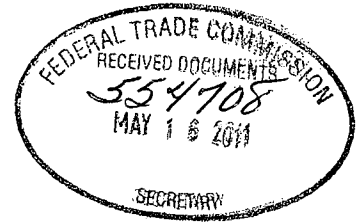


IN THE UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

ORIGINAL



In the Matter of )  
)  
)

PROMEDICA HEALTH SYSTEM, INC., )  
a corporation )  
)

Docket No. 9346

**PUBLIC VERSION**

**NON-PARTIES UNITEDHEALTHCARE, INC. AND  
UNITEDHEALTHCARE OF OHIO INC.'S AMENDED MOTION  
FOR IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

UnitedHealthcare, Inc. and UnitedHealthcare of Ohio, Inc. (collectively, "United"), which are not a parties to this action, respectfully request that this Court grant *in camera* treatment of certain documents and transcripts of testimony that either ProMedica Health System, Inc. ("ProMedica") or Complaint Counsel have designated for introduction into evidence in the administrative trial of this mater. On April 27 and April 28, 2011, Complaint Counsel and ProMedica notified United that they intend to introduce certain documents submitted by United, as well as excerpts from testimony and a statement provided by United employees. Much of the material sought to be introduced contains competitively sensitive information, the disclosure of which is likely to cause direct, serious harm to United. As to this information, identified below and attached to this Motion as Exhibits 1 through 47, United respectfully moves this Court to order *in camera* treatment. In support of this Motion, United attaches the declaration of Janette Gee ("Gee Decl."), attached hereto as Exhibit A.

**UNITED'S CONFIDENTIAL DOCUMENTS DESERVE  
IN CAMERA TREATMENT UNDER THE FEDERAL TRADE  
COMMISSION'S RULES OF PRACTICE**

Of the United documents and testimony sought to be introduced in the trial of this matter,  
the following deserve *in camera* treatment:

- PX02370/ UHC-FTC-PROD000025--UHC-FTC-PROD000046 (Exhibit 1)
- PX02371/UHC-FTC-PROD000219--UHC-FTC-PROD000244 (Exhibit 2)
- PX02372/UHC-FTC-PROD000275--UHC-FTC-PROD000300 (Exhibit 3)
- PX02373/UHC-FTC-PROD000301--UHC-FTC-PROD000326 (Exhibit 4)
- PX02485/UHC-FTC-PROD000260--UHC-FTC-PROD000274 (Exhibit 5)
- PX02494/UHC-FTC-PROD003109--UHC-FTC-PROD003132 (Exhibit 6)
- UHC-PM-PROD007030 (Exhibit 7)
- PX02383/UHC-FTC-PROD002244--UHC-FTC-PROD002244 (Exhibit 8)
- PX02436/FTC-UHC-00000504--FTC-UHC-00000504-00005 (Exhibit 9)
- PX02493/UHC-FTC-PROD002241--UHC-FTC-PROD002242 (Exhibit 10)
- PX02500/UHC-FTC-PROD004482--UHC-FTC-PROD004482 (Exhibit 11)
- UHC-FTCProd00008226 (Exhibit 12)
- UHC-PM-PROD004729 (Exhibit 13)
- UHC-PM-PROD004747 (Exhibit 14)
- UHC-PM-PROD004754 (Exhibit 15)
- UHC-PM-PROD004802 (Exhibit 16)
- UHC-PM-PROD5604 (Exhibit 17)
- UHC-PM-PROD005726 (Exhibit 18)
- UHC-PM-PROD006741 (Exhibit 19)
- UHC-PM-PROD006800 (Exhibit 20)
- UHC-PM-PROD006831 (Exhibit 21)
- PX02488/UHC-FTC-PROD001891--UHC-FTC-PROD001899 (Exhibit 22)
- PX02489/UHC-FTC-PROD001918--UHC-FTC-PROD001926 (Exhibit 23)
- PX02490/UHC-FTC-PROD001927--UHC-FTC-PROD001935 (Exhibit 24)
- PX02491/UHC-FTC-PROD001936--UHC-FTC-PROD001944 (Exhibit 25)

