ORIGINAL

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

In the Matter of ProMedica Health System, Inc. a corporation	PUBLIC Docket No. 9346

COMPLAINT COUNSEL'S POST-TRIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

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RECORD REFERENCES

References to the record are made using the following citation forms and abbreviations:

JX - Joint Exhibit

PX - Complaint Counsel Exhibit

RX - Respondent Exhibit

Tr. - Citations to Trial Testimony

(PX00000 at 000 (XX, Dep. at xx)) - Citations to Deposition Testimony

(PX00000 at 000 (XX, Dep. at xx), *in camera*) - Citations to *in camera* Deposition Testimony

(PX00000 at 000 (XX, IHT at xx)) - Citations to Investigational Hearing Testimony

(PX00000 at 000 (XX, IHT at xx), *in camera*) - Citations to *in camera* Investigational Hearing Testimony

Joint Stipulations of Law and Fact, JX00002A ¶ - Citation to Joint Stipulations of Law and Fact

Commission Complaint - Administrative Complaint filed January 6, 2011

Response to RFA at ¶ - Citation to Respondent's Response to Complaint Counsel's Requests for Admission

Response to IROG at ¶ - Citation to Respondent's Response to Complaint Counsel's Interrogatories

Answer at ¶ - Citation to Respondent's Answer to Complaint

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I. EXECUTIVE SUMMARY

1. ProMedica Health System, Inc. ("ProMedica"), is a not-for-profit health system that, prior to the acquisition of St. Luke's Hospital ("St. Luke's"), operated three general acute-care hospitals in Lucas County, Ohio. ProMedica is the self-proclaimed dominant hospital system in Lucas County, as well as the highest-priced. ProMedica acquired St. Luke's, a formerly-independent not-for-profit community hospital located in Maumee, Ohio, on September 1, 2010, pursuant to a Joinder Agreement that vests ProMedica with total economic and decision-making control over St. Luke's (the "Acquisition"). (*See infra* Sections II, III).

2. In July 2010, the Federal Trade Commission ("FTC" or "Complaint Counsel") and the State of Ohio opened investigations into the Acquisition. The FTC and ProMedica subsequently entered into a voluntary Hold Separate Agreement ("HSA") that, to date, has restricted ProMedica from making certain significant changes to St. Luke's. In January 2011, the FTC and the State of Ohio filed an action in federal district court, seeking a temporary restraining order and preliminary injunction under Sections 13(b) and 16 of the Clayton Act, pending resolution of the administrative trial on the merits of the FTC's Section 7 claim. After several briefings, submission of hundreds of exhibits, and a one and a half-day preliminary injunction hearing, the federal district court judge granted the FTC's motion and issued a preliminary injunction extending the HSA. (*See infra* Section IV).

3. For purposes of analyzing the competitive effects of the Acquisition, the two relevant markets at issue are general acute-care inpatient hospital services ("GAC") and inpatient obstetrical services ("OB") sold to commercial health plans. It is appropriate and necessary to consider OB services as a distinct relevant market because these services are offered by a different (more limited) set of providers in Lucas County and, thus, the competitive conditions differ. For both relevant services, the relevant geographic market is no broader than Lucas County, Ohio. (*See infra* Sections VI, VII, VIII).

4. The Acquisition increases market shares and market concentration substantially in both relevant markets, which already were highly concentrated before the Acquisition. Such high levels of market concentration create a strong presumption – in both markets – that the Acquisition is anticompetitive and unlawful. ProMedica's post-Acquisition market share is 58.3% for GAC services and 80.5% for OB services. In the GAC market, concentration under the Herfindahl-Hirschman Index ("HHI") rises by 1,078 points to 4,391; in the obstetrics market – a duopoly after the Acquisition – concentration rises by 1,323 points to 6,854. (*See infra* Section IX). These levels far exceed the levels required to create a presumption of illegality, and also exceed, by a wide margin, levels that have been found by numerous courts to be sufficiently high to warrant condemning proposed mergers.

5. Additional evidence presented by Complaint Counsel confirms and strengthens the presumption of competitive harm created by the market-concentration figures. This evidence includes hundreds of ordinary-course documents from ProMedica, St. Luke's,

third-party hospitals and health plans; the analysis of three expert witnesses; fact-witness testimony from sixteen investigational hearings and thirty depositions; and live testimony of 29 fact witnesses and five expert witnesses. For example, an October 2009 presentation to the St. Luke's Board of Directors stated that a "St. Luke's affiliation with ProMedica has the greatest potential for higher hospital rates. A ProMedica-SLH partnership would have a lot of negotiating clout." Formal due-diligence team notes, distributed among St. Luke's executives and assessing potential affiliation scenarios, pointed out that an affiliation with ProMedica "could still stick it to employers, that is, to continue forcing high rates on employers and insurance companies." (*See infra* Sections X-XIII).

6. The evidence demonstrates that, prior to the Acquisition, ProMedica and St. Luke's were close, vigorous competitors. The Acquisition eliminated this competition and the benefits – in price, quality, and service – that flowed from that competition to Lucas County residents. After the Acquisition, ProMedica becomes a "must-have" health system that will exercise its market power to obtain higher rates from health plans. These higher rates are imposed on local employers, but ultimately are borne by the residents of Lucas County, who will face higher deductibles, co-pays, or other out-of-pocket costs for healthcare services. (*See infra* Sections X-XIII).

7. The evidence is clear that entry or expansion will not be timely, likely, or sufficient to counter the anticompetitive effects resulting from the Acquisition. (*See infra* Section XIV).

8. The Acquisition does not produce cognizable, merger-specific efficiencies that outweigh the competitive harm resulting from the transaction. The paltry efficiencies claims that Respondent has put forth are not credible, not substantiated, and appear designed for litigation. (*See infra* Section XV).

9. Respondent admits that St. Luke's is not a "failing firm." Not only was St. Luke's not in grave danger of imminent failure, it was in fact, successfully rebounding under the leadership of a relatively new CEO at the time of Acquisition. Absent the Acquisition, St. Luke's would have remained a viable, independent competitor for the foreseeable future. (*See infra* Section XVI).

10. The Acquisition has eliminated vital competition between ProMedica and St. Luke's, and will result in higher prices, thus harming the residents of Lucas County. A remedy is justified and needed to prevent the Acquisition's substantial lessening of competition. Only a full and complete divestiture of St. Luke's, the traditional and proper remedy, will restore competition in Lucas County. (*See infra* Section XVIII).

II. THE PARTIES TO THE ACQUISITION

A. ProMedica Health System, Inc.

11. ProMedica Health System, Inc. ("ProMedica") is a not-for-profit healthcare system incorporated under and by virtue of the laws of Ohio. ProMedica is headquartered at 1801 Richard Road, Toledo, Ohio, 43607. ProMedica's healthcare system serves northwestern and west-central Ohio and southeastern Michigan. (Answer at ¶ 7).

12. Excluding St. Luke's, ProMedica operates three general acute-care hospitals in Lucas County, Ohio: The Toledo Hospital ("TTH"); Flower Hospital ("Flower"); and Bay Park Community Hospital ("Bay Park"). (Answer at ¶ 8). ProMedica's Lucas County hospitals offer general acute care inpatient services. (Joint Stipulations of Law and Fact, JX00002A ¶ 4). ProMedica also operates Toledo Children's Hospital, which is located on the same campus as TTH. (Answer at ¶ 8; Oostra, Tr. 5773; Shook, Tr. 1030; RX-194 at 32 (Wakeman, Decl.), *in camera*).

13. TTH has about 550 staffed beds and offers all basic general acute-care services, as well as more specialized, higher-acuity tertiary services. (Oostra, Tr. 5773-5774; PX01904 at 017, 027 (Steele, IHT at 58-59, 99), *in camera*; PX02389 at 015 (Navigant Proposal Presentation), *in camera*). TTH also houses a Level I Trauma Center. (Oostra, Tr. 5774; PX01904 at 014 (Steele, IHT at 49), *in camera*). Flower and Bay Park are community hospitals and do not offer tertiary-level services. (PX01902 at 008 (Sheridan, IHT at 23-24), *in camera*). Flower has about 250 staffed beds and Bay Park has about 80 staffed beds. (Oostra, Tr. 5777-5778; PX02389 at 015 (Navigant Proposal Presentation), *in camera*); PX01904 at 017 (Steele, IHT at 59), *in camera*). All three hospitals offer inpatient obstetrics services. (Oostra, Tr. 5774, 5777-5778; PX01906 at 047 (Oostra, IHT at 184), *in camera*).

14. ProMedica also owns Paramount Health Care ("Paramount"), a for-profit corporation that is one of the largest commercial health plans in Lucas County. (Answer at ¶ 8; Wachsman, Tr. 4855; Hanley, Tr. 4784-4785, *in camera*; PX00270 at 024 (S&P Credit Presentation)). Some of the business decisions made on behalf of Paramount or ProMedica hospitals may have an impact on the other, and if a business decision was to have such an impact, an evaluation of that impact may be performed. (Joint Stipulations of Law and Fact, JX00002A ¶ 14).

15. ProMedica is by far the largest employer of physicians in Lucas County. (Joint Stipulations of Law and Fact, JX00002A ¶ 26; Answer at ¶ 8). ProMedica employs over 300 physicians. (Oostra, Tr. 5795).

16. ProMedica is the dominant hospital system in Lucas County, a fact its executives have highlighted in internal analyses and external presentations. (PX00270 at 025 (S&P Credit Presentation) ("ProMedica Health System has market dominance in the Toledo MSA"); PX00221 at 002 (ProMedica 2009 Presentation) ("it is critical that ProMedica

evolves to maintain its competitive dominance in the Region"); PX00319 (TTH SWOT Analysis) ("Dominant market share position")).

17. Both before and after the Acquisition, ProMedica's market share is higher than its competitors in Lucas County, whether calculated by registered beds, beds-in-use, or occupancy. (Joint Stipulations of Law and Fact, JX00002A ¶ 17). ProMedica accounted for almost 50 percent of patient days for general acute-care services in Lucas County from July 2009 through March 2010, before the acquisition of St. Luke's. (PX02148 at 143 (Ex. 6) (Town Expert Report), *in camera*); PX02150 at 001 (market share chart)). ProMedica accounted for 71.2 percent of patient days for obstetrics services during the same period. (PX02148 at 143 (Ex. 6) (Town Expert Report), *in camera*; PX02150 at 002 (market share chart)).

18. Prior to the Acquisition, ProMedica considered St. Luke's a competitor for general acute care services and obstetric services. (Joint Stipulations of Law and Fact, JX00002A ¶ 20); Response to RFA at ¶ 41; Oostra, Tr. 5801, 6038-6039, 6040).

19. ProMedica receives the highest commercial reimbursement rates in Lucas County. (Radzialowski, Tr. 684, *in camera*; Pugliese, Tr. 1484-1485, 1513, 1656-1657, *in camera*; Pirc, Tr. 2238, *in camera*; PX02296 at 001 (Anthem notes), *in camera*; PX02125 at 027 (Ex. 4) (Town, Decl.), *in camera* (calculating that ProMedica's rates are **{70.9}** percent higher than St. Luke's' rates, as a volume-weighted average)). Health plans have told ProMedica executives that its rates are among the highest in the state of Ohio. (PX00153 at 001 (ProMedica Jan. 2009 e-mail) ("we hear from payors we are among the most expensive in ohio [sic]"); Oostra, Tr. 5996).

20. In 2009, ProMedica's total net revenues exceeded $1.6 billion. (Answer at ¶ 8; Oostra, Tr. 6123; PX00015 at 006 (ProMedica and Subsidiaries Consolidated Financial Statements 2009: "Total revenues, gains, and other support" line)). ProMedica also had a reserve fund with more than $1 billion, as of December 31, 2009. (PX00009 at 048-049 (ProMedica Credit Presentation); PX00015 at 004 (ProMedica and Subsidiaries Consolidated Financial Statements 2009: sum of "Cash and cash equivalents," "Marketable securities," and "Internally designated for capital acquisition" lines); Hanley, Tr. 4804-4805, *in camera* (over $1 billion in reserve fund for last several years); Johnston, Tr. 5495, *in camera* (about $1 billion at time of Acquisition)). At the end of 2009, ProMedica's total assets exceeded $2.4 billion. (PX00009 at 062 (ProMedica Credit Presentation); Oostra, Tr. 6122-6123).

21. Approximately 34 percent of TTH's 2009 patient days was derived from commercially-insured patients. (PX02148 at 171 (Ex. 16) (Town Expert Report), *in camera* (commercial share, third quarter 2009 to first quarter 2010 data)). For Flower and Bay Park, the percentage of patient days that came from commercially-insured patients was 28.4 and 22.5 percent, respectively. (PX02148 at 171 (Ex. 16) (Town Expert Report), *in camera* (commercial share, third quarter 2009 to first quarter 2010 data)).

22. ProMedica's hospitals in Lucas County have had lower quality measures and outcomes than St. Luke's. (PX01172 at 001 (Aug. 2009 St. Luke's email), *in camera*; PX01030 at 018-019 (St. Luke's Board Affiliation Analysis Update Oct. 2009), *in camera*; PX01016 at 006 (St. Luke's Board Meeting Affiliation Update Dec. 2009), *in camera*; Nolan, Tr. 6339-6343, *in camera*; PX01221 at 068 (Sept. 2010 Navigant report), *in camera*). In fact, St. Luke's Board of Directors and executives worried that an affiliation with ProMedica might lower St. Luke's quality. (Rupley, Tr. 2011, *in camera* ("[W]e wanted to make sure that [St. Luke's] quality ratings didn't go down as a result of joining the ProMedica system.") (discussing PX01560 at 003 (Notes from Due Diligence Meetings: Aug. 2009), *in camera*; PX01130 at 002 (Notes from Due Diligence Meetings, Aug. 2009), *in camera* ("Some of ProMedica's quality outcomes/measures are not very good. Would not want them to bring poor quality to St. Luke's."); PX01016 at 023 (St. Luke's Board Meeting Affiliation Update Dec. 2009), *in camera*; PX01911 at 061 (Wakeman, IHT at 237), *in camera* (acknowledging concern that affiliating with a lower quality institution might have an adverse impact on St. Luke's)). Mr. Wakeman informed St. Luke's Board of Directors that ProMedica "[a]cknowledges they need to improve" quality measures. (PX01030 at 018 (St. Luke's Board Affiliation Analysis Update Oct. 2009), *in camera*; *see also* PX01920 at 025 (Wakeman, Dep. at 92-93), *in camera*).

B. St. Luke's Hospital

23. St. Luke's Hospital ("St. Luke's"), located at 5901 Monclova Road, Maumee, Ohio, 43537, is a formerly independent, non-profit general acute-care community hospital. (Answer at ¶ 9).

24. St. Luke's offers general acute care inpatient services. (Joint Stipulations of Law and Fact, JX00002A ¶ 5).

25. St. Luke's has 178 staffed beds and provides a full array of general acute-care hospital services and some tertiary cardiac services through its Heart Center, which opened in 2001. (Wakeman, Tr. 2638, *in camera* (about 175-185 staffed beds), 2753-2754; PX01322 (St. Luke's Aug. 2010 e-mail), *in camera*; PX01909 at 029 (Dewey, IHT at 109), *in camera*; PX01022 at 005 (St. Luke's Revenue and Expense Milestone Descriptions)). St. Luke's currently performs few, if any, tertiary services and no quaternary services. (Joint Stipulations of Law and Fact, JX00002A ¶ 6).

26. St. Luke's was broadly recognized as a low-cost, high-quality hospital before it was acquired by ProMedica. (Answer at ¶ 9; Wakeman, Tr. 2494-2496; Sandusky, Tr. 1310-1311; PX00390 at 001 (ProMedica May 2010 news release); PX01072 at 001 (Key Messages from St. Luke's Nov. 2009); PX01914 at 016 (Pirc, IHT at 55-56), *in camera*).

27. St. Luke's is located in a desirable and strategically important southwestern suburb in Lucas County. (Wakeman, Tr. 2477; 2478-2481; PX01911 at 015 (Wakeman, IHT at 53), *in camera* ("terrific location"); PX01906 at 031 (Oostra, IHT at 117-118), *in camera* ("very appealing location"); PX00009 at 029 (ProMedica Credit Presentation) ("desirable section of the Toledo metro area where PHS lacks a physical presence"); PX01917 at 017

(Radzialowski, Dep. at 62) ("huge population that resides in Southwest Toledo relies on [St. Luke's] as their primary source of secondary care, hospital care"), PX01917 at 020 (Radzialowski, Dep. at 76), *in camera*). St. Luke's is easily accessible from major highways, and its location provides it with access to a growing population of employed and commercially-insured patients. (Wakeman, Tr. 2479-2481; PX01911 at 015 (Wakeman, IHT at 53-55), *in camera*; Oostra, Tr. 6036-6038; Nolan, Tr. 6287, *in camera* (St. Luke's is "in a highly visible area, right off the highway, good highway access, and it's an area with good demographics, reasonable population growth and good average household incomes."); PX01132 at 002-004 (St. Luke's evaluation), *in camera*; PX01215 at 003 (Navigant Presentation: ProMedica Health System Market and Facility Assessment Summary), *in camera* ("good access and visibility from the Interstate"); JX00003-004 (photo of freeway next to St. Luke's)).

28. Prior to the Acquisition, St. Luke's considered ProMedica, Mercy, and UTMC to be competitors. (Joint Stipulations of Law and Fact, JX00002A ¶ 19; Response to RFA at ¶ 40; Wakeman, Tr. 2758).

29. St. Luke's was not an in-network provider with Paramount from 2001 through August 31, 2010. (Joint Stipulations of Law and Fact, JX00002A ¶ 46).

30. St. Luke's total revenues were approximately $156 million in 2009. (PX01006 at 005 (OhioCare and Subsidiaries 2009 Consolidated Financial Report)).

31. As of August 31, 2010, St. Luke's held a total of at least $65 million in cash and investment balances. (Joint Stipulations of Law and Fact, JX00002A ¶ 34). As of December 31, 2010, St. Luke's held a total of at least $70 million in cash and investment balances. (Joint Stipulations of Law and Fact, JX00002A ¶ 35).

32. As of August 31, 2010, St. Luke's had enough cash and investments on its financial statement to pay off all of its outstanding debt. (Joint Stipulations of Law and Fact, JX00002A ¶ 24).

33. In 2009, St. Luke's admitted 10,969 inpatients, performed 22,811 outpatient surgeries, had 40,781 emergency-department visits, and had 26,610 patient days. (PX01149 at 009 (St. Luke's Presentation May 2010), *in camera*; PX02148 at 171 (Ex. 16) (Town Expert Report), *in camera* (total patient days, third quarter 2009 to first quarter 2010 data)). As a result of St. Luke's growth prior to the Acquisition, St. Luke's was the third-largest hospital in Lucas County based on commercial discharges. (Wakeman, Tr. 2600; PX02148 at 171 (Ex. 16) (Town Expert Report), *in camera*).

34. In Lucas County, St. Luke's had a market share based on patient days of 11.5 percent for GAC services and 9.3 percent for OB services from July 2009 through March 2010. (PX02148 at 143 (Ex. 6) (Town Expert Report), *in camera*; PX02150 (market share charts)).

35. In 2009, St. Luke's generated approximately 31 percent of its patient days from commercially-insured patients, a higher percentage than all but one of ProMedica's Lucas County hospitals. (PX02148 at 171 (Ex. 16) (Town Expert Report), *in camera*).

36. Commercial payors represent about 39-40 percent of St. Luke's net patient revenue. (Wakeman, Tr. 2751).

III. THE ACQUISITION

37. On May 25, 2010, ProMedica entered into a Joinder Agreement with OhioCare Health System, Inc. ("OHS"), St. Luke's, and St. Luke's Foundation, Inc. ("SLF") to acquire St. Luke's, SLF, and other affiliates. (PX00058 (Joinder Agreement); Oostra, Tr. 6115; PX00390 at 001 (ProMedica News Release)).

38. Prior to the Acquisition, OHS was the parent company of St. Luke's, SLF, and other affiliates (collectively, "OHS Affiliates"). (PX00058 at 006 (Joinder Agreement Recitals)).

39. Upon consummation of the Acquisition on August 31, 2010 (effective as of Sept. 1, 2010), ProMedica became the sole corporate member or shareholder of St. Luke's and its affiliated entities. (Answer at ¶ 2, 11; PX00058 at 009 (Joinder Agreement § 3.1)).

40. The Joinder Agreement ("Agreement") vests ProMedica with economic and decision-making control over St. Luke's and the other OHS Affiliates. Among other things, and subject only to certain limited qualifications, ProMedica has the right to: (a) appoint ProMedica nominees to the boards of directors of St. Luke's and the other OHS Affiliates; (b) approve St. Luke's-nominated appointments to the boards of St. Luke's and the other OHS Affiliates; (c) remove members from the boards of St. Luke's and the other OHS Affiliates; (d) adopt and approve strategic plans and annual operating and capital budgets for St. Luke's and other OHS Affiliates; (e) authorize and approve non-budgeted operating expenses and capital expenditures above certain amounts; (f) authorize and approve the incurrence or assumption of debt above certain amounts; (g) authorize and approve contracts for expenditures above certain amounts; (h) authorize and approve any merger, consolidation, sale, or lease of St. Luke's and the other OHS Affiliates; and (i) appoint and remove the President, Secretary, and Treasurer of St. Luke's and the other OHS Affiliates. (PX00058 at 016-018 (Joinder Agreement § 4.1)).

41. ProMedica also has the exclusive right to negotiate contracts with managed care organizations on behalf of St. Luke's. (PX00058 at 025, 058 (Joinder Agreement § 9, Ex. 9); PX01905 at 042 (Wachsman, IHT at 162), *in camera*). Since the Acquisition, ProMedica has negotiated with health plans for general acute care services performed at St. Luke's. (Joint Stipulations of Law and Fact, JX00002A ¶ 16). ProMedica admits that it has negotiated and will continue to negotiate reimbursement rates with health plans for St. Luke's. (Response to RFA at ¶ 34).

42. ProMedica admits that the Acquisition constitutes an acquisition under Section 7 of the Clayton Act. (Answer at ¶ 10).

43. ProMedica's ordinary course internal analysis concluded that the "[b]ottom line, for accounting purposes" is that ProMedica "has acquired St. Luke's." (PX00223 at 005 (ProMedica Jul. 2010 e-mail)). ProMedica's CFO confirmed in testimony that ProMedica had "complete economic control" over St. Luke's. (PX01903 at 035 (Hanley, IHT at 130), *in camera*).

44. The Agreement requires ProMedica to add St. Luke's to the provider network of its health-insurance subsidiary, Paramount, at rates comparable to other general acute-care hospitals in the ProMedica system. (PX00058 at 022-023 (Joinder Agreement § 6.2(i)); PX00140 at 002 (Second Amendment to Joinder Agreement § 1.c)). St. Luke's was not an in-network provider with Paramount from 2001 through August 31, 2010. (Joint Stipulations of Law and Fact, JX00002A ¶ 46). After the consummation of the Acquisition, Paramount added St. Luke's to its network. (Oostra, Tr. 5788; Wakeman, Tr. 2584; PX01918 at 020 (Oostra, IHT at 72), *in camera*).

45. The Agreement requires ProMedica to maintain St. Luke's as an acute-care hospital providing six general categories of services in its current location for ten years, but does not require ProMedica to maintain or provide any other services at St. Luke's that are not specified in the Agreement. Thus, for example, ProMedica could cease offering – or reduce service levels – for services including oncology, cardiology, orthopedics, spinal neurosurgery, pediatrics, or diabetes care. (PX00058 at 023, 045-046 (Joinder Agreement §§ 7.1, 13.2-13.3); PX02102 at ¶ 5 (Wakeman, Decl.) (identifying St. Luke's' current services); *see also* PX01920 at 040 (Wakeman, Dep. at 152-153), *in camera*).

46. By September 1, 2012, ProMedica will have the right to approve two-thirds of the members of St. Luke's Board of Directors. (Joint Stipulations of Law and Fact, JX00002A ¶ 25; Response to RFA at ¶ 50).

47. ProMedica already has significant influence on St. Luke's Board of Directors after the Acquisition. ProMedica has already added ProMedica representatives to the St. Luke's Board of Directors and St. Luke's Foundation Board. (Oostra, Tr. 5856-5857). ProMedica also has the power to approve and remove any board member at any time from the St. Luke's Hospital Board and the Foundation Board with or without cause. (Black, Tr. 5674; PX00058 at 016-017 (Joinder Agreement § 4.1)). ProMedica also has the right to appoint the president and CEO, and approve budgets and strategic plans, for St. Luke's. (Oostra, Tr. 5857-5858; Black, Tr. 5674-5675; PX00058 at 017-019 (Joinder Agreement § 4.1). The St. Luke's Board of Directors is subject to a list of reserve powers. (PX00058 at 016-018 (Joinder Agreement § 4.1). For example, St. Luke's cannot sell property or assets without ProMedica's approval. (Oostra, Tr. 5857; PX00058 at 017 (Joinder Agreement § 4.1). ProMedica can remove all of the profits from St. Luke's and use it for any purpose that it wanted, and ProMedica has the right to unilaterally amend the articles of incorporation or the bylaws of St. Luke's. (Black, Tr. 5676; PX00058 at 018, 023-025 (Joinder Agreement §§ 4.1, 7).

48. ProMedica's acquisition of St. Luke's and the other OHS Affiliates was not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. (15 U.S.C. § 18a; PX00057 at 001 (Jan. 2010 e-mail from FTC to ProMedica counsel)).

IV. PROCEDURAL HISTORY

A. Complaint Counsel's Antitrust Investigation

49. In July 2010, the FTC and the State of Ohio staff began preliminary investigations into the Acquisition's potential effects on competition for hospital services in Toledo, Ohio, and the surrounding area.

50. On August 9, 2010, the Commission issued a resolution authorizing the use of compulsory process, including subpoenas and civil investigative demands ("CIDs"), to obtain relevant information for the investigation. (*See* Emergency Petition for an Order Enforcing Subpoenas *Duces Tecum* and Civil Investigative Demands ("FTC Petition"), Petition Ex. 2, *FTC v. ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK (N.D. Ohio Oct. 13, 2010)).

51. On August 13, 2010, the Commission issued six subpoenas to ProMedica and four subpoenas to St. Luke's, compelling named persons to provide testimony under oath in investigational hearings. (FTC Petition, Petition Ex. 1 at ¶ 14 (Liu, Decl.), *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK). Three additional subpoenas requiring testimony from the merging parties were issued subsequently. The 13 investigational hearings resulting from these subpoenas were held between September 13 and October 15, 2010.

52. On August 25, 2010, the FTC issued subpoenas and CIDs to ProMedica, Paramount, and St. Luke's, with a return date of September 24, 2010. (FTC Petition, Petition Ex. 1 at ¶ 17 (Liu, Decl.), *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK). ProMedica, Paramount, and St. Luke's failed to comply with the CIDs and subpoenas by September 24, 2010, or in the days thereafter. (*See* FTC Petition, Petition Ex. 1 at ¶¶ 36-37). Ultimately, on October 13, 2010, the FTC filed an emergency petition in the Northern District of Ohio to enforce its subpoenas and CIDs. (FTC Petition, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK).

53. On January 3, 2011, ProMedica certified substantial compliance with all subpoenas and CIDs issued to it (including those issued to Paramount and St. Luke's) by the FTC. (Answer at ¶ 16, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK).

B. The Voluntary Hold-Separate Agreement

54. On August 18, 2010, the FTC and ProMedica entered into a limited, 60-day Hold-Separate Agreement ("HSA"), to allow the expedited FTC investigation to continue. (PX00069 (HSA); FTC Petition, Petition Ex. 1 at ¶ 15 (Liu, Decl.), *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK).

55. Though not comprehensive, the HSA includes several key provisions designed to temporarily preserve St. Luke's viability, competitiveness, and marketability. The HSA prevents, among other things: (1) ProMedica's termination of St. Luke's health-plan contracts (while allowing health plans the option to extend their contracts with St. Luke's past the termination date, if a new agreement is not reached); (2) the elimination, transfer, or consolidation of any clinical service at St. Luke's; and (3) the termination of employees at St. Luke's without cause. (PX00069 at 001 (¶¶ 1-5) (HSA)).

56. On October 15, 2010, following the FTC's emergency petition to enforce the subpoenas and CIDs, ProMedica agreed to extend the HSA to expire 15 days after ProMedica substantially complied with the subpoenas and CIDs (including those issued to Paramount and St. Luke's). (Answer at ¶ 16, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK). On the same day, the FTC granted ProMedica's request for a modification to the HSA to allow ProMedica to move inpatient rehabilitation beds at St. Luke's to Flower to create additional medical/surgical rooms at St. Luke's.

C. Federal District Court Proceedings

57. On January 6, 2011, by a unanimous 5-0 vote, the Commission found reason to believe that the Acquisition would violate Section 7 of the Clayton Act by substantially reducing competition in two lines of commerce (general acute-care inpatient hospital services and inpatient obstetrical services), and initiated an administrative proceeding. (Complaint at ¶ 17, ProMedica Health Sys., Inc., No. 3:10-cv-02340-DAK; *see also* Commission Complaint, FTC Dkt. #9346 (In the Matter of ProMedica Health System, Inc.)).

58. Also on January 6, 2011, the Commission authorized FTC staff to seek preliminary relief in federal district court that would require ProMedica to preserve St. Luke's as a viable, independent competitor during the FTC's administrative proceeding and any subsequent appeals. (Complaint at ¶ 18, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK).

59. On January 7, 2011, the FTC and the State of Ohio filed an action for a temporary restraining order ("TRO") and preliminary injunction ("PI"), under Sections 13(b) and 16 of the FTC Act, 15 U.S.C. §§ 53(b), 26. (Complaint, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK). Plaintiffs' complaint alleged that the Acquisition "threatens to substantially lessen competition" for general acute-care inpatient hospital services and inpatient obstetrical services in Lucas County, Ohio, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. (Complaint at ¶¶ 1, 4, 17, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK). Accordingly, Plaintiffs sought temporary and preliminary injunctive relief from the Court to prevent further integration of St. Luke's until the conclusion of the full administrative proceeding on the merits. (Complaint at ¶ 7, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK).

60. On January 10, 2011, ProMedica answered the complaint and filed a response in opposition to Plaintiffs' motion for a TRO. (Answer, *ProMedica Health Sys., Inc.*, No.

3:10-cv-02340-DAK; Def.'s Resp. in Opp. to Pltfs.' Motion for TRO, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK).

61. A TRO hearing was held before Judge Katz of the Northern District of Ohio on January 13, 2011. After the TRO hearing, ProMedica agreed to extend the HSA (with one modification) until 5:00 p.m. on the second day following the District Court's ruling on Plaintiffs' Motion for Preliminary Injunction. (Mem. in Support of Pltfs.' Motion to Withdraw Without Prejudice Pltfs.' Motion for TRO) ("Brief for Withdrawal of TRO Motion") at 2, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK). Plaintiffs granted ProMedica's request to modify the HSA to allow ProMedica to provide health plans with notice that, if the District Court denies preliminary relief, ProMedica will negotiate new rates with health plans as soon as the current contracts expire. Plaintiffs thereafter moved to withdraw without prejudice their motion for a temporary restraining order, and the District Court granted the motion on January 18, 2011. (Brief for Withdrawal of TRO Motion, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK; Order Granting Withdrawal of TRO Motion, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK).

62. Pursuant to the District Court's Order Scheduling the PI Hearing, Plaintiffs and Defendant conducted expedited discovery, including 12 fact-witness and expert depositions. (Order Scheduling the PI Hearing, *ProMedica Health Sys., Inc.*, No. 3:10-cv-02340-DAK).

63. On February 10 and 11, 2011, the District Court held a one and a half-day hearing regarding the motion for a preliminary injunction. (*FTC v. ProMedica Health Sys.*, No. 3:11 CV 47, 2011 U.S. Dist. LEXIS 33434 at *2-3, *5 (N.D. Ohio March 29, 2011)).

64. On March 29, 2011, U.S. District Court Judge, David A. Katz, issued his decision. (*ProMedica,* 2011 U.S. Dist. LEXIS 33434). Judge Katz ordered that the HSA was to continue until either the completion of all legal proceedings by the Commission, including all appeals, or further order of the District Court, with an update on November 30, 2011, if the FTC had not completed actions by that date. (*FTC v. ProMedica,* 2011 U.S. Dist. LEXIS 33434 at *164).

D. FTC Administrative Litigation

65. The administrative complaint, filed on January 6, 2011, alleges that the Acquisition substantially lessens competition in the relevant markets – inpatient general acute-care services and obstetrical inpatient services – in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. (Commission Complaint at ¶¶ 39-40).

66. On January 26, 2011, ProMedica filed an answer to the administrative complaint. (Answer).

67. During discovery, Complaint Counsel and Respondent conducted 28 depositions – 22 fact depositions and six expert depositions, and exchanged five expert reports and three rebuttal expert reports.

68. The administrative trial began May 31, 2011. During the administrative trial, 18 fact witnesses and three experts testified during Complaint Counsel's case in chief, and 11 fact witnesses and two experts testified during Respondent's case in chief. The last day of the administrative trial was August 18, 2011.

