULES OF PRACTICE**

Under 16 C.F.R. § 3.45(b), requests for *in camera* treatment must show that public disclosure of the document or testimony in question "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 evidence 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. Under this standard, *in camera* treatment of the documents and testimony in Appendices 1 through 5 is warranted. See Exhibit A hereto.

**A. Anthem Has Preserved The Confidentiality Of Its Documents And Commercially Sensitive Information.**

Anthem has taken significant steps to protect the confidential nature of its documents set forth in Appendices 1 through 4, which were produced in response to the August 18, 2010 Civil Investigative Demand issued by the FTC and the February 28, 2011 Subpoenas issued by both the FTC and ProMedica; and to protect Mr. Pugliese’s deposition testimony (set forth in Appendix 5). Specifically, in addition to securing the written agreement of counsel for the FTC and ProMedica to consider and treat this evidence as confidential, these documents were produced, and the Pugliese testimony was given, only pursuant to the Orders of the Ohio District Court<sup>5</sup> and the January 6, 2011 Protective Order Governing Discovery Material issued in this matter (collectively “the Protective Orders”). The collective purpose of the Protective Orders was to expedite discovery while ensuring that materials produced would receive sufficient protection from disclosure to competitors and to the ProMedica’s business personnel and providers.

---

<sup>5</sup> See the January 10, 2011 Stipulated Interim Protective Order and the Court’s January 20, 2011 Order Granting Plaintiff’s Unopposed Motion To Modify Stipulated Interim Protective Order as well as the Court’s February 8, 2011 Order granting Non-Party WellPoint, Inc.’s Motion For *In Camera* Treatment Of Documents And Deposition Transcript, all issued by Judge Katz in Federal Trade Commission, et al v. ProMedica Health System, Inc., Case No. 3:11cv00047 (DAK).

In addition to these measures, Anthem has taken substantial measures to guard the secrecy of the information contained in Appendices 1 through 5, limiting dissemination of such information and taking every reasonable step to protect its confidentiality. Indeed, such information is never disclosed by Anthem publicly and is disclosed internally only to particular Anthem employees, who are involved in and responsible for Anthem's relationships with its network providers, including the negotiation and management of its current Agreements with the hospitals in the Toledo market. It would be extremely difficult for Anthem's competitors or other outside persons to access or recreate the information in the documents and testimony at issue. All of these efforts demonstrate that WellPoint has gone to great lengths to preserve the confidentiality of the information contained in Appendices 1 through 5. See Exhibit A hereto.

**B. Disclosure Of The Information Identified In Appendices 1 Through 5 Would Result In Serious Competitive Injury To Anthem.**

**Appendix 1.** The trial exhibits listed in Appendix 1 are Anthem's current Agreements with its network hospitals in the Toledo market, including Respondent ProMedica's area hospitals and St. Luke's Hospital, that have been designated as trial exhibits. These operative hospital Agreements, including renewal Amendments and Compensation Schedules, constitute highly confidential and commercially sensitive business information, and they should be protected from public disclosure.

Both Anthem and its contracting hospitals treat their respective hospital Agreements as being confidential and the information contained in those Agreements is never disclosed publicly. Indeed, disclosure of these documents would publicize the actual contractual arrangements governing Anthem's relationships with these competing hospitals, including revealing rates and other key contractual rights and obligations; how Anthem currently analyzes

and values these hospitals in relation to one another and in the context of the entire Toledo market; and how it has paid and will pay for acute care hospital services rendered to its members over the 3-5 year terms of these current hospital Agreements. Anthem has devoted years of time and effort to develop its current hospital relationships, including the trust of its business partners that Anthem will maintain and protect the confidential nature of their relationship; and to be in a position to negotiate the best rates for its members, Anthem's efforts in this regard have allowed it to gain a strong competitive position in the Toledo market and to deliver better rates and service to its members. If the exhibits listed in Appendix 1 were disclosed, Anthem's hospital relationships will be harmed; its ability to negotiate the best rates for its members would be compromised; and it would potentially be placed at competitive disadvantage in the marketplace.

Further, comprehensive in camera protection for the trial exhibits listed in Appendix 1 is supported by Paragraphs 1, 2, 3a-3b, and 8-10 of Exhibit A.

**Appendix 2.** The trial exhibits listed in Appendix 2 are other Anthem agreements with Toledo area hospitals, including renewal amendments and Compensation Schedules, and key Anthem internal e-mails and documents, which set forth Anthem's business plans and negotiation strategies for the Toledo market, including with regard to Respondent ProMedica's hospitals, St. Luke's Hospital and other hospitals competing with ProMedica and St. Luke's. These documents constitute highly confidential and commercially sensitive business information that should be protected from public disclosure.