- UHC-PM-PROD000028 (Exhibit 26)
- PX02487/UHC-FTC-PROD001570--UHC-FTC-PROD001577 (Exhibit 27)
- PX02495/UHC-FTC-PROD003222--UHC-FTC-PROD003223 (Exhibit 28)
- PX02496/UHC-FTC-PROD003441--UHC-FTC-PROD003444 (Exhibit 29)
- PX02497/UHC-FTC-PROD004184-- UHC-FTC-PROD004204 (Exhibit 30)
- PX02498/UHC-FTC-PROD004211--UHC-FTC-PROD004220 (Exhibit 31)
- PX02499/UHC-FTC-PROD004221--UHC-FTC-PROD004226 (Exhibit 32)
- PX02503/UHC-PM-PROD004728--UHC-FTC-PROD004728 (Exhibit 33)
- UHC-FTCProd00004557 (Exhibit 34)
- UHC-PM-PROD004728 (Exhibit 35)
- UHC-PM-PROD005727 (Exhibit 36)
- UHC-PM-PROD005803 (Exhibit 37)
- UHC-PM-PROD005852 (Exhibit 38)
- UHC-PM-PROD005946 (Exhibit 39)
- UHC-PM-PROD006716 (Exhibit 40)
- UHC-PM-PROD006738 (Exhibit 41)
- PX02486/UHC-FTC-PROD001410--UHC-FTC-PROD001562 (Exhibit 42)
- PX01806 (Exhibit 43)
- UHC-PM-PROD000947 (Exhibit 44)
- PX01902 (Exhibit 45)
- PX01939 (Exhibit 46)
- PX02078 (Exhibit 47)

The information contained in these materials is highly sensitive and held in strict confidence within United. The documents and testimony were provided to the FTC and ProMedica in response to compulsory process, and the statement was provided in lieu of a subpoena.

Moreover, when the documents were submitted, each was marked confidential. As to the deposition testimony, counsel for both the FTC and ProMedica agreed, at United's request, to treat the testimony as confidential under the terms of the protective order entered in this case.

Thus, the information described above warrants *in camera* treatment as provided by 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 document 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 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. Under this standard, *in camera* treatment of the documents in question is warranted.

**A. United Has Preserved the Confidentiality of the Documents and Information**

United has taken significant steps to protect the confidential nature of the information in these documents and testimony, which were produced either in response to, or in lieu of, a Civil Investigative Demand issued by the FTC and subpoenas issued by the FTC and ProMedica. All of the information has been provided subject to the Protective Order Governing Discovery Material issued in this matter on January 6, 2011 (“Protective Order”). The purpose of the Protective Order was to expedite discovery and ensure that materials produced would receive protection from disclosure to competitors and to ProMedica business personnel.

In addition to these measures, United has taken substantial measures to guard the secrecy of the information contained in Exhibits 1 through 47 including limiting the dissemination of such information both within and outside United. (Gee Decl. at ¶¶ 3-10.) It would be extremely difficult for anyone outside of United to access or recreate the information in the documents at

issue. (*Id.*) Thus, United has treated this information as confidential and asks the Court to preserve that confidentiality by entering an order requiring *in camera* treatment of Exhibits 1 through 47.

**B. Disclosure of the Information in Exhibits 1 Through 47 Would Result in Serious Competitive Injury to United**

Exhibits 1 through 7 are contracts or portions of contracts that United has reached with providers in the Toledo area. The documents contain fee schedules and rates paid by United to various providers in the Toledo, Ohio area. (Gee Decl. at ¶ 3.) United's fee schedules and rate information are highly confidential and competitively sensitive business information that is never publicly disclosed by United. (*Id.*) Disclosure of this information would reveal how United values these providers and the services they offer, something that United has developed at great cost and through the expense of numerous person-hours. (*Id.*) United's efforts in this regard have allowed it to better serve its members by obtaining the best possible provider network at the most competitive rates possible. (*Id.*) If Exhibits 1 through 7 were disclosed, United could lose this competitive advantage. (*Id.*)

Exhibits 8 through 21 are copies of e-mails created in the course of United's recent contract negotiations with various providers in the Toledo area. (Gee Decl. at ¶ 4.) The e-mails contain highly confidential information that, if public, would reveal details about United's negotiating strategy and would provide other confidential information such as the rates and other contract terms that United was negotiating with the provider. (*Id.*) Such information is held in strict confidence within United and is not available to anyone who was not involved in, or does not have responsibility for, contract negotiations. (*Id.*) If Exhibits 8 through 21 were disclosed, it would seriously damage United's ability to negotiate competitive contracts in the future. (*Id.*)

Exhibits 22 through 26 contain information obtained through United's proprietary Hospital Comparison Program for specific hospitals in the Toledo area. (Gee Decl. at ¶ 5.) The Hospital Comparison Program gathers comparative quality and cost information on hospitals for a number of inpatient conditions and procedures. (*Id.*) The detailed quality and cost information for each hospital in Exhibits 22 through 26 is revealed only to United's members and is not publicly available. (*Id.*) The ability to provide this kind of comparative information to United's members gives United a competitive advantage. If the information in Exhibits 22 through 26 were disclosed, United would lose this competitive advantage and be seriously damaged as a result of that loss. (*Id.*)