V. FUNDAMENTALS OF HOSPITAL COMPETITION AND PRICING

A. Types of Insurance and the Role of Health Plans

69. Most of the patients treated by hospitals fall into one of three broad payment categories: Medicare/Medicaid, self-pay/indigent, and private commercial insurance. (Wachsman, Tr. 4860; Town, Tr. 3608; PX02148 at 010 (¶ 14) (Town Expert Report), *in camera*; RX-71(A) at 46-47 (Guerin-Calvert Expert Report), *in camera*; *see* Korducki, Tr. 551; Radzialowski, Tr. 627-629; Oostra, Tr. 5783).

70. In Lucas County, Ohio, roughly 65 percent of patients receiving inpatient care are covered by Medicare or Medicaid, roughly 29 percent are privately insured, and roughly 6 percent are self-pay. (PX02148 at 010 (¶ 14) (Town Expert Report), *in camera*).

71. The reimbursement rates that hospitals receive for Medicare or Medicaid patients are not negotiated. (Town, Tr. 3608). Rather, administrative processes at federal and state agencies establish these rates. (Wachsman, Tr. 4848, 4860; PX02117 at 003 (¶ 7 n.1) (Wachsman, Decl.), *in camera*; Town, Tr. 3608).

72. Self-pay patients, including indigent patients, are billed directly at hospitals' chargemaster rates (*i.e.*, at hospitals' list prices). (*See* PX01923 at 025-026 (Town, Dep. at 99-101); PX02117 at 002 (Wachsman, Decl.)). For those self-pay patients who cannot afford their charges, hospitals often provide indigent and charity care at a discount or at the hospitals' own expense. (Wachsman, Tr. 4848-4849; *see* Gold, Tr. 268-269; Town, Tr. 3608)).

73. Privately-insured patients obtain health insurance coverage primarily through commercial health plans. (PX02148 at 010 (¶ 15) (Town Expert Report), *in camera*). These health plans typically use a variety of methods to manage the cost of the medical care provided to their members. (Town, Tr. 3616; PX02148 at 010 (¶ 15) (Town Expert Report), *in camera*).

74. Cost-management techniques implemented by health plans include contracting selectively with providers, requiring referrals for members to visit specialists, introducing financial incentives for providers to reward more efficient care, encouraging the use of preventative care, and reviewing the necessity and appropriateness of the care provided to their members. (Town, Tr. 3616; PX02148 at 10 (¶ 15) (Town Expert Report), *in camera*; *see* Wachsman, Tr. 5039-5040, *in camera*)).

75. All else equal, hospitals receive higher reimbursements for treating commercially insured patients than for treating Medicare/Medicaid and self-pay/indigent patients. (Gold, Tr. 268-269; Wachsman, Tr. 4848-4849; Town, Tr. 3609.) Therefore, commercially insured

patients are important to a hospital's bottom line. (Gold, Tr. 268-269; Wachsman, Tr. 4848-4849; Town, Tr. 3609.)

B. Relationships Between Employees, Employers, Health Plans, and Hospitals

76. Commercially insured patients generally obtain health insurance through their employer. (Town, Tr. 3609-3610; PX02148 at 005 (¶ 14) (Town Expert Report), *in camera*). Health insurance is a pre-tax benefit, so it is essentially subsidized if purchased through one's employer. (Town, Tr. 3610). The risk-sharing nature of health insurance generates benefits from grouping, such that health insurance costs are lowered as more people buy into a health insurance pool. (Town, Tr. 3610).

77. Employers offer their employees health insurance as part of their employees' total compensation package, making health insurance very important to employees. (Town, Tr. 3610; PX02148 at 010 (¶ 16) (Town Expert Report), *in camera*).

78. Employers generally do not negotiate directly with hospitals, but rather rely on health plans to do so. (Neal, Tr. 2095, 2106; Pugliese, Tr. 1432-1433, 1547; Radzialowski, Tr. 748; PX01914 at 014 (Pirc, IHT at 49); Town, Tr. 3611; *see also* Caumartin, Tr. 1839-1839, 1873; Buehrer, Tr. 3062, 3089; PX02065 at 001 (¶ 3-4) (Szymanski, Decl.).

79. Even large and sophisticated employers rely on health plans to manage their employees' health insurance options. (Town, Tr. 3611; Neal, Tr. 2095, 2106 (Chrysler); *see also* Caumartin, Tr. 1838-1839, 1873 (Wood County Schools Consortium)). This is the case because such employers can benefit from the bargaining leverage of the health plan's additional membership and because health plans specialize in the often complex tasks involved in managing health benefits. (Caumartin, Tr. 1838-1839, 1872; Town, Tr. 3611; *see also* Neal, Tr. 2106; Pugliese, Tr. 1432-1433).

80. The health insurance products that health plans offer to employers fall into two broad categories: self-insured and fully-insured. (Town, Tr. 3612; PX02148 at 011-012 (¶ 18) (Town Expert Report), *in camera*; Pugliese, Tr. 1430-1432; Pirc, Tr. 2175; Radzialowski, Tr. 622; McGinty, Tr. 1226-1227; Sheridan, Tr. 6701, *in camera*; Sandusky, Tr. 1293).

81. Under a self-insured plan, the employer collects premiums from its employees and pays the full costs of employees' healthcare claims, bearing the risk that healthcare costs may exceed the premiums collected by the employer. (Town, Tr. 3612-3613; PX02148 at 011-012 (¶ 18) (Town Expert Report), *in camera*; Pirc, Tr. 2175-2176; Pugliese, Tr. 1431-1432, 1534; Radzialowski, Tr. 622, 625).

82. Under a self-insured plan, the employer pays the health plan a fee in exchange for access to the health plan's provider network at the rates negotiated by the health plan and for administration of its employees' claims. (PX02148 at 011-012 (¶ 18) (Town Expert Report), *in camera*; Pirc, Tr. 2175-2176; Pugliese, Tr. 1431-1432; Radzialowski, Tr. 622, 629-30).

83. Therefore, under a self-insured plan, an increase in a hospital's reimbursement rates will directly increase the employer's healthcare expenditures for employees who use that

hospital as soon as the rate increase takes effect. (Response to RFA at ¶ 35; Town, Tr. 3612; PX01944 at 020 (Pirc, Dep. at 74-75); Radzialowski, Tr. 840-841, *in camera*; s*ee also* Pugliese, Tr. 1456).

84. Approximately 70 percent of commercially insured employees in Lucas County receive coverage through self-insured plans. (Town, Tr. 3612-3613; PX02148 at 012 (¶ 18) (Town Expert Report), *in camera*).

85. Under a fully-insured plan, the health plan collects premiums from the employer and pays the cost of the employees' healthcare, bearing the risk that healthcare costs may exceed the premiums collected by the health plan. (Town, Tr. 3612; PX02148 at 011-012 (¶ 18) (Town Expert Report), *in camera*; Pugliese, Tr. 1430-1431; Pirc, Tr. 2175; Radzialowski, Tr. 622, 624).

86. Therefore, under a fully-insured plan, an increase in a hospital's reimbursement rates will increase the employer's healthcare expenditures via the premium paid to the health plan. (Town, Tr. 3612; Pugliese, Tr. 1554-55, 1560-1561; PX01938 at 030 (Radzialowski, Dep. at 114), *in camera*; Sheridan, Tr. 6701-6702, *in camera*).

87. Health plans pass on some or all of the increase in the price of hospital care to their fully-insured customers. (Pirc, Tr. 2174; Pugliese, Tr. 1554-1555; Radzialowski, Tr. 779; Sheridan, Tr. 6701, *in camera*; PX01944 at 020, 027 (Pirc, Dep. at 75-76, *in camera*, 104-105); PX01938 at 030 (Radzialowski, Dep. at 114, *in camera*); PX01939 at 019 (Sheridan, Dep. at 70, *in camera*)). Any profit-maximizing business will pass on some or all of a cost increase to its customers. (Town, Tr. 3615).

88. Testimony in this matter and economic studies indicate that employers generally pass on to employees increases in the cost of health insurance, or reduce or eliminate healthcare benefits altogether. (PX02148 at 012 (¶ 18 n. 29) (Town Expert Report), *in camera*; Town, Tr. 3604-3605, 3614; Neal, Tr. 2114-2115, 2117-2118, 2158; Caumartin, Tr. 1837-1838; s*ee also* Buehrer, Tr. 3072).

89. If an employer chooses to increase its employees' health insurance costs or reduce its employees' health insurance benefits, the employees' healthcare costs will increase. (Town, Tr. 3615).

90. Those employers who do not pass on all of the increase in healthcare costs will face higher labor costs and may respond by reducing employment. (Town, Tr. 3604.)

91. Because the burden of increased healthcare costs is ultimately passed on to insured individuals, the price increase for hospital services resulting from the Acquisition will harm these consumers. (PX02148 at 012-013 (¶ 18) (Town Expert Report), *in camera*).

C. Rate Negotiations Between Health Plans and Hospitals

1. Health Plans' Criteria for Creating Hospital Networks

92. Health plans compete with one another to be offered by employers in the menu of insurance products that employers offer to their employees. (Town, Tr. 3616-3617; PX02148 at 011 (¶ 17) (Town Expert Report), *in camera*; PX01944 at 028 (Pirc, Dep. at 106); *see also* Neal, Tr. 2092, 2099-2100; Caumartin, Tr. 1839; Buehrer, Tr. 3066).

93. Health plans compete for employers' business along various dimensions, particularly over the price of their insurance products and the breadth and quality of their provider networks. (Town, Tr. 3616-3617; PX02148 at 011 (¶ 17) (Town Expert Report), *in camera*; Neal, Tr. 2101-2104; Caumartin, Tr. 1848-1849; Buehrer, Tr. 3068, 3074-3075; s*ee also* Pirc, Tr. 2284; Pugliese, Tr. 1455; Radzialowski, Tr. 583, 588-589, 595, 598-600, 652-654).

94. Generally, the lower the premium, the more attractive the health plan's product is to employers and their employees, provided the health plan's network offers the employees' preferred set of providers. (PX02148 at 011 (¶ 17) (Town Expert Report), *in camera*; Sandusky, Tr. 1287-1288; Lortz, Tr. 1699-1700, 1707; Caumartin, Tr. 1848-1849; s*ee also* Pirc, Tr. 2284; Pugliese, Tr. 1455).

95. Employers that offer health insurance negotiate with health plans and select the combination of rates, benefit structures, and healthcare provider networks that best meets the needs of the employer and its employees. (PX02148 at 013 (¶ 19) (Town Expert Report), *in camera*; Town, Tr. 3616-3617; Neal, Tr. 2099-2100, 2102; Caumartin, Tr. 1848-1849; Buehrer, Tr. 3066, 3068, 3074-3075; Pugliese, Tr. 1432-1434; Radzialowski, Tr. 620-622).

96. Once included in the employer's menu of health insurance products, health plans compete with one another to attract enrollees. (PX02148 at 011 (¶ 17) (Town Expert Report), *in camera*; PX01944 at 028 (Pirc, Dep. at 106, 107); Neal, Tr. 2099-2100; McGinty, Tr. 1175; *see* Sandusky, Tr. 1302-1303).

97. Health plans regularly conduct market research about their members' preferences in order to maintain attractive and marketable provider networks that appeal to employers and employees. (*See* Pirc, Tr. 2178-2180; Radzialowski, Tr. 588-590; PX02067 at 002 (¶ 6) (Radzialowski, Decl.), *in camera*; PX02072 at 002 (¶ 6) (Firmstone, Decl.), *in camera*; PX01914 at 014-015 (Pirc, IHT at 49-51)).

98. Health plans will find it difficult to market products to employers if their networks do not include the hospitals desired by current and potential members. (PX02148 at 011 (¶ 17) (Town Expert Report), *in camera*; Sandusky, Tr. 1302-1303; Lortz, Tr. 1700, 1704; Caumartin, Tr. 1848-1849; Neal, Tr. 2102-2103; Sheridan, Tr. 6691-6693, *in camera*; *see* Pugliese, Tr. 1434)).

99. In deciding whether to add a hospital to its network, a health plan balances the value its current and prospective members place on having in-network access to the hospital – and

the resulting increase in the marketability of the health plan's network – against the costs of adding that hospital to the network. (PX02148 at 013 (¶ 20) (Town Expert Report), *in camera*; Town, Tr. 3621-3622; Pirc, Tr. 2167-2169, 2208-2211; *see* Radzialowski, Tr. 675-677).

100. The greater the increase in the marketability of a health plan's products as a result of adding a hospital to the provider network, the higher the reimbursement rates the health plan will be willing to pay to have that hospital as an in-network provider and, therefore, the greater the hospital's bargaining leverage against the health plan. (Pirc, Tr. 2168-2169, 2208-2211, 2296; PX02148 at 016 (¶ 27) (Town Expert Report), *in camera*; Town, Tr. 3641-3643; PX02065 at 004 (¶ 13) (Szymanski, Decl.); PX02067 at 004 (¶ 13) (Radzialowski, Decl.), *in camera*; Radzialowski, Tr. 663-666; Pugliese, Tr. 1458-1461; Sandusky, Tr. 1348-1349, *in camera*; Pirc, Tr. 2167-2169).

101. Among the factors that health plans consider when deciding whether to add a hospital to their provider networks are the reimbursement rates that the hospital is requesting, the hospital's location, the number of hospitals it has in the market (if it is a system), its reputation for delivering quality care, its market share, and the breadth of its service offering. (Pugliese, Tr. 1458-1459; Pirc, Tr. 2189; PX02072 at 002-003(¶ 9) (Firmstone, Decl.), *in camera*; PX01917 at 019-020 (Radzialowski, Dep. at 72-74), *in camera*; Town, Tr. 3627-3628; McGinty, Tr. 1164-1165, 1172-1173; *see* Radzialowski, Tr. 663-666).

102. A hospital's location is a significant factor for health plans because patients do not like to travel very far for hospital care. (Town, Tr. 3628; Radzialowski, Tr. 632-634; Sandusky, Tr. 1305-1306; Caumartin, Tr. 1831; Andreshak, Tr. 1754-1755). This holds true for patients in Lucas County, Ohio. (Town, Tr. 3628; Sandusky, Tr. 1314-1315; Caumartin, Tr. 1851-1852; Andreshak, Tr. 1754-1755; Marlowe, Tr. 2402-2404; *see also* Pirc, Tr. 2182-2183; Radzialowski, Tr. 642-643).

103. This preference for local care stems from the fact that a hospital's location affects not only a patient's travel time, which can significantly affect the health outcomes of patients with time-sensitive acute conditions, but also the travel time of the people likely to visit and support the patient while he or she is in the hospital. (Pirc, Tr. 2183-2185; McGinty, Tr. 1180-1181; Marlowe, Tr. 2406; Town, Tr. 3631-3632).

104. Therefore, the marketability of a health plan's insurance products depends, in part, on the geographic coverage of the health plan's hospital network, with broader coverage translating to broader marketability. (Pugliese, Tr. 1449; Sandusky, Tr. 1315-1316; Town, Tr. 3628).

105. All else equal, health plans and their members generally value a broad network of providers, desiring to have in-network access to physicians and hospitals that span the geographic areas in which the members work and reside. (Pirc, Tr. 2203-2204, 2281; PX01944 at 020 (Pirc, Dep. at 76); Pugliese, Tr. 1449, 1451-1452, 1458-1459, 1543; PX02148 at 011 (¶ 17), 013 (¶ 20) (Town Expert Report), *in camera*; Radzialowski, Tr. 657-658; Buehrer, Tr. 3074-3075; Sandusky, Tr. 1287-1288; Lortz, Tr. 1700-1703; Caumartin, Tr. 1861; Neal, Tr. 2102-2103).

106. Health plans that do not have sufficient geographic coverage in a market will have difficulty marketing their insurance products to employers and their employees. (PX02148 at 011 (¶ 17) (Town Expert Report), *in camera*; Sandusky, Tr. 1316; Sheridan, Tr. 6691-6693, *in camera*).

2. Hospitals Compete for Network Inclusion and for Selection by Health-Plan Members

107. Hospitals compete with one another on multiple levels. (Town, Tr. 3625-3626, 3630-3631; PX02148 at 013-014 (¶¶ 21-22) (Town Expert Report), *in camera*).

108. Hospitals compete with one another for inclusion in health plans' provider networks. (Town, Tr. 3626; PX02148 at 013-014 (¶¶ 20-21) (Town Expert Report), *in camera*; Sheridan, Tr. 6676; Pugliese, Tr. 1456-1457; Wachsman, Tr. 4852-4855). Health plan members have access to in-network hospitals at rates substantially lower than out-of-network hospitals. (Town, Tr. 3618; PX02148 at 013 (¶ 19) (Town Expert Report), *in camera*; Radzialowski, Tr. 584; Sandusky, Tr. 1396; Pirc, Tr. 2208).

109. The difference between a member's out-of-pocket cost for an in-network provider and an out-of-network provider can be as high as ten-fold. (Town, Tr. 3619). Generally, a member's out-of-pocket costs do not vary across in-network providers. (Town, Tr. 3618; *see* McGinty, Tr. 1184-1185; Pirc, Tr. 2213-2216).

110. Once included in a health plan's network, hospitals in that network compete with one another to attract the health plan's members. (Town, Tr. 3630-3631; PX02148 at 014 (¶ 22) (Town Expert Report), *in camera*; Pugliese, Tr. 1456-1457; Sheridan, Tr. 6676).

111. Because members generally face little or no out-of-pocket price difference between in-network hospitals, in-network hospitals compete primarily on non-price dimensions, such as location, quality of care, patient experience, and other factors. (Town, Tr. 3630-3631; PX02148 at 014 (¶ 22) (Town Expert Report), *in camera*; Wachsman, Tr. 5115-5116; *see* Sandusky, Tr. 1304-1305; Wachsman, Tr. 5110-5111; Shook, Tr. 946; *see also* JX00002A at 002 (¶ 11) (Joint Stipulations of Law and Fact)).

112. A hospital's volume of patients from a specific health plan is largely determined by whether the hospital is part of the health plan's provider network. (Town, Tr. 3621-3622, 3626-3627; PX02148 at 014 (¶ 23) (Town Expert Report), *in camera*; Wachsman, Tr. 4852-4855).

113. Because a health plan's members face significantly higher out-of-pocket costs for using out-of-network hospitals, these members almost always choose in-network providers for their healthcare needs, and an in-network hospital will treat a significantly larger portion of a health plan's members than an out-of-network hospital. (Town, Tr. 3619-3620, 3621-3622, 3626-3627; PX02148 at 014 (¶ 23) (Town Expert Report), *in camera*; Shook, Tr. 941).

114. The volume of patients that one in-network hospital will treat versus another in-network hospital depends upon patient preferences, the location and characteristics of the hospital, the admitting patterns of physicians, and the location and characteristics of other competing in-network hospitals. (PX02148 at 14 (¶ 23) (Town Expert Report), *in camera*).

115. A hospital may bargain with a health plan about the participation of other hospitals in the health plan's network. (Town, Tr. 3628-3629; Pugliese, Tr. 1488-1489, *in camera*, 1499-1501, *in camera*; Wachsman, Tr. 4874-4875, 5184-5185, *in camera*, 5201-5202, *in camera*).

116. A hospital may wish to exclude competitors from the health plan's network because these competitors could draw the health plan's members away from that hospital, thereby reducing that hospital's revenues. (Town, Tr. 3629; Pugliese, Tr. 1488-1489, *in camera*, 1499-1501, *in camera*; Wachsman, Tr. 5184-5185, *in camera*, 5201-5202, *in camera*; Wakeman, Tr. 2588; *see* Shook, Tr. 954).

117. For example, ProMedica contracted with Anthem to have St. Luke's excluded from Anthem's network for a period of time, in exchange for lower reimbursement rates at ProMedica's hospitals. (JX00002A at 003 (¶ 18) (Joint Stipulations of Law and Fact); PX00380 at 001 (Anthem "will have to pay PHS for the privilege" of adding St. Luke's to its network); PX00231 at 015, *in camera*; PX01919 at 016 (Pugliese, Dep. at 60), *in camera*; Town, Tr. 3629-3630).

118. Such exclusions benefit the excluded hospital's competitors in the health plan's network by eliminating in-network competition from the excluded hospital. (PX02148 at 014 (¶2 22), 018 (¶ 31) (Town Expert Report), *in camera*; Pugliese, Tr. 1499-1501, *in camera*; Wachsman, Tr. 5184-5185, *in camera*, 5201-5202, *in camera*; Wakeman, Tr. 2588; *see* Shook, Tr. 954).

119. Competition among hospitals benefits actual and potential consumers of hospital services by leading to lower prices for hospital care and, in turn, to lower premiums, higher wages, more healthcare benefits, and increased access to health care. (Town, Tr. 3635; PX02148 at 006-007 (¶ 7) (Town Expert Report), *in camera*; Caumartin, Tr. 1864-1865; Rupley, Tr. 1964-1966; Wachsman, Tr. 5116-5118; Oostra, Tr. 6039-6040). Testimony from health plans in this matter indicates that this proposition holds true in Lucas County, Ohio. (Pirc, Tr. 2260-2261, *in camera*; *see* Radzialowski, Tr. 700-704, *in camera*; Pugliese, Tr. 1461-1462).

120. A hospital becomes part of a health plan's network by entering into a provider contract with that health plan. (Town, Tr. 3622; s*ee* Radzialowski, Tr. 658-661; Pugliese, Tr. 1454-1456; Pirc, Tr. 2205-2207).

3. Bargaining Dynamics That Shape Provider Contracts Between Hospitals and Health Plans

121. Health plans negotiate with hospitals to determine the scope of coverage for their members and the reimbursement rates for services. (Town, Tr. 3609, 3624-3625, 3637,

3641; PX02148 at 014-015 (¶ 24) (Town Expert Report), *in camera*; *see* Pugliese, Tr. 1434, 1456, 1547-1548; Pirc, Tr. 2177, 2208-2209; Radzialowski, Tr. 658-660; Sandusky, Tr. 1287-1289, 1325-1326; Sheridan, Tr. 6622, 6688, 6703, *in camera*; Shook, Tr. 948-950; Beck, Tr. 406-408).

122. The reimbursement rates over which health plans and hospitals negotiate determine the compensation that a hospital will receive in exchange for treating that health plan's members. (Town, Tr. 3622-3623; *see* Shook, Tr. 949-950; Gold, Tr. 207-300).

123. Other items of negotiation include the payment methodology, the length of the contract, and outlier provisions. (Town, Tr. 3623; Pugliese, Tr. 1472-1473, *in camera*, 1550-51; Pirc, Tr. 2288-2289; Radzialowski, Tr. 760-761).

124. Notwithstanding multiple other items in contracts between health plans and hospitals, the reimbursement rates are the most important point of negotiation because they determine the cost of care at the hospital to the health plan and its members and the amount of revenue the hospital stands to earn from contracting with the health plan. (Town, Tr. 3623-3624; Pugliese, Tr. 1514, *in camera*; Sandusky, Tr. 1318; Wachsman, Tr. 5139-5140, *in camera*; Gold, Tr. 209-210, 300; Beck, Tr. 407-408; Shook, Tr. 1050). In the ordinary course of business, health plans compare the reimbursement rates that they pay to the hospitals in their provider networks. (Pugliese, Tr. 1512-1513, *in camera*; Pirc, Tr. 2227, *in camera*; Radzialowski, Tr. 595; *see* Sandusky, Tr. 1332-1334, *in camera*; McGinty, Tr. 1191-1192).

125. Hospitals and health plans may negotiate over the reimbursement methodology to be used to calculate the actual payments from the health plan to the hospital. (Town, Tr. 3622-3623; Pirc, Tr. 2205; McGinty, Tr. 1241).

126. Most hospitals offer a broad array of services. (Town, Tr. 3637; Shook, Tr. 892, 895-896, 899-900, 902-903; PX02064 at 001 (¶ 2) (Gold, Decl.); Pugliese, Tr. 1440-1441, 1443; Wakeman, Tr. 2753-2755; Oostra, Tr. 5771-5778).

127. Rather than negotiate a separate reimbursement rate for each of these services, health plans and hospitals typically decide on a reimbursement methodology that allows them to negotiate rates across the entire array of services. (Pugliese, Tr. 1550; Pirc, Tr. 2286-2287; Radzialowski, Tr. 750-751; McGinty, Tr. 1240; Town, Tr. 3637; PX02148 at 019-020 (¶ 33) (Town Expert Report), *in camera*).

128. Such methodologies include per-diem, percent-of-charges, and DRG-based payments. (Town, Tr. 3639-3640; PX02148 at 019-020 (¶ 33) (Town Expert Report), *in camera*; *see* Pugliese, Tr. 1645-1646, *in camera*; Pirc, Tr. 2218-2219, *in camera*, 2224-2225, *in camera*; Radzialowski, Tr. 672-673; Sandusky, Tr. 1320).

129. A per diem reimbursement methodology involves a negotiated base reimbursement rate, which is then multiplied by the number of days a patient stayed in the hospital to determine the total reimbursement owed to the hospital for that patient. (Town, Tr. 3639, Radzialowski, Tr. 672-673; PX02117 at 006 (¶ 12) (Wachsman, Decl.), *in camera*).

130. A percent-of-charges reimbursement methodology involves a negotiated base percentage, which is then multiplied by the total charges for a patient, generated from the hospital's chargemaster (*i.e.,* list prices), to determine the reimbursement owed to the hospital for that patient. (Town, Tr. 3639; Pirc, Tr. 2224-2225, *in camera*).

131. A DRG-based reimbursement methodology involves a negotiated base reimbursement rate, which is then multiplied by the weight assigned to each Diagnosis Related Group ("DRG") associated a patient's treatment to determine the total reimbursement owed to the hospital for that patient. (Town, Tr. 3639-3640; Pirc, Tr. 2218-2219, *in camera*.)

132. DRGs are categories, created by the Centers for Medicare & Medicaid Services ("CMS"), which classify hospital services based on similar diagnoses and procedures. (Town, Tr. 3639-3640; Pirc, Tr. 2218-2219, *in camera*.)

133. The weights attached to each DRG are also created by CMS, with each weight reflecting the average amount of resources used for the services covered by the corresponding DRG. (Town, Tr. 3639-3640; Pirc, Tr. 2218-2219, *in camera*.) DRGs with higher weights correspond to services with greater resource use and, generally, with higher severity. (Town, Tr. 3676-3677; Pirc, Tr. 2218-2219, *in camera*.)

134. Hospitals and health plans can impose a separate rate structure for particular services by negotiating a "carve-out," also referred to as a "case rate." (Town, Tr. 3637-3638; PX02148 at 019-020 (¶ 33) (Town Expert Report), *in camera*; PX01925 at 020 (Guerin-Calvert, Dep. at 73)). For example, a contract might contain a carve-out for open-heart services or for obstetrics services to have these services reimbursed according to a different formula than the one that applies to other hospital services covered by the contract. (Town, Tr. 3638; Sheridan, Tr. 6683-6684).

135. Reimbursement rates for hospital services are determined through the bargaining process between hospitals and health plans. (PX02148 at 014-015 (¶ 24) (Town Expert Report), *in camera*; Pugliese, Tr. 1472, *in camera*, 1547-1548; Radzialowski, Tr. 658-661; Korducki, Tr. 527-528; Shook, Tr. 948-950).

136. Health plans negotiate rates for hospital services on behalf of their customers, who are both self-insured and fully-insured employers. (Pugliese, Tr. 1432-1433, 1547; PX01914 at 014 (Pirc, IHT at 49); Radzialowski, Tr. 748; PX02072 at 003 (¶ 12) (Firmstone, Decl.), *in camera*; PX02148 at 15 (¶ 25) (Town Expert Report), *in camera*; Sandusky, Tr. 1297).

137. These negotiations typically involve a series of offers and counteroffers, and result in either the inclusion of a hospital in a health plan's network or the failure of the health plan and hospital to reach an agreement. (PX02148 at 15 (¶ 25) (Town Expert Report), *in camera*; PX02065 at 003 (¶ 11) (Szymanski, Decl.); Radzialowski, Tr. 658-661; Sandusky, Tr. 1318-1322).

138. Because the reimbursement rates that health plans pay to hospitals on behalf of commercially insured members are determined through negotiations in a market setting, a merger's effect on the bargaining dynamic and, thus, on these rates (*i.e.,* prices) is the

logical focus of merger analysis. (Town, Tr. 3609, 3624-3625; PX02148 at 014-015 (¶ 24) (Town Expert Report), *in camera*).

139. The rates and terms of the contracts that are negotiated by a hospital and a health plan are a function of the bargaining leverage that each party brings to bear in the negotiation. (Pirc, Tr. 2208; Radzialowski, Tr. 659-660; Shook, Tr. 978, *in camera*; PX01914 at 015 (Pirc, IHT at 53), *in camera* ("Q: Do the rates that are ultimately agreed upon in a negotiation between Medical Mutual and a given hospital depend on the relative bargaining leverage that [each has]? A: . . . That's a primary factor, yes."); PX02065 at 003 (¶ 11) (Szymanski, Decl.) ("[T]he resulting reimbursement rates are determined largely by the amount of bargaining leverage that FrontPath and the negotiating hospital/system have relative to each other."); Town, Tr. 3637, 3640-3641).

140. In bargaining relationships, the bargaining leverage of each party and, therefore, the terms of the agreement depend principally upon how each party would fare if it failed to enter into an agreement with the other party. (PX02148 at 015-016 (¶ 26) (Town Expert Report), *in camera*; Town, Tr. 3641; Pirc, Tr. 2208-2211; Sandusky, Tr. 1323-1324; Wachsman, Tr. 5123-5126; PX02067 at 004 (¶ 13) (Radzialowski, Decl.), *in camera*; PX02072 at 002-003 (¶ 9) (Firmstone, Decl.), *in camera*).

141. In other words, each party considers the cost it would face if the negotiations failed. (Sandusky, Tr. 1323-1324; Wachsman, Tr. 5123-5126; PX02148 at 015-016 (¶ 26) (Town Expert Report), *in camera*; Town, Tr. 3641-3642)).

142. The success or failure of a negotiation depends on the hospital's and health plan's respective "walk-away" points. (PX02148 at 015-016 (¶ 26) (Town Expert Report), *in camera*; PX01914 at 015-016 (Pirc, IHT at 51-53), *in camera*; Radzialowski, Tr. 660).

143. If a hospital demands rates above a health plan's walk-away point, the health plan will refuse to contract with the hospital. (PX02148 at 015-016 (¶ 26) (Town Expert Report), *in camera*; Radzialowski, Tr. 675-677; Pirc, Tr. 2207-2208; Sheridan, Tr. 6688).

144. If a health plan refuses to pay rates above a hospital's walk-away point, the hospital will decline to contract with the health plan. (PX02148 at 015-016 (¶ 26) (Town Expert Report), *in camera*; Radzialowski, Tr. 675-677).

145. The threat of termination is implicit, if not explicit, in negotiations between hospitals and health plans, and it influences these negotiations. (Pugliese, Tr. 1458; Pirc, Tr. 2207; PX01917 at 011, 024-025 (Radzialowski, Dep. at 41, 93-94), *in camera*; PX01919 at 006 (Pugliese, Dep. at 21), *in camera*; PX01914 at 015 (Pirc, IHT at 51-52), *in camera*).

146. In the past, hospitals and health plans in Lucas County have sometimes failed to reach agreement in contract negotiations, resulting in the health plans offering narrower or exclusive provider networks. (PX02148 at 019 (¶ 32) (Town Expert Report), *in camera*; *see also* PX02136 at 032 (¶ 27) (Guerin-Calvert, Supp. Decl.), *in camera*).

147. The bargaining leverage of a hospital against a health plan depends on the value that the hospital adds to the health plan's network. (Town, Tr. 3643; Pirc, Tr. 2208-2210; Radzialowski, Tr. 663-666; Pugliese, Tr. 1458-1461).

148. Put differently, a hospital's bargaining leverage against a health plan depends on the amount of value the health plan's network would lose if the health plan failed to contract with the hospital. (Town, Tr. 3641; Pirc, Tr. 2210-2211; Radzialowski, Tr. 665-666; Pugliese, Tr. 1458-1461).

149. This, in turn, depends on the value that the health plan's current and potential members place on having in-network access to that hospital. (PX02148 at 016 (¶ 27) (Town Expert Report), *in camera*; Pirc, Tr. 2168, 2189, 2208-2211; PX01914 at 015 (Pirc, IHT at 50), *in camera* ("Q: Is it fair to say, then, that the more important a particular provider is to your member[s], the more MMO might be willing to pay to have that provider in its network? A: That's a fair statement, yes.")).

150. This value is reflected by the number of the health plan's members who use or would use the hospital. (PX02072 at 002-003 (¶ 9) (Firmstone, Decl.), *in camera*; Radzialowski, Tr. 665).

151. The more a health plan's members value a hospital, the more bargaining leverage the hospital possesses in its negotiations with the health plan, because the worse off would be the health plan's ability to market its insurance products without the hospital in-network. (Pirc, Tr. 2168-2169, 2209-2210, 2296; PX02148 at 016 (¶ 27) (Town Expert Report), *in camera*; Town, Tr. 3641-3643, 3649-3650; PX02065 at 004 (¶ 13) (Szymanski, Decl.); PX02067 at 004 (¶ 13) (Radzialowski, Decl.), *in camera*; Radzialowski, Tr. 665-666; Pugliese, Tr. 1458-1461; Sheridan, Tr. 6686-6687).