Anthem's contracts with each of its network hospitals are evergreen and the renewal amendments to those agreements necessarily have built upon one another over many years. Anthem's current hospital Agreements in the Toledo market vary from one another and each one

relies heavily on the format and content of that particular hospital's own prior agreements, including key contractual provisions which may or may not be further refined over a series of agreements. The historic significance developed in information is of particular importance to Anthem in the Toledo market, where hospital agreements – including some current ones – are negotiated to be in place for 3-5 years. The Appendix 2 materials, then, demonstrate the development and continuity of the unique and confidential relationship Anthem enjoys with each of its network hospitals.

Disclosure of such information – even if Anthem's current Agreements are protected – would damage Anthem by providing its competitors and ProMedica's business personnel with substantial confidential information to analyze Anthem's trends; to determine what Anthem has historically paid to the hospitals they also contract with; to learn how Anthem values these Toledo area hospitals in relation to one another and in the context of the market and to project how Anthem is likely to pay for acute care hospital services rendered to its members in the Toledo market in the future.

Anthem has expended considerable time over many years to develop its processes for understanding and evaluating the Toledo market for hospital services; its overall hospital negotiation strategies; and its negotiations with individual hospitals and their leadership. Anthem's competitors and ProMedica's business personnel and providers simply should not be allowed any window into the marketplace strengths and weaknesses of Anthem's hospital network in the Toledo area – particularly, when Anthem would not have parallel information on its competitors.

The importance of protecting Anthem's confidential documents is further heightened here because ProMedica is not only one of Anthem's contracting hospital systems, but it is one of Anthem's direct competitors – by way of Paramount – in the Toledo market. None of Anthem's competitors, including ProMedica's Paramount, should be given access to, or insight into, Anthem's business information that could be used to better build their own relationships with those hospitals for their own competitive gain, resulting in serious competitive injury to Anthem and in turn to its members.

Finally, the importance of protecting the confidentiality of Anthem's hospital relationships – including the business plans, reimbursement philosophies and negotiating strategies of both sides that define those arrangements – is demonstrated by ProMedica's Motion For *In Camera* Treatment, which seeks similar protection for these categories of confidential and commercially sensitive documents. If Attachment 2 were disclosed, Anthem undoubtedly would be put at a competitive disadvantage in the Toledo marketplace.

Further, comprehensive in camera protection for the trial exhibits listed in Appendix 2 is supported by Paragraphs 1, 2, 4a-4e, and 8-10 of Exhibit A.

**Appendix 3** is an Electronic File created and produced by Anthem in response to the February 28, 2011 Subpoenas Duces Tecum issued by the FTC and ProMedica and subject to the Protective Orders. Under 16.C.F.R. § 3.45(b), this Electronic File contains confidential and sensitive personal information regarding thousands of Anthem members and in particular, inpatient admission or outpatient treatment episode for any Anthem member residing in the Toledo area, including, but not limited to, information regarding each patient member's age, gender and race; the primary and any secondary diagnoses; whether the treatment was for an

emergency; the hospital at which the service was received; the specifics of patient member's referral to the facility; the specifics about his/her health insurance and billing for the service; and the patient member's status upon discharge. Although personal identifying information for individual patient members has been masked, the Electronic File nonetheless contains extensive confidential information regarding thousands of Anthem's members during the timeframe 2004 to the present that should be not publicly disclosed.

Anthem goes to great lengths to protect and keep secret all sensitive personal information regarding its members and the public dissemination of the confidential information contained on this Electronic File could harm the interests of both Anthem and its many members, whose medical treatment and personal health information are documented in this database.

This Electronic File was designated as being confidential when produced and it has been maintained as confidential by the Parties by agreement and in accordance with the Protective Orders; and the confidential sensitive personal information contained thereon has been and continues to be carefully guarded by Anthem.

Further, comprehensive *in camera* protection for the trial exhibit listed in Appendix 3 is supported by Paragraphs 1, 2, 5a-5c, and 8-10 of Exhibit A.

Finally, the confidential nature of Appendix 3 is demonstrated by the fact that the motions for *in camera* treatment filed by both Parties also seek *in camera* protection for this Electronic File.

**Appendix 4** is the November 19, 2010 Declaration of Tony Firmstone, Vice President, Ohio Health Services for WellPoint in Ohio, which was provided confidentiality as part of the compulsory process in the FTC investigation. The Declaration expressly states that it was being



provided with the expectation that its entire contents would be kept confidential and be exempt from public disclosure. Throughout this litigation, this Declaration has been treated with the strictest confidentiality by the Parties, by agreement and pursuant to the Protective Orders. Like Appendices 1 and 2, Appendix 4 contains highly sensitive and confidential information about Anthem's commercial business in the Toledo market and its relationships with its network hospitals in the Toledo area. Of most significance, the Declaration contains strategic information and analyses, and high level insight, into competition in the Toledo market (Paragraph 7); Anthem's hospital negotiation strategies (Paragraphs 8, 9, 10); its current hospital Agreements (Paragraphs 14, 15, 16, 17); and Anthem's business assessment of the potential impact of the ProMedica-St. Luke's merger on the Toledo market (Paragraphs 18 and 19). All of this information is highly confidential and is the product of knowledge and analyses of the Toledo hospital market developed over many years.