Exhibits 27 through 41 are documents that United used in its recent contract negotiations with ProMedica and St. Luke's. (Gee Decl. at ¶ 6.) The documents lay out United's negotiating strategy with respect to both hospitals. (*Id.*) The documents also contain information relating to United's costs, revenues and margins at the hospitals and show what impact proposed rate increases might have on those figures. (*Id.*) This information is extremely sensitive and closely held within United. (*Id.*) The disclosure of Exhibits 27 through 41 to ProMedica or St. Luke's employees, to other providers, or to United's competitors would cause serious damage to United's ability to negotiate competitive rates for its members. (*Id.*)

Exhibit 42 is a presentation that summarizes UnitedHealthCare's competitive position across markets throughout the United States in 2009. (Gee Decl. at ¶ 7.) It contains highly sensitive information regarding UnitedHealthCare's market shares, provider networks, members, and competitors in many of the markets in which UnitedHealthCare competes. (*Id.*) Public disclosure of Exhibit 42 would be extremely damaging to United's competitive position in markets throughout the United States. (*Id.*)

Exhibits 43 and 44 are collections of data regarding claims submitted by United's members. (Gee Decl. at ¶ 8.) The data provides detailed information regarding United's spend rate at providers in the Toledo area. (*Id.*) Disclosure of Exhibits 43 and 44 would provide precise information on United's market share in the Toledo area. (*Id.*) Releasing the data would also reveal United's methodology for its rate structure – that is, how much it is willing to pay for various healthcare services. (*Id.*) Revealing such confidential information would be extremely damaging to United's competitive position in the Toledo area. (*Id.*)

Exhibits 45 is a transcript of the investigational hearing of United employee Gina Sheridan on September 13, 2010. (Gee Decl. at ¶ 9.) Exhibit 46 is a transcript of Ms. Sheridan's deposition by counsel for ProMedica and the Federal Trade Commission ("FTC") on April 5, 2011. (*Id.*) In both instances, the testimony was taken pursuant to compulsory process. (*Id.*) The parties have designated excerpts of the testimony in Exhibits 45 and 46 for use at the administrative trial of this matter. (*Id.*) All of the information sought to be used from Exhibits 45 and 46 is confidential business or employment information. (*Id.*) For example, Ms. Sheridan discusses United's business objectives and strategies in its overall negotiations with providers, United's contracting strategy with respect to specific providers, and United's contracts, contract negotiations, and reimbursement rates with various providers. (*Id.*) This is highly sensitive information for which United takes great effort to maintain confidentiality. (*Id.*) As another example, the testimony also discusses United's proprietary data and proprietary methodologies related to its networking and contracting strategies. (*Id.*) This is information that United has expended time and resources to develop, and disclosure of this material to United's competitors would result in serious competitive injury to United. Disclosure of information from Exhibits 45 and 46 would cause serious harm to United. (*Id.*)

Exhibit 47 is a sworn declaration provided to the FTC by United employee Gretchen Kline on December 17, 2010, at the FTC's request. (Gee Decl. at ¶ 10.) The FTC has designated excerpts of the testimony in Exhibits 47 for use at the administrative trial of this matter. (*Id.*) All of the relevant information contained in this document is highly confidential and discusses, for example, United member preferences, United confidential business concerns, United confidential negotiations with providers, and United's reimbursement rates with providers. (*Id.*) This information in Exhibit 47 relates to United's business strategy that United keeps confidential. (*Id.*) Disclosure of the information in Exhibit 47 would severely disadvantage United's ability to negotiate competitive rates for its members. (*Id.*)

**C. The Public Interest in Disclosure of Exhibits 1 Through 47 is Outweighed by the Likelihood of Serious Competitive Harm to United**

United deserves "special solicitude" as a non-party requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 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. *Id.* United has cooperated with the discovery demands in this case. Conversely, disclosing documents containing United's highly confidential information will not materially promote the resolution of this matter, nor will these documents lend measurable public understanding to these proceedings. The balance of interests clearly favors *in camera* protection for Exhibits 1 through 47. *See In re Bristol-Meyers*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality).

**D. Protection for Exhibits 1 Through 47 Should Extend for Five Years**

The nature of the highly confidential information contained in Exhibits 1 through 47 warrants lasting protection. The fee schedules and rates paid by United to the various provider



groups in its network are vital to United's competitive position and business strategy. (Gee Decl. at ¶ 3.) Moreover, disclosure of details about United's negotiating strategies, its proprietary programs, its revenues, costs and analyses could severely disadvantage United's ability to negotiate competitive rates for its members. Accordingly, United respectfully requests that Exhibits 1 through 47 be afforded *in camera* protection for five years.

### CONCLUSION

The information contained in Exhibits 1 through 47 satisfies the standard for *in camera* protection under the Commission's Rules of Practice and relevant FTC precedent. Accordingly, this Court should order that that this confidential information receives *in camera* treatment.

DATED: May 13, 2011

Respectfully submitted,

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# **Exhibit A**

**[redacted]**

# **Exhibits 1-47**

**[redacted]**