152. The more bargaining leverage a hospital has against a health plan, the higher the reimbursement rates that the hospital will be able to obtain from the health plan. (Pirc, Tr. 2168-2169, 2211, 2296; Radzialowski, Tr. 658-659; Pugliese, Tr. 1523-1525, *in camera*; Sandusky, Tr. 1348-1349, *in camera*; McGinty, Tr. 1209-1210; Sheridan, Tr. 6700-6701, *in camera*).

153. Health plans regularly conduct market research regarding members' preferences in order to maintain marketable and attractive provider networks, thus ensuring that their insurance products appeal to employers and employees. (Pirc, Tr. 2167-2168, 2182-83; Radzialowski, Tr. 588-590; *see* PX02067at 002 (¶ 6) (Radzialowski, Decl.), *in camera*; PX02072 at 002 (¶ 6) (Firmstone, Decl.), *in camera*; PX01914 at 014-015 (Pirc, IHT at 49-51)).

154. Assuming a market has been properly defined, a hospital's market share can be a useful metric of the hospital's bargaining leverage because it reflects the number of patients who are choosing that hospital given the other options in the market. (Town, Tr. 3645-46; PX02148 at 035 (¶ 62) (Town Expert Report), *in camera*; *see* Pirc, Tr. 2209-2212).

155. A more popular hospital will have a higher market share, will add more value to a health plan's network by virtue of its popularity with patients, and will, therefore, be more

important to the health plan's marketability and will have more bargaining leverage against the health plan. (Town, Tr. 3646; PX02148 at 035 (¶62) (Town Expert Report), *in camera*; Pugliese, Tr. 1523-1525, *in camera*; Pirc, Tr. 2209-2212; *see* Sheridan, Tr. 6686-6687, 6700-6701, *in camera*).

156. In Lucas County, there is a strong, positive correlation between a hospital's market share and the reimbursement rates that the hospital has obtained from health plans. (PX02148 at 039 (¶ 71), 147 (Ex. 8) (Town Expert Report), *in camera*).

157. In other words, the higher a hospital's market share, the higher the rates it is able to demand and receive from health plans: St. Luke's has the smallest market share in Lucas County – 11.5 percent for GAC – and receives the lowest rates; UTMC has a 13.0 percent GAC market share and its average rates are **{ }** higher than St. Luke's; Mercy has a 28.7 percent GAC market share and its average rates are **{ }** greater than St. Luke's; and ProMedica has a 46.8 percent GAC market share, with average rates exceeding St. Luke's by **{ }**. (PX02148 at 036 (¶ 66), 143 (Ex. 6), 145 (Ex. 7), 147 (Ex. 8) (Town Expert Report), *in camera*).

158. The Willingness-To-Pay ("WTP") measure is another measure of the value that a hospital brings to a given health plan's network. (Town, Tr. 3645-46).

159. A hospital system that owns two or more substitute hospitals within a given market will have greater bargaining leverage against health plans than an independent hospital in that market. (Town, Tr. 3645; *see* Pirc, Tr. 2209-2210; Radzialowski, Tr. 663; Pugliese, Tr. 1459). This is the case because failure to contract with the hospital system will harm the marketability of the health plans' products more than failure to contract with the independent hospital. (Town, Tr. 3644-3645; Pirc, Tr. 2209-2210; Radzialowski, Tr. 663).

160. The fewer the substitutes for a particular hospital in a particular market, the harder it would be for health plans to market a network without that hospital and, therefore, the more valuable that hospital is to health plans and the greater that hospital's bargaining leverage is against health plans. (Pirc, Tr. 2199-2200, 2210-2211; Pugliese, Tr. 1461-1462; PX01944 at 008 (Pirc, Dep. at 28-29), *in camera*; PX01914 at 016 (Pirc, IHT at 54), *in camera*; PX02065 at 003 (¶ 11), 004 (¶ 13) (Szymanski, Decl.); Town, Tr. 3652-3653; PX02148 at 017 (¶ 29) (Town Expert Report), *in camera*; *see* Radzialowski, Tr. 662-663; PX02072 at 002-003 (¶ 9) (Firmstone, Decl.), *in camera*; PX02067 at 004 (¶ 13) (Radzialowski, Decl.), *in camera*).

161. A health plan's bargaining leverage with a hospital is determined by how much the hospital values being included in the health plan's network. (PX02148 at 016-017 (¶ 28) (Town Expert Report), *in camera*; PX02065 at 003-004 (¶ 12) (Szymanski, Decl.); JX00002A at 002 (¶ 13) (Joint Stipulations of Law and Fact).

162. This depends on the size of the health plan's membership, or the patient volume, that the health plan can offer to the hospital. (Pugliese, Tr. 1461; Pirc, Tr. 2209; PX02072 at 002-003 (¶ 9) (Firmstone, Decl.), *in camera*; PX02067 at 004 (¶ 12) (Radzialowski,

Decl.), *in camera*; PX02148 at 016-017 (¶ 28) (Town Expert Report), *in camera*; Radzialowski, Tr. 661-662; *see* Wachsman, Tr. 5125).

163. The more patient volume that a hospital stands to lose if it fails to reach an agreement with the health plan, the greater the bargaining leverage the health plan will have with the hospital. (PX02148 at 016-017 (¶ 28) (Town Expert Report), *in camera*; PX02072 at 002-003 (¶ 9) (Firmstone, Decl.), *in camera*; *see* Radzialowski. Tr. 661-662).

164. A merger between substitute hospitals changes the bargaining leverage of the merged entity by changing health plans' cost of failing to reach an agreement with the merged entity. (Town, Tr. 3651-3652; PX02148 at 018 (¶ 30) (Town Expert Report), *in camera*).

165. In other words, a merger between substitute hospitals changes the value of the health plans' walk-away network—the network of alternative hospitals that health plans can offer to their members if they fail to contract with the merged entity. (Town, Tr. 3654-3655; Pirc, Tr. 2261-2262, *in camera*).

166. The degree to which the merging hospitals are substitutes for each other (*i.e.,* the degree of substitutability between them) is directly related the merger's impact on the health plans' walk-away network, on its cost failing to reach an agreement with the merging hospitals, and thus on the change in the merged hospitals' bargaining leverage. (Town, Tr. 3563-3655; PX02148 at 018 (¶ 30) (Town Expert Report), *in camera*).

167. The degree of substitutability between the merging hospitals depends on the number of patients who view the merging hospitals as their first- and second-choice hospitals. (Town, Tr. 3654).

168. The greater the degree of substitutability between the merging hospitals, the larger the number of patients who will lose in-network access to their first- and second-choice hospitals if health plans' fail to contract with the merged hospitals. (Town, Tr. 3653-3654).

169. The greater the degree of substitutability between the merged hospitals, the greater the reduction in the value of the health plans' walk-away network, the more the health plans stand to lose from failing to contract with the merged hospitals. (Town, Tr. 3651-3655; PX02148 at 018 (¶ 30) (Town Expert Report), *in camera*). Therefore, the higher the price that the health plans will be willing to pay the merged hospitals and the greater the increase of the merged hospitals' bargaining leverage against health plans as a result of the merger. (Town, Tr. 3651-55; PX02148 at 018 (¶ 30) (Town Expert Report), *in camera*).

170. Mergers between non-substitute hospitals (*e.g.*, hospitals located in different geographic markets) generally will not affect the bargaining leverage of the merged hospitals and, therefore, generally will not produce anticompetitive effects. (Town, Tr. 3652; *see* PX01944 at 009 (Pirc, Dep. at 32), *in camera*).

4. Application of Bargaining Dynamics to ProMedica's Acquisition of St. Luke's Hospital

171. Prior to the Acquisition, both ProMedica and St. Luke's independently engaged in extensive negotiations with health plans over rates for services and other contractual terms, with the goal of reaching a multi-year contract with each health plan. (PX02148 at 015 (¶ 25) (Town Expert Report), *in camera*; Radzialowski, Tr. 681-687, *in camera*; Pugliese, Tr. 1474-1476, *in camera*).

172. Prior to the Acquisition, the health plans' walk-away network with respect to ProMedica's Lucas County hospitals consisted of St. Luke's, Mercy's Lucas County hospitals and UTMC. (Town, Tr. 3656-3657). As a result of the Acquisition, this walk-away network shrank to only Mercy's Lucas County hospitals and UTMC. (Town, Tr. 3656-3657; PX02067 at 004, 006 (¶ 13, 21) (Radzialowski, Decl.), *in camera*; PX02073 at 004 (¶ 15) (McGinty, Decl.), *in camera*; *see* PX02148 at 064-065 (¶ 116) (Town Expert Report), *in camera*).

173. Because St. Luke's is valued by health plan members, failure to contract with ProMedica has become more costly for health plans as a result of the Acquisition, because their walk-away network becomes significantly less valuable from the exclusion of ProMedica and St. Luke's than from the exclusion of only ProMedica. (Town, Tr. 3658-59; Radzialowski, Tr. 715-716, *in camera*; McGinty, Tr. 1201; Sandusky, Tr. 1312-1313, 1351, *in camera*; Pugliese, Tr. 1477-1478, *in camera*, 1481-1482, *in camera*; Pirc, Tr. 2201-2203, 2262-2263, *in camera*).

174. Consequently, as a result of the Acquisition, health plans will be willing to pay higher rates to keep the merged ProMedica/St. Luke's in their networks, increasing ProMedica's bargaining leverage against the health plans. (Town, Tr. 3658-59; PX02148 at 054 (¶ 94) (Town Expert Report), *in camera*; Radzialowski, Tr. 715-716, *in camera*,841-842, *in camera*; Pugliese, Tr. 1525, *in camera;* McGinty, Tr. 1209-1210; Pirc, Tr. 2262-2263, *in camera*).

175. Prior to the Acquisition, the health plans' walk-away network with respect to St. Luke's consisted of ProMedica's Lucas County hospitals, Mercy's Lucas County hospitals, and UTMC. (Town, Tr. 3661). As a result of the Acquisition, this walk-away network shrank to only Mercy's Lucas County hospitals and UTMC. (Town, Tr. 3662-63; PX02067 at 004, 006 (¶¶ 13, 21) (Radzialowski, Decl.), *in camera*; PX02073 at 004 (¶ 15) (McGinty, Decl.), *in camera*).

176. Because ProMedica's Lucas County hospitals are highly valued by health plan members, failure to contract with St. Luke's has become much more costly for health plans as a result of the Acquisition, because their walk-away network becomes dramatically less valuable from the exclusion of St. Luke's and ProMedica's Lucas County hospitals than from the exclusion of only St. Luke's. (Town, Tr. 3661-3663; *see* Sheridan, Tr. 6693, *in camera*; Pirc, Tr. 2262, *in camera*; Radzialowski, Tr. 715-716, *in camera*; McGinty, Tr. 1201; Sandusky, Tr. 1348-1349, *in camera*, 1351, *in camera*; Pugliese, Tr. 1477-1478, *in camera*, 1523-1525, *in camera*; Pirc, Tr. 2262, *in camera*).

177. Consequently, as a result of the Acquisition, health plans will be willing to pay higher rates to keep the merged ProMedica/St. Luke's in their networks, increasing St. Luke's bargaining leverage against the health plans. (Town, Tr. 3662-63; PX02148 at 053-054 (¶ 93) (Town Expert Report), *in camera*; Radzialowski, Tr. 700-704, *in camera*, 842, *in camera*; McGinty, Tr. 1209-1210).

178. The Acquisition asymmetrically increased ProMedica's and St. Luke's respective bargaining leverage. (Town, Tr. 3602, 3660-3664; PX02148 at 036 (¶¶ 64-65), 053-054 (¶¶ 93-94) (Town Expert Report), *in camera*).

179. Prior to the Acquisition, the health plans' walk-away network with respect to St. Luke's was more valuable than the health-plans' walk away network with respect to ProMedica, because the former contained more alternative hospitals than the latter. (Town, Tr. 3662). In other words, prior to the Acquisition, St. Luke's had less bargaining leverage against health plans than ProMedica, because health plans would lose less from failing to contract with St. Luke's than from failing to contract with ProMedica. (Town, Tr. 3662).

180. As a result of the Acquisition, health plans have the same walk-away network with respect to St. Luke's and to ProMedica. (Town, Tr. 3663; PX02148 at 061-062 (¶¶ 110-111) (Town Expert Report), *in camera*).

181. Therefore, the walk-away network with respect to St. Luke's lost significantly more value as a result of the Acquisition than the walk-away network with respect to ProMedica. (Town, Tr. 3656-57, 3661-62; *see* PX02148 at 061-062 (¶¶ 110-111) (Town Expert Report), *in camera*).

182. Consequently, the Acquisition increased St. Luke's bargaining leverage against health plans significantly more than it increased ProMedica's bargaining leverage. (*See* Town, Tr. 3657-59, 3662-63; PX02148 at 053-054 (¶ 93) (Town Expert Report), *in camera*).

183. While health plans in Lucas County have marketed virtually every configuration of hospital network, none have marketed a network consisting of only Mercy and UTMC in the past 10 years. (Randolph, Tr. 7066, 7069-7070; Pirc, Tr. 2204; Pugliese, Tr. 1474, *in camera*, 1476-1478, *in camera*; Radzialowski, Tr. 670-671; PX02065 at 003 (¶ 10) (Szymanski, Decl.); Sandusky, Tr. 1288-1289, *in camera*; McGinty, Tr. 1194, 1199; Sheridan, Tr. 6690-6692, 6694; JX00002A at 003 (¶ 19) (Joint Stipulations of Law and Fact)).

184. Testimony from health plans indicates that a hospital network comprised of only Mercy and UTMC would be extremely difficult to market in Lucas County, OH. (Radzialowski, Tr. 715-716, *in camera*; McGinty, Tr. 1201; Sandusky, Tr. 1351, *in camera*; Pugliese, Tr. 1477-1478, *in camera*; Pirc, Tr. 2262, *in camera*; *see also infra* Section XI.D.1.).

5. A Hospital's Rates Reflect A Hospital's Relative Bargaining Leverage Against Health Plans

185. If a health plan's network is substantially less attractive or less marketable to employers due to the exclusion of a hospital, that hospital will be able to command higher rates for

its inclusion in the health plan's network than a less-valued hospital. (PX02148 at 016 (¶ 27), 019-020 (¶ 33) (Town Expert Report), *in camera*; PX02067 at 004 (¶¶ 12-13) (Radzialowski, Decl.), *in camera*; Town, Tr. 3640-3643, 3806, *in camera*; Pirc, Tr. 2209-2211).

186. Because reimbursement contracts typically specify only a limited number of prices, a hospital with greater bargaining leverage over some of its services will generally exercise that bargaining leverage by negotiating a higher price for all of its services. (PX02148 at 019-020 (¶33) (Town Expert Report), *in camera*; Town, Tr. 4054-4055).

187. This higher price can be viewed as reflecting the average market power that the hospital possesses over all of the services it provides. (PX02148 at 019-020 (¶ 33) (Town Expert Report), *in camera*; Town, Tr. 4054-4055).

188. A hospital may have greater bargaining leverage with respect to some of its services by virtue of the attractiveness of its offerings and/or the lack of alternative providers for those services. (PX02148 at 016 (¶ 27), 018 (¶30), 019-020 (¶ 33) (Town Expert Report), *in camera*; Town, Tr. 3638). This hospital may exercise this greater bargaining leverage by negotiating carve-outs or case rates for the specific services to which this greater bargaining leverage applies. (Town, Tr. 3638; PX02148 at 019-020 (¶ 33) (Town Expert Report), *in camera*).

VI. GENERAL ACUTE-CARE INPATIENT HOSPITAL SERVICES SOLD TO COMMERCIAL HEALTH PLANS CONSTITUTE A RELEVANT PRODUCT MARKET

189. General acute-care ("GAC") inpatient hospital services sold to commercial health plans is a relevant product market in which to evaluate the competitive effects of the Acquisition. (Joint Stipulations of Law and Fact, JX00002A ¶ 3; Response to RFA at ¶ 1; Answer at ¶ 12).

190. GAC services are a broad "cluster market" of inpatient surgical, medical, and supporting services provided in a hospital setting to commercially-insured patients. (PX02148 at 021-023 (¶¶ 38, 40) (Town Expert Report), *in camera*); *see* Gold, Tr. 195; Korducki, Tr. 481-482).

191. Individual services within the GAC cluster market are not clinical substitutes for each other. (Guerin-Calvert, Tr. 7631-7632; Town, Tr. 3665). Therefore, each service line is a relevant product market from a demand-side analysis. (Guerin-Calvert, Tr. 7631-7633; Town, Tr. 3665-3667). The purpose of the cluster market is to provide a convenient and efficient way to conduct a competitive analysis across a multitude of different services, instead of evaluating each individual service separately. (Guerin-Calvert, Tr. 7633; Town, Tr. 3666-3667).

192. Analyzing services as part of a cluster market is appropriate when competitive conditions, such as market concentration and entry barriers, are similar across the services. It is not appropriate to analyze products or services as part of a cluster when

such competitive conditions are dissimilar. (Town, Tr. 3667-3668; *see* Guerin-Calvert, Tr. 7637, 7640, 7649-7650).

193. The GAC product market excludes "tertiary" and "quaternary" services. Respondent admits that the more sophisticated and specialized tertiary and quaternary services, such as major surgeries and organ transplants, are properly excluded from the relevant market. (Answer at ¶ 13). Tertiary services are higher acuity than general acute-care services, and require more resources and specialized technology. (Korducki, Tr. 481-482; Gold, Tr. 194-195; Shook, Tr. 892-894; Sheridan, Tr. 6671-6672).

194. Patients are willing to travel farther for tertiary and quaternary services, resulting in different market participants and different market concentration levels for such services as compared to GAC services. (Guerin-Calvert, Tr. at 7649-7650; Gold, Tr. 212-213; Sheridan, Tr. 6679; Town, Tr. 3676-3678). The different market structure for tertiary and quaternary services makes it inappropriate to include these services within the GAC product market. (Town, Tr. 3677-3679, *see* Guerin-Calvert, Tr. 7649-7650).

195. Additionally, St. Luke's currently performs few, if any, tertiary services and no quaternary services. (Joint Stipulations of Law and Fact, JX00002A ¶ 6). Services not performed by St. Luke's should not be included in the GAC product market, because the Acquisition does not potentially create or enhance market power for those services. (Town, Tr. 3668-3669).

196. Respondent admits that the GAC market also excludes outpatient services because health plans and patients could not substitute outpatient services for inpatient care in response to a price increase. (Answer at ¶ 13; Response to RFA at ¶ 3; Guerin-Calvert, Tr. 7637). Outpatient services are services that do not require an overnight stay in the hospital. (Joint Stipulations of Law and Fact, JX00002A ¶ 3; Korducki, Tr. 483-484).

197. Patients would not substitute outpatient services in response to price increases for inpatient services, because such substitution is instead based on clinical considerations. (Radzialowski, Tr. 638-639; PX01914 at 007-008 (Pirc, IHT at 21-22); Town, Tr. 3669-3671).

198. It is also inappropriate to include outpatient services within GAC services because they have different competitive conditions than inpatient services. For example, there may be a different set or mix of market competitors, not just hospitals. (Guerin-Calvert, Tr. at 7637, 7640; *see* Town, Tr. 3672-3673 (It is important to only cluster services that have the same competitive conditions.).

VII. INPATIENT OBSTETRICAL SERVICES SOLD TO COMMERCIAL HEALTH PLANS CONSTITUTE A RELEVANT PRODUCT MARKET

199. Inpatient obstetrical ("OB") services are a cluster of procedures relating to pregnancy, labor, and post-delivery care provided to patients for the labor and delivery of newborns. (Response to RFA at ¶ 4; Marlowe, Tr. 2388, 2432; Read, Tr. 5275).

200. No other hospital services are reasonably interchangeable with inpatient obstetrical services. (Guerin-Calvert, Tr. at 7633, 7667-7668; PX01935 at 005 (Read, Dep. at 11); PX02148 at 023-024 (¶ 41) (Town Expert Report), *in camera*; *see* Response to RFA at ¶ 4).

201. Inpatient obstetrical services are only offered in a hospital setting, and outpatient obstetrical services are not acceptable substitutes. (PX01935 at 005 (Read, Dep. at 10); *see* Marlowe, Tr. 2431-2433).

202. In this case, it would be inappropriate and misleading to analyze OB services as part of the cluster market of GAC services because OB services are offered by a different set of providers in Lucas County and, thus, are subject to different competitive conditions than are GAC services. (Town, Tr. 3595, 3667-3668, 3672-3673; *see also* Complaint Counsel's Proposed Conclusions of Law at Section XX.E.). Most significantly, two Lucas County hospitals that offer GAC services, UTMC and Mercy St. Anne Hospital, do not provide OB services. (Answer at ¶ 15; Gold, Tr. 203, 220-221; Shook, Tr. 901).

203. ProMedica and St. Luke's acknowledge this reality by obtaining and tracking separate market shares and other data for OB services. (*See, e.g.*, Response to RFA at ¶ 5; PX01016 at 003 (Dec. 2009 St. Luke's Affiliation Update), *in camera*; PX01077 at 003, 005 (2008 St. Luke's Market Report); PX00009 at 022 (ProMedica Credit Presentation)).

204. Leading up to the Joinder Agreement, St. Luke's executives specifically discussed OB market shares and the implications of such high market shares in analyzing the legality of the Acquisition. (Wakeman, Tr. 2695-2696, *in camera*; Rupley, Tr. 1978-1982; PX01030 at 017 (Oct. 2009 St. Luke's Affiliation Update), *in camera*; PX01016 at 003 (Dec. 2009 St. Luke's Affiliation Update), *in camera*).

205. Moreover, in the process of negotiating rates with commercial health plans, hospitals often "carve-out" OB services from other GAC services and separate back and forth rate negotiations are had specifically for OB services. (Radzialowski, Tr. 808, *in camera;* 752-753; Sheridan, Tr. 6662, *in camera*, 6683-6684; s*ee, e.g.,* PX00365 at 030 (ProMedica-United Contract), *in camera*; PX00363 at 019, 022 (ProMedica-Aetna Contract)).

206. Respondent's economic expert testified that if Mercy no longer offered OB services - which would result in ProMedica having a monopoly for OB services in Lucas County - prices of OB services in Lucas County would likely increase. (Guerin-Calvert, Tr. at 7679-7680).

207. Complaint Counsel's economic expert also concluded that inpatient obstetrical services constitute a separate relevant market. (Town, Tr. 3672-3673; PX02148 at 023-024 (¶ 41) (Town Expert Report), *in camera*).

VIII. LUCAS COUNTY IS THE RELEVANT GEOGRAPHIC MARKET

208. The relevant geographic market for both product markets is Lucas County, Ohio. (Town, Tr. 3688; PX02148 at 025-031 (¶¶ 45-55) (Town Expert Report), *in camera*; *see* PX00900 (Map of Northwest Ohio)).

A. Lucas County is the Relevant Geographic Market for Inpatient General Acute-Care Services

209. Indeed, Respondent has admitted Lucas County constitutes a relevant geographic market for the purposes of analyzing the likely effects of the Acquisition in the general acute-care services product market. (Response to RFA at ¶ 7). As Respondent's counsel stated in his opening statement, "[W]e don't disagree with Lucas County as the relevant geographic market." (Respondent's Opening Statement, Tr. 109; *see also* Respondent's Pre-Trial Brief at 31; Guerin-Calvert, Tr. 7683 ("[T]he complaint counsel and the respondent counsel and both experts have agreed that the narrowest relevant geographic market applying those principles is Lucas County hospitals.")).

210. This conclusion is compelled by the fact that a hypothetical monopolist controlling every hospital in Lucas County could increase the price of inpatient general acute-care services in Lucas County by at least 5 to 10 percent, a small but significant amount. (Guerin-Calvert, Tr. 7681; PX01954 at 042-043 (Guerin-Calvert, Dep. at 164-165), *in camera*; Town, Tr. 3688-3690; PX02148 at 016, 025-026, 029 (¶¶ 27, 45, 51) (Town Expert Report), *in camera*).

211. ProMedica and St. Luke's only focus on other Lucas County hospitals in its market analyses. For example, in its presentation to a credit rating agency, ProMedica presented market share information including only Lucas County hospitals. (PX00009 at 021-022 (ProMedica Credit Presentation Jul. 2010); *see also* PX00392 at 068-076 (2009 Draft Environmental Assessment Apr. 2009), *in camera*).

212. In a St. Luke's marketing analysis, patients residing in St. Luke's core service area had such a low awareness of Wood County Hospital it was placed in the "Other Hospitals" category. (PX01169 at 010 (Great Lakes Marketing Survey)). The only hospitals listed by name were Lucas County hospitals. (PX01169 at 010 (Great Lakes Marketing Survey); *see also* PX01418 at 005 (St. Luke's Market Share Analysis), *in camera*; PX01352 at 006 (St. Luke's Board and Medical Staff Planning Retreat Apr. 2008); PX01016 at 003 (St. Luke's Board Meeting Affiliation Update Dec. 2009), *in camera*).

213. When ProMedica retained Navigant to perform a clinical integration study for ProMedica's Toledo-area hospitals, Navigant examined the geographic area in which ProMedica competed. (Nolan, Tr. 6253, 6275-6276, *in camera*; PX01216 at 004-008 (Navigant Service Line and Clinical Integration Market Trends and Facilities Assessment Aug. 2010), *in camera*). Navigant examined only **{**

} from its market share analysis. (Nolan, Tr. 6326-6327, *in camera*).

214. ProMedica acknowledges that it competes only with other Lucas County hospitals for general acute-care services. (PX01903 at 008, 020 (Hanley, IHT at 22, 72-73), *in camera*; Rupley, Tr. 2054 ("members of our community were choosing, if not St. Luke's Hospital, then they would be choosing most likely Toledo Hospital, St. Vincent Medical Center, Flower Hospital, and University of Toledo); *see also* Oostra, Tr. 5757-6059 (not once mentioning Wood County Hospital or Fulton County Health Center in a full day of trial testimony)). Respondent's counsel has noted that: "[P]ayers and their patients have alternative hospitals to turn to that are conveniently located in the market. And those alternative hospitals are Mercy's three hospitals and UTMC." (TRO Hearing, Tr. at 50).

215. Within Lucas County, the two remaining competitors to ProMedica for general acute care services after the Acquisition are Mercy and UTMC. (Joint Stipulations of Law and Fact, JX00002A ¶ 8; *see* PX00900 (Map of Northwest Ohio)).

1. Lucas County Patients Have a Strong Preference to Remain Close to Home for Inpatient General Acute-Care Services

216. Patients have a preference for local care and close access to healthcare providers. (Pirc, Tr. 2184; Pugliese, Tr. 1450-1451; Randolph, Tr. 7102; Rupley, Tr. 1962; Sandusky, Tr. 1306; Sheridan, Tr. 6681; Shook, Tr. 942; Town, Tr. 3694, 3759, *in camera*; *see also* PX01917 at 008 (Radzialowski, Dep. at 26-27), *in camera*).

217. Donald Pirc from MMO, for example, testified that "if you live in Lucas County, you stay there." (Pirc, Tr. 2183; *see also* Pugliese, Tr. 1451 (Anthem's Lucas County members "will stay closer to home for common services, preventative care services.")). Mr. Pirc stated that Lucas County residents stay in Lucas County for hospital care because "people want to stay close to home for care." (Pirc, Tr. 2184; *see also* Wakeman, Tr. 2510; Pugliese, Tr. 1451 (hospitals in adjacent counties are not acceptable alternatives for Lucas County members); Rupley, Tr. 1962 (community members prefer hospitals closer to them)).

218. Mr. Pirc also testified that Lucas County residents will not travel because they can receive quality care close to home. (Pirc, Tr. 2184; *see also* Radzialowski, Tr. 739; Andreshak, Tr. 1781).

219. Finally, Mr. Pirc testified that Lucas County residents prefer to stay in Lucas County for hospital care because "if a loved one is in the hospital, you'd rather be ten minutes away than an hour away . . . ." (Pirc, Tr. 2184; *see also* Wakeman, Tr. 2509; *cf.* Radzialowski, Tr. 634 (" . . . people do develop connections with their local hospital. You know, their babies, that's where they have babies. Their parents might have died there. They know people that work there. They sit on the board.")).

220. With extremely rare exceptions, Lucas County residents do not use more distant providers of general acute-care services. (Sheridan, Tr. 6680-6682; Town, Tr. 3691; PX02148 at 026, 155-159 (¶ 46, Ex. 10) (Town Expert Report), *in camera*).

221. In the ordinary course of business, health plans analyze the Lucas County market. (*See, e.g.*, PX02210 at 003 (Aetna Lucas County Marketshare Analysis), *in camera*). Health plans agree that patients are unwilling to travel outside of Lucas County for general acute-care services. (Pirc, Tr. 2183, 2186; Pugliese, Tr. 1450-1451; Radzialowski, Tr. 648-649; Sandusky, Tr. 1314-1315; Sheridan, Tr. 6681).

222. Physicians in Lucas County have also testified that their patients seek inpatient hospital care close to home. (Marlowe, Tr. 2403; *see also* Andreshak, Tr. 1773; PX01948 at 027 (Peron, Dep. at 99) (approximately 98% of the patients Dr. Peron sees in his Toledo office are from Lucas County)).

2. Data Analysis Confirms Patients Do Not Travel for Inpatient General Acute-Care Services in Lucas County

223. Patient-flow data reveals that nearly all Lucas County residents (97.9 percent) stay within Lucas County for general acute-care services. (PX02148 at 026 (¶ 46) (Town Expert Report), *in camera*; *see also* Sheridan, Tr. 6682). In other words, only 2.1 percent of Lucas County residents leave the county for general acute-care services. (PX02148 at 026 (¶ 46) (Town Expert Report), *in camera*). "[P]atients residing in Lucas County have an obvious and strong preference for hospitals located within Lucas County." (PX02148 at 026 (¶ 46) (Town Expert Report), *in camera*).

224. After analyzing state hospital admissions data and its own marketing studies, Mercy also found that patients want to use hospitals that are convenient and located close to their home. (Shook, Tr. 878-879).

225. This is confirmed by Professor Town's hospital market share by zip code analysis, which shows that Lucas County hospitals typically draw more patients in zip codes closer to the hospital than in more distant zip codes. (Town, Tr. 3752, 3757-3759, *in camera*).

226. The average travel time from home to hospital for Lucas County general acute-care patients is 11.5 minutes, with 50 percent of patients traveling less than 8.7 minutes. (Town, Tr. 3693-3694; PX02148 at 030, 140 (¶ 52, Ex. 5) (Town Expert Report), *in camera*).

227. Ms. Guerin-Calvert has also observed that the vast majority of patients travel less than 20 minutes for healthcare services. (RX-71(A) at 32 (¶ 52) (Guerin-Calvert Expert Report), *in camera*).

228. Professor Town's analysis of St. Luke's core service area demonstrates that for inpatient general acute-care services, only Lucas County hospitals have significant market share. Prior to the Acquisition, ProMedica had a market share of **{ }** percent, St. Luke's had

a share of {   } percent, Mercy had a share of {   } percent, and UTMC had a share of {   } percent. (Town, Tr. 3764, *in camera*; PX02148 at 161 (Ex. 11) (Town Expert Report), *in camera*).

B. Lucas County is the Relevant Geographic Market for Inpatient Obstetrical services

229. The conclusion that Lucas County is the relevant geographic market for inpatient obstetrical services is compelled by the fact that a hypothetical monopolist controlling every hospital in Lucas County could increase the price of inpatient obstetrical services in Lucas County by at least 5 to 10 percent, a small but significant amount. (Guerin-Calvert, Tr. 7681; PX01954 at 042-043 (Guerin-Calvert, Dep. at 164-165), *in camera*; Town, Tr. 3688-3690; PX02148 at 025-026, 029 (¶¶ 45, 51) (Town Expert Report), *in camera*).

230. St. Luke's ordinary course planning documents analyze obstetrical services utilization for Lucas County only. (*See, e.g.*, PX01077 at 003 (St. Luke's Market Report Nov. 2008)).

231. ProMedica's ordinary course planning documents similarly analyze women's services for the metro Toledo area. (*See, e.g.*, PX00392 at 075 (2009 Draft Environmental Assessment Apr. 2009), *in camera*).

232. ProMedica's President of Acute Care testified that, after the Acquisition of St. Luke's, ProMedica's only competition for obstetrical services is Mercy. (PX01904 at 035 (Steele, IHT at 132-133), *in camera* ("St. Vincent is Toledo's competition. St. Charles is Bay Park's competition. Flower doesn't really have competition."))

233. Within Lucas County, the only remaining competitor to ProMedica for inpatient obstetrical services after the Acquisition is Mercy. (Answer at ¶ 4; Response to RFA at ¶ 10; Gold, Tr. 203).

1. Lucas County Patients Have a Strong Preference to Remain Close to Home for Inpatient Obstetrical services

234. Patients "typically want to be closer" to a hospital for delivery – "they have this perception that they're going to deliver so quickly that they're not going to get there." (Marlowe, Tr. 2406). It is more convenient for patients, as well as for friends and family who want to come to visit, to utilize a hospital close to home. (Marlowe, Tr. 2406; *see also* Andreshak, Tr. 1772). Physicians, as well, prefer not to travel to see their patients. (Marlowe, Tr. 2398-2399; *see also* Gbur, Tr. 3109).

235. With extremely rare exceptions, Lucas County residents do not use more distant providers of obstetrical services. (Sheridan, Tr. 6680-6682; Town, Tr. 3691; PX02148 at 026, 155-159 (¶ 46, Ex. 10) (Town Expert Report), *in camera*; PX01939 at 027 (Sheridan, Dep. at 104), *in camera*).

236. Dr. Marlowe, an obstetrician in Lucas County, testified that patients seek inpatient hospital care close to home, especially for obstetrical services. (Marlowe, Tr. 2402-2403).

237. As Mr. Radzialowski from Aetna testified: "I would be hard-pressed to explain to [my wife] why I'm driving by the local hospital and going 15 miles into the country to deliver the baby." (Radzialowski, Tr. 634).

238. Mr. Pirc of MMO testified that MMO would have trouble marketing a hospital network to Lucas County residents that included only Wood County Hospital and Fulton County Health Center because Lucas County residents would be unwilling to travel to these facilities for obstetrical services. (Pirc, Tr. 2193).

2. Data Analysis Confirms Patients Do Not Travel for Inpatient Obstetrical Services in Lucas County

239. *Fewer* obstetrical services patients (0.6 percent) leave Lucas County for care than do patients in need of other hospital services (2.1 percent), which is not surprising in light of the nature of obstetrical services (delivering babies). (PX02148 at 026 (¶ 46) (Town Expert Report), *in camera*; *see also* PX01939 at 027 (Sheridan, Dep. at 104), *in camera*).

240. In the ordinary course of his business, Mr. Pirc of MMO has reviewed hospital utilization data and found that Lucas County residents do not leave Lucas County for obstetrical services. (Pirc, Tr. 2186).

241. Ninety-five percent of Lucas County residents drive fewer than 24.5 minutes for obstetrical services, and residents' average drive time is just 11.3 minutes with 50 percent of obstetrical services patients travelling less than 10 minutes. (Town, Tr. 3694-3695; PX02148 at 030-031, 141 (¶ 53, Ex. 5) (Town Expert Report), *in camera*).

242. Professor Town's analysis of St. Luke's core service area also demonstrates that for inpatient obstetrical services, only Lucas County hospitals have significant market share. Prior to the Acquisition, ProMedica had a market share of { } percent, St. Luke's had a share of { } percent, and Mercy had a share of { } percent. (Town, Tr. 3764-3765, *in camera*; PX02148 at 161 (Ex. 11) (Town Expert Report), *in camera*).

C. Health Plan Provider Networks Must Include Lucas County Hospitals

243. According to health plans, the residents of Lucas County are not willing to and do not travel outside of Lucas County for inpatient hospital care, and that health plans would not be able to market hospital networks to Lucas County residents that consist solely of hospitals outside of Lucas County. (*See, e.g.*, Randolph, Tr. 7064-7065; Pirc, Tr. 2183, 2193; Pugliese, Tr. 1450-1451; PX01944 at 023 (Pirc, Dep. at 88), *in camera*; PX01914 at 009-011, 019 (Pirc, IHT at 29-30, 33-34, 66); PX01917 at 008 (Radzialowski, Dep. at 26-27), *in camera*; McGinty, Tr. 1193; Sandusky, Tr. 1314; Sheridan, Tr. 6682; PX02065 at 002-003 (¶ 9) (Szymanski, Decl.)).

244. Donald Pirc of MMO testified that, if all of the hospitals in Lucas County raised their rates, MMO would not be able to avoid or to res{st the rate increase by } (PX01944 at 023 (Pirc, Dep. at 88, *in camera*).

245. Even John Randolph, President of ProMedica's health plan division, Paramount, testified: "To not have any facility in Lucas County for the provision of services to a health plan membership . . . would not be a very viable or marketable option." (Randolph, Tr. 7065 (continuing "[t]o have to go outside of town entirely and not have a single hospital? Yes, that would be unmarketable and highly unrealistic.")).

246. Employers require that health plan provider networks include hospitals that are close to employees' homes. (Neal, Tr. 2103 ("It's very important to Chrysler that our employees have adequate representation within the provider networks, that they have hospitals within certain limits within those networks."); Caumartin, Tr. 1831; *see also* Buehrer, Tr. 3069).

D. Non-Lucas County Hospitals Are Not in the Relevant Geographic Market for Either Relevant Service

247. The primary reason patients do not travel outside of Lucas County is distance. (Radzialowski, Tr. 649; Sheridan, Tr. 6681; *see also* Pirc, Tr. 2184). Patients do not want to travel 15 to 20 miles or more to a hospital, and Lucas County residents' mindset is not to travel outside of the metro-Toledo area. (Radzialowski, Tr. 649; Pugliese, Tr. 1451; Andreshak, Tr. 1768).

248. James Pugliese of Anthem testified that hospitals in adjacent counties are not acceptable alternatives for their Lucas County members. (Pugliese, Tr. 1451).

249. Wood County Hospital, located in Bowling Green, Ohio, is approximately 25 miles and 35 minutes from downtown Toledo. (Korducki, Tr. 475, 504-505; *see* PX00900 (Map of Northwest Ohio)).

250. Wood County Hospital routinely reviews Ohio Hospital Association data to track patient flow. (Korducki, Tr. 469-470). Wood County Hospital primarily serves the area south of Route 582 in Wood County, southward to the bottom of Wood County, and westward into the eastern half of Henry County. (Korducki, Tr. 506, 508-509).

251. Eighty-one percent of Wood County Hospital's patient admissions are from 10 contiguous zip codes in this area. (Korducki, Tr. 506). No Lucas County zip codes are included in this area. (Korducki, Tr. 509).

252. Wood County Hospital has approximately 3,600 to 3,700 patient admissions per year. (Korducki, Tr. 511). In each of the last two years, approximately 100 Lucas County residents have sought inpatient hospital services at Wood County Hospital. (Korducki,

Tr. 510-511). In other words, approximately 2.7% of Wood County Hospital's inpatient admissions are of Lucas County residents. (*See* Korducki, Tr. 510-511). Some of these Lucas County residents are coming to Wood County Hospital for bariatric services, for which Wood County Hospital is the only hospital in northwest Ohio that is a Center of Excellence. (Korducki, Tr. 511-512).

253. Stanley Korducki, the President of Wood County Hospital testified that less than one percent of Lucas County patients – approximately 12 patients – deliver babies at Wood County Hospital each year. (Korducki, Tr. 512-513).

254. Mr. Korducki testified that Wood County Hospital does not actively compete for patients in Lucas County. (Korducki, Tr. 515-516). Mr. Korducki testified that he doesn't "spend a lot of time really looking at what [Lucas County Hospitals are] doing, because our focus is on our community, and we see [Lucas County] as really a separate market." (Korducki, Tr. 474). For example, when Wood County Hospital advertises either general acute-care or obstetrical services, it does not specifically target Lucas County residents. (Korducki, Tr. 514).

255. Fulton County Health Center is approximately 30 miles and a 45 minute drive from St. Luke's. (Beck, Tr. 384-385; *see* PX00900 (Map of Northwest Ohio)).

256. Like Wood County Hospital, Fulton County Health Center looks at data provided by the Ohio Hospital Association to track patient flow. (Beck, Tr. 386-388). Most of Fulton County Health Center's patients come from the area around the hospital in Fulton County. (Beck, Tr. 388).

257. Patients in Lucas County do not come to Fulton County Health Center for inpatient general acute-care services or inpatient obstetrical services. (Beck, Tr. 389). The President of Fulton County Health Center testified that Lucas County residents do not travel to Fulton County Health Center because of the distance and that hospital services are more available in the hospitals in Lucas County. (Beck, Tr. 392-393 (noting that "there's sufficient healthcare in Lucas County that there's no need to come to [Fulton County Health Center]")).

258. Moreover, Fulton County Health Center does not advertise its services in Lucas County to attract Lucas County residents. (Beck, Tr. 396-397). As a result, Fulton County Health Center does not view itself as a competitor to the Lucas County Hospitals. (Beck, Tr. 388-390).

259. St. Luke's did not view Wood County Hospital or Fulton County Health Center as significant competitors. (PX01933 at 047 (Oppenlander, Dep. at 178-179), *in camera*).

260. Even Respondent's counsel admitted that "[r]elatively few patients go to Wood County to deliver babies." (Respondent, Scheduling Hearing, Tr. 51).

261. In addition, the only practicing physician that Respondent called to testify at trial, Dr. Elizabeth Read, has never even performed a delivery at Wood County Hospital. (PX01935 at 016 (Read, Dep. at 57)).

262. Health plans have also testified that Wood County Hospital and Fulton County Health Center do not compete with Lucas County hospitals for inpatient general acute-care *or* obstetrical services patients. (Pirc, Tr. 2191-2193; Radzialowski, Tr. 648-651; Sandusky, Tr. 1315).

263. Mr. Radzialowski of Aetna testified that he does not believe Fulton County Health Center offers a full complement of hospital services. (Radzialowski, Tr. 650).

E. Even Within the Relevant Geographic Market, Location Matters

264. A hospital's location within Lucas County is also important because community members prefer hospitals close to them. (Rupley, Tr. 1962; Pugliese, Tr. 1451-1452; Radzialowski, Tr. 634; Town, Tr. 3628, 3757, *in camera*; Shook, Tr. 878-879; Korducki, Tr. 511, 558 ("People prefer to stay close to home if the hospital close to home can provide the service.")).

265. Most of St. Luke's patients come from the area immediately surrounding St. Luke's. (Rupley, Tr. 1945; Town, Tr. 3628, 3757, *in camera* ("Patients do not like to travel far for inpatient care."); *see also* Shook, Tr. 879 ("If you build concentric rings of one mile out from the hospitals, you will see a greater concentration of percentage of the admissions to that particular hospital the closer in you are. It begins to dissipate the farther out you travel.")).

266. Health plans have also testified to the importance of a hospital's location in Lucas County in contract negotiations. (Radzialowski, Tr. 663; Pirc, Tr. 2199; Pugliese, Tr. 1451-1452, 1459).

267. Specifically, St. Luke's location was important to health plan networks. (Pirc, Tr. 2195; Pugliese, Tr. 1442-1443; Radzialowski, Tr. 713-714, *in camera*; Sheridan, Tr. 6672-6673; *see also* Town, Tr. 3627, 3651).

268. When St. Luke's analyzed its market in the ordinary course of its business, it focused on its core service area. (PX01418 at 005 (St. Luke's Market Share Analysis), *in camera*; PX01352 at 006 (St. Luke's Board and Medical Staff Planning Retreat Apr. 2008); PX01016 at 003 (St. Luke's Board Meeting Affiliation Update Dec. 2009), *in camera*). St. Luke's core service area consists of eight zip codes in southwest Lucas County and north Wood County. (PX01016 at 003 (St. Luke's Board Meeting Affiliation Update Dec. 2009), *in camera*).

269. Southwest Lucas County is a desirable area for a hospital to be located. (Oostra, Tr. 6037). Upon his arrival, Mr. Wakeman believed that St. Luke's location placed it in a "favorable" position, and, at the time of the trial, St. Luke's location was "terrific."

(Wakeman, Tr. 2477). The area surrounding St. Luke's contains "very good demographics" with "a reasonably well-affluent community." (Shook, Tr. 926-927; *see also* Wakeman, Tr. 2477, 2479).

270. The area surrounding St. Luke's is growing and "more and more [is] being built in the adjoining communities to Maumee." (Shook, Tr. 927). St. Luke's location makes it convenient both for patients and their families. (Wakeman, Tr. 2509-2510).

271. Both { } and { } have had strategies to establish a presence in southwestern Lucas County. (Oostra, Tr. 5898, *in camera*; Shook, Tr. 971, 986, *in camera*). { } and { } would not contemplate building additional facilities in southwest Lucas County if distance and a hospital's location were not important factors. (Town, Tr. 3756, *in camera*; PX01850 at 025 (¶ 35) (Town Rebuttal Report), *in camera*).

272. A hospital's location is important, and this is consistent with ProMedica's strategy when it built Bay Park Hospital. Mr. Oostra testified that ProMedica built Bay Park Hospital in order to access patients on the east side of Toledo. (Oostra, Tr. 5804-5805).

IX. EXTRAORDINARILY HIGH MARKET CONCENTRATION LEVELS ESTABLISH A STRONG PRESUMPTION OF HARM TO COMPETITION IN BOTH RELEVANT MARKETS

273. The calculation of market concentration is an important tool for performing merger analysis, as it provides relevant information regarding the current competitive conditions in a market. (PX02148 at 032 (¶ 56) (Town Expert Report, *in camera*)).

274. Markets that are highly concentrated are presumed to be less competitive than less concentrated markets. In less competitive markets, firms will charge higher prices to consumers, and generally have less incentive to innovate and offer high quality goods and services. (PX02148 at 032 (¶ 56) (Town Expert Report, *in camera*)). Indeed, in Lucas County, market shares of the hospital systems are an accurate predictor of each hospital's relative rates. (*See supra* Section V.C.3).

A. Market Structure

1. Additional Market Participants

275. Within Lucas County, the two remaining competitors to ProMedica for general acute care inpatient services after the acquisition are Mercy Health Partners ("Mercy") and the University of Toledo Medical Center ("UTMC"). (Joint Stipulations of Law and Fact, JX00002A ¶ 8); *See supra* Section VIII.A.).

a. Mercy

276. Mercy is a not-for-profit health system in northwestern Ohio. (Shook, Tr. 890).

277. Mercy offers general acute care inpatient services. (Joint Stipulations of Law and Fact, JX00002A ¶ 7).

278. Mercy offers inpatient obstetric services in the Toledo area. (Shook, Tr. 887, 896, 902).

279. Mercy is affiliated with the Catholic Church and serving the poor is emphasized in its mission. (Shook, Tr. 889, 895).

280. Due to its Catholic affiliation, Mercy operates subject to the ethical and religious directives of Catholic hospitals. Therefore, Mercy does not and cannot offer the full range of obstetric services such as tubal ligations. (Shook, Tr. 1065-1066).

281. In Lucas County, Mercy has three general acute-care hospitals: Mercy St. Vincent Medical Center ("St. Vincent"), Mercy St. Charles Hospital ("St. Charles"), and Mercy St. Anne Hospital ("St. Anne"). (Shook, Tr. 892).

282. St. Vincent is a 445-bed critical care regional referral and teaching center in downtown Toledo. St. Vincent is a tertiary facility that also houses a children's hospital on its campus. (Shook, Tr. 895-896; PX02068 at 001 (¶¶ 3-4) (Shook, Decl.), *in camera*). St. Vincent provides obstetrical services including a Level III perinatal referral center with a licensed neonatal intensive care unit for obstetrical cases and very sick babies. (Shook, Tr. 887, 895).

283. Despite being located near ProMedica's Toledo Hospital, St. Vincent serves a higher percentage of Medicaid and self-insured patients and a lower share of commercially-insured patients as compared to the Toledo Hospital. (Shook, Tr. 899, 914-915; PX02068 at 002 (¶ 9) (Shook, Decl.), *in camera*). In fact, St. Vincent has the largest number of Medicaid cases in Ohio. (Shook, Tr. 888-889).

284. St. Charles is a 294-bed, full-service community hospital located in an eastern suburb of Toledo. (Shook, Tr. 902-903; PX02068 at 001-002 (¶ 5) (Shook, Decl.), *in camera*). St. Charles operates a Level II perinatal referral center with a licensed neonatal intensive care unit. (Shook, Tr. 902).

285. St. Charles draws most of its patients from the east side of the Maumee River. (Shook, Tr. 946-947; PX02068 at 002 (¶ 10) (Shook, Decl.), *in camera*).

286. St. Anne is a 100 bed, small community hospital in northwestern Toledo. (Shook, Tr. 899-900; PX02068 at 002 (¶ 6) (Shook, Decl.), *in camera*).

287. St. Anne is the closest Mercy hospital to ProMedica's Flower Hospital. (Shook, Tr. 917; Oostra, Tr. 5802-5803).

288. St. Anne does not provide inpatient obstetrical services. (Answer at ¶ 15; Oostra, Tr. 5972-5973; Shook, Tr. 901).

289. Mercy has a GAC market share of 28.7%, and an OB market share of 19.5% as measured by patient days. (PX02148 at 143 (Town Expert Report, Ex. 6, *in camera*); *see also* PX02150 at 001-002 (Market share chart)). ProMedica's market share is 60% higher than Mercy's for GAC services and three times larger for OB services. (PX02148 at 036 (¶ 66) (Town Expert Report, *in camera*)).

290. In southwestern Lucas County, Mercy has only a 9% market share for GAC services. (Shook, Tr. 934-935, 1012-1013, *in camera*; *see* PX02290 at 003, *in camera*).

291. Immediately prior to the Acquisition, ProMedica's severity-adjusted rates were **{ }** higher than Mercy's rates, on average. (Town, Tr. 3721, *in camera*; PX01850 at 031-032 (¶ 46) (Town Rebuttal Report, *in camera*)).

b. UTMC

292. UTMC was formed when the University of Toledo and the Medical College of Ohio merged in 2006. (Gold, Tr. 186; PX02064 at 001 (¶ 1) (Gold, Decl.)).

293. UTMC is the only academic medical center in the area, and has a mission to support the academic needs of the University of Toledo. (Gold, Tr. 192-193, 252-253).

294. UTMC's primary focus is on tertiary and quaternary hospital services, as well as clinical research and education. (Gold, Tr. 192-194; PX02064 at 001, 003 (¶ 2, 10) (Gold, Decl.)).

295. UTMC also provides general acute care services. (Joint Stipulations of Law and Fact, JX00002A ¶ 7; PX02064 at 001 (¶ 2) (Gold, Decl.)).

296. UTMC does not offer inpatient obstetrical services. (Answer at ¶¶ 4, 15, 20; Oostra, Tr. 5972; Gold, Tr. 203, 220). UTMC does not plan to offer inpatient obstetrical services in the future. (Gold, Tr. 220).

297. UTMC is licensed for 300 beds, but only has and staffs 225 beds. (Gold, Tr. 199-201).

298. UTMC is harder for patients to get to than St. Luke's Hospital. It is mainly surrounded by commercial buildings and has minimal access to the expressway. (Shook, Tr. 924, 929).

299. UTMC depends on its relationship with other local hospitals. Only half of UTMC's residents gain clinical experiences at UTMC; the rest rotate through other community hospitals in northwestern Ohio and southeast Michigan. (Gold, Tr. 196).

300. In 2010, UTMC and ProMedica began a six-year clinical education and research partnership. According to which, UTMC provides day-to-day management of academic programs in the ProMedica system. (Gold, Tr. 191-192, 210-211; PX02064 at 002-003 (¶ 7) (Gold, Decl.)).

301. UTMC has a 13% market share for GAC services in Lucas County, which is less than one-third of ProMedica's market share. (*See* PX02148 at 143 (Town Expert Report, Ex. 6, *in camera*); PX02150 at 001 (Market share chart)).

302. Immediately prior to the Acquisition, ProMedica's severity-adjusted rates were **{ }** higher than UTMC's rates, on average. (Town, Tr. 3721-3722, *in camera*; PX02148 at 037 (¶ 68) (Town Expert Report, *in camera*)).

2. The Acquisition Left Only Three Competitors in the Lucas County GAC Services Market

303. In Lucas County prior to the Acquisition, ProMedica and St. Luke's competed with UTMC and Mercy. (Answer at ¶ 20).

304. Within Lucas County, the only two remaining competitors to ProMedica for general acute care services after the Acquisition are Mercy and UTMC. (Joint Stipulations of Law and Fact, JX00002A ¶ 8).

3. The Acquisition Results in a Duopoly in the Lucas County OB Services Market

305. In Lucas County, the Acquisition is a merger to duopoly for OB services. Following the Acquisition, Mercy is the only remaining competitor in Lucas County that provides OB services. (Response to RFA at ¶ 10; Answer at ¶¶ 4, 15, 20; Oostra, Tr. 5972-5973; Gold, Tr. 220).

B. Market Shares, Concentration, and the Presumption of Competitive Harm

306. Both before and after the Acquisition, ProMedica's market share is higher than its competitors in Lucas County, whether calculated by registered beds, beds-in-use, or occupancy. (Joint Stipulations of Law and Fact, JX00002A ¶ 17).

307. The Acquisition significantly increases concentration in the already highly-concentrated Lucas County markets for GAC and OB services. ProMedica's post-Acquisition market share is 58.3% in the GAC market, where only two competitors remain, and 80.5% in the OB market, where only one competitor remains. (Town, Tr. 3702-3705; PX02148 at 033-034 (¶¶ 60-61), 143 (Ex. 6) (Town Expert Report, *in camera*); PX02150 (Market share chart)).

308. Under the U.S. Department of Justice and the Federal Trade Commission *Horizontal Merger Guidelines* ("*Merger Guidelines*"), which guide federal courts in applying antitrust merger analysis, a merger or acquisition is presumed likely to create or enhance market power when the post-merger HHI exceeds 2500 points and the merger or acquisition increases the HHI by more than 200 points. (Answer at ¶ 22).

309. This Acquisition far exceeds the *Merger Guidelines* concentration thresholds: in the GAC market, concentration rises 1,078 points to 4,391; in the OB market, concentration rises 1,323 points to 6,854. (Town, Tr. 3703-3704; PX02148 at 034 (¶ 61), 143 (Ex. 6) (Town Expert Report, *in camera*); PX02150 at 002 (Market share chart)). Therefore, the Acquisition is presumptively anticompetitive by a wide margin in both relevant markets based on these high levels of market concentration, and is presumed likely to enhance ProMedica's market power in both markets. (PX02214 at 021-022 (§ 5.3) (*Merger Guidelines)*; *see* Complaint Counsel's Proposed Conclusions of Law at Section XX.G.).

310. The strong presumption that the Acquisition is anticompetitive is insensitive to potential changes in the relevant product and/or geographic markets. While the exact market shares of the individual hospitals would change slightly, the inclusion of tertiary and quaternary services does not affect the strong presumption of anticompetitive harm because the market would still be highly concentrated according to post-Acquisition HHIs. (Town, Tr. 3714-3715; Guerin-Calvert, Tr. at 7730-7731, 7695). The market shares also do not change materially if Wood County Hospital and Fulton County Health Center are included. (Town, Tr. 3711-3712).

311. Market shares can be accurately based on number of discharges, revenue, or patient days. No matter which one is selected, the calculated market shares "would be unaffected." (Town, Tr. 3701-3702, 3709-3710). It is not accurate to calculate market shares based on billed charges, such as those made by the Respondent's expert. Commercial insurers pay discounted prices for services, not the full charge master price, so it would provide a distorted view of the market. (Town, Tr. 3707-3708).

312. Respondent's expert concedes that even using her relevant market definition, the market is still highly concentrated and presumed to increase market power with post-Acquisition HHIs over 4000. (Guerin-Calvert, Tr. at 7730-7731).

313. Additionally, ProMedica's market dominance is even greater in southwestern Lucas County where it now controls **{ }** of the market for GAC services. (PX02290 at 003, *in camera*; Wakeman, Tr. 2523-2525; *see* PX01352 at 006). Mercy has only a **{ }** market share and UTMC has an **{ }** market share. (Shook, Tr. 934-936, 1012-1013, *in camera*; PX02290 at 003, *in camera*).

314. St. Luke's was fully aware that an affiliation with ProMedica would generate antitrust concerns due to the high HHI levels. (PX01030 at 017, *in camera* ("significant legal, regulatory considerations . . . ProMedica: HHI with St. Luke's is 34.7% and 29.9% without . . . Any obstetrics affiliation may need to be carefully reviewed. Note: Anything [referring to HHIs] over 18% throws up a red flag."); Wakeman, Tr. 2695-2696, *in camera*; Black, Tr. 5734, *in camera*; PX01125 at 002, *in camera*).

X. PROMEDICA AND ST. LUKE'S WERE SIGNIFICANT COMPETITORS PRIOR TO THE ACQUISITION

A. Because ProMedica's Lucas County Hospitals and St. Luke's Hospital Were Close Substitutes, the Acquisition Eliminates Significant Competition

1. St. Luke's Hospital and ProMedica's Lucas County Hospitals Were Close Substitutes

315. Under a unilateral effects theory, a merger will lead to increased bargaining leverage and higher prices if the hospitals that are parties to the merger are close substitutes. (Town, Tr. 3778-3779, *in camera*; PX02148 at 040-041 (¶¶ 75-76) (Town Expert Report), *in camera*). The more substitutable the hospitals are in the eyes of health plans and patients, the greater the harm from the transaction. (Town, Tr. 3772, *in camera*; PX02148 at 046-047 (¶¶ 87-88) (Town Expert Report), *in camera*).

316. Patients generally prefer to seek treatment in the hospital that is closest to them. (Randolph, Tr. 7102, *in camera*; Pugliese, Tr. 1450; Sheridan, Tr. 6680-6681; PX02148 at 041 (¶ 77) (Town Expert Report), *in camera*). Hospitals that are located close to one another and to a patient's residence are closer substitutes than more distant hospitals. (PX02148 at 041 (¶ 77) (Town Expert Report), *in camera*). So, within the geographic market of Lucas County, some hospitals are closer substitutes than others. (PX02148 at 041 (¶ 77) (Town Expert Report), *in camera*).

317. Professor Town concluded that for inpatient general acute-care services, ProMedica is St. Luke's closest competitor. (Town, Tr. at 3759-3760, *in camera*). Professor Town also concluded that for obstetrics services, ProMedica is St. Luke's closest competitor. (Town, Tr. at 3760-3761, *in camera*).

318. Notably, two merging parties do not have to be each other's closest substitutes for competitive harm to result from a merger. (Town, Tr. 3782, *in camera*).

319. It is also not necessary for St. Luke's to be a stand-alone substitute for ProMedica in order for the merger to result in anticompetitive harm. (Town, Tr. 3784, *in camera*).

a. A Host of Evidence Demonstrates that St. Luke's and ProMedica Were Close Substitutes

320. Testimony, documents and data demonstrate that St. Luke's and ProMedica hospitals were considered close substitutes by patients seeking inpatient hospital services, especially those residing in southwest Lucas County. (*See, e.g.,* PX01235 at 003, 005; PX02148 at 042-046 (¶¶ 79-87) (Town Expert Report), *in camera*; PX01077 at 009-015 (St. Luke's Market Report 2008); Wakeman, Tr. 2511, 2523-2525, 2527; Rupley, Tr. 1945).

321. ProMedica and St. Luke's competed to attract patients, especially those who reside between ProMedica's hospitals and St. Luke's. (Oostra, Tr. 6041-6042).

322. Prior to the Acquisition, ProMedica was St. Luke's "most significant competitor." (Wakeman, Tr. 2511, 2523-2525, 2527; Rupley, Tr. 2036, *in camera*; Oostra, Tr. 6040). ProMedica's CEO viewed ProMedica and St. Luke's as "[s]trong competitors" prior to the Acquisition. (Oostra, Tr. 6038-6039). Mercy does not consider itself to be "in any way, shape or form a primary competitor to" St. Luke's. (Shook, Tr. 1038).

323. Market shares can identify which competitors are the most significant in a given area. (Wakeman, Tr. 2507). Hospitals with the highest and next-highest market share in a given area will likely be the closest competitors in that area. (PX02148 at 042 (¶ 78) (Town Expert Report), *in camera*).

324. According to internal documents, in St. Luke's core service area, St. Luke's and ProMedica had the first- and second-highest market shares, respectively, for GAC. (PX01235 at 003). ProMedica and St. Luke's had the first- and second-highest market shares, respectively, for OB in St. Luke's core service area. (PX01235 at 005). St. Luke's defines its core service area in the ordinary course of business as the zip codes where 80 percent of its admission base, by service line, comes from. (Wakeman, Tr. 2508).

325. A December 2009 joinder presentation to the board reflected that St. Luke's and ProMedica treated the { } of general acute-care patients in St. Luke's core service area. (Rupley, Tr. 1978-1983, *in camera*; PX01016 at 003, *in camera*). For OB, { } was shown to have the greatest share, followed by { }. (Rupley, Tr. 1978-1983, *in camera*; PX01016 at 003, *in camera*). St. Luke's, TTH, and Flower had a combined { } market share in St. Luke's core service area for OB in 2008. (Rupley, Tr. 1978-1983, *in camera*; PX01016 at 003, *in camera*).

326. Internal documents similarly reflect that in 2007, ProMedica and St. Luke's accounted for 66 percent of the inpatient market share in St. Luke's core service area, compared to 13 percent for UTMC and only 8 percent for Mercy St. Vincent's. (Wakeman, Tr. 2519; PX01352 at 006). Since 2007, St. Luke's inpatient market share in the core service area has increased. (Wakeman, Tr. 2519-2520).

327. Based on Ms. Guerin-Calvert's own calculations, in St. Luke's top ten zip codes by volume, (accounting for { } of admissions), ProMedica ({ }) and St. Luke's ({ }) rank first and second in market share. (PX02148 at 076 (¶ 137) (Town Expert Report), *in camera*; PX02123 at 041-042 (Guerin-Calvert, Decl. Exhibits)). In eight of St. Luke's top ten zip codes, and in all of St. Luke's "core" zip codes, St. Luke's and ProMedica had the first- and second-highest shares of the GAC market. (PX02123 at 042 (Guerin-Calvert, Decl. Exhibits); PX02148 at 043, 064-065, 161 (¶¶ 82, 116-117, Exhibit 11) (Town Expert Report), *in camera*).

328. ProMedica's and St. Luke's market shares in southwestern Lucas County are significantly higher than Mercy's in both relevant product markets. (Town, Tr. 3752-3754, *in camera*; PX02148 at 062-065 (¶¶ 111-117), 156-159 (Exhibit 10) (Town Expert Report), *in camera*). Professor Town's analysis of market shares in St. Luke's core service area demonstrates that for inpatient general acute-care services ProMedica has a market share of { }, St. Luke's has a share of { }, Mercy has a share of { }, and UTMC has a share of { }. (Town, Tr. 3764, *in camera*; PX02148 at 161 (Exhibit 11) (Town Expert Report), *in camera*). Professor Town's analysis of St. Luke's core service area demonstrates that for inpatient obstetrics services ProMedica has a market share of { }, St. Luke's has a share of { }, and Mercy has a share of { }. (Town, Tr. 3764, *in camera*; PX02148 at 161 (Exhibit 11) (Town Expert Report), *in camera*).

329. Scott Shook, Mercy's Senior Vice President of Business Development, testified that Mercy has a { } percent market share for inpatient services in its primary service area, compared to only { } percent in the southwest quadrant of Lucas County. (Shook, Tr. 934-935, 980-981, *in camera*). Similarly, a 2010 Mercy analysis concluded that, in southwestern Lucas County, St. Luke's had a { } percent market share, ProMedica had a { } percent market share, UTMC had an { } percent market share, and Mercy had a { } percent market share. (PX02290 at 002-003, *in camera*; Shook, Tr. 1012-1013, *in camera*).

330. Based on Mr. Shook's review of market share information, St. Luke's had a slim majority of the southwest Lucas County market, with "a fair degree of inpatient admissions going to Flower and Toledo." (Shook, Tr. 934).

331. Mercy does not have a hospital in southwestern Lucas County and has no plans to build one. (Shook, Tr. 963-65, 968; PX02068 at 002, 006 (¶¶ 8, 24) (Shook, Decl.), *in camera*); PX02148 at 064-065 (¶ 116) (Town Expert Report), *in camera*). Despite Mercy's efforts to { } (Shook, Tr. 988, *in camera*). *See infra* Section XIV.D.

332. Based on market shares, Professor Town concluded that patients residing in St. Luke's core service area prefer St. Luke's and ProMedica for inpatient services. (Town, Tr. 3753-3754, *in camera*). Mercy and UTMC have much lower market shares and are therefore preferred less by patients in St. Luke's core service area. (Town, Tr. 3754-3755, *in camera*).

b. Overlapping Service Areas and Patient Origin Data Further Reflect the Close Competition Between St. Luke's and ProMedica Before the Acquisition

333. There is significant overlap between the primary service areas of St. Luke's and ProMedica hospitals, which is direct evidence that they were head-to-head competitors

before the Acquisition. (PX02148 at 041 (¶ 76) (Town Expert Report), *in camera*; Shook, Tr. 933-934).

334. Based on patient origin data, patients in St. Luke's service area choose TTH the most if they do not go to St. Luke's. (Rupley, Tr. 1945). For OB, if patients in St. Luke's primary service area do not go to St. Luke's, they also are most likely to go to TTH. (Rupley, Tr. 1946).

c. Consumer Preference Surveys Confirm that St. Luke's and ProMedica Were the Top Two Choices for Many Patients

335. A 2006 survey conducted for St. Luke's revealed that in St. Luke's core service area, St. Luke's (45%) and TTH (24%) were the top two hospitals that came to mind when consumers were asked about hospitals in the area. (PX01352 at 007; Wakeman, Tr. 2521). The consumer survey found that St. Luke's was preferred by 44% of consumers in the core service area and TTH was second with 21%. (PX01352 at 007; Wakeman, Tr. 2522).

336. In a 2008 survey conducted for St. Luke's in the ordinary course of business, consumers ranked St. Luke's and TTH first and second in patient preference and awareness within St. Luke's primary service area. (PX01077 at 009-014; Wakeman, Tr. 2523). Forty-two percent of residents in St. Luke's primary service area selected TTH as St. Luke's most direct competitor and another 8 percent selected Flower Hospital. (PX01169 at 042; Rupley, Tr. 1958-1959). UTMC was selected by 8 percent and St. Vincent by 16 percent of residents. (PX01169 at 042; Rupley, Tr. 1958-1959).

337. In the same 2008 survey, St. Luke's was selected most often as the preferred hospital for "routine care," followed by TTH. (PX01169 at 015; Rupley, Tr. 1953-1955). For obstetrics ("[m]aternity"), TTH, St. Luke's, and Flower ranked as the top three preferred hospitals. (PX01077 at 013).

d. Diversion Analysis Demonstrates that ProMedica and St. Luke's Were Close Substitutes

338. Diversion analysis is a commonly used method to quantify the degree of substitutability between hospitals or hospital systems. In the context of a hospital merger, the exercise is: if a given hospital was not available to patients, where would they go to seek inpatient care? (Town, Tr. 3771, *in camera*).

339. Diversion analysis relies on hospital claims data, and estimates a hospital choice model by examining the choices patients make with respect to which hospital to use. (Town, Tr. 3772-3773, *in camera*; PX02148 at 046-047 (¶ 88) (Town Expert Report), *in camera*).

340. The higher the diversion, the higher is the substitutability of the hospitals. (Town, Tr. 3773, *in camera*; PX02148 at 046-047 (¶ 88) (Town Expert Report), *in camera*).

341. For { } patients, if St. Luke's were not available to patients, { } of those patients would have gone to a ProMedica hospital, { } would have gone to a Mercy hospital and { } would have gone to UTMC. (Town, Tr. 3775-3776, *in camera*; PX01850 at 020 (Table 3) (Town Rebuttal Report), *in camera*). Diversion analysis for { } patients reveals that ProMedica is St. Luke's closest competitor. (Town, Tr. 3775-3776, *in camera*; PX01850 at 020 (Table 3) (Town Rebuttal Report), *in camera*).

342. For { } patients, if ProMedica were not available, the second largest number of patients ({ }) would have gone to St. Luke's. (Town, Tr. 3776, *in camera*; PX01850 at 020 (Table 3) (Town Rebuttal Report), *in camera*).

343. Professor Town's diversion analysis demonstrates that ProMedica is St. Luke's closest substitute for { } For { }, St. Luke's is ProMedica's closest substitute and for { }, ProMedica is the second-closest substitute for St. Luke's. (Town, Tr. 3777, *in camera*; PX01850 at 020 (Table 3) (Town Rebuttal Report), *in camera*).

344. In a year-by-year diversion analysis, { } enrollees' diversion from St. Luke's to ProMedica is increasing, reflecting the relatively recent addition of ProMedica to { } network. (Town, Tr. 3780-3781, *in camera*; PX01850 at 018 (Table 2) (Town Rebuttal Report), *in camera*).

345. Based on the diversion analysis, { } is ProMedica's closest substitute and St. Luke's is ProMedica's second-closest substitute. (Town, Tr. 3777-3778, *in camera*; PX01850 at 020 (Table 3) (Town Rebuttal Report), *in camera*). A higher diversion to { } from ProMedica only implies that a merger between those two systems may be even more anticompetitive than the merger between St. Luke's and ProMedica. (Town, Tr. 3777-3778, *in camera*).

e. St. Luke's is a Significant Competitor in Lucas County

346. St. Luke's provides care to a significant number of commercial patients in the Lucas County market. (PX02148 at 171 (Ex. 16) (Town Expert Report), *in camera*; PX01920 at 014-015 (Wakeman, Dep. at 49-51), *in camera*; PX01409 at 001 (Jul. 2011 Wakeman email)).

347. St. Luke's is the third-largest hospital in the market based on commercial volume: St. Luke's had 2,846 commercial discharges between July 1, 2009 and March 31, 2010, exceeded only by St. Vincent and TTH. (PX02148 at 171 (Ex. 16) (Town Expert Report), *in camera*). By July 2010, St. Luke's had surpassed UTMC, Flower Hospital, and St. Charles Hospital to serve the third-largest number of patients in the market based on total discharges and outpatient visits. (Wakeman, Tr. 2599-2560; PX01920 at 014-015 (Wakeman, Dep. at 49-51), *in camera*; PX01409 at 001 (Jul. 2011 Wakeman email)).

348. St. Luke's is important to health plans because it enhances the marketability of their provider networks. (Pirc, Tr. 2202-2203).

349. Anthem's Regional Vice President, James Pugliese, testified that {

} (Pugliese, Tr. 1481, *in camera*).

350. Mr. Pugliese testified that his having written { } was "probably a reflection on the fact that there were certain health plans that [Anthem] competed against that had St. Luke's and [Anthem] did not." (Pugliese, Tr. 1484-1485, *in camera* (referring to PX02296, *in camera* (Anthem's 2008 ProMedica negotiation notes))).

351. "I believe that the notion that there was a competing health plan [{ }] out there that offered a broader access network than we did { }, and I would use that [information] in my conversations with ProMedica to help them understand { }." (Pugliese, Tr. 1482-1483, *in camera*).

352. ProMedica expected that St. Luke's addition to Paramount after the Acquisition would "certainly open up opportunities for membership growth at Paramount." (Randolph, Tr. 7100-7101, *in camera*). Indeed, the addition of St. Luke's to Paramount's network had a positive impact on Paramount's business. (Randolph, Tr. 7062). Since St. Luke's joined Paramount, two employers in the area – the City of Maumee Schools and Anthony Wayne Schools – switched to Paramount from other health plans. (Randolph, Tr. 7008-7010).

353. Prior to the Acquisition, ProMedica and St. Luke's also competed to attract and retain physicians. (Oostra, Tr. 6040-6041).

354. Up until the Acquisition, there were benefits to the community that resulted from competition between St. Luke's and ProMedica because competition "keeps everybody on their toes." (Oostra, Tr. 6043-6044).

2. Independent St. Luke's Impacted ProMedica's Bottom Line

355. Prior to the Acquisition, St. Luke's goal was to regain patient volume in St. Luke's core and primary service areas from ProMedica. (Wakeman, Tr. 2505).

356. The 2010 ProMedica Environmental Assessment concluded that "[m]arket share continued to wane early in 2009" and that "[a]dding St. Luke's would 'recapture' a substantial portion of recent losses." (PX00159 at 005, *in camera*). The same report noted, "[I]n metro Toledo, ProMedica's share of the inpatient market declined 1% through nine months of 2009, with St. Luke's Hospital picking up half of that share[.]" (PX00159 at 012, *in camera*). One percent of ProMedica's 2009 gross revenue represents tens of millions of dollars. (PX00322 at 001 (ProMedica Gross Revenues 1Q2009)).

357. The Environmental Assessment is a document created annually by ProMedica and presented to the Board of Trustees, after being reviewed by ProMedica's CEO, among others. (PX01947 at 020-021 (Oostra, Dep. at 72, 74-75), *in camera*). Considerable effort is put into ensuring the accuracy of the Environmental Assessment. (PX01947 at 020 (Oostra, Dep. at 73), *in camera*).

358. Real-world natural experiments in the marketplace confirm that St. Luke's successfully competed with ProMedica for a significant number of patients. For example, ProMedica estimated that St. Luke's readmission to { } network in 2009, after being excluded since 2005, would cost ProMedica { } in gross margin annually. (PX00333 at 002, *in camera* (ProMedica's Anthem negotiation notes)) This equates to approximately { } in revenues. (Wachsman, Tr. 5204, *in camera*).

359. ProMedica expected that volume shifts to St. Luke's away from ProMedica hospitals would "undoubtedly occur" after St. Luke's joined Paramount pursuant to the Acquisition. (Randolph, Tr. 7099-7100, *in camera*). In particular, ProMedica expected patients residing in the area around St. Luke's to be most likely to switch from ProMedica hospitals to St. Luke's. (Randolph, Tr. 7100, *in camera*).

360. According to Dr. Andreshak, after St. Luke's became an in-network provider for Paramount patients, the "majority of patient requests" were to have their surgery at St. Luke's instead of TTH. (Andreshak, Tr. 1759-1760).

361. ProMedica estimated that St. Luke's readmission to Paramount's network would lead to a reduction of 255-344 commercial inpatient admissions (and hundreds of outpatient procedures) at ProMedica hospitals each year. (PX00040 at 007-008, *in camera* (Compass Lexicon analysis of adding St. Luke's to Paramount); *see also* PX00236 at 002 (ProMedica 2008 analysis)).

362. ProMedica estimated that the impact on Flower Hospital alone would be { } of lost margin annually. (PX00240 at 002, *in camera* (ProMedica emails regarding patient diversion from Flower to St. Luke's); PX00291 at 001, *in camera* (ProMedica emails discussing impact of St. Luke's on Flower). The loss of admissions and "the potential for the acute care impact (loss) to be bigger over time" concerned ProMedica executives. (PX00236 at 001 (ProMedica email and analysis of adding St. Luke's to Paramount)).

363. ProMedica estimated that some of the losses would be offset by an increase in membership for Paramount – up to 15,000 new members – solely from the addition of St. Luke's into the Paramount network. (PX00040 at 008, *in camera* (Compass Lexicon analysis of adding St. Luke's to Paramount); *see also* PX00236 at 002) (ProMedica 2008 analysis)).

364. St. Luke's believed that if they were readmitted to Paramount that { }. (Rupley, Tr. 2010, *in camera*).

B. ProMedica Took Aim at St. Luke's as a Significant Marketplace Competitor

1. Exclusions from Third-Party Health Plans

365. St. Luke's significance as a competitor is illustrated by the fact that ProMedica sought to have third-party health plans exclude St. Luke's from their hospital provider networks and ProMedica refused to admit St. Luke's into Paramount's provider network. (*See, e.g.,* Joint Stipulations of Law and Fact, JX00002A ¶ 18; PX01127 at 001 (St. Luke's competitor assessment); PX00231 at 015, *in camera* (2008 ProMedica/Anthem Letter of Agreement); PX01233 at 005, *in camera* (Nov. 2009 St. Luke's presentation)).

366. St. Luke's was out of Anthem's network from 2005 to July 2009. (Pugliese, Tr. 1477, *in camera*). There were "{ } in the contract between Anthem and ProMedica in terms of { }." (Pugliese, Tr. 1483, *in camera*; Rupley, Tr. 1962-1963). The 2007 Letter of Understanding between ProMedica and Anthem "speaks specifically to St. Luke's as a west-side Lucas County hospital and that there was some { } in the LOA related to that." (Pugliese, Tr. 1489, 1491, *in camera* (referring to PX02245)).

367. During 2007-2008 contract negotiations, Anthem informed ProMedica that it wanted to add St. Luke's back into its provider network. (Pugliese, Tr. 1479, 1482-1483, *in camera*).

368. ProMedica resisted Anthem's interest in adding St. Luke's to its network. As Mr. Pugliese testified, "They were arguing that in essence Anthem didn't need to have St. Luke's to be successful in the marketplace and that they would – it was their preference that we would not add them." (Pugliese, Tr. 1488, *in camera*; *see also* Pugliese, Tr. 1493, *in camera* ("They were suggesting that we not add [St. Luke's]."). ProMedica did not want Anthem to add St. Luke's because it would have resulted in ProMedica losing volume by virtue of another competing hospital (St. Luke's) being available to Anthem's members. (Pugliese, Tr. 1488-1489, *in camera*). Anthem told ProMedica that { } (Pugliese, Tr. 1493, *in camera*).

369. Ultimately, the issue was resolved by { } the time when St. Luke's would be added to the Anthem network and "there was a { } associated with bringing St. Luke's in." (Pugliese, Tr. 1493, *in camera*).

370. ProMedica provided Anthem a discount to continue to exclude St. Luke's { }. (Joint Stipulations of Law and Fact, JX00002A ¶ 18; PX00231 at 015, *in camera* (2008 ProMedica/Anthem Letter of Agreement)). St. Luke's was added to Anthem's network on July 1, 2009 and, as a result, Anthem was required under its contract with ProMedica to pay ProMedica { } higher rates at all of its Lucas County hospitals. (Pugliese, Tr. 1497-1498, *in camera*; PX00231 at 015, *in camera* (2008 ProMedica/Anthem Letter of Agreement)).

371. During the 2008 contract negotiations with Anthem, Ronald Wachsman, ProMedica's executive responsible for managed care contracting, wrote in an internal e-mail that Anthem "would add [St. Luke's] as soon as they are able" but that they "will have to pay PHS for the privilege." (PX00380 at 001 (May 2008 Wachsman e-mail)).

372. The issue of St. Luke's exclusion from Anthem's network was described as the "main deal breaker" for ProMedica in its negotiations with Anthem and as requiring a "huge effort" to accomplish. (PX00295 at 001, *in camera* (2008 ProMedica email regarding Anthem negotiations)). The issue was important enough that ProMedica's then-CEO Alan Brass, who only rarely participated directly in managed care contracting issues, became involved. (PX00295 at 001, *in camera* (2008 ProMedica email regarding Anthem negotiations); Wachsman, Tr. 4894, 5207-5208, *in camera*).

373. ProMedica wanted to have Anthem exclude St. Luke's because ProMedica and St. Luke's compete for the same patients, and St. Luke's inclusion in Anthem's network would have a negative impact on ProMedica. (Wachsman, Tr. 5153-5154, 5200-5201, *in camera*; PX00328 at 001, *in camera* (ProMedica's Anthem notes).

374. ProMedica told Mr. Pugliese that { } was needed to compensate ProMedica for the expected loss in volume from ProMedica to St. Luke's. (Pugliese, Tr. 1499-1500, *in camera*). ProMedica sought the { } in order to offset an expected loss in revenues of approximately { } at ProMedica's Lucas County hospitals. (Wachsman, Tr. 5203-5204, *in camera*).

375. Mercy was added back to Anthem's network 18 months before St. Luke's. (Pugliese, Tr. 1539).

376. ProMedica sought to exclude St. Luke's from { } network because St. Luke's is a close competitor to ProMedica. (Town, Tr. 3768-3769, *in camera*).

377. ProMedica also sought to exclude St. Luke's from { } network and indicated to { } that this would be "an advantage to them." (PX02267 at 001, *in camera* (internal email)).

378. ProMedica evaluated opportunities to exclude St. Luke's from { } network. (PX00407 at 001, *in camera* (ProMedica's managed care strategy recommendations); Wachsman, Tr. 5215-5216, *in camera*).

379. ProMedica also evaluated opportunities to exclude St. Luke's from { } network. (PX00407 at 001, *in camera* (ProMedica's managed care strategy recommendations); Wachsman, Tr. 5215-5216, *in camera*).

380. Unlike ProMedica, Mercy did not take any action or engage in any practices to exclude St. Luke's from health plan provider networks. (Wakeman, Tr. 2538).

2. ProMedica Excluded St. Luke's From Paramount's Provider Network

381. St. Luke's was not a Paramount provider from 2001 until August 31, 2010. (Joint Stipulations of Law and Fact , JX00002A ¶ 46; Rupley, Tr. 1940-1941; Randolph, Tr. 7078). Paramount had wanted to add St. Luke's back into its network "from time to time" during that time. (Oostra, Tr. 6045). However, Alan Brass, former CEO of ProMedica, had concerns about St. Luke's participation in Paramount's network. (Randolph, Tr. 7077). Similarly, Mr. Oostra did not think it was worthwhile to add St. Luke's and "cannibalize" the existing ProMedica hospitals. (Oostra, Tr. 6045-6046).

382. In 2008, after Mr. Wakeman became president and CEO, St. Luke's wanted to rejoin Paramount but was unsuccessful. (Rupley, Tr. 1940-1941). Mr. Rupley's understanding was that Paramount wanted to readmit St. Luke's, but that ProMedica overall did not, due to concerns that St. Luke's would draw Paramount patients away from ProMedica hospitals. (Rupley, Tr. 1940-1941; *see also* Randolph, Tr. 7077-7078).

383. Mr. Randolph, the President of Paramount, confirmed that he wanted to pursue the opportunity to bring St. Luke's back into Paramount in 2008. (Randolph, Tr. 7079-7080; PX00405 at 001). It was also clear to Mr. Oostra that in 2008 Mr. Randolph wanted to add St. Luke's to the Paramount network. (Oostra, Tr. 6053). The issue of St. Luke's participation in Paramount was important for both ProMedica and Paramount in 2008. (Randolph, Tr. 7082-7084).

384. Mr. Randolph wrote in a May 2008 email to ProMedica's top executives that "Since Anthem has been given this right to add St. Luke's within a year, Paramount must have an ability to add them." (PX00405 at 001). Mr. Oostra interpreted Mr. Randolph's statement to mean that Mr. Randolph felt that Paramount was going to be at a competitive disadvantage to Anthem without St. Luke's. (Oostra, Tr. 6047-6048 (discussing PX00405 (2008 Oostra/Randolph emails) ("[Mr. Randolph] was, you know, suggesting that they wouldn't be able to compete.")). Mr. Oostra agreed that a fair reading of Mr. Randolph's email is that Mr. Randolph was afraid of being at a competitive disadvantage. (Oostra, Tr. 6049-6050).

385. Mr. Randolph confirmed that some of ProMedica's hospital presidents "who were direct competitors of St. Luke's had concerns about St. Luke's joining Paramount. (Randolph, Tr. 7077). ProMedica management, including Mr. Oostra, were also concerned in 2008 specifically about the impact on Flower Hospital and TTH of adding St. Luke's back into the Paramount network. (Randolph, Tr. 7087).

386. St. Luke's noted that "Paramount leaders want SLH in; ProMedica leaders want to keep SLH out." (PX01233 at 005, *in camera* (Nov. 2009 St. Luke's presentation)). A 2008 St. Luke's internal document stated that Paramount would "only let us back in when we give them [ProMedica] the keys." (PX01119 at 004, *in camera*).

C. St. Luke's Executives Knew St. Luke's Was Being Targeted by ProMedica and Feared Retaliation If St. Luke's Chose Other Affiliation Partners

387. In 2007, St. Luke's considered filing an antitrust suit against ProMedica in response to perceived efforts by ProMedica to exclude or disadvantage St. Luke's in the market. (Rupley, Tr. 1969; PX01144 at 003 (Rupley 2007 notes); PX01207 at 002-003 (2007 St. Luke's CEO's monthly memo).

388. A St. Luke's competitor assessment document observed that "ProMedica desires the SLH geographic area, so they will continue to starve SLH through exclusive managed care contracts and owned physicians. They will do this until we sign up with them or are weakened[.]" (PX01127 at 001).

389. A St. Luke's document noted that ProMedica is "continuing an aggressive strategy to take over St. Luke's or put us out of business." (PX01152 at 001).

390. In a speech to the Perrysburg Chamber of Commerce in 2008, St. Luke's CEO Daniel Wakeman stated that in order to "provide the best value to employers and consumers," hospitals should compete on "price, quality and service," but instead were competing on "how well you can lock out hospitals and other healthcare providers [from] health insurance networks." (PX01380 at 001; PX01920 at 036-037 (Wakeman, Dep. at 137-140, *in camera*) (confirming that speech referred to ProMedica and { } and that St. Luke's was at the time excluded from { } and Paramount)).

391. In 2008, Mr. Wakeman described ProMedica as "[t]he organization that has taken the greatest resources from the community, made the best bottom line and perform[ed] poorly in terms of costs and outcomes." (PX01378 at 001 (Wakeman email); PX01920 at 027 (Wakeman, Dep. at 98, *in camera*) (confirming that reference is to ProMedica)).

392. An August/September 2009 presentation to St. Luke's Board of Directors noted that if St. Luke's became a stronger independent competitor, ProMedica might { }, which would be a "hard hit" to St. Luke's. (PX01018 at 009, *in camera*; Wakeman, Tr. 2660-2661, *in camera*). The same presentation also expressed concern that attempts would again be made to { }. (Wakeman, Tr. 2659, *in camera*).

393. After years of competing vigorously against ProMedica, St. Luke's decided to become part of the ProMedica system, primarily to gain access to ProMedica's extraordinary health plan rates and out of concern over ProMedica's retaliation if St. Luke's were instead to affiliation with a different partner. In October 2009, in describing a possible affiliation with ProMedica, Mr. Wakeman advised leaders of the St. Luke's Board of Directors that ProMedica would bring "strong market/capital position" and "incredible access to outstanding pricing on managed care agreements" to St. Luke's. (PX01125 at 002, *in camera*; Wakeman, Tr. 2685-2686, *in camera*).

394. Mr. Wakeman concluded: "Taking advantage of [ProMedica's] strengths may not be the best thing for the community in the long run. Sure would make life easier right now though." (PX01125 at 002, *in camera*; Wakeman, Tr. 2687, *in camera*).

395. St. Luke's feared that ProMedica would retaliate or respond aggressively if St. Luke's { affiliated with }. (Wakeman, Tr. 2701-2702, *in camera*; Rupley, Tr. 2000-2001, 2036, *in camera*; PX01030 at 021, *in camera* (St. Luke's Affiliation Analysis Update Oct. 2009); PX01232 at 003, *in camera* (2009 email Wakeman/Oppenlander); PX01130 at 006, *in camera* (St. Luke's due diligence meeting notes)).

396. St. Luke's determined that choosing ProMedica "[w]ould reduce or eliminate significant ProMedica actions that are bound to happen if St. Luke's partners with { }." (PX01030 at 016, *in camera* (St. Luke's Affiliation Analysis Update Oct. 2009)).

397. If St. Luke's partnered with { }, St. Luke's expected a "[s]corched [e]arth [r]esponse" from ProMedica and "the wrath of Alan [Brass, then-CEO of ProMedica]." (PX01030 at 021, *in camera* (St. Luke's Affiliation Analysis Update Oct. 2009); Wakeman, Tr. 2701-2702*, in camera,* 2890, *in camera*).

398. St. Luke's suspected that ProMedica was "threatening { }" in order to "keep St. Luke's Hospital out of potential affiliations[.]" (PX01130 at 006, *in camera* (St. Luke's due diligence meeting notes)).

XI. THE ACQUISITION ENABLES PROMEDICA TO RAISE RATES FOR ST. LUKE'S AND PROMEDICA'S OTHER LUCAS COUNTY HOSPITALS

A. By Joining a Dominant System, St. Luke's Can Obtain Higher Rates Than It Could On Its Own

1. ProMedica and St. Luke's Understood that the Acquisition Would Increase St. Luke's Bargaining Leverage and Rates

399. ProMedica was aware of its bargaining leverage before the Acquisition, and it advertised this strength to entice potential affiliation partners. (PX00226 at 008 (ProMedica Health Network ProMedica Partnerships) ("Why ProMedica? . . . Payer System Leverage")).

400. A St. Luke's planning document, dated August 10, 2009, and reflecting a brainstorming session by St. Luke's senior leaders, notes that an option for St. Luke's would be to "enter[] into an affiliation/partnership with a local health system with the express purpose to raise reimbursement rates to the level of our competitors." (PX01390 at 002 (Framing the St. Luke's Strategy Discussion for Dan Wakeman and the Board), *in camera*; Wakeman, Tr. 2640, 2643, *in camera*).

401. St. Luke's CEO, Daniel Wakeman, and its Director of Marketing & Strategic Planning, Scott Rupley, both noted that an independent St. Luke's acts as a competitive constraint in the market and that St. Luke's merger with a larger system would lead to higher rates.

(PX01144 at 003 (Rupley Notes from Planning Session, Jan. 9, 2007); PX01229 (Email from Wakeman (St. Luke's) to Oppenlander (St. Luke's), Aug. 20, 2009), *in camera*).

402. Mr. Rupley noted that health plans should care about St. Luke's independence because "St. Luke's Hospital keeps the systems a little more honest," and that health plans "lose clout if St. Luke's is no longer independent." (PX01144 at 003 (Rupley Notes from Planning Session, Jan. 9, 2007); Rupley, Tr. 1966-1969). This statement was based on Mr. Rupley's belief that providing health plans with an alternative benefits not only the health plans, but also the community through more affordable healthcare rates and better services and amenities. (Rupley, Tr. 1966-1969).

403. In an email, Mr. Wakeman wrote to Mr. Oppenlander, St. Luke's VP and Treasurer at the time, that St. Luke's "need[s] to show **{ }** that we intend to merge with another system, and all the value we produce will [be] diluted, as our payments skyrocket." (PX01229 at 001 (Email from Wakeman (St. Luke's) to Oppenlander (St. Luke's), Aug. 20, 2009), *in camera*; Wakeman, Tr. 2651-2655, *in camera*).

404. A 2009 presentation made by Mr. Wakeman, to educate and inform St. Luke's Board of Directors states: "In essence, the message [to payors] would be pay us now (a little bit more) or pay us later (at the other hospital system contractual rates)." (PX01018 at 009 (Options for St. Luke's: St. Luke's is now at a cross-roads), *in camera*; PX01911 at 047 (Wakeman, IHT at 181-182), *in camera*; Wakeman, Tr. 2655-2656, *in camera*). Mr. Wakeman testified that the message he intended to convey to health plans "was pay us a little bit more now as an independent or pay us more if we're part of another system in Lucas County." (Wakeman, Tr. 2658, *in camera*). This same presentation states: "Option 3: Affiliate with ProMedica. What do they bring? Strong managed care contracts." (PX01018 at 014 (Options for St. Luke's: St. Luke's is now at a cross-roads), *in camera*).

405. Both Mr. Wakeman, and St. Luke's Director of Marketing and Strategy, Scott Rupley, testified that, at the time St. Luke's was considering its affiliation options, ProMedica was believed to enjoy the highest reimbursement rates in the area. (Wakeman, Tr. 2681-2682, *in camera*; *see* Rupley, Tr. 1998, *in camera*).

406. Mr. Wakeman, hoped that an affiliation with ProMedica would allow St. Luke's to obtain the higher reimbursement rates that ProMedica was receiving. (Wakeman, Tr. 2685-2686, *in camera*).

407. Statements from St. Luke's leadership to St. Luke's Board left the Board's Chairman, James Black, with the understanding that "we [St. Luke's] would receive higher reimbursements through our affiliation with ProMedica." (Black, Tr. 5738-5740, *in camera* (discussing PX01030)). Mr. Black viewed the potential for "[r]evenue/ reimbursement enhancement" as an important factor in the evaluation of potential affiliation partners by St. Luke's board. (Black, Tr. 5634-5635; *in camera* (discussing PX01030 at 007); PX01030 at 007 (Affiliation Analysis Update, Oct. 30, 2009), *in camera*).

408. St. Luke's Board member, Dr. Stephen Bazeley, testified that the decision of St. Luke's Board to pursue an affiliation with a larger system was driven by the hope that a merger with such a system would allow St. Luke's to negotiate higher reimbursement rates. (PX01932 at 015 (Bazeley, Dep. at 55-56), *in camera*).

409. ProMedica's Senior VP for Managed Care, Reimbursement and Revenue Cycle Management, Ronald Wachsman, believes that St. Luke's gave MMO notice of its intent to terminate its contract in order to preserve its ability to negotiate higher reimbursement rates in 2011. (Wachsman, Tr. 4833, 5224, *in camera*).

410. A presentation regarding potential affiliation partners, made to St. Luke's Board of Directors by Mr. Wakeman and other members of St. Luke's leadership team, states: "An SLH affiliation with ProMedica has the greatest potential for higher hospital rates. A ProMedica-SLH partnership would have a lot of negotiating clout." (PX01030 at 020 (Affiliation Analysis Update, Oct. 30, 2009), *in camera*; Wakeman, Tr. 2689-2690, *in camera*; Black, Tr. 5634, *in camera*). This statement conveyed the belief that "ProMedica had a significant leverage on negotiations with some of the [health plans]," that this leverage would allow St. Luke's to obtain higher reimbursement rates, and that an affiliation with ProMedica could "[h]arm the community by forcing higher hospital rates on them." (Wakeman, Tr. 2698-2700, *in camera*; Rupley, Tr. 2003, *in camera* (discussing PX01124 at 009, which contains the contents of PX01030 at 020)).

411. In an email on October 11, 2009, to St. Luke's Board members and managers tasked with searching for possible affiliation partners, Mr. Wakeman wrote that "incredible access to outstanding pricing on managed care agreements" is among the important "things Pro[M]edica brings to the table" as an affiliation partner, and that "[t]aking advantage" of this strength "may not be the best thing for the community in the long run" but that it "[s]ure would make life much easier right now though." (PX01125 at 002, *in camera*; Wakeman, Tr. 2682-2683, *in camera*; *see also* PX01130 at 004 (Notes from Due Diligence Meetings, Aug. 26, 2009), *in camera* ("Concern that U.T.[M.C.] does/ may not have as high of [sic] reimbursement rates as ProMedica and/ or Mercy.")). Mr. Wakeman wrote this statement under the assumption that "if our [St. Luke's] rates would have went up to the insurers, the insurers would have then passed those rates off to the employers and the community." (Wakeman, Tr. 2682, *in camera*, 2687, *in camera* (discussing PX01125 at 002)).

412. Formal notes generated by the due diligence team in charge of finding the best affiliation options for St. Luke's point out that a "ProMedica or Mercy affiliation could still stick it to employers, that is, to continue forcing high rates on employers and insurance companies." (PX01130 at 005 (Notes from Due Diligence Meetings, Aug. 26, 2009), *in camera*; Wakeman, Tr. 2673, *in camera*). Mr. Rupley confirmed that the due diligence team believed that an affiliation with a large system in Toledo could perpetuate high healthcare rates in the area. (Rupley, Tr. 2013-2014, *in camera*).

413. During the process of selecting an affiliation partner, St. Luke's CEO, Daniel Wakeman, believed that a "ProMedica-St. Luke's affiliation could force higher rates on employers and insurance companies." (Wakeman, Tr. 2680-2681, *in camera*).

414. St. Luke's anticipated as much as { } in additional revenues from { }, and Paramount as a result of joining ProMedica. (PX01231 (Email from Wakeman (St. Luke's) to Oppenlander (St. Luke's), Oct. 12, 2009), *in camera* ("Yes we asked { } for { }, but if we go over to the dark green side [i.e., ProMedica] … we may pick up as much as { } in additional { } and Paramount fees")).

415. St. Luke's anticipated that the transaction with ProMedica, and its potential for higher prices, could trigger antitrust scrutiny. (*See* PX01125 at 002, *in camera*; PX01228 at 002, *in camera*; PX01030 at 017, *in camera*). In an email, dated October 11, 2009, to St. Luke's Board members and managers tasked with searching for possible affiliation partners, St. Luke's CEO, Daniel Wakeman, wrote: "Promedica [sic] and MHP [Mercy] already have a high degree of concentration in the market … [t]hat's antitrust speak for possible challenge of [sic] we merge with either . . . [b]etter chance with MHP than Promedica [sic]." (PX01125 at 002, *in camera*; Wakeman, Tr. 2682-2684, *in camera*).

416. An email from St. Luke's former VP and Treasurer, David Oppenlander, to St. Luke's Director of Marketing and Strategy, Scott Rupley, states: "Slides 6, 11 and 17 will need some modification in your discussion of managed care rates/leverage … we can't talk about raising rates, managed care leverage and the like due to anti-trust issues." (PX01228 at 002, *in camera* (dated Oct. 15, 2009)).

417. A presentation regarding potential affiliation partners, made to St. Luke's Board of Directors by St. Luke's CEO, Daniel Wakeman, and other members of St. Luke's leadership team, states: "[S]ignificant legal, regulatory considerations … ProMedica: HHI with St. Luke's is 34.7% and 29.9% without … Any obstetrics affiliation may need to be carefully reviewed. Note: Anything [referring to HHIs] over 18% throws up a red flag." (PX01030 at 017 (Affiliation Analysis Update, Oct. 30, 2009), *in camera*; Wakeman, Tr. 2689-2690, *in camera*, 2695-2696, *in camera*).

2. Every Health Plan Believes That The Acquisition Has Increased ProMedica's Bargaining Leverage, Which Will Likely Lead To Higher Rates

418. Anthem's Regional VP for Provider Engagement and Contracting in northern Ohio, James Pugliese, testified:

    a. Less competition in the marketplace is not desirable for Anthem, because less competition leads to less choice and likely higher prices. (Pugliese, Tr. 1523-1524, *in camera*).

b. Lack of competition leads to higher costs and lower quality relative to markets in which "competitive forces [are] in play." (PX01942 at 026 (Pugliese, Dep. at 98), *in camera*).

c. The Acquisition will likely lead to higher healthcare costs because St. Luke's has been absorbed into a larger system, ProMedica, with a great deal of leverage that it can exercise during the contract negotiation process. (Pugliese, Tr. 1524-1525, *in camera*).

d. The addition of St. Luke's to ProMedica will give ProMedica more hospitals and greater geographic coverage in Lucas County, OH. (Pugliese, Tr. 1524-1525, *in camera*). { } (Pugliese, Tr. 1524-1525, *in camera*; PX01919 at 014 (Pugliese, Dep. at 51), *in camera*). { } (*See* Pugliese, Tr. 1525, *in camera*).

e. Mr. Pugliese's boss, Anthony Firmstone, characterized the Acquisition as a "low cost provider [i.e., St. Luke's]" being "absorbed by the high cost provider [i.e., ProMedica]." (PX01942 at 024 (Pugliese, Dep. at 91, 93), *in camera*; PX02377 at 001-002 (Email from Firmstone, Feb. 1, 2010)).

f. Prior to the Acquisition, the reimbursement rates that Anthem paid to St. Luke's were { } the rates that Anthem paid to other community hospitals in Ohio. (Pugliese, Tr. 1505-1506, *in camera*).

g. Prior to the Acquisition, the reimbursement rates that Anthem paid to St. Luke's were { } than the rates Anthem paid to ProMedica community hospitals, Flower and Bay Park. (Pugliese, Tr. 1506, *in camera*).

h. Anthem is concerned that ProMedica will raise the rates that Anthem pays to St. Luke's towards the rates that Anthem pays to ProMedica's community hospitals in Lucas County. (Pugliese, Tr. 1517, *in camera*; *see also* PX02072 at 005 (¶ 18) (Firmstone, Decl.), *in camera*).

i. Anthem conducted an analysis of the change in reimbursements to St. Luke's that would result if Anthem's rates to St. Luke's were increased to Anthem's rates to ProMedica's { }. (Pugliese, Tr. 1506-1508, *in camera*; PX02380 (Email chain among Anthem employees, Aug. 19 to Nov. 2, 2010), *in camera*). According to this analysis, if ProMedica brings Anthem's rates to St. Luke's in line with Anthem's rates to { }, Anthem's rates to St. Luke's will { }—between roughly { } and { }. (Pugliese, Tr. 1517-1519, *in camera*; PX02380, *in camera*).

j. Anthem's concerns about the Acquisition's likely impact on the reimbursement rates it pays to ProMedica and to St. Luke's pre-date Anthem's first contact with

the FTC regarding the Acquisition. (Pugliese, Tr. 1519, *in camera*; *see also* PX02377 (Email from Firmstone, Feb.1, 2010)).

k. ProMedica represents a { } of Anthem's overall member utilization. (Pugliese, Tr. 1667, *in camera*).

l. Nothing in the current contract between Anthem and St. Luke's prevents { } after the expiration of the contract on { }. (PX01942 at 031 (Pugliese, Dep. at 120-121), *in camera*).

419. MMO's VP of Network Management for Ohio, Indiana and Kentucky, Donald Pirc, testified:

a. Prior to the Acquisition, competition between St. Luke's and ProMedica's Lucas County hospitals benefited MMO's members, because competition generally allows MMO to obtain lower rates. (Pirc, Tr. 2260-2261, *in camera*).

b. The Acquisition reduced competition in the market for general acute-care services in Lucas County. (PX01914 at 017 (Pirc, IHT at 60), *in camera*).

c. When competition is reduced in a market, the healthcare costs and the reimbursement rates that MMO has to pay typically rise. (PX01914 at 017 (Pirc, IHT at 61, *in camera*)).

d. { } (Pirc, Tr. 2261, *in camera*).

e. { } (Pirc, Tr. 2261-2263, *in camera*).

f. { } (PX01944 at 027 (Pirc, Dep. at 103), *in camera*).

g. { } (Pirc, Tr. 2262-2263, *in camera*).

h. { } (PX01944 at 013-014 (Pirc, Dep. at 49-50, *in camera*)).

420. Aetna's Senior Network Manager, Greg Radzialowski, testified:

a. The Acquisition has eliminated competition between ProMedica and St. Luke's and has increased ProMedica's bargaining leverage against Aetna. (PX02067 at 006 (¶ 20) (Radzialowski, Decl.), *in camera*).

b. Although it was not easy to walk away from ProMedica before it acquired St. Luke's, the Acquisition has made the prospect of walking away from ProMedica substantially more unattractive for Aetna. (Radzialowski, Tr. 712-713, *in camera*; PX02067 at 006 (¶ 21) (Radzialowski, Decl.), *in camera*; PX01917 at 023 (Radzialowski, Dep. at 86), *in camera*).

c. The Acquisition's addition of St. Luke's to ProMedica's Lucas County network has made it harder for Aetna to walk away from ProMedica because the attractiveness of Aetna's network would fall to a greater degree from the loss of not only at ProMedica's three pre-Acquisition hospitals, but also from the loss of St. Luke's, which would leave Aetna without coverage in southwestern Lucas County. (Radzialowski, Tr. 712-713, *in camera*; PX02067 at 006 (¶ 21) (Radzialowski, Decl.), *in camera*; PX01917 at 020 (Radzialowski, Dep. at 74-77), *in camera*).

d. The Acquisition has increased the importance of ProMedica to Aetna's network, as "it would be exponentially more difficult to market a network in Lucas County without ProMedica *and* St. Luke's." (PX02067 at 006 (¶ 21) (Radzialowski, Decl.), *in camera* (emphasis in original); *see also* PX01917 at 020 (Radzialowski, Dep. at 76), *in camera*).

e. If ProMedica were to walk-away from negotiations with Aetna today, **{** **}** (PX01917 at 023 (Radzialowski, Dep. at 86), *in camera*).

f. Therefore, the Acquisition has substantially increased not only St. Luke's bargaining leverage, but also the bargaining leverage of ProMedica's entire hospital network in Lucas County. (Radzialowski, Tr. 712-713, *in camera*; *see also* PX02067 at 006 (¶ 21) (Radzialowski, Decl.), *in camera*).

g. This additional leverage flowing from the Acquisition gives ProMedica the ability to raise the reimbursement rates that Aetna pays to St. Luke's and to ProMedica's other Lucas County hospitals. (Radzialowski, Tr. 713, *in camera*; *see also* PX02067 at 006-007 (¶ 22) (Radzialowski, Decl.), *in camera*).

h. Mr. Radzialowski expects that ProMedica, as a first step, will increase Aetna's rates to St. Luke's to the level of Aetna's rates to ProMedica and, as a second step, will use the additional leverage it gained from the Acquisition to raise rates even further. (PX01938 at 023 (Radzialowski, Dep. at 88-89), *in camera*; *see also* PX02067 at 006-007 (¶¶ 20, 22) (Radzialowski, Decl.), *in camera*).

i. In early December 2010, ProMedica asked Aetna to increase St. Luke's reimbursement rates to **{** **}**. (Radzialowski, Tr. 717, *in camera*).

j. Aetna performed a "hard-number analysis" of the Acquisition's impact on Aetna's rates to St. Luke's. (Radzialowski, Tr. 704, *in camera*; *see also* PX01938 at 026 (Radzialowski, Dep. at 99), *in camera*). This analysis assumed, based on the typical pattern experienced by Aetna, that the acquiring system would raise the acquired hospital's rates to the system-wide rates. (Radzialowski, Tr. 704, *in camera*; *see also* PX01938 (Radzialowski, Dep. at 99), *in camera*). This analysis projected a { } increase in Aetna's rates to St. Luke's if these were to rise to the level of Aetna's rates to ProMedica, accounting for differences in severity between ProMedica and St. Luke's. (Radzialowski, Tr. 704, *in camera*, 848-49; *see also* PX01938 at 026 (Radzialowski, Dep. at 99), *in camera*).

k. Mr. Radzialowski believes that the actual impact on rates could be higher, because this analysis did not account for the additional bargaining leverage that the acquisition gave to ProMedica as a whole. (Radzialowski, Tr. 843, *in camera*; *see also* PX01938 at 023 (Radzialowski, Dep. at 89), *in camera*).

l. Mr. Radzialowski is not aware of anyone at Aetna who has predicted or estimated that the Acquisition will not lead to higher reimbursement rates at St. Luke's. (Radzialowski, Tr. 843, *in camera*).

421. FrontPath's President and CEO, Susan Szymanski, and FrontPath's healthcare management consultant, Barbara Sandusky, testified:

a. A hospital's bargaining leverage against FrontPath depends on the degree to which FrontPath's members value that hospital. (PX02065 at 004 (¶ 13) (Szymanski, Decl)).

b. The greater a hospital's bargaining leverage against FrontPath, "the higher the prices and the less favorable [for FrontPath] the contract terms it will be able to demand from FrontPath." (PX02065 at 003 (¶ 11) (Szymanski, Decl.)).

c. The larger the portion of FrontPath's membership that utilizes a particular hospital system, the more importance that FrontPath places on maintaining a relationship with that system, the better the contractual terms that the hospital will be able to secure for itself from FrontPath. (Sandusky, Tr. 1325-1326).

d. ProMedica is a "significant" provider for FrontPath, and FrontPath's business "would suffer significantly" from the absence of ProMedica from FrontPath's network. (Sandusky, Tr. 1323-24).

e. {

} (Sandusky, Tr. 1351, *in camera*).

422. Humana's Director of Network Development for northern Ohio, Thomas McGinty, testified:

a. Humana used its negotiated rates with St. Luke's as a benchmark in negotiations with ProMedica. (PX02073 at 003 (¶ 11) (McGinty, Decl.), *in camera*).

b. The Acquisition eliminated Humana's ability to leverage St. Luke's independence against ProMedica and increased ProMedica "ability to leverage us [Humana] for rates for all of their hospitals and St. Luke's now as well." (McGinty, Tr. 1209; PX02073 at 003 (¶ 11) (McGinty, Decl.), *in camera*).

c. ProMedica's increased leverage applies with respect to both Humana's commercial and Medicare Advantage products, as there is nothing preventing ProMedica from seeking reimbursement rates greater than 100 percent of Medicare. (McGinty, Tr. 1209-1210).

d. Humana will have to choose between accepting higher rates from ProMedica and exiting the Lucas County market altogether. (McGinty, Tr. 12111-212; PX02073 at 004 (¶ 15) (McGinty, Decl.), *in camera*).

e. Were Humana to exit the market, there would be less competition among health plans and, thus, less incentive for the remaining health plans to pass lower rates on to consumers. (McGinty, Tr. 1212-1213).

423. United's VP of Network Management for nearly five years (until Dec. 2010), Gina Sheridan (the only health plan witness classed by ProMedica) testified:

a. After the Acquisition was announced, Ms. Sheridan expected that rates at St. Luke's would likely increase because "ProMedica's rate structure [with United] was so substantially higher than St. Luke's to begin with" and because she believed that {

} (Sheridan, Tr. 6698-6700, *in camera*).

b. Prior to entering into a contract with ProMedica in September 2010, {

} (Sheridan, Tr. 6693, *in camera*).

c. United would face even greater difficulty serving its membership without ProMedica and St. Luke's than without ProMedica's pre-Acquisition hospital network in Lucas County. (Sheridan, Tr. 6687).

d. United expects its rates to St. Luke's to rise as a result of the Acquisition. (PX01902 at 018 (Sheridan, IHT at 62), *in camera*).

e. The size of a hospital system is a factor that can influence that system's bargaining leverage against United. (Sheridan, Tr. 6686-6687).

f. It is more difficult for United to negotiate with larger hospitals and hospital systems than with smaller ones, because larger hospitals and hospital systems tend to be more important to United in terms of serving its membership. (Sheridan, Tr. 6686-6687).

g. It would be harder for United to serve its membership if it did not offer access to a large hospital or hospital system than if it did not offer access to a to a smaller one. (Sheridan, Tr. 6687).

h. ProMedica's hospital network in Lucas County has become larger as a result of the addition of St. Luke's. (Sheridan, Tr. 6701, *in camera*).

i. Prior to entering into a contract with ProMedica in September 2010, {

} (Sheridan, Tr. 6691-6693, *in camera*).

424. Health plan representatives testified that their firms will have little choice but to pass any rate increases at St. Luke's or ProMedica's legacy hospitals after the Acquisition to both their self- and fully-insured members. (Pugliese, Tr. 1554; Pirc, Tr. 2174; PX01944 at 020 (Pirc, Dep. at 76), *in camera*; Radzialowski, Tr. 779; Sandusky, Tr. 1296; McGinty Tr. 1210-1211; PX02073 at 004 (¶ 16) (McGinty, Decl.), *in camera*; Sheridan, Tr. 6701, *in camera*; PX01900 at 011 (Mullins, IHT at 39-40), *in camera*).

3. The Acquisition Has Left ProMedica Even More Dominant Than Before

425. Prior to the Acquisition, ProMedica acknowledged its dominance in the Lucas County market through ordinary course documents:

a. A Standard & Poor's credit presentation stated: "ProMedica Health System has market dominance in the Toledo MSA." (PX00270 at 025 (ProMedica "Credit Presentation" to Standard & Poor's on 04/02/2008); *see also* Oostra, Tr. 5964-5965, 5973-5974).

b. A 2009 planning presentation for The Toledo Hospital states: "As Healthcare evolves it is critical that ProMedica evolves to maintain its competitive dominance in the Region." (PX00221 at 002 (Heart Vascular Institute and Toledo Hospital Campus)).

c. A 2010 presentation noted ProMedica's "leading market position within the Toledo metropolitan area," celebrating "dominant market share[s]" in oncology, orthopedics, and women's services. (PX00320 at 003 (Kaufman Hall Presentation on ProMedica's Credit and Capital Position)).

d. In its "2010 Environmental Assessment," ProMedica noted its status as a "clear market leader" in cancer services and orthopedics. (PX00159 at 012-013, *in camera*). Regarding obstetrics services, the document states: "ProMedica has expanded on its already commanding share of the women's product line in metro Toledo, growing from 65.0% in 2008 to 65.9% through nine months of 2009." (PX00159 at 013 (ProMedica "2010 Environmental Assessment"), *in camera*).

e. In documents from 2009, ProMedica noted that it was the "clear market leader" in inpatient women's hospital services for the metro Toledo area, with a "commanding and largely stable market share" of 65% as of June 2008. (PX00249 at 004 (Memorandum from Steele (ProMedica) Re: Market Share Info, March 6, 2009); PX00265 at 060 (ProMedica "2009 Environmental Assessment Draft"), *in camera*).

f. In a strengths, weaknesses, opportunities and threats ("SWOT") analysis, ProMedica listed its "[d]ominant market share" as a strength. (PX00319 at 001 ("TTH Medical Executive Committee SWOT Analysis Results 2007")).

426. ProMedica's pre-Acquisition dominance was evident in its ability to successfully negotiate { } exclusion from Anthem's network for { }. (PX00231 at 015 (Anthem Letter of Agreement), *in camera*).

427. As a result of ProMedica's demands, Anthem was prohibited from adding { } to its network before { }; and if { } was added after that date, ProMedica would increase rates to Anthem by { }. (PX00231 at 015 (Anthem Letter of Agreement), *in camera*; PX00234 at 003-004 (2007 "PHS Managed Care Approach")). In an email, ProMedica's Senior VP for Managed Care, Reimbursement and Revenue Cycle Management, Ron Wachsman, explained that "Anthem cannot sign up st. lukes [sic] until 7/1/09 and will have to pay PHS for the privilege." (PX00380 at 001 (Wachsman (ProMedica) email, 5/7/08)).

428. Prior to the Acquisition, ProMedica had the highest market shares for inpatient general acute-care and obstetrics services and the highest prices in Lucas County. (PX02148 at 143 (Ex. 6), 145 (Ex. 7) (Town Expert Report), *in camera*; *see also* PX00153 at 001 (Email from Oostra (ProMedica) to Steele (ProMedica), Jan. 14, 2009) ("we hear from payors we are among the most expensive in ohio [sic]")).

429. Professor Town's examination of hospital prices in Lucas County prior to the Acquisition demonstrates that ProMedica's average price was { } percent higher than Mercy's, { } percent higher than UTMC's, and { } percent higher than St. Luke's. PX02148 at 145 (Ex. 7) (Town Expert Report), *in camera*). Professor Town's analysis of hospital prices used case-mix adjustment to control for variation in case-mix, severity, and patient demographics across hospitals, and to allow for an apples-to-apples comparison of prices. PX02148 at 037 (¶68, n. 107) (Town Expert Report), *in camera*; Town, Tr. 3722-3725, *in camera*). Health plan testimony supports the general conclusion of Professor Town's price comparison. (Pirc, Tr. 2238-2242, *in camera*; Radzialowski, Tr. 684, *in camera*, 687-688, *in camera*, 698-700, *in camera*; Sandusky, Tr. 1338-1348, *in camera*, 1350, *in camera*; *see* Pugliese, Tr. 1512-1513).

430. If product and geographic markets are properly defined, market shares are generally indicative of a firm's market power, and this is equally true for hospitals in Lucas County. (PX02148 at 035 (¶ 62) (Town Expert Report), *in camera*; Town, Tr. 3645-3646). The relationship between market share and hospital prices is highly informative in this case. (PX02148 at 039 (¶ 71) (Town Expert Report), *in camera*).

431. Professor Town's examination of hospital prices and market shares in Lucas County prior to the Acquisition demonstrates a high correlation between market shares and prices (PX02148 at 039 (¶ 71), 147 (Ex. 8) (Town Expert Report), *in camera*). ProMedica, the system with the highest market share, had the highest prices. (PX02148 at 039 (¶ 71), 147 (Ex. 8) (Town Expert Report), *in camera*). Mercy, the system with the second-highest share, had the second- highest prices. (PX02148 at 039 (¶ 71), 147 (Ex. 8) (Town Expert Report), *in camera*). UTMC, with the third-highest share, had the third-highest prices. (PX02148 at 039 (¶ 71), 147 (Ex. 8) (Town Expert Report), *in camera*). And St. Luke's, with the smallest share, had {the lowest prices}. (PX02148 at 039 (¶ 71), 147 (Ex. 8) (Town Expert Report), *in camera*). Health plans have confirmed Professor Town's analysis of the relative price difference between ProMedica and St. Luke's by testifying that ProMedica's rates are the highest and St. Luke's rates are the lowest in Lucas County. Pirc, Tr. 2238-2242, *in camera*; Radzialowski, Tr. 684, *in camera*, 687-688, *in camera*, 698-700, *in camera*; Sandusky, Tr. 1338-1348, *in camera*, 1350, *in camera*; PX02296 at 001, *in camera*; *see* Pugliese, Tr. 1512-1513, *in camera*; McGinty, Tr. 1210).

432. The Acquisition increased ProMedica's market share among Lucas County hospitals from 47 percent to 58 percent for inpatient general acute-care services, and from 71 percent to over 80 percent for inpatient obstetrics services. (PX02148 at 143 (Ex. 6) (Town Expert Report), *in camera*). The increases in ProMedica's market shares, and the resulting increase in market concentration, create a strong presumption of enhanced market power from the Acquisition. (PX02148 at 035-036 (¶ 63) (Town Expert Report), *in camera*).

433. In St. Luke's core service area, the eight zip codes from which St. Luke's draws most of its patients, the Acquisition increased ProMedica's market share in inpatient general acute care services from 38 percent to 72 percent. (*See* PX02148 at 161 (Ex. 11) (Town Expert Report), *in camera*).

434. In St. Luke's core service area, ProMedica's post-Acquisition market share in inpatient general acute care services is 183 percent higher than the combined market shares of Mercy and UTMC in this same area. (*See* PX02148 at 161 (Ex. 11) (Town Expert Report), *in camera*).

435. In St. Luke's core service area, the Acquisition increased ProMedica's market share in inpatient obstetrics services from 69 percent to 87 percent. (*See* PX02148 at 161 (Ex. 11) (Town Expert Report), *in camera*).

436. In St. Luke's core service area, ProMedica's post-Acquisition market share in inpatient obstetrics services is 653 percent higher than Mercy's market share in this same area. (*See* PX02148 at 161 (Ex. 11) (Town Expert Report), *in camera*).

437. Professor Town's analysis of willingness-to-pay demonstrates that, before the Acquisition, consumers placed 22 percent more value on having in-network access to

ProMedica than to Mercy's Lucas County hospitals. (PX02148 at 066 (¶ 118), 165 (Ex. 13) (Town Expert Report), *in camera*).

438. Professor Town's analysis of willingness-to-pay demonstrates that the Acquisition has increased willingness-to-pay for ProMedica by 50 percent. (PX02148 at 066 (¶ 118), 165 (Ex. 13) (Town Expert Report), *in camera*).

439. Professor Town's analysis of willingness-to-pay demonstrates that the Acquisition has increased ProMedica's bargaining leverage by 14 percent. (PX02148 at 066 (¶ 118), 165 (Ex. 13) (Town Expert Report), *in camera*).

B. ProMedica Will Exercise its Increased Leverage to Extract Higher Rates

1. Nonprofits, Including ProMedica, Seek to Maximize Revenues and Profits

440. ProMedica's documents demonstrate that, despite its nonprofit status, maximizing revenues is one of its central goals. (PX00384 at 014 (ProMedica's Managed Care Strategy, Jul. 23, 2007) (under all health-plan strategies, ProMedica considers the maximization of cost-coverage ratios for managed-care contracts to be an essential element); PX00270 at 054 (ProMedica Credit Presentation to Standard & Poor's, Apr. 2, 2008) ("Improved profitability continues as a key objective for the System.")).

441. ProMedica's profit-seeking behavior has caused some confusion in the community concerning ProMedica's nonprofit status. (PX00242 at 017 (2005-2007 ProMedica strategic analysis) ("Threats" to ProMedica's "Philanthropic Strategy": "Continued perception that PHS and its hospitals are for-profit organizations"); PX00271 at 019 ("Listening Tour" Notes, Jan. 8, 2010), *in camera* ("ProMedica is forced to apologize for our success – why are we a not-for-profit? Should we convert to a for-profit? ProMedica brand: 'successful business pursuing a profit'. . .")).

442. According to health plans, both nonprofit hospitals and for-profit hospitals attempt to maximize commercial reimbursement rates to the full extent that their bargaining leverage will allow. (Pugliese, Tr. 1462-1463; Pirc, Tr. 2212-2213; Radzialowski, Tr. 670, 740; Sandusky, Tr. 1330; McGinty Tr. 1185-1186; Sheridan, Tr. 6684-6685; PX01900 at 010-011 (Mullins, IHT at 34-35, 37), *in camera*).

443. ProMedica's economic expert, Margaret Guerin-Calvert, testified that she has never heard of a hospital knowingly failing to maximize its reimbursements from health plans. (PX01925 at 057 (Guerin-Calvert, Dep. at 220)).

444. Other nonprofit hospitals in the area exercise their bargaining leverage to secure the highest possible compensation from commercial health plans. (Shook, Tr. 950, 1050; Gold, Tr. 207-208, 209-210, 300; Beck, Tr. 408).

2. ProMedica Will Apply Its Additional Bargaining Leverage From the Acquisition Towards Obtaining Higher Reimbursement Rates

445. ProMedica seeks to maximize its revenues and its reimbursement rates from commercial health plans. (Wachsman, Tr. 5145-5146, *in camera*; PX01906 at 066 (Oostra, IHT at 259-260), *in camera* ("Q: Is ProMedica happy with the rates that they have with managed care organizations? A: No. We would always like more.")).

446. ProMedica would not voluntarily pass along cost savings to commercial health plans in the form of reduced rates. (Wachsman, Tr. 5145, *in camera*).

447. Two of the individuals at ProMedica responsible for managed care contracting, Ronald Wachsman and Amy Hutt, receive bonus compensation that is based, in part, on the rates achieved from health plans in negotiations. (Wachsman, Tr. 5097-5098).

448. ProMedica negotiates reimbursement rates with a minimum cost coverage target of { } for health plans offering broad provider networks. (Wachsman, Tr. 4949-4950, *in camera*; *see also* PX00381 at 001, *in camera* (explanation of the cost-coverage ratio as a calculation of operating margin – that is, net revenue as a percentage of cost)).

449. ProMedica would not turn down a contract with a health plan because ProMedica's cost-coverage ration under contract would exceed { }. (Wachsman, Tr. 5147, *in camera*).

450. ProMedica's cost-coverage ratios for significant third-party, commercial health plans range from { } to { }. (PX00233 at 001 (ProMedica's Annualized Cost-Coverage Ratios for 2009), *in camera*; *see also* PX01927 at 011 (Wachsman, Dep. at 37-40), *in camera* (supporting the view that ProMedica seeks to maximize cost-coverage ratios with third-party, commercial health plans, given the bargaining dynamic between ProMedica and each health plan)).

451. ProMedica's internal analyses show that its average cost-coverage ratio for third-party commercial health plans was higher than the { } target in 2009 and 2010, exceeding { } in June 2010. (Wachsman, Tr. 5141-5143, *in camera*; PX00233 at 001 (ProMedica's Annualized Cost-Coverage Ratios for 2009), *in camera*; PX00443 at 002 (ProMedica's Cost-Coverage Ratios for YTD June 2010), *in camera*).

452. ProMedica's operating margin for its hospitals is significantly above the { } for the system as a whole, which includes operations that lose money or have low margins. (PX01947 at 012 (Oostra, Dep. at 39), *in camera*).

453. The hospitals' operating margin through September 10, 2010 was over 6 percent, a fact significant enough to be presented by ProMedica to investors in January 2011. (PX00532 at 005 (ProMedica Investor Presentation); PX01947 at 012 (Oostra, Dep. at 38-39), *in camera*).

454. In negotiations prior to the Acquisition, ProMedica sought rate increase of approximately { }, plus an annual inflation adjustment, from Aetna. (PX02067 at 005-006 (¶ 18) (Radzialowski, Decl.), *in camera*). These increases were substantially larger than those sought by St. Luke's and other hospitals in Lucas County. (PX02067 at 005-006 (¶ 18) (Radzialowski, Decl.), *in camera*).

455. In early December 2010, ProMedica asked Aetna to increase St. Luke's reimbursement rates to { }. (Radzialowski, Tr. 717, *in camera*).

456. While negotiating a new contract with MMO on behalf of St. Luke's at the end of 2010, under the hold-separate agreement, ProMedica requested a 50-percent rate increase. (PX01944 at 023 (Pirc, Dep. at 89)).

3. Professor Town's Econometric Model of the Acquisition's Effect Predicts Significant Price Increases Due To the Elimination of Competition Between ProMedica and St. Luke's

457. Professor Town's Willingness-to-Pay merger simulation model predicts that inpatient reimbursement rates paid by third-party health plans to ProMedica will increase by 10.8 percent and that inpatient reimbursement rates paid by third-party health plans to St. Luke's will increase by between 38.4 percent and 56.2 percent. (PX02148 at 101 (Appendix ¶ 4) (Town Expert Report), *in camera*).

458. Even under the assumption that St. Luke's would have received significantly higher rates even in the absence of the Acquisition, the Willingness-to-Pay merger simulation model predicts that the Acquisition will lead to significant rate increases at St. Luke's, ranging from 33.2 percent to 48.6 percent. (PX02148 at 102 (Appendix ¶ 6) (Town Expert Report), *in camera*).

459. Professor Town's merger simulation results are consistent with the un-rebutted health plan testimony in this matter. (PX01850 at 059 (¶ 92) (Town Rebuttal Report), *in camera*).

460. Professor Town's merger simulation results are consistent with the high concentration in the undisputed relevant geographic market in this matter. (PX01850 at 060 (¶ 92) (Town Rebuttal Report), *in camera*).

461. Professor Town's merger simulation results are consistent with the existing academic literature which shows that hospital mergers in highly concentrated markets typically lead to significant price increases. (PX02148 at 111 (Appendix ¶ 37) (Town Expert Report), *in camera*).

462. The Willingness-to-Pay merger simulation model is the state of the art in hospital merger simulation. (Town, Tr. 3862).

463. The Willingness-to-Pay merger simulation model is the best existing approach to predicting the price effect of a prospective hospital merger. (PX01850 at 063 (¶ 97) (Town Rebuttal Report), *in camera*; Town, Tr. 3862).

464. Willingness-to-Pay has been peer-reviewed and published in two prestigious economics journals. (PX01850 at 059 (¶ 91) (Town Rebuttal Report), *in camera*).

465. Willingness-to-Pay is based on, and consistent with, standard intuition and economic analyses of bargaining between hospitals and health plans. (PX02148 at 105 (Appendix ¶¶ 17-18) (Town Expert Report), *in camera*; Town, Tr. 3863).

466. Willingness-to-Pay is consistent with the standard economic theory on mergers in differentiated products markets described in the *Horizontal Merger Guidelines.* (PX01850 at 062 (¶ 94) (Town Rebuttal Report), *in camera*).

467. Other scholars' analysis of the Willingness-to-Pay merger simulation model has shown it to make accurate and conservative estimates of the impact of hospital mergers. (PX01850 at 063-064 (¶ 97) (Town Rebuttal Report), *in camera*).

4. ProMedica's Ownership of Paramount May Further Enhance ProMedica's Incentive to Seek Post-Acquisition Rate Increases

468. Some of the business decisions made on behalf of Paramount or ProMedica hospitals may have an impact on the other, and if a business decision was to have such an impact, an evaluation of that impact may be performed. (Joint Stipulations of Law and Fact, JX00002A ¶ 14).

469. Paramount's margin goes toward the ProMedica Health System bottom line. (Wachsman, Tr. 5178-5181, *in camera*; Randolph, Tr. 7071).

470. Paramount pays the lowest reimbursement rates to ProMedica's hospitals, relative to the rates that third-party health plans pay to ProMedica's hospitals. (Randolph, Tr. 7071; Wachsman, Tr. 5178-5181, *in camera*). Paramount gets better rates from ProMedica than another health plan that was primarily aligned with ProMedica and had identical network composition would get. (Randolph, Tr. 7071-7072).

471. ProMedica's ownership of Paramount may increase ProMedica's incentive to bargain more aggressively with health plans for higher rates. (PX02067 at 007-008 (¶ 24) (Radzialowski, Decl.), *in camera*; PX01917 at 013 (Radzialowski, Dep. at 49), *in camera*; PX02148 at 056-057 (¶ 99) (Town Expert Report), *in camera*); PX02073 at 004 (¶18) (McGinty, Decl.), *in camera*).

472. If ProMedica raised reimbursement rates to third-party health plans, these health plans' insurance products would become more expensive and, thus, less attractive to employers relative to Paramount's products. (PX01914 at 018 (Pirc, IHT at 62-63), *in camera*; PX02067 at 007-008 (¶ 24) (Radzialowski, Decl.), *in camera*; PX02073 at 004-005 (¶ 18)

(McGinty, Decl.), *in camera*). As a result, such a rate increase would benefit ProMedica not only by increasing revenues at its hospitals (because of the higher rates) but also by attracting more customers to Paramount's insurance products. (PX01914 at 018 (Pirc, IHT at 63), *in camera*; PX02067 at 007-008 (¶ 24) (Radzialowski, Decl.), *in camera*; PX02073 at 004-005 (¶18) (McGinty, Decl.), *in camera*; *see also* Randolph, Tr. 7109-7110).

473. If a third-party health plan were unable to offer a network that included ProMedica, Paramount would benefit because its network would become more attractive relative to the other health plan's network. (PX02067 at 007-008 (¶ 24) (Radzialowski, Decl.), *in camera*; PX01917 at 026 (Radzialowski, Dep. at 98-99); *see* PX01914 at 018 (Pirc, IHT at 63), *in camera*; PX02073 at 004-005 (¶18) (McGinty, Decl.), *in camera*).

474. ProMedica's ownership of Paramount makes a health plan's failure to contract with ProMedica more costly for the health plan because walking away from ProMedica would cause the health plan to become less attractive to current and potential members, relative to other health plans including Paramount that include ProMedica in its network. (PX02148 at 056-057 (¶ 99) (Town Expert Report), *in camera*; PX02067 at 007-008 (¶ 24) (Radzialowski, Decl.), *in camera*; *see* PX01914 at 018 (Pirc, IHT at 63), *in camera*).

475. The cost to ProMedica of failing to reach an agreement with a health plan is diminished by the increased revenue Paramount will receive from patients switching from that health plan to Paramount as a result of ProMedica being out of that health plan's network. (PX02148 at 056-057 (¶ 99) (Town Expert Report), *in camera*; PX02067 at 007-008 (¶ 24) (Radzialowski, Decl.), *in camera*; *see* PX01914 at 018 (Pirc, IHT at 63), *in camera*).

476. Adding St. Luke's to ProMedica and, thus, to Paramount's network increases the attractiveness of Paramount's products to customers in Lucas County. (Randolph, Tr. 7007-7008, 7061-7062; PX01914 at 018 (Pirc, IHT at 64), *in camera*; PX02067 at 007-008 (¶ 24) (Radzialowski, Decl.), *in camera*). For example, since St. Luke's joined Paramount, two employers – the City of Maumee Schools and Anthony Wayne Schools – switched to Paramount from other health plans. (Randolph, Tr. 7007-7010).

477. ProMedica's acquisition of St. Luke's makes failing to contract with ProMedica even more costly to third-party health plans and less costly to ProMedica, because walking away from ProMedica creates a much wider disparity than before the Acquisition: the third-party health plan's network becomes significantly less attractive *without* both ProMedica and St. Luke's, while Paramount's network becomes significantly more attractive *with* both ProMedica and St. Luke's. (PX02148 at 056-057 (¶ 99) (Town Expert Report), *in camera*; PX02067 at 007-008 (¶ 24) (Radzialowski, Decl.), *in camera*; *see* PX01914 at 018 (Pirc, IHT at 64-65), *in camera*).

C. Market Dynamics Will Not Constrain ProMedica's Price Increases

1. Mercy's Presence in the Relevant Markets Will Not Constrain ProMedica's Exercise of Increased Market Power Resulting From the Acquisition

478. Despite the geographic proximity of Mercy's three Toledo-area hospitals and ProMedica's three legacy Toledo-area hospitals, and the relative similarity of their service offerings, ProMedica maintained a substantial advantage in terms of its Lucas County market share prior to the Acquisition. (PX02148 at 063 (¶ 114) (Town Expert Report), *in camera*).

a. Market Share Analysis Demonstrates that Mercy's Presence Has Not And Will Not Constrain ProMedica

479. Prior to the Acquisition, ProMedica's market share for inpatient GAC services was 63 percent larger than that of Mercy. For inpatient obstetrics services, ProMedica's share was 266 percent larger than Mercy's. (PX02148 at 063 (¶ 114) (Town Expert Report), *in camera*; PX02148 at 143 (Town Expert Report, Ex. 6), *in camera*).

480. The difference in shares between ProMedica and Mercy prior to the Acquisition demonstrates that consumers do not view the hospital systems as interchangeable. (PX02148 at 063 (¶ 114) (Town Expert Report), *in camera*).

481. ProMedica's market share is significantly higher than Mercy's, even without St. Luke's. (Oostra, Tr. 5973 (referring to 2006 data reflected in PX00270)).

482. ProMedica's CEO, Randall Oostra, admitted that prior to the Acquisition, Mercy was not a geographical "mirror image" to ProMedica, since St. Anne no longer offers obstetrics services. (Oostra, Tr. 5973; *see also* Sheridan, Tr. 6675; *see generally* Radzialowski, Tr. 640; Sandusky, Tr. 1307-1308; Answer at ¶ 15).

483. In southwestern Lucas County, the combined market share of ProMedica and St. Luke's in both inpatient GAC services and inpatient obstetrics services is much larger than Mercy's corresponding share. (PX02148 at 043-044, 156-159, 161 (¶¶ 82-83, Ex. 10, Ex.11) (Town Expert Report), *in camera*; PX02290 at 002-003 (Mercy Business Development Committee Meeting Minutes, Mar. 9, 2010), *in camera*).

484. The Acquisition has further increased the disparity between ProMedica's and Mercy's market shares in both relevant markets. (PX02148 at 064-065 (¶ 116-117) (Town Expert Report), *in camera*). ProMedica's post-Acquisition market share in inpatient GAC services is roughly twice as large as Mercy's. (PX02148 at 064-065 (¶ 116) (Town Expert Report), *in camera*; PX02148 at 143 (Town Expert Report, Ex. 6), *in camera*). ProMedica's post-Acquisition market share in inpatient obstetrics services is more than

four times greater than Mercy's. (PX02148 at 064-065 (¶¶ 116-117) (Town Expert Report), *in camera*).

485. Prior to the Acquisition, Mercy's presence in the market did not limit ProMedica's ability to charge the highest rates, by far, in Lucas County. ProMedica's case-mix-adjusted (*i.e.*, apples-to-apples) prices were **{ }** percent higher than Mercy's. (Town, Tr. 3794-3795, *in camera*; PX02148 at 037, 062-063 (¶¶ 68, 111-113) (Town Expert Report), *in camera*; *see also* PX02148 at 145 (Town Expert Report, Ex. 7), *in camera*).

486. There is no evidence suggesting that the price disparities between ProMedica and Mercy are due to differences in costs of care or quality of care. (Town, Tr. 3795, *in camera*; PX02148 at 037-038 (¶¶ 68-69) (Town Expert Report), *in camera*).

487. ProMedica's rates would reasonably be expected to be much lower and closer to Mercy's if Mercy served as a very close substitute to ProMedica prior to the Acquisition and constrained it accordingly. (PX02148 at 037-038 (¶¶ 68-69) (Town Expert Report), *in camera*).

b. Mercy Cannot Constrain Post-Acquisition ProMedica In Southwest Lucas County

488. The Acquisition has given ProMedica a significant locational advantage over Mercy because Mercy offers no direct counterpart to St. Luke's in southwest Lucas County. (PX02148 at 064-065 (¶ 116) (Town Expert Report), *in camera*); (Sheridan, Tr. 6698).

489. Greg Radzialowski, Senior Network Manager of Aetna, testified that Mercy is unable to cover the southwest portion of Lucas County, and that the location of St. Luke's significantly increases ProMedica's leverage with Aetna. (Radzialowski, Tr. 713-714).

490. Don Pirc, Vice President of Network Management of MMO, testified that a network without St. Luke's would leave a fairly sizable geographic hole in MMO's network. (Pirc, Tr. 2195).

491. Gina Sheridan, an executive of United HealthCare, testified that St. Luke's location serves a great need in Lucas County. (Sheridan, Tr. 6672-6673).

492. Jim Pugliese, Regional Vice President of Contracting and Provider Relations for Anthem, testified that the area around St. Luke's is an important customer base for Anthem. (Pugliese, Tr. at 1442-1443).

493. Further, Mercy currently attracts relatively few patients from the **{ }.** (PX02290 at 002-003 (Mercy Business Development Committee Meeting Minutes, Mar. 9, 2010), *in camera*}**)**.

494. The facts surrounding **{ }** do not support Respondent's assertion that Mercy will be better able to constrain ProMedica in the future. **{**

} (PX02288, *in camera;* Shook, Tr. 971-972, *in camera*).

495. Mercy has no current plans in its {

} (PX02288, *in camera*; Shook, Tr. 982-986, *in camera*).

496. Mercy's President, Scott Shook, testified that Mercy has not achieved its { } (Shook, Tr. 1019, *in camera*). Despite Mercy's efforts to {

} (Shook, Tr. 988, *in camera*).

c. Econometric Analysis Demonstrates Mercy is Less Preferred Than ProMedica

497. Willingness-to-pay ("WTP") is a peer-reviewed econometric methodology for quantifying hospital bargaining leverage with health plans. (Town, Tr. 3798-3799, *in camera*). Willingness-to-pay is the health plan's willingness to pay for the hospital to be in its network of providers. (Town, Tr. 3799, *in camera*). Willingness-to-pay is measured in utils. (Town, Tr. 3799-3800, *in camera*).

498. Willingness-to-pay analysis shows that, prior to the Acquisition, commercially-insured patients placed { } percent more value on having in-network access to ProMedica than on having in-network access to Mercy. (PX02148 at 063 (¶ 118) (Town Expert Report), *in camera*; PX02148 at 165 (Town Expert Report, Ex. 13), *in camera*) (ProMedica's WTP is 8235.6 and Mercy's WTP is 6727.89). That is, prior to the Acquisition, ProMedica had { } percent more bargaining leverage than Mercy. (Town, Tr. 3802, *in camera*).

499. As a result of the Acquisition, consumers value in-network access to ProMedica nearly twice as much as they value in-network access to Mercy. (PX02148 at 165 (Town Expert Report, Ex. 13), *in camera*) (ProMedica and St. Luke's post-Acquisition WTP is 12,346.19 and Mercy's WTP is 6727.89)).

500. ProMedica's acquisition of St. Luke's increases the value to health plans of contracting with ProMedica. (Town, Tr. 3802-3803, *in camera*; PX02148 at 165 (Town Expert Report, Ex. 13), *in camera*).

501. Post-Acquisition, ProMedica's willingness-to-pay increases dramatically; it is { greater than Mercy's willingness-to-pay. (Town, Tr. 3803, *in camera*); PX02148 at 165 (Town Expert Report, Ex. 13), *in camera*). Professor Town's willingness-to-pay analysis was strongly corroborated by the testimonial and documentary evidence in this matter. (Town, Tr. 3803-3804, *in camera*). Thus, the Acquisition has rendered Mercy a significantly more distant substitute for ProMedica in the eyes of health plans and their

members. (Town, Tr. 3802-3804, *in camera*; PX02148 at 064-065 (¶¶ 116-117) (Town Expert Report), *in camera*).

502. Mercy did not provide a sufficiently strong competitive constraint to prevent ProMedica from exercising its market power before the Acquisition. (PX02148 at 066 (¶ 119) (Town Expert Report), *in camera*). Because the Acquisition has made ProMedica more dominant and has made Mercy less competitive against ProMedica, there is no reason to believe that Mercy will be able to constrain ProMedica's post-Acquisition exercise of enhanced market power. (PX02148 at 066 (¶ 119) (Town Expert Report), *in camera*).

D. Health Plans Cannot Constrain ProMedica's Price Increases

1. A Hospital Network Consisting of Mercy and UTMC is Not a Viable Substitute for One Including ProMedica

a. Market Share Analysis Confirms That A Network of Mercy and UTMC is Less Preferred Than A Network That Includes ProMedica

503. ProMedica's post-Acquisition market share is significantly higher than the combined market share of Mercy and UTMC in Lucas County. (Town, Tr. 3804-3805; PX02148 at 069-070 (¶ 125) (Town Expert Report), *in camera*). A Mercy and UTMC network is not a viable or close substitute for a ProMedica-St. Luke's network, as evidenced by relative market shares, and patient draw by zip codes, which indicate each hospital's relative desirability among patients. (PX02148 at 069-071 (¶¶ 125-126) (Town Expert Report), *in camera*).

504. Post-Acquisition, the combined market share of Mercy and UTMC is 42 percent for general acute-care services, significantly less than the 58 percent share for ProMedica and St. Luke's. (Town, Tr. 3804-3805, *in camera*); (PX02150 (Market Share Chart)).

505. In St. Luke's core service area, a network consisting of Mercy and UTMC would not be viable for residents. (Town, Tr. 3761-3762, *in camera*). Mercy and UTMC have very low market shares in St. Luke's core service area. (Town, Tr. 3761-3762).

506. In St. Luke's core service area, the combined market share for Mercy and UTMC is about 25 percent for general acute-care services, significantly less than the 72 percent share for ProMedica and St. Luke's. (Town, Tr. 3805, *in camera;* PX02148 at 143 (Town Expert Report, Ex. 6), *in camera*).

507. In particular, with respect to obstetrics services, a network comprised of Mercy and UTMC would not be nearly as attractive as a network comprised of ProMedica and St. Luke's because Mercy's St. Anne, located proximally to ProMedica's Flower Hospital, and UTMC, located proximally to St. Luke's, do not offer obstetrics services. (PX02148 at 069-070 (¶ 125) (Town Expert Report), *in camera*).

508. Because UTMC and Mercy St. Anne do not offer obstetrics services, the asymmetry between ProMedica and the post-Acquisition walk-away network of Mercy and UTMC is heightened. Post-Acquisition, ProMedica's share is three times greater in obstetrics services than Mercy and UTMC. (Town, Tr. 3806-3807, *in camera*).

b. Respondent Admits That A Hospital Network of Mercy and UTMC Has Not Been Offered by Health Plans

509. Respondent's expert, Ms. Guerin-Calvert, admits that if a health plan could not reach an agreement with ProMedica today, the health plan would have to offer an unprecedented network comprised of Mercy and UTMC. (Guerin-Calvert, Tr. 7896-7897).

510. No health plan in at least the last 10 years has ever offered a network comprised of only UTMC and Mercy. (JX00002A at ¶ 9, Respondent's Reply to RFA at ¶ 14; PX02148 at 062-063 (¶ 112) (Town Expert Report), *in camera*).

511. Respondent's expert, Ms. Guerin-Calvert, testified that in the past 20 years, there has never been a network comprised of only Mercy and UTMC. (Guerin-Calvert, Tr. 7895).

512. In fact, Jack Randolph, who has been President of Paramount since 1992, is unaware of any health plan ever marketing a network consisting only of Mercy and UTMC. (Randolph, Tr. 7065). Health plans have had many different permutations of hospital providers in their networks in Lucas County, but have not marketed a network of Mercy and UTMC alone. (Randolph, Tr. 7069-70; *see also* Guerin-Calvert Tr. at 7893-7896).

513. Ron Wachsman, Senior Vice President for Managed Care, Reimbursement, and Revenue Cycle Management of ProMedica, testified that no health plan doing business in Lucas County has ever offered a network consisting of only the Mercy hospitals and UTMC, or a network of only Mercy or only UTMC. (Wachsman, Tr. 5196-5197, *in camera*; PX01927 at 019 (Wachsman, Dep. at 69), *in camera*).

c. Health Plan Testimony Confirms That a Hospital Network of Mercy and UTMC Would Not Be A Viable Substitute For One Including ProMedica

514. Aetna is not aware of any health plan that has offered a network of just Mercy and UTMC. (Radzialowski, Tr. 672).

515. Aetna has never considered offering a network comprised of Mercy and UTMC only. (Radzialowski, Tr. 672; *see also* 715-716, *in camera*).

516. Aetna has no future plans to offer such a network of Mercy and UTMC only. (Radzialowski, Tr. 672; *see also* 715-716, *in camera*). **{**

(Radzialowski, Tr. 716, *in camera*).

517. An Aetna executive testified that prior to the Acquisition, marketing a network consisting of St. Luke's, Mercy, and UTMC would have been feasible. (PX02067 at 006 (¶ 21) (Radzialowski, Decl.), *in camera*). However, post-Acquisition, marketing a network that excludes ProMedica would be "significantly detrimental to Aetna's business." (PX01917 at 020 (Radzialowski, Dep. at 76), *in camera*).

518. Anthem has never marketed a health plan product with a hospital network that consisted solely of Mercy and UTMC to Lucas County employers. (Pugliese, Tr. 1477, *in camera*). No such network has ever been marketed because "[t]here wasn't a demand for that type of network." (Pugliese, Tr. 1477-1478, *in camera*).

519. A network consisting of Mercy and UTMC would not be commercially viable for Anthem because it "is not representative of what our customers have been asking for." (Pugliese, Tr. 1478, *in camera*).

520. Even if Anthem could offer a Mercy-UTMC network at a lower price, the network would not be competitive. (Pugliese, Tr. 1577-1578 ("We wouldn't be more competitive. We would be lacking in network, so price might be better, but the network would not.")).

521. An MMO executive testified that MMO could not offer a viable health plan network in Lucas County that consisted only of UTMC and Mercy. (Pirc, Tr. 2262, *in camera*).

522. MMO's members in southwest Lucas County would have to travel too far to receive care if MMO's network consisted of only Mercy and UTMC. (Pirc, Tr. 2262, *in camera*).

523. Marketing a network without ProMedica post-Acquisition, even at lower reimbursement rates, would be unmarketable and result in a loss of membership for MMO. (Pirc, Tr. 2313, *in camera*).

524. Post-Acquisition, MMO could not offer a PPO product in Lucas County that did not include ProMedica's hospitals. (Pirc, Tr. 2261-2262, *in camera*).

525. United has never marketed a network consisting solely of UTMC and Mercy. (Sheridan, Tr. 6694; PX01939 at 031 (Sheridan, Dep. at 119), *in camera*).

526. An United executive testified that marketing a network without ProMedica post-Acquisition makes it much more difficult to serve its members. (PX01902 at 018 (Sheridan, IHT at 63), *in camera*).

527. United added ProMedica to its network in the fall of 2010. (Sheridan, Tr. 6621). United was under significant internal pressure to bring ProMedica into United's network. (Sheridan, Tr. 6693, *in camera*). Having a "skinnied-down" narrow network in Lucas County was not attractive enough for United to grow its membership, even at a lower

price. (Sheridan, Tr. 6692-93, *in camera*). In fact, if ProMedica didn't rejoin the United network, { }. (Sheridan, Tr. 6693, *in camera*).

528. A network comprised solely of Mercy and UTMC could not be viably marketed by FrontPath; as it would account for less than { } of their current Lucas County utilization. (Sandusky, Tr. 1351, *in camera*).

529. ProMedica is a significant provider for FrontPath. (Sandusky, Tr. 1324). If ProMedica was not in FrontPath's network, it would significantly affect FrontPath's book of business. (Sandusky, Tr. 1324).

530. Humana testified that it cannot create a viable hospital network in Lucas County that consists only of Mercy and UTMC. (McGinty, Tr. 1201; PX02073 at 004 (¶ 15) (McGinty, Decl.), *in camera*).

531. Humana's Medicare Advantage product originally included only Mercy but was "not successful." (McGinty, Tr. 1199-1200, 1261). Humana did not consider adding UTMC to the Mercy-only network because adding a high-cost hospital with questionable quality would destroy the network's value proposition by increasing premiums for members. (McGinty, Tr. 1201).

532. Ultimately, a network comprised of Mercy and UTMC would not allow Humana to be competitive versus other health plans. (McGinty, Tr. 1201).

533. Humana subsequently added St. Luke's to the Medicare Advantage network and increased its membership. (McGinty, Tr. 1200-1201). When Humana switched to a ProMedica/St. Luke's network, it gained over 4,000 Medicare Advantage members over when Humana offered a Mercy/St. Luke's network. (McGinty, Tr. 1203-1204).

d. Employer Testimony Confirms That a Hospital Network of Mercy and UTMC Would Not Be a Viable Substitute For One Including ProMedica

534. A provider network consisting of only Mercy and UTMC is unacceptable to employers. (Neal, Tr. at 2112-2113; Buehrer, Tr. 3091).

535. A Chrysler representative testified that a network consisting solely of Mercy and UTMC would be "very detrimental to [Chrysler's Lucas County] employees." (Neal, Tr. 2112-2113)

536. Mr. Buehrer, President of the Buehrer Group Architectural and Engineering Inc., testified that network consisting of Mercy, UTMC, and St. Luke's acceptable only "because St. Luke's was included." (Buehrer, Tr. 3091).

e. Economic and Econometric Analysis Demonstrates that a Network of Mercy and UTMC Would not be a Viable Substitute For One Including ProMedica

537. The walk-away network that managed care organizations can turn to post-Acquisition when negotiating with ProMedica is the Mercy and UTMC combination; for residents of southwest Lucas County, a network comprised of Mercy and UTMC is much less attractive. (Town, Tr. 3806, *in camera*); PX02148 at 067-068 (¶ 126) (Town Expert Report), *in camera*).

538. Professor Town's willingness-to-pay analysis demonstrates that a network of ProMedica and St. Luke's is significantly more valuable than a network of Mercy and UTMC. (Town, Tr. 3808, *in camera*; PX02148 at 066, 164-165 (¶ 118, Ex. 13) (Town Expert Report), *in camera*. This suggests that ProMedica's bargaining leverage is heightened because the value of the walk-away network is significantly less than the post-Acquisition bargaining leverage of St. Luke's. (Town, Tr. 3808-9, *in camera*); (PX02148 at 066-068, 071-072 (¶¶119-122, 127) (Town Expert Report), *in camera*).

2. Health Plans Cannot Defeat ProMedica's Price Increases By Steering Members to Less Expensive Hospitals

539. Health plans currently place greater emphasis on open-access networks than they did prior to 2008. (Radzialowski, Tr. 615, 657-658; PX02148 at 064 (¶¶ 121) (Town Expert Report), *in camera*; PX02067 at 004-005 (¶ 15) (Radzialowski, Decl.), *in camera*). For example, an Anthem executive testified that it added Mercy in 2008 and St. Luke's in 2009 in response to member preferences for access to all Lucas County hospitals. (Pugliese, Tr. 1544-1545); (Radzialowski, Tr. 657-658); (PX02072 at 003-004 (¶ 13) (Firmstone, Decl.), in camera); *see also* (PX02067 at 004-005 (¶ 15) (Radzialowski, Decl.).

540. Members prefer broader networks. (Radzialowski, Tr. 657; Sandusky, Tr. 1287-1288; Pugliese, Tr. 1449; PX01939 at 020 (Sheridan, Dep. at 74), *in camera*; PX01944 (Pirc, Dep. at 76).

541. Lucas County employers testified that their employees prefer health plan networks that include broad access to hospitals. (Lortz, Tr. 1700-1701, 1706; Caumartin, Tr. 1859-1861, 1864; Neal, Tr. 2102-2106, 2113; Buehrer, Tr. 3074, 3078).

542. Patients are resistant to changing hospitals, or losing access to hospitals in a health plan network. (Sheridan, Tr. 6680).

543. Patients do not like health plans steering them to particular hospitals. (Radzialowski, Tr. 657-658; Pugliese, Tr. 1465, 1544-1545; PX01917 at 018 (Radzialowski, Dep. at 68), *in camera*).

544. In-network steering is defined as charging different prices to patients for accessing in-network hospitals based on the price the health plan pays to the hospital for its members' inpatient care. (Town, Tr. 3810, *in camera*).

545. Implementation of a steering mechanism would be costly to health plans because it would devalue the health plan's product. (Town, Tr. 3810, *in camera*).

546. It is not practical to steer members to lower cost providers because members prefer full access to their health plan's network and find steering mechanisms inconvenient and difficult to understand. (PX02148 at 067-069 (¶¶ 122-123) (Town Expert Report), *in camera*).

547. There are significant differences in prices across the hospital systems in Lucas County, and if steering were an effective tool by which health plans could shift patients to lower cost hospitals and manage costs, a strong incentive to use this tool existed prior to the Acquisition. (Town, Tr. 3811, *in camera*).

548. The absence of any widespread in-network steering in Lucas County prior to the Acquisition, shows that this was not an effective tool for health plans, or undesirable insofar as it devalued the health plans' product. (Town, Tr. 3811, *in camera*).

549. Even if in-network steering were implemented, it would be unlikely to defeat a price increase. (Town, Tr. 3813, *in camera*; PX01850 at 027-030 (¶¶ 39-43) (Town Rebuttal Report), *in camera*). This is because unlike hospital markets, in most markets consumers directly face prices. (Town, Tr. 3813-3814, *in camera*) Mergers of close competitors in markets where consumers do not face prices still raise competitive concerns. (Town, Tr. 3813-3814, *in camera*; PX01850 at 014 (¶19) (Town Rebuttal Report), *in camera*).

550. It would be even more difficult for health plans to steer Lucas County residents to hospitals outside of Lucas County, such as Fulton County Health Center or Wood County Hospital, even if these hospitals have available capacity, in an effort to resist a price increase. (PX02148 at 028-029 (¶ 50) (Town Expert Report), *in camera*).

551. Health plans have testified that Wood County Hospital and Fulton County Health Center are insignificant competitors to the Lucas County hospitals, and thus, not viable alternatives for Lucas County members. (Pirc, Tr. 2183, 2191- 2193; Radzialowski, Tr. 648-651; Sandusky, Tr. 1315; Pugliese, Tr. 1451; Sheridan, Tr. 6691 (*in camera*), 6682).

552. Indeed, Jack Randolph, CEO of Paramount, testified that a network marketed to Lucas County members that consisted of only non-Lucas County hospitals would be "absurd" and not a viable or marketable option. (Randolph, Tr. 7064).

553. Wood County Hospital and Fulton County Health Center executives have testified that they do not compete with Lucas County hospitals. (Korducki, Tr. 515-516; (Beck, Tr. 388-390).

554. Respondent's argument that steering is easy because health plans have demonstrated the ability to exclude Mercy or ProMedica in past network configurations fails to consider the change in value to health plans in comprising an alternative, or walk-away network without St. Luke's. (Town, Tr. 3822-3823, *in camera*).

555. Notably, in the past 10-15 years, no health plan network has excluded both ProMedica and St. Luke's. (Town, Tr. 3824, *in camera*; Guerin-Calvert, Tr. 7893-7897).

556. MMO does not steer its members to use certain hospitals within MMO's network based on the reimbursement rates that MMO pays. (Pirc, Tr. 2213-2214; PX01944 at 019 (Pirc, Dep. at 72), *in camera*). MMO has no plans to implement a program to steer members to certain in-network providers using financial incentives. (Pirc, Tr. 2214; PX01944 at 022 (Pirc, Dep. at 82), *in camera*)). MMO has never implemented a tiered hospital network and has no plans to do so in the future. (Pirc, Tr. 2216).

557. MMO does not tier hospitals in its network based on the quality of care that the hospitals deliver to MMO's members. (PX01944 at 019 (Pirc, Dep. at 72), *in camera*; Pirc, Tr. 2214).

558. Apart from the health insurance products offered to { } employees, none of MMO's products in Lucas County provide financial incentives for MMO's members to seek care at certain hospitals over others. (Pirc, Tr. 2213-2214; PX01944 at 019 (Pirc, Dep. at 73), *in camera*). Mr. Pirc is unaware of any requests from self-insured customers in Lucas County that MMO create tiered networks which provide different levels of insurance coverage to members, depending on the hospital the members choose for inpatient care. (Pirc, Tr. 2215; PX01944 at 019 (Pirc, Dep. at 72-73), *in camera*).

559. MMO's marketing department has indicated that the market would not welcome such a steering program, because of the general preference among members for broad access to providers. (PX01944 at 022 (Pirc, Dep. at 82-83), *in camera*)).

560. Six to seven years ago, MMO implemented a { } (Pirc, Tr. 2215-2216); PX01944 at 022 (Pirc, Dep. at 83), *in camera*). However, the { } who were not placed in { }, causing MMO to end it. (Pirc, Tr. 2215-2216; PX01944 at 022 (Pirc, Dep. at 83, *in camera*)). This was the last time MMO attempted any steering program aimed at all its members. (PX01944 at 022 (Pirc, Dep. at 84), *in camera*).

561. Hospital systems with bargaining leverage, including { }, take steps to protect themselves from steering programs. (Pirc, Tr. 2259, *in camera*; PX01944 at 022 (Pirc, Dep. at 84, *in camera*)). { } has negotiated anti-steering language into its MMO contracts for its Lucas County hospitals, including { }. (PX01944 at 022-023 (Pirc, Dep. at 84-87), *in camera*; PX02533 at 017-018 (Anti-Steering Provision in MMO/ ProMedica Contract), *in camera*). This language prohibits MMO from

implementing tiered networks that place { } in anything but the most favored tier. (Pirc, Tr. 2259-2260, *in camera*; PX01944 at 022-023 (Pirc, Dep. at 85-86), *in camera*)). Prior to the acquisition, MMO's contract with St. Luke's Hospital did not have such language. (Pirc, Tr. 2260, *in camera*). { } was able to obtain anti-steering provisions in its contract with MMO prior to { } (*See e.g.*, PX02533 at 017-018 (Anti-Steering Provision in MMO/ ProMedica Contract effective Jan. 1, 2008, *in camera*); *see generally* (PX01944 at 023 (Pirc, Dep. at 87), *in camera*).

562. MMO's { contracts with Mercy and UTMC do not contain }. (Pirc, Tr. 2260, *in camera*); PX01944 at 023 (Pirc, Dep. at 87-88), *in camera*).

563. { } has negotiated anti-transparency language into its MMO contracts with { } that prohibits MMO from disclosing to its members the rates it pays to these hospitals and thus allowing its members to price shop for services. (Pirc, Tr. 2247-2248, *in camera*; *see also* PX01944 at 022, 024 (Pirc, Dep. at 82, 91)). MMO's contracts with Mercy and UTMC do not prevent MMO from sharing rate information with its members. (Pirc, Tr. 2249, *in camera*).

564. Anthem has never used steering – in the sense of affirmative financial incentives – to entice members to use particular, low-cost hospitals. (Pugliese, Tr. 1465; PX01942 at 003 (Pugliese, Dep. at 8), *in camera*).

565. Anthem's customers do not want to be told by Anthem where to go for healthcare – "that's become clear in terms of the benefit designs. They've been asking for broad-access PPO networks, and part of that is the ability to choose their doctor and their hospital." (Pugliese, Tr. 1465).

566. Mr. Pugliese is not aware of any attempts by employers in Lucas County to steer their employees to lower-cost hospitals or any plans by Anthem to implement such a steering plan for Lucas County employers. (PX01942 at 003 (Pugliese, Dep. at 8-9), *in camera*).

567. Higher-priced providers have displayed resistance to hard steerage. Such resistance arises as part of contract discussions. Higher-priced hospitals resist affirmative steering because they may lose business. (Pugliese, Tr. 1466).

568. If Anthem tried to implement a steering program in Lucas County, Mr. Pugliese expects that hospitals would resist. (PX01942 at 032 (Pugliese, Dep. at 122-124), *in camera*).

569. Larger hospitals in Lucas County would have a better ability to resist Anthem's implementation of a steering program. (PX01942 at 032 (Pugliese, Dep. at 122-124), *in camera*).

570. Although Anthem provides online tools allowing members to access quality and cost information about hospitals, it does not provide economic incentives for members to use

any particular hospitals, and its online tools have not resulted in any shifts in the hospitals its members utilize. (PX01919 at 004 (Pugliese, Dep. at 12-13)).

571. An Aetna executive testified that "[s]teering is providing incentives to patients or physicians to pursue healthcare with specific providers." (Radzialowski, Tr. 723). Hard steerage is providing financial incentives to a member to go to a particular provider. Soft steerage is providing information to members and physicians to try to change where care is provided. (Radzialowski, Tr. 723-724).

572. Aetna only uses soft steerage such as transparency measures in Lucas County. (Radzialowski, Tr. 723-724). Aetna testified that "soft steering" efforts have not been effective at steering members to low-cost hospitals because informational and transparency measures "don't have teeth, they haven't had [an] impact[.]" (Radzialowski, Tr. 724); (PX01938 at 004 (Radzialowski, Dep. at 12), *in camera*).

573. In January 2011, Aetna started a pilot hard-steering program to 100 or fewer Aetna employees in Toledo. (Radzialowski, Tr. 724-725). In the pilot, hospitals are "tiered" into low-cost (*i.e.*, lower rates) "first tier" hospitals, which provide a more financially-advantageous benefit for members, and high-cost (i.e., higher rates) "second tier" hospitals, which require members to pay a higher copay. (Radzialowski, Tr. 725).

574. There are no results yet showing whether the program successfully steers members to lower-cost hospitals, but Aetna has received "a good number of complaints from the members not liking to have steerage imposed on them[.]" (Radzialowski, Tr. 725-726).

575. Hospitals also dislike Aetna's pilot program. "The hospitals complained, too, because they got letters identifying which tier they were in, and the hospitals did not like being identified publicly as being a high-cost or low-cost hospital, so we got complaints from the hospitals as well." (Radzialowski, Tr. 726). "There's quite a number of hospitals that have expressed their concern about being put in tier two and wanting to be in tier one." (PX01938 at 004 (Radzialowski, Dep. at 11), *in camera*)).

576. ProMedica, for one, complained that TTH and Flower were not in tier one. (PX01938 at 004 (Radzialowski, Dep. at 11), *in camera*). Today, none of Aetna's contracts in northern Ohio prevent steerage, but now in response to the pilot program a number of hospitals are proposing contract language to restrict steerage. (Radzialowski, Tr. 727).

577. An Aetna executive testified that it is probable that hospital systems like ProMedica, with substantial bargaining leverage, can reject a health plan's attempt to negotiate terms that would steer patients to low-cost providers. (PX01917 at 017-018 (Radzialowski, Dep. at 65-68), *in camera*).

578. United does not have any steering mechanisms in place. (PX01939 at 006, 029 (Sheridan, Dep. at 21, 112-113), *in camera*).

579. A United executive testified that she was not aware of any United programs with tiered benefits. (PX01939 at 007 (Sheridan, Dep. at 23), *in camera*).

580. Humana does not have any plans in Lucas County or Ohio that have incentives to use one in-network provider over another in-network provider (*i.e.* tiered network). (McGinty, Tr. 1184-1185).

581. Since at least 2003, Humana has never offered a tiered network in Lucas County. (McGinty, Tr. 1184-1185).

582. Other than employers that are healthcare providers, Ms. Sandusky testified she is not aware of any FrontPath member using a benefit structure that steers members to hospitals based on the cost of that hospital to the FrontPath member. (Sandusky, Tr. 1328).

583. This is because there are provisions in FrontPath's agreements with providers that prevent the use of steering. (Sandusky, Tr. 1328-1329).

584. Professor Town testified that he is aware of only two of approximately 10,000 Lucas County employers that have steering or tiered networks. Both of these employers are in the health care related business. (Town, Tr. 4461). It is fairly common for hospital employers to provide a higher level of coverage for care at their own hospitals. (Randolph, Tr. 7006-7007). This is similar to an employee discount in other types of industries. (Randolph, Tr. 7006-7007).

585. Ronald Wachsman, Senior Vice President for Managed Care, Reimbursement, and Revenue Cycle Management of ProMedica, testified that one of ProMedica's goals in managed care contracting is to ensure that health plans will not steer members to other in-network providers or establish networks that exclude ProMedica. (PX01945 at 013 (Wachsman, Dep. at 43), *in camera*; Wachsman, Tr. 4874).

586. ProMedica claims to accept price transparency, but only to the extent it will not steer significant business away from ProMedica hospitals. (Wachsman, Tr. 4880-4881).

587. ProMedica will discourage any strategies to steer patients away from ProMedica facilities to the extent that it can. (PX01945 at 013 (Wachsman, Dep. at 43), *in camera*).

588. ProMedica has anti-steering provisions in its contracts with { } and { }, the two { } payers in Lucas County besides ProMedica's own health plan, Paramount. (Wachsman, Tr. 5162-5163, *in camera*). ProMedica has also negotiated a contract with { } for St. Luke's that includes an anti-steering provision. (Wachsman, Tr. 5165-5166, *in camera*).

589. The anti-steering provisions keep health plans from steering members away from ProMedica hospitals to other in-network hospitals because of prices or for any other reason. (Wachsman, Tr. 5163-5164, *in camera*).

590. ProMedica also contractually restricts in-network steering by employers. (Wachsman, Tr. 5244-5246, *in camera*).

591. In his testimony at trial, Ronald Wachsman acknowledged that the reason health plans would want to steer patients is to incentivize the use of lower-priced service providers. (Wachsman, Tr. 5163-5164, *in camera*).

592. Ronald Wachsman was not aware, however, of a significant Lucas County health plan ever contracting with fewer than all of ProMedica's Lucas County hospitals. (Wachsman, Tr. 5173, *in camera*).

E. Physicians Cannot Constrain ProMedica's Price Increases

1. A High Degree of Overlap in Physicians' Admitting Privileges Has Not and Will Not Constrain ProMedica's Exercise of Increased Market Power Resulting From the Acquisition

593. Admitting privileges across hospitals is a misleading measure of physician preferences or a physician's actual admission patterns. (PX01850 at 011-012 (¶ 14) (Town Rebuttal Report), *in camera*). Market shares are a much better measure of physician (and patient) preferences and admission patterns. (PX01850 at 011-012 (¶ 14) (Town Rebuttal Report), *in camera*). Physician steering and admitting privileges will not constrain ProMedica's post-Acquisition bargaining power. (Town, Tr. 3818, *in camera*).

594. It is not uncommon for physicians to maintain admitting privileges at hospitals where they rarely admit patients. *See* PX02056 at 001 (¶ 3) (Korducki, Decl.) ("WCH has a total of approximately 180 physicians on its staff. However, many of these physicians visit WCH only three to four times per year."); Andreshak, Tr. 1751-1752, 1756-1757; *cf.* PX01850 at 011-012 (¶ 14) (Town Rebuttal Report), *in camera*).

595. Dr. Bazeley testified that although he has admitting privileges at both St. Luke's and Flower, he has not admitted a patient to Flower in the last seven years. (PX01932 at 022 (Bazeley, Dep. at 81), *in camera*).

596. Dr. Gbur testified that although he has admitting privileges at St. Vincent, St. Anne, St. Charles, Bay Park, Flower and St. Luke's, he admits 60-70 percent of his patients to St. Luke's. (Gbur, Tr. 3105-3106).

597. Dr. Marlowe testified that approximately 90 percent of his patients deliver at St. Luke's, although he maintains privileges at St. Luke's, TTH, and St. Vincent's. (Marlowe, Tr. 2397, 2399).

598. Dr. Read maintains privileges at TTH, St. Vincent, and St. Luke's, but 60% of her patients deliver at St. Luke's. (Read, Tr. 5268, 5291).

599. Respondent's analysis of physician admitting privileges ignores the role of patient preferences in hospital choice and the role that distance plays in the value patients place on having access to different hospitals. (Town, Tr. 3818, *in camera*).

600. Physicians maintain privileges at multiple hospitals to accommodate patient preferences for inpatient care. (Andreshak, Tr. 1751-1755; Marlowe, Tr. 2428-2429; Read, Tr. 5271, 5284; Shook, Tr. 940-941; Pugliese, Tr. 1467; *cf*. Gbur, Tr. 3105-3106).

601. Patient preference plays a major role in where a patient is ultimately admitted. (Marlowe, Tr. 2457; Read Tr. 5290-5291; *cf*. PX01932 at 023 (Bazeley, Dep. at 085)).

602. Obstetrics patients often preselect an obstetrician based on where the doctor maintains admitting privileges. ((Marlowe, Tr. 2456-2457; Read, Tr. 5284).

603. When UTMC's employed physicians decide which hospital they should admit a patient to, one of the main factors they consider is the patient's preference and geographically where the patient is being referred from. (Gold, Tr. 205).

604. Patient preferences are important to both health plans and hospitals' marketability. Hospitals routinely perform consumer-preference and patient-satisfaction surveys, demonstrating that they too are invested in patient preferences. (PX01607 at 001-003 (SLH Presentation: 2008 Market Report St. Luke's Board Executive Committee); PX00602 at 029-038 (PHS Presentation: Market Position Growth Strategies); PX02532 at 001-002 (Mercy Health Partners Brand Attribute Market Fit Study – 08031), *in camera*; PX02534 at 001-007 (Mercy Health Partners Hospital Marketing Study St. Vincent Mercy Children's Market Area Nov., 2007), *in camera*; PX00593 at 001-012(Great Lakes Marketing Presentation: Regional Hospital Research, Central Region)).

605. Health plan testimony demonstrates that patients' preferences for hospitals play a key role in health plans' marketing efforts. (Radzialowski, Tr. 588-589; Pirc, Tr. 2167-2168). Notably, an Aetna executive testified that he has never reviewed or considered overlapping physician admitting privileges in Lucas County. (Radzialowski, Tr. 721).

606. Hospitals in Lucas County are differentiated by location and other characteristics, and, therefore, patients face costs associated with hospital switching independent of the physicians' cost of shifting their patients. (PX01850 at 011-016 (¶¶ 14-23) (Town Rebuttal Report), *in camera*).

607. The fact that many physicians in Lucas County had admitting privileges at both ProMedica and St. Luke's before the Acquisition supports the conclusion that these firms directly competed with one another before the Acquisition. (PX01850 at 011-016 (¶¶ 14-23) (Town Rebuttal Report), *in camera*); *see* (PX02136 at 043 (¶ 42) (Guerin-Calvert Supp. Decl.), *in camera*)).

608. This is because, in addition to competing for inclusion in health plan networks, ProMedica and St. Luke's competed prior to the Acquisition to attract patients based on

variables such as quality and patient satisfaction while also competing to convince physicians to refer to their hospitals rather than a competitor's hospital. (Response to RFA at ¶ 20; *cf*. PX01850 at 011-012 (¶ 14) (Town Rebuttal Report), *in camera*).

609. Examination of physician privileges and the share of those privileges across hospitals to measure competitive overlap reveals that ProMedica is St. Luke's closest competitor, and that St. Luke's is a close competitor to ProMedica. (Town, Tr. 3821-3822, *in camera*).

610. St. Luke's has more overlapping physicians with ProMedica than with other systems, by a large margin. (Rupley, Tr. 1999-2000, *in camera*)

611. The high degree of overlap in physician admitting privileges prior to the Acquisition did not constrain ProMedica from charging the highest prices in Lucas County and some of the highest in the state. (PX01850 at 11 (Town Rebuttal Report) (¶18); *see generally* (PX00153 (Oostra (ProMedica) Jan. 2009 e-mail)).

2. Physician Steering Has Not and Will Not Constrain ProMedica's Exercise of Increased Market Power Resulting From the Acquisition

a. Physician Steering Is Not Feasible Because of Physician Preferences and Employment by Hospitals

612. Physicians would prefer to limit the hospitals to which they admit patients. There are costs involved for a physician who has patients admitted to multiple hospitals, including making rounds and maintaining call coverage at the hospitals; in addition to physician travel time. (PX01850 at 9 (¶15) (Town Rebuttal Report), *in camera*; Marlowe, Tr. 2401-2403).

613. Physician employment further limits health plans' ability to steer patients. (Town, Tr. 3819-3820, *in camera*); PX01850 at 012-013 (¶ 16) (Town Rebuttal Report), *in camera*).

614. Physicians employed by a hospital system generally admit to that hospital system. (Marlowe, Tr. 2393-2394; Beck, Tr. 400; Korducki, Tr. 497-498; *see generally* Shook, Tr. at 1057). For example, Dr. Riordan, a ProMedica physician, testified that he would not be able to admit patients to either UTMC or Mercy hospitals due to exclusive contracting arrangements. (PX01949 at 015, 027 (Riordan, Dep. at 50, 98)).

615. Indeed, ProMedica is the largest employer of physicians in Lucas County, with over 250 employed physicians. (Joint Stipulations of Law and Fact, JX00002A ¶ 26; Wachsman, Tr. 5156; Pugliese, Tr. 1440).

616. Similarly, UTMC's employed physicians generally admit their medical-surgical adult inpatients to UTMC, except for obstetrical services, which UTMC does not offer. (Gold, Tr. 204-205).

617. An Anthem executive testified that employed physicians are expected to admit patients to the hospital system that employs the physician. (Pugliese, Tr. 1468). It is not likely that employed physicians would steer patients away from the hospital system that employs them. (Pugliese, Tr. 1469).

b. Physician Steering Is Not Feasible Because Physicians Are Not Aware of Rates Charged By Hospitals To Health Plans

618. Physicians are not sensitive to the rates hospitals charge health plans. (Town, Tr. 3819, *in camera*). There is no evidence on the record that non-employed, independent physicians steer patients to specific hospitals because of the rates charged to health plans.

619. While it is clear that a patient's physician plays a role in the patient's admission decision, physician testimony unanimously demonstrates that physicians do not admit patients to hospitals based on the cost to the patients' health plans. (Marlowe, Tr. 2417; Read, Tr. 5293; Andreshak, Tr. 1782-1783; PX01932 at 033 (Bazeley, Dep. at 127), *in camera*; PX01948 at 044-045 (Peron, Dep. at 166-167, 169-170), *in camera*).

620. Physicians are not aware of the rates that hospitals charge health plans. (Gold, Tr. 206-207; Pirc, Tr. 2379, *in camera*; Pugliese, Tr. 1467-1468; Sandusky, Tr. 1325).

621. Not one physician who testified at trial had ever seen a contract between a hospital and a health plan. (Andreshak, Tr. 1782; Gbur, Tr. 3109; Marlowe, Tr. 2417; Read, Tr. 5293).

622. Dr. Gold is not aware of any instance in which a physician employed by UTMC admitted a patient to a hospital specifically based on the amount that the hospital was reimbursed by a health plan. (Gold, Tr. 206-207). UTMC physicians do not see the contracts between hospitals and health plans. (Gold, Tr. 206-207).

623. Mr. Beck, of Fulton County Health Center ("FCHC"), testified that physicians do not admit patients to FCHC based on how much a procedure would cost a health plan or employer. (Beck, Tr. 403).

624. Physicians in Lucas County do not have access to contracts between MMO and Lucas County hospitals. (Pirc, Tr. 2378-2379, *in camera*). Physicians in Lucas County do not see the specific negotiated rates between MMO and Lucas County hospitals. (Pirc, Tr. 2379, *in camera*).

625. Physicians in Anthem's network are not party to the contracts that Anthem negotiates with hospitals in Lucas County. (Pugliese, Tr. 1467-1468). As such, Mr. Pugliese is not aware of any means by which physicians can routinely access the reimbursement rates negotiated between health plans and hospitals in Lucas County. (Pugliese, Tr. 1468).

626. Mr. Pugliese has never seen an effort by physicians to steer or affirmatively encourage patients away from higher-priced hospitals to lower-priced hospitals. (Pugliese, Tr.

1468). He would be surprised if that began to happen in the future because "there would be no motivation for that at this point." (Pugliese, Tr. 1468).

627. Physicians are not aware of the rates FrontPath has negotiated with the Lucas County hospitals. (Sandusky, Tr. 1325).

628. Even if physicians knew the rates that hospitals charge health plans in Lucas County, physicians recommend a hospital to a patient based on the needs of that patient, not the cost to the employer or health plans. (Marlowe, Tr. 2405; *see generally* Read, Tr. 5268; PX01932 at 032 (Bazeley, Dep. at 127), *in camera*). There is no evidence that any physician has ever admitted a patient to one in-network hospital instead of an alternate in-network hospital on account of the price to the health plan or employer. (Guerin-Calvert, Tr. 7911). Hospital prices do not affect physician behavior because physicians simply do not have the financial "skin in the game." (PX01850 at 013-014 (¶ 17) (Town Rebuttal Report), *in camera*).

XII. LUCAS COUNTY EMPLOYERS AND RESIDENTS WILL BE HARMED BY THE ACQUISITION

A. Local Employers and Physicians are Concerned About the Competitive Harm From the Acquisition

1. Employers Believe that Hospital Competition is Beneficial

629. Local employers recognize that competition among hospitals is beneficial and important to employees and community members. A former local school superintendent testified, "[Hospital] competition is good. And I think having the option for … employees to select which [hospital] they want to go to is … a plus for the community and certainly for the employer and employees." (Caumartin, Tr. 1865). Another local employer expressed concern about the Acquisition by noting that "when you eliminate a player … you reduce your competitive market forces." (Buehrer, Tr. 3077).

2. Employers are Concerned that the Acquisition Will Lead to Higher Hospital Rates, Forcing Employers to Reduce Health Insurance Coverage or Other Employee Benefits

630. Even prior to ProMedica's acquisition of St. Luke's, Chrysler perceived ProMedica as the dominant healthcare provider in Lucas County. (Neal, Tr. 2111). Chrysler believes that the Acquisition gives ProMedica "very strong leverage when it comes to negotiating reimbursement rates with the healthcare plans" that Chrysler contracts with. (Neal, Tr. 2111).

631. St. Luke's is an important and significant hospital for many Lucas County employees, particularly those living in southwest Lucas County. (Buehrer, Tr. 3069 (one-third of company's employees live in close proximity to St. Luke's, making St. Luke's the most convenient hospital for them)).

632. Local employers testified that they are concerned that the Acquisition will lead to higher rates at St. Luke's and ProMedica's other Lucas County hospitals, resulting in higher healthcare costs for employers and their employees. (Caumartin, Tr. 1862 ("the major concern" is "that costs could go up"); Neal, Tr. 2111 (Chrysler's inpatient spend on ProMedica will be a "very large number for one hospital to have")).

633. Increased healthcare costs force some employers to eliminate services or covered procedures from their employees' benefit plans or reduce other employee healthcare benefits. (Buehrer, Tr. 3072 (rising cost of health insurance led employer to eliminate the vision plan it offered to its employees), 3065-3066 (continuing rise in healthcare costs led to elimination of coverage for employees' working spouses who could receive health insurance from their own employer); Caumartin, Tr. 1837; Lortz, Tr. 1713; Pugliese, Tr. 1559-1560 (when healthcare costs increase, one of the options that employers select is to "change their [plan's] benefit design."); Town, Tr. 3604; PX02148 at 011-013 (¶ 18) (Town Expert Report), *in camera*).

3. Employers Would Be Concerned if the Acquisition Leads Health Plans to Offer a Narrower Network

634. Employers want a health plan that offers a network with broad provider access so that employees and their family members can use their preferred physician or hospital. (Caumartin, Tr. 1861; Lortz, Tr. 1700-1704; Buehrer, Tr. 3068, 3074; Neal, Tr. 2105-2107; PX02148 at 011 (¶ 17) (Town Expert Report), *in camera*).

635. Health plans recognize that Lucas County employers prefer having access to a broad provider network. (Radzialowski, Tr. 657; Sandusky, Tr. 1304-1305; Pugliese, Tr. 1449; Pirc, Tr. 2281; Sheridan, Tr. 6680-6681; Town, Tr. 3617-3618, 3628; PX02148 at 013 (¶ 20) (Town Expert Report), *in camera*).

636. Offering a network with fewer provider choices often proves disruptive to employees, who may no longer have access to their preferred provider. (Caumartin, Tr. 1847, 1864; Neal, Tr. 2107; Pugliese, Tr. 1667, *in camera*; PX02148 at 067 (¶ 121) (Town Expert Report), *in camera*).

637. Employees would be concerned if their health plan's network no longer included ProMedica's hospitals, including St. Luke's. (Buehrer, Tr. 3068 ("It's always been a requirement for a [health insurance] plan we would fund that St. Luke's Hospital be a part of the plan."), 3079 ("those that live in Maumee would now have to go to a hospital that's further away for their services [if St. Luke's were no longer in the network]"); Caumartin, Tr. 1864 (not having ProMedica's hospitals in-network would cause "turmoil" for many employees); Neal, Tr. 2155).

638. A provider network consisting of only Mercy and UTMC is unacceptable to employers. (Neal, Tr. 2112-2113 (network consisting solely of Mercy and UTMC would be "very detrimental to [Chrysler's Lucas County] employees"); Buehrer, Tr. 3091 (network

consisting of Mercy, UTMC, and St. Luke's acceptable only "because St. Luke's was included")).

4. Physicians are Concerned about the Potential and Actual Elimination of Services at St. Luke's Post-Acquisition

639. A local cardiologist is concerned that the Acquisition will result in the elimination or transfer of services at St. Luke's. In particular, Dr. Gbur is concerned that St. Luke's open heart program will be moved to a less-preferred and less-convenient ProMedica facility. (Gbur, Tr. 3112-3113). If St. Luke's no longer provides an open heart program, Dr. Gbur is concerned that it will affect his ability to perform cardiac interventions at St. Luke's. Specifically, if Dr. Gbur's cardiac patients suffer a heart attack, some will have to add "another 10 to 15 minutes to their transit time" since they will have to travel to a hospital other than St. Luke's for open heart services. (Gbur, Tr. 3112-3113).

640. Before ProMedica ceased providing inpatient rehabilitation services at St. Luke's, St. Luke's patients "raved" about its excellent, high-quality services. (Andreshak, Tr. 1796-1797). An orthopedic surgeon stated that his patients "improved better [at St. Luke's] than if they would have gone to a nursing home rehab facility." (Andreshak, Tr. 1797).

641. The post-Acquisition closure of St. Luke's inpatient rehabilitation center upset rehabilitation patients, especially patients from Maumee and Bowling Green. (Andreshak, Tr. 1798). Dr. Andreshak's inpatient rehabilitation patients were "upset," and the "most disgruntled patients" were from Maumee and Bowling Green. (Andreshak, Tr. 1798). The Maumee patients "really were the ones who suffered and didn't feel that they were able to go someplace adequately." (Andreshak, Tr. 1798). Bowling Green patients "loved the … [patient rehabilitation center] at St. Luke's since Bowling Green only has nursing home type rehab facilities." (Andreshak, Tr. 1798).

642. The post-Acquisition closure of St. Luke's inpatient rehabilitation center resulted in fewer, less convenient options for rehabilitation patients. (Andreshak, Tr. 1797). Following the closure of St. Luke's inpatient rehabilitation center post-Acquisition, the two main Lucas County rehabilitation centers that remain are at Flower Hospital and St. Charles Hospital; both are inconvenient for Maumee and Bowling Green patients due to distance and travel time. (Andreshak, Tr. 1766, 1768, 1797, 1823-1824).

B. Self-insured Employers' Healthcare Costs Will Increase Directly and Immediately as a Result of the Acquisition

643. Unlike fully-insured employers who pay fixed monthly premiums to health plans, self-insured employers directly pay the full cost of their employees' healthcare claims to healthcare providers. (Neal, Tr. 2097 ("As a self-insured company, any increases in the cost of healthcare is a direct impact on our bottom line."); Caumartin, Tr. 1836-1837; Radzialowski, Tr. 622, 625-626; Town, Tr. 3612-3613; PX02148 at 011-013 (¶ 18) (Town Expert Report), *in camera*).

644. Thus, when hospital reimbursement rates increase, self-insured employers immediately bear the full burden of these higher costs. (Sandusky, Tr. 1296; McGinty, Tr. 1243-1244; Radzialowski, Tr. 625-626, 840-841, *in camera*; Town, Tr. 3612-3613; PX02148 at 011-013 (¶ 18) (Town Expert Report), *in camera*; Radzialowski, Tr. 840-841, *in camera* ("Local employers … [whose] members receive services at St. Luke's, especially the self-insured employers, would feel a direct impact from unexpected [rate] increases.")).

645. ProMedica and St. Luke's executives agree that when hospital reimbursement rates increase, self-insured employers immediately and directly must pay these higher costs. Respondent admitted that "if the reimbursement rate Paramount pays to hospitals changes, that change is ultimately passed on to the self-insured customer because self-insured customers pay their own claims. … [A]ny reimbursement rate change affects self-insured customers on the effective date of the new contract between Paramount and a hospital." (Response to RFA at ¶ 35).

646. St. Luke's CEO, Daniel Wakeman, testified that if St. Luke's rates increased post-Acquisition (as has already occurred for some health plan members), and self-insured employers' "volume stayed the same, they would pay higher costs per unit." (Wakeman, Tr. 2687, *in camera*).

647. ProMedica's CEO, Randall Oostra, testified that if a Lucas County hospital or hospital system increases its rates to commercial health plans, those increased costs are "passed on straightforward" to self-insured employers. (Oostra, Tr. 6144).

648. In Lucas County, approximately 70 percent of the commercially insured business is self-insured. (Town, Tr. 3613-3614; PX02148 at 011-013 (¶ 18) (Town Expert Report), *in camera*).

C. Fully-insured Employers' Premiums Will Increase as a Direct Result of the Acquisition

649. Under a fully-insured plan, an employer pays a premium to a health plan and the health plan absorbs all of the costs for the medical care that the employees receive. (Buehrer, Tr. 3063, 3086). Thus, the health plan bears the risk that the employees' medical expenses will exceed the amount collected from premiums. (Pugliese, Tr. 1430-1431; PX02148 at 011-013 (¶ 18) (Town Expert Report), *in camera*).

650. When a health plan incurs a rate increase from a hospital, it will pass down the increased costs to employers in the form of higher premiums. (Radzialowski, Tr. 625-626, 779; PX01938 at 030 (Radzialowski, Dep. at 114), *in camera* ("With the fully insured, I can't see any circumstance where we would not automatically pass that on through the premium increase."); Pugliese, Tr. 1558, 1560; PX01942 at 025 (Pugliese, Dep. at 94), *in camera*; McGinty, Tr. 1210-1211, 1242-1243; Pirc, Tr. 2174; PX01944 at 020 (Pirc, Dep. at 76), *in camera*; Sheridan, Tr. 6701-6702, *in camera*; Town, Tr. 3614; PX02148 at 011-013 (¶ 18) (Town Expert Report), *in camera*).

651. Jack Randolph, the President of Paramount, a health plan owned by ProMedica, also acknowledged that when Paramount has to pay increased reimbursement rates to providers, at some point, it has to pass on those increased costs to its customers. (Randolph, Tr. 7108-7109).

652. St. Luke's CEO acknowledged that if St. Luke's rates increased to health plans, he believed that the health plans "would have then passed those rates off to the employers and the community." (Wakeman, Tr. 2687, *in camera*).

D. Employees' Premiums and Out-of-Pocket Costs Will Increase as a Direct Result of the Acquisition

653. Employers cite healthcare costs as one of their largest expenses. (Caumartin, Tr. 1846-1847 (health insurance is a "very significant" expense); Buehrer, Tr. 3073 (health insurance is the "second highest expense behind payroll"); Neal, Tr. 2118 (Healthcare is "the largest fixed cost for [Chrysler's] bargaining unit employees when we negotiate a collective bargaining agreement with the UAW."); Lortz, Tr. 1707-1708 ("healthcare is one of the big pieces" in collective bargaining)).

654. When healthcare costs rise due to hospital rate increases, employers generally must increase employees' premiums, co-payments, deductibles, and out-of-pocket costs. (Neal, Tr. 2114 (Chrysler passes the cost of increased healthcare prices "through to our employees in the form of premium sharing or increased cost sharing"), 2115, 2117, 2158; Caumartin, Tr. 1837; Buehrer, Tr. 3072; Town, Tr. 3614; PX02148 at 011-013 (¶ 18) (Town Expert Report), *in camera*).

655. As E. Dean Beck, Fulton County Health Center's CEO, testified, if healthcare costs go up, "[o]bviously, the premiums [that people pay] go up." (Beck, Tr. 441).

656. Health plans also recognize that employers have to pass on any increased healthcare costs. (Pugliese, Tr. 1559-1560; Radzialowski, Tr. 782; PX01938 at 030 (Radzialowski, Dep. at 116), *in camera* (If an employer chose not to pass on healthcare cost increases to employees, it "would have to make the money up somewhere else to keep financially viable.")).

657. When costs for employee health insurance coverage increase for employers with union members, these employers try to pass on those added costs to union members by reducing service levels or by increasing the amount the union members must pay. (Lortz, Tr. 1707, 1711-1713).

658. When healthcare costs increase for self-insured employers with unionized employees, such as Chrysler, employers must offset these higher costs through reduced wages or other trade-offs. (Neal, Tr. 2118).

659. When healthcare costs rise due to hospital rate increases, employers may be forced to reduce wages, lay off employees, or discontinue offering health insurance to their employees. (Town, Tr. 3614).

660. In some cases, higher healthcare costs may lead employees to delay or forego routine physical check-ups or certain medical treatment. (Caumartin, Tr. 1838; Town, Tr. 3614-3615). Hugh Caumartin, a former local school superintendent, is concerned that higher healthcare rates will lead employees to "pull back on getting the medical services they need" or not take their family members to get check-ups. (Caumartin, Tr. 1838). He believes that employees might not "use the benefits that are available to them because of the added cost." (Caumartin, Tr. 1838).

661. Higher healthcare costs have additional negative consequences for employees and the local community. (Caumartin, Tr. 1837-1838). As Hugh Caumartin, a former local school superintendent testified, when hospital rates increase to a school system "somebody's got to pay the ticket" and sometimes "taxpayers pick up the additional" cost. (Caumartin, Tr. 1837). Other times, a school system must divert funding from its educational program to pay for healthcare. (Caumartin, Tr. 1838).

XIII. THE ACQUISITION WILL ELIMINATE BENEFICIAL NON-PRICE COMPETITION AND RESULT IN LOWER QUALITY OF CARE AND SERVICE LEVELS

662. Hospitals compete on the basis of clinical quality, amenities, and patient experience. (Joint Stipulations of Law and Fact, JX00002A ¶ 11; Response to RFA at ¶20; PX02148 at 084-085 (¶ 155) (Town Expert Report), *in camera*). Many such non-price elements of competition will likely be negatively affected by the Acquisition. (Town, Tr. 3605-3606, 3630-3631, 3634-3635).

A. Pre-Acquisition Competition Between ProMedica and St. Luke's Resulted in Improved Hospital Quality and Service Offerings

663. The Acquisition eliminates important non-price competition between ProMedica and St. Luke's. Reduced competition can lead to lower quality compared to markets with higher levels of competition. (PX01942 at 026 (Pugliese, Dep. at 98), *in camera*; Town, Tr. 3634-3635).

664. As an independent hospital, St. Luke's challenged other hospital systems "to keep costs down" and "to keep service levels up." (PX01170 at 020 (St. Luke's presentation about controlling health care cost); Wakeman, Tr. 2540-2541; Rupley, Tr. 1935-1936; *see also* PX01144 at 003 (Rupley planning session notes, Jan. 2007) ("SLH – gives choice, customer service, quality, etc.")).

665. Health plan executives have testified that non-price dimensions, such as clinical quality, are an important factor they consider when negotiating for a hospital's inclusion in the health plan's network. (Radzialowski, Tr. 655; Sheridan, Tr. 6622; Pugliese, Tr. 1455; McGinty, Tr. 1173; PX01944 at 006 (Pirc, Dep. at 18-19)).

666. Health plans continually monitor the quality of the hospitals in their networks. (Radzialowski, Tr. 600, 632).

667. Health plan customers want quality information for hospitals in their networks to help make informed decisions. (Pugliese, Tr. 1449). Anthem Care Comparison is an online tool that provides Anthem's members with cost and quality rankings for selected hospital services. (PX01919 at 004 (Pugliese, Dep. at 12)).

668. Respondent's executives and expert confirm that competition between hospitals benefits the local community through better customer service, higher quality care, better access for patients and improved facilities. (Oostra, Tr. 6039; Guerin-Calvert, Tr. at 7792; Waschsman, Tr. 5116-5118; PX01905 at 033 (Wachsman, IHT at 127), *in camera*).

B. St. Luke's Quality Was Superior to ProMedica's

669. Prior to the Acquisition, St. Luke's ranked as the highest quality, lowest cost hospital in the Toledo market. (PX01018 at 012 (Options for St. Luke's), *in camera*; PX01072 at 001 (St. Luke's Key Messages); Rupley, Tr. 1920, 1924-1925; Wakeman, Tr. 2482-2483, 2494).

670. Delivering high-quality service and achieving high patient satisfaction are important parts of St. Luke's mission. (Wakeman, Tr. 2493). According to Barbara Machin, former Chairman of St. Luke's board, "Our motto has always been 'Patients First Always.' Quality and patient service and patient care has been our mantra." (PX01907 at 016 (Machin, IHT at 54), *in camera*).

671. Despite St. Luke's rapid growth in patient volume in 2010, patient satisfaction and quality were unaffected and remained at very high levels. (Wakeman, Tr. 2495-2497; Black, Tr. 5685, 5690).

672. In fact, several quality measures improved, such as myocardial infarction (i.e., heart attack) care, emergency and obstetrics satisfaction levels, and door-to-artery time for cardiac intervention. (Wakeman, Tr. 2496-2497, 3042-3043).

673. St. Luke's achievements in clinical quality exceed those of The Toledo Hospital ("TTH") and Flower, its closest competitors in the ProMedica system for inpatient hospital services. ProMedica's flagship hospital, TTH, ranked *last* in the Toledo market and below the state average for quality. (Rupley, Tr. 1984-1985, *in camera*, 1991-1993, *in camera* (TTH showed a "dismal performance"); PX01016 at 006 (St. Luke's Board Meeting Affiliation Update, Dec. 2009), *in camera*; PX01172 (St. Luke's e-mail, Kathy Connell, Corp. Comm'ns Director, to Scott Rupley, Aug. 28, 2009), *in camera* ("[I]n the Commonwealth scoring on quality, SLH was the best, just a hair shy of the top 10% nationally, with Toledo Hospital dead last and well below the state average."); PX01030 at 018-019 (St. Luke's Affiliation Analysis Update, Oct. 2009), *in camera*). Flower

ranked sixth in Lucas County for overall quality. (Rupley, Tr. 2002; PX01172 at 008, *in camera*; PX01030 at 018 (St. Luke's Affiliation Analysis Update, Oct. 2009), *in camera*).

674. ProMedica has admitted that St. Luke's is a high quality hospital. (Answer at ¶ 33; Oostra, Tr. 6027-6028; PX01913 at 032 (Hammerling, IHT at 119), *in camera* (St. Luke's has a "good reputation historically" for quality and patient care); PX01903 at 033 (Hanley, IHT at 123), *in camera* ("I think St. Luke's has strong quality of care [.]"); PX01949 at 018 (Riordan Dep. at 64-65)).

675. ProMedica documents reflect patients' awareness that St. Luke's was a high-quality hospital, often scoring better than ProMedica in quality rankings. (PX00399 at 024 (ProMedica Central Region, Great Lakes Marketing Presentation), *in camera*; PX00272 (Commonwealth Fund 2007 scores); PX01138 at 001 (Quality Scoring from hospitalbenchmark.com)).

676. ProMedica also has admitted that St. Luke's scored higher than TTH and Flower in patient satisfaction scores. (PX01904 at 035 (Steele, IHT at 131), *in camera*).

677. Navigant, the healthcare consulting firm that ProMedica hired to analyze the Acquisition with St. Luke's, found St. Luke's to have high quality levels based on respected third-party quality rating organizations. (PX01946 at 008 (Nolan, Dep. at 24)).

678. The data used by Navigant showed that St. Luke's scored higher than TTH on several cardiac service quality measures including Overall Heart Attack, Overall Heart Failure, and Heart Failure Mortality Rate. (Nolan, Tr. 6339-6343, *in camera*; PX01221 at 068 (Navigant clinical integration presentation, Sept. 23, 2010), *in camera*).

679. Health plans have testified that St. Luke's is an important part of their Lucas County provider networks because it provides high-quality services. (Sandusky, Tr. 1312-1313; McGinty, Tr. 1190-1191; Pugliese, Tr. 1443-1445; Pirc, Tr. 2195-2196; PX02280 at 001-013 (MMO document on St. Luke's quality)).

680. Both Mercy and UTMC view St. Luke's as a high-quality competitor. (Shook, Tr. 1032, 1123, *in camera*; Gold, Tr. 225).

681. St. Luke's "is regularly recognized by third-party quality ratings organizations that rank St. Luke's within the top 10% of hospitals nationally, based on outcomes, cost and patient satisfaction." (PX00390 at 001 (ProMedica News Release May 26, 2010); *see also* PX01073 at 001 (St. Luke's Press Release Healthgrades.com)).

682. Third-party quality ranking organizations also regularly praise St. Luke's for its value, *i.e.*, its combination of high quality and low costs. (Rupley, Tr. 1933-1934; PX02300 at 001 (Leap Frog recognized St. Luke's as one of only 13 hospitals across the nation to be rated "Highest Value"); PX01170 at 013-014 (Data Advantaged named St. Luke's "one of the Top 100 Best Kept Secrets in the United States.")).

C. ProMedica Cannot Be Expected to Improve St. Luke's Quality

683. St. Luke's prides itself on providing benefit to the community through its high quality of care and patient satisfaction. (Wakeman, Tr. 2493; Rupley, Tr. 1920, 1924-1925; PX01933 at 017 (Oppenlander, Dep. at 60), *in camera*).

684. In an internal analysis of potential acquisition options, St. Luke's noted that its "well maintained" facilities, "strong clinical quality outcomes," "strong patient/employee satisfaction and loyalty," and "positive working relationships with affiliated physicians" were all important points of leverage "to secure the best offer" for St. Luke's from several possible affiliation partners. (PX01018 at 018 (Options for St. Luke's), *in camera*).

685. Prior to the