The information set forth in Appendix 4, which is made available only to Anthem's contracting leadership, has been very closely guarded and would be extremely difficult, if not impossible, for third parties to access or properly obtain. The development of this strategic information and expertise has allowed Anthem to gain a strong competitive position in the marketplace and to deliver better rates and service to its members. If Appendix 4 was disclosed, Anthem's ability to negotiate competitive rates for its members would be severely damaged and Anthem could potentially lose its competitive advantage in the marketplace.

Finally, comprehensive in camera protection for the trial exhibit listed in Appendix 4 is supported by Paragraphs 1, 2, 6a-6b, and 8-10 of Exhibit A.

Appendix 5 is a list of only those excerpts of James Pugliese's testimony<sup>6</sup> designated by the FTC and/or ProMedica that warrant *in camera* treatment. Specifically, Mr. Pugliese was primarily questioned about the confidential subject matter of the Exhibits contained in Appendices 1, 2 and 4, for which Anthem seeks *in camera* treatment, and WellPoint has identified in Appendix 5 only testimony that addresses these commercially sensitive topics: Anthem's current hospital Agreements; its confidential business strategies and negotiations forming the foundation for, and leading to, the execution of the current Agreements; specific confidential internal e-mails and documents, including rate information for hospitals in the Toledo market; and its strategic assessment of the subject merger and its likely impact on competition in the Toledo market. For the same specific reasons cited hereinabove as to why Appendices 1, 2 and 4 should be afforded *in camera* treatment, the excerpts of testimony in Appendix 5 also should be granted *in camera* treatment. This Court has granted *in camera* treatment for portions of deposition testimony and WellPoint requests the same protection here. See, *In re Polypore Int'l, Inc.*, 2009 F.T.C. LEXIS 258, at \*1 (July 9, 2009).

Further, since Mr. Pugliese continues to be actively involved in Anthem's hospital contracting and the management of Anthem's relationships with its network hospitals in the Toledo market, and will continue in that role after this Administrative Proceeding is concluded,

---

<sup>6</sup> Mr. Pugliese, the current Regional Vice President of Contracting and Provider Relations for Anthem in northern Ohio, submitted to two depositions relating to the subject of this matter. On February 1, 2011, Mr. Pugliese was deposed in the Ohio District Court case entitled Federal Trade Commission v. ProMedica Health System, Inc. (Case No. 3:11cv000473-DAK). The sixty-six (66) page transcript has been designated as Complaint Counsel's Exhibit PX01919. Thereafter, on April 6, 2011, Mr. Pugliese was deposed in this subject administrative matter entitled In The Matter Of ProMedica Health System, Inc. (FTC Case No. DO9346). The one hundred thirty (130) page transcript of the April 6, 2011 deposition has been designated as Complaint Counsel's Exhibit PX01942. WellPoint painstakingly reviewed the extensive portions of Mr. Pugliese's testimony designated by Complaint Counsel and/or Respondent's Counsel as trial exhibits and narrowed considerably those excerpts of the designated testimony for which it seeks *in camera* treatment.

disclosure of his testimony would put Anthem at a competitive disadvantage negotiating the best rates for its members in the future.

Finally, comprehensive *in camera* protection for the excerpts of testimony from the trial exhibits listed in Appendix 5 is supported by Paragraphs 1, 2, 7a-7b, and 8-10 of Exhibit A.

**Attachments 1 Through 5.** The information contained in all 5 of Anthem's Appendices is central to Anthem's business and strategic planning, and its goal of outperforming its competitors, whose use of such information would unquestionably directly harm Anthem. If the information in these Appendices 1 through 5 were to be made public, Anthem's competitors instantly would be armed with information that strikes at the core of Anthem's business – not only how Anthem has historically conducted its relationships with its network hospitals, but the exact contractual terms now governing these relationships, including most critically the rates being paid by Anthem to these various Toledo area hospitals. This information no doubt would be used to specifically target and build relationships with such hospitals for their own competitive gain, resulting in serious competitive harm to Anthem. Access to this information would have an immediate and detrimental effect on Anthem's ability to compete, while Anthem would enjoy no similar advantage over its competitors (whose fee schedules and rates paid to its network hospitals would remain unknown to Anthem). See Exhibit A hereto.

**C. The Public Interest In Disclosure Of Attachments 1 Through 5 Is Outweighed By The Likelihood Of Serious Competitive Harm To Anthem.**

Anthem deserves "special solicitude" as a non-party requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corporation*, 103 F.T.C. 500, 500 (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. Anthem fully cooperated during the FTC's compulsory process and has continued to fully cooperate with the discovery demands of both sides in this adjudicative proceeding – providing a Declaration and Electronic File of claims data; producing thousands of pages of documents; and having a Regional Vice President submit to two depositions. Further, Anthem has painstakingly narrowed the Exhibits for which it is seeking *in camera* protection and its motion is entirely consistent with the protections being sought by the Parties themselves as well as other third parties. Conversely, disclosing documents containing Anthem's highly confidential and commercially sensitive information will not materially promote the resolution of this matter, nor will Anthem's documents and testimony lend measurable public understanding of these proceedings. The balance of interests clearly favors *in camera* protection for Appendices 1 through 5. *See In re Bristol-Myers*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality). See Exhibit A hereto.

**D. Protection For Appendices 1 Through 5 Should Be Extensive.**

The nature of the highly confidential information contained in Appendices 1 through 5 warrants comprehensive *in camera* treatment as follows:

1. **Appendix 1.** As set forth herein, the term of Anthem's Agreements with the hospitals in the Toledo market have generally been 3-5 years in length and the commercial importance of those contracts for analyzing trends and forming the basis for subsequent hospital Agreements continues as long as that evergreen contractual relationship is in place. As such, the current contracting Agreements set forth in **Appendix 1**, some of which do not expire until the end of 2012, should be afforded *in camera* treatment for an indefinite period of time.

2. **Appendices 2, 4 and 5.** Anthem's other hospital agreements, including renewal amendments, compensation schedules and rate information; and key internal e-mails and other documents addressing Anthem's business plans and negotiation strategies for the Toledo market listed in Appendices 2 and 4, as well as the related testimony identified in Appendix 5, constitute highly confidential information that is vital to Anthem's competitive position and its business strategies going into the future, and therefore, the items listed in Appendices 2, 4 and 5 should be afforded *in camera* treatment for an indefinite period of time.

3. **Appendix 3.** As noted herein, Appendix 3 is an Electronic File containing sensitive personal information about the medical care and treatment of Anthem's members – both inpatient admissions and outpatient treatment episodes – at Toledo area hospitals from 2004 to the present. Anthem respectfully submits that the sensitivity of this information will not diminish with the passage of time and therefore Appendix 3 should be afforded *in camera* treatment for an indefinite period of time.

### CONCLUSION

Appendices 1 through 5 satisfy 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 these confidential documents.

DATED: May 11, 2011

Respectfully submitted,



---

MICHAEL G. DURHAM  
DONAHUE, DURHAM & NOONAN, P.C.  
Concept Park  
741 Boston Post Road, Suite 306  
Guilford, CT 06437  
Phone: (203) 458-9168  
Facsimile: (203) 458-4424  
State Juris No. 370426  
[mdurham@ddnctlaw.com](mailto:mdurham@ddnctlaw.com)

*Attorney for Non-Party WellPoint, Inc. and its  
direct and indirect wholly owned subsidiaries  
including without limitation Community Insurance  
Company d/b/a Anthem Blue Cross and Blue Shield*

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

---

In the matter of

PROMEDICA HEALTH SYSTEM, INC.

---

\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. 9346  
PUBLIC

**PROPOSED ORDER**

On May 11, 2011, non-party WellPoint, Inc. ("WellPoint") filed a Motion for *in camera* treatment of confidential business information contained in various documents and excerpts of testimony identified by the Federal Trade Commission ("FTC") and/or Respondent ProMedica Health System, Inc. ("ProMedica") as trial exhibits.

IT IS HEREBY ORDERED that WellPoint's Motion is GRANTED. The information set forth in the WellPoint documents numbered as follows will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding as follows:

1. **Appendix 1.** As set forth herein, the term of Anthem's Agreements with the hospitals in the Toledo market have generally been 3-5 years in length and the commercial importance of those contracts for analyzing trends and forming the basis for subsequent hospital Agreements continues as long as that evergreen contractual relationship is in place. As such, the current contracting Agreements set forth in **Appendix 1**, including some renewal amendments that do not expire until the end of 2012, should be afforded *in camera* treatment for an indefinite period of time.

2. **Appendices 2, 4 and 5.** Anthem's other hospital agreements, including renewal amendments, compensation schedules and rate information; and its key internal e-mails and other documents addressing Anthem's business plans and negotiation strategies for the Toledo market listed in Appendices 2 and 4, as well as the related testimony identified in Appendix 5, constitute highly confidential information that is vital to Anthem's competitive position and its business strategies going into the future, and therefore, the items listed in Appendices 2, 4 and 5 should be afforded *in camera* treatment for an indefinite period of time.

3. **Appendix 3.** As noted in WellPoint's Motion For In Camera Treatment Of Trial Exhibits, Appendix 3 is an Electronic File containing sensitive personal information about the medical care and treatment of Anthem's members – both inpatient admissions and outpatient treatment episodes – at Toledo area hospitals from 2004 to the present. Anthem respectfully submits that the sensitivity of this information will not diminish with the passage of time and therefore Appendix 3 should be afforded *in camera* treatment for an indefinite period of time.

IT IS FURTHER ORDERED that only authorized Federal Trade Commission ("FTC") personnel and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

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

ORDERED: \_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge



**CERTIFICATE OF SERVICE**

I hereby certify that on May 11, 2011, I e-filed and delivered a true and correct electronic copy of the foregoing **Non-Party WellPoint, Inc.'s Unopposed Motion For *In Camera* Treatment Of Proposed Evidence** to:

Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., H-113  
Washington, DC 20580  
[dclark@ftc.gov](mailto:dclark@ftc.gov)

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room H-110  
Washington, DC 20580  
[oalj@ftc.gov](mailto:oalj@ftc.gov)

I hereby certify that on May 11, 2011, I delivered via electronic mail a true and correct copy of the foregoing to:

Jeanne Liu  
Attorney, Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, DC 20580  
[jliu@ftc.gov](mailto:jliu@ftc.gov)

David Marx, Jr.  
McDermott, Will & Emery, LLP  
227 W. Monroe Street.  
Suite 4400  
Chicago, IL 60606  
[dmarx@mwe.com](mailto:dmarx@mwe.com)

Alexis J. Gilman  
Attorney, Mergers IV  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, DC 20580  
[agilman@ftc.gov](mailto:agilman@ftc.gov)

Janelle Filson  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, DC 20580  
[jfilson@ftc.gov](mailto:jfilson@ftc.gov)

Matthew J. Reilly  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580  
[mreilly@ftc.gov](mailto:mreilly@ftc.gov)

Jeffrey H. Perry  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580  
[jperry@ftc.gov](mailto:jperry@ftc.gov)

Sara Y. Razi  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580  
[srazi@ftc.gov](mailto:srazi@ftc.gov)

Stephanie L. Reynolds  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580  
[sreynolds@ftc.gov](mailto:sreynolds@ftc.gov)

Maureen B. Howard  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580  
[mhoward@ftc.gov](mailto:mhoward@ftc.gov)

Christine G. Devlin  
McDermott Will & Emery, LLP  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
[cdevlin@mwe.com](mailto:cdevlin@mwe.com)

Amy E. Hancock  
McDermott Will & Emery, LLP  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
[ahancock@mwe.com](mailto:ahancock@mwe.com)

Jennifer L. Westbrook  
McDermott Will & Emery, LLP  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
[jwestbrook@mwe.com](mailto:jwestbrook@mwe.com)

Vincent C. Van Panhuys  
McDermott Will & Emery, LLP  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
[vvanphuys@mwe.com](mailto:vvanphuys@mwe.com)

Carrie G. Amezcua  
McDermott Will & Emery, LLP  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
[camezcua@mwe.com](mailto:camezcua@mwe.com)

James B. Camden  
McDermott Will & Emery, LLP  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
[jcamden@mwe.com](mailto:jcamden@mwe.com)

Daniel G. Powers  
McDermott Will & Emery, LLP  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
[dpowers@mwe.com](mailto:dpowers@mwe.com)

Kevin Showman  
Litigation Case Manager  
McDermott Will & Emery, LLP  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
[kshowman@mwe.com](mailto:kshowman@mwe.com)

Pamela A. Davis  
Antitrust Specialist  
McDermott Will & Emery, LLP  
600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
[pdavis@mwe.com](mailto:pdavis@mwe.com)

Stephen Y. Wu  
McDermott Will & Emery, LLP  
227 West Monroe Street  
Chicago, IL 60606  
[swu@mwe.com](mailto:swu@mwe.com)

Amy J. Carletti  
McDermott Will & Emery, LLP  
227 West Monroe Street  
Chicago, IL 60606  
[acarletti@mwe.com](mailto:acarletti@mwe.com)

Erin C. Arnold  
McDermott Will & Emery, LLP  
227 West Monroe Street  
Chicago, IL 60606  
[earnold@mwe.com](mailto:earnold@mwe.com)



MICHAEL G. DURHAM

*Attorney for Non-Party WellPoint, Inc. and its  
direct and indirect wholly owned subsidiaries  
including without limitation Community Insurance  
Company d/b/a Anthem Blue Cross and Blue Shield*

**EXHIBIT A**  
**IN SUPPORT OF NON-PARTY WELLPOINT, INC.'S UNOPPOSED**  
**MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS**  
**(James Pugliese Declaration With Appendices 1 Through 5)**

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

---

In the matter of

PROMEDICA HEALTH SYSTEM, INC.

---

\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. 9346  
PUBLIC

**DECLARATION OF JAMES PUGLIESE  
IN SUPPORT OF NON-PARTY WELLPOINT, INC.'S  
MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

I, James Pugliese, declare as follows:..

1. I am currently employed by WellPoint, Inc. ("WellPoint") as Regional Vice President of Contracting and Provider Relations for Anthem Blue Cross and Blue Shield<sup>1</sup> in northern Ohio, a position which I have held since May, 2005. In my role as Regional Vice President, I am responsible for our contractual relationships with the hospitals in Northern Ohio, including the hospitals owned by Respondent ProMedica Health System, Inc. ("ProMedica") and I am familiar with the Toledo hospital market, including WellPoint's provider contracting strategies and contract negotiations with hospitals in that market.

2. I have reviewed the documents for which WellPoint seeks *in camera* treatment. By virtue of my position for WellPoint, as described above, I am familiar with the type of information contained in the documents at issue. Based upon my review, my knowledge of Anthem's business, and my familiarity with the confidentiality protection afforded this type of

---

<sup>1</sup> Anthem Blue Cross and Blue Shield is a trade name under which Community Insurance Company does business in Ohio ("Anthem"). Community Insurance Company is a subsidiary of WellPoint.

information by Anthem, it is my belief that disclosure of these documents to the public, to competitors of Anthem and/or to ProMedica's business personnel and providers would cause serious competitive injury to Anthem.

3a. The Exhibits designated by the Federal Trade Commission and ProMedica (collectively the "Parties") set forth in **Appendix 1** hereto are contracting documents, including Amendments and Compensation Schedules, for Agreements currently in effect between Anthem and various hospitals in its Toledo area network, including the Respondent's three hospitals (Bay Park, Flower and Toledo); the Mercy hospitals (St. Charles, St. Anne and St. Vincent); and St. Luke's Hospital. Anthem's hospital agreements, including Compensation Schedules and rate information, constitute highly confidential and commercially sensitive business information.

3b. Both Anthem and its contracting hospitals treat their respective hospital Agreements as confidential and the information in those Agreements is never disclosed publicly. Indeed, disclosure of these contracting documents would reveal the key contractual provisions that have been negotiated and are in place---as well as Anthem's current rate agreements---with the major hospitals in northern Ohio; reveal critical information that could be used to project Anthem's trends in the future; and disclose both how Anthem analyzes and values various hospitals in the Toledo area and how it has paid and will pay for acute care hospital services rendered to its members over the 3-5 year terms of those current hospital Agreements. Anthem has devoted years of time and effort to develop its current hospital relationships, including the trust of its business partners that Anthem will maintain and protect the confidential nature of their relationship; and to be in a position to negotiate the best rates for its members. Anthem's efforts in this regard have allowed it to gain a strong competitive position in the Toledo market

and to deliver better rates and service to its members. If the Exhibits set forth in Appendix 1 were disclosed, Anthem's hospital relationships would be harmed; its ability to negotiate the best rates for its members would be compromised; and it would potentially be placed at competitive disadvantage in the marketplace.

4a. The Exhibits set forth in Appendix 2 hereto are other Anthem agreements with Toledo area hospitals, including renewal amendments and compensation schedules, and key Anthem internal emails and document, which set forth Anthem's business plans and negotiation strategies for the Toledo market. These Exhibits contain many of the final, or near final, terms of Anthem's current hospital Agreements and they provide insight into how Anthem negotiates with its providers on confidential provisions, such as rates and length of contract, and unique or individualized issues that might be important to a particular provider. These documents constitute highly confidential and commercially sensitive business information that should be protected from public disclosure.

4b. Anthem's hospital contracts in the Toledo market are evergreen and the renewal amendments to those agreements rely heavily on the format and content of the prior agreements, including key contractual provisions which can vary from hospital to hospital and may or may not be refined over time. The historic significance of the information developed in its hospital agreements is particularly important to Anthem in the Toledo market, where it is common to negotiate hospital contracts—including some current ones—with terms of 3-5 years.

4c. Anthem's internal analyses and negotiation strategies for its various contracted hospitals in the Toledo network are highly confidential and commercially sensitive business information. Disclosure of such information would damage Anthem by revealing to its



competitors and ProMedica's business personnel its negotiating strategies and trends; how it analyzes and values various hospitals in the Toledo market; and how it determines the contract provisions it will agree to, including the rates it has paid, and is likely to pay, for acute care services rendered to its members in the Toledo market.

4d. Anthem has expended considerable time over many years to develop these strategic processes for evaluating the Toledo market and for negotiating with its network hospitals there. For Anthem to sustain and grow its competitive position in the Toledo market, it is imperative that Anthem's competitors and ProMedica's business personnel and providers be denied access to confidential information about Anthem's strengths and weaknesses in the Toledo marketplace—particularly, when Anthem would not have parallel information on its competitors. If the Exhibits in Attachment 2 were disclosed, Anthem could potentially lose its competitive advantage in the marketplace.

4e. Under the circumstances of this proceeding, the need for protecting the confidential and commercially sensitive information in Appendix 2 is heightened by the fact that, in addition to being a hospital system that contracts with Anthem, ProMedica is one of Anthem's direct competitors---by way of Paramount---in the Toledo market. None of Anthem's competitors, including ProMedica's Paramount, should be given access to, or insight into, Anthem's confidential business information that would be used by those third parties for their own competitive gain and to the serious competitive injury to Anthem and its members.

5a. The Exhibit identified in **Appendix 3** hereto is an Electronic File that contains actual confidential Ohio claims data relating to medical treatment received by Anthem members at Toledo area hospitals from 2004 to the present. This Electronic File contains sensitive

personal information regarding thousands of Anthem members and in particular, inpatient admission or outpatient treatment episode for any Anthem member residing in the Toledo area, including, but not limited to, information regarding each patient member's age, gender and race; the primary and any secondary diagnoses; whether the treatment was for an emergency; the hospital at which the service was received; the specifics of patient member's referral to the facility; the specifics about his/her health insurance and billing for the service; and the patient member's status upon discharge. Although personal identifying information for individual patient members has been masked, the Electronic File nonetheless contains a tremendous amount of confidential personal health information that should be not publicly disclosed.

5b. Anthem goes to great lengths to protect and keep secret all sensitive personal information regarding its members and public dissemination of the confidential information contained on this Electronic File would harm the interests of both Anthem and its many members, whose medical treatment and personal health information are documented in this database.

5c. This Electronic File was designated as being confidential when produced and it has been maintained as confidential by the Parties to this proceeding by agreement and in accordance with the court protective orders; and the confidential sensitive personal information contained thereon has been and continues to be carefully guarded by Anthem.

6a. The Exhibit set forth in **Appendix 4** hereto is the November 19, 2010 Declaration of Tony Firmstone, which contains highly sensitive and confidential information about Anthem's views of the Toledo market and its relationships with its network hospitals there. Of particular significance, the Declaration contains strategic information and analysis, and management level

insight, into competition in the Toledo market; how Anthem negotiates its hospital agreements, including factors that provide leverage to one side or the other of a negotiation; its current hospital Agreements; its assessments of the market for acute care hospital services in the Toledo area and of the potential impact of the ProMedica-St. Luke's merger on the market; as well as specifics about its contracting negotiations and actual current rate arrangements with certain Toledo hospitals. All of this information is highly confidential and is the product of knowledge and analyses of the Toledo hospital market developed over many years.

6b. The information and views set forth in Appendix 4 has been very closely guarded by Anthem's contracting leadership and would be extremely difficult, if not impossible, for third parties to access or properly obtain. The development of this strategic information and expertise has allowed Anthem to gain a strong competitive position in the Toledo market and to deliver better rates and service to its members. If Appendix 4 was disclosed, Anthem's ability to negotiate competitive rates for its members would be severely damaged and Anthem could potentially lose its competitive advantage in the marketplace.

7a. Appendix 5 hereto identifies those portions of my testimony at my depositions on February 1, 2011 and April 6, 2011, as designated by one or both of the Parties as testimony intended to be used at the administrative trial, that provide highly sensitive information about Anthem's hospital Agreements in the Toledo area; our negotiations, including key business strategies and rate information leading to those hospital Agreements; and various internal emails and documents identified by one or the other, or both, of the Parties relating to Anthem's confidential view of ProMedica's potential acquisition of St. Luke's Hospital, and strategies in reaction to that transaction. Disclosure of the testimony identified in Appendix 5 would reveal

how Anthem analyzes, evaluates and values various hospitals in the Toledo area; determines the rates it pays for acute care hospital services in that market; and negotiates its hospital agreements. Anthem has expended considerable time over many years to develop its strategic processes and its efforts in this regard have allowed it to gain a competitive advantage in the marketplace and better service its members. If the testimony identified in Appendix 5 were disclosed, Anthem would potentially lose its competitive advantage in the marketplace.

7b. Also, in this regard, since I expect to continue to be actively involved in Anthem's hospital contracting and in the management of our relationships with our network hospitals in the Toledo market, disclosure of my testimony set forth in Appendix 5 would put Anthem at a competitive disadvantage negotiating the best rates for its members in the future.

8. Further, Anthem takes substantial measures to guard the secrecy of the information contained in the Exhibits set forth and/or identified in Appendices 1 through 5, limiting dissemination of such information and taking every reasonable step to protect its confidentiality. Indeed, such information is disclosed only to particular employees of Anthem. It would be extremely difficult for Anthem's competitors or other outside persons to access or recreate the information in the documents at issue. These efforts demonstrate that Anthem has gone to great lengths to preserve the confidentiality of the information contained in the Exhibits set forth and/or identified in Appendices 1 through 5.

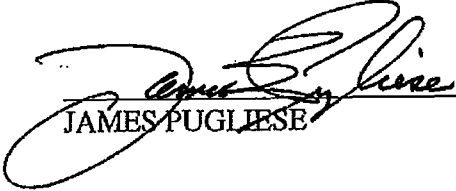
9. Further, the information contained in the Appendices 1 through 5 is central to Anthem's business and strategic planning, and its goal of outperforming its competitors, whose use of such information would directly harm Anthem. If this information were to be made public, Anthem's competitors could pinpoint the rates paid by Anthem to these various hospitals

in the Toledo market and could use this information to specifically target and build relationships with such hospitals for their own competitive gain, resulting in serious competitive harm to Anthem. Access to this information would also enable a competitor and ProMedica's business personnel and providers to understand how Anthem evaluates the relative importance of the various Toledo hospitals to its provider network and therefore could be used by competitors and ProMedica's business personnel and providers to Anthem's severe competitive disadvantage.

10. Knowledge about how Anthem evaluates and compensates its various Toledo area hospitals, which are key to the viability of Anthem's networks, would arm competitors and ProMedica's business personnel and providers with information that strikes at the core of Anthem's business. This would have an immediate and detrimental effect on Anthem's ability to compete in the Toledo market, while Anthem would enjoy no similar advantage over its competitors (whose fee schedules and rates paid to its hospitals would remain unknown to Anthem).

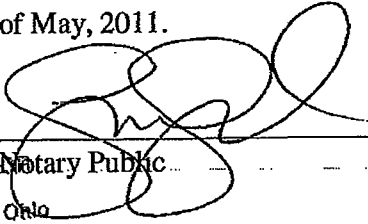
The highly confidential and commercially sensitive information contained in the Exhibits set forth and/or identified in Appendices 1 through 5, including the hospital agreements and compensation schedules showing the rates paid by Anthem to the various hospitals in its Toledo area network, are vital to Anthem's competitive position and business strategy; and they therefore warrant *in camera* protection, as set forth in WellPoint's Motion For *In Camera* Treatment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 10 day of May, 2011 in Ohio.

  
\_\_\_\_\_  
JAMES PUGLIESE

Subscribed and sworn to before me this 10 day of May, 2011.



  
\_\_\_\_\_  
STEPHANIE M. TAYLOR Notary Public  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
March 20, 2012

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
My Commission Expires

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

---

In the matter of

PROMEDICA HEALTH SYSTEM, INC.

---

\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. 9346  
PUBLIC

APPENDIX 1  
TO NON-PARTY WELLPOINT, INC.'S UNOPPOSED  
MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS

**DOCUMENTS  
REDACTED  
IN THEIR  
ENTIRETY**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

---

In the matter of

PROMEDICA HEALTH SYSTEM, INC.

---

\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. 9346.  
PUBLIC

APPENDIX 2  
TO NON-PARTY WELLPOINT, INC.'S UNOPPOSED  
MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS

**DOCUMENTS  
REDACTED  
IN THEIR  
ENTIRETY**



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

---

In the matter of

PROMEDICA HEALTH SYSTEM, INC.

---

\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. 9346  
PUBLIC

APPENDIX 3  
TO NON-PARTY WELLPOINT, INC.'S UNOPPOSED  
MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS

---

**DOCUMENTS  
REDACTED  
IN THEIR  
ENTIRETY**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

---

In the matter of

PROMEDICA HEALTH SYSTEM, INC.

---

\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. 9346  
PUBLIC

APPENDIX 4  
TO NON-PARTY WELLPOINT, INC.'S UNOPPOSED  
MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS

---

**DOCUMENTS  
REDACTED  
IN THEIR  
ENTIRETY**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

---

In the matter of

PROMEDICA HEALTH SYSTEM, INC.

---

\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. 9346  
PUBLIC

APPENDIX 5  
TO NON-PARTY WELLPOINT, INC.'S UNOPPOSED  
MOTION FOR *IN CAMERA* TREATMENT OF TRIAL EXHIBITS

**DOCUMENTS  
REDACTED  
IN THEIR  
ENTIRETY**