

[PUBLIC]

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

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

**DECLARATION OF LENORE HOLT-DARCY**  
**IN SUPPORT OF NON-PARTY UNICARE’S**  
**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. Specifically, Complaint counsel has identified a number of documents for which UniCare seeks *in camera* protection:

- a. Exhibit No. CX00129 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.
- b. Exhibits Nos. CX05080, CX05091, CX05090, CX05088, CX05081, CX05083, CX5909, CX5087, CX05242 and CX05077 consist of contracts between UniCare entities (including entities which UniCare or its predecessor acquired) and ENH entities. All of these contracts contain 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 No. CX02203 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.

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

- a. Exhibits Nos. RX0568, RX0810, RX0811, RX0690, RX0937, RX0321 and RX1030 all consist of contracts between UniCare, or its predecessors, and other healthcare providers in Illinois. These contracts contain confidential terms, fee schedules, and rate information which, for the reasons discussed above, UniCare considers to be confidential, proprietary, and secret. Public disclosure of these terms and fee schedules would result in competitive injury to UniCare, as discussed above.
- b. Exhibits Nos. RX0179, RX0665, RX0682, RX0722 and RX0802 all constitute confidential correspondence between UniCare and various providers regarding the terms and conditions of the contracts between UniCare and these providers. In many cases, these letters include specific rate proposals, or discuss changes in fee

structure which UniCare considers to be highly confidential. 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.

8. 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 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.

9. 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 3<sup>rd</sup> day of **January, 2005**, in Chicago, Illinois.

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**LENORE HOLT-DARCY**

**SUBSCRIBED AND SWORN** to  
before me this \_\_\_\_ day of  
\_\_\_\_\_, 2005.

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Notary Public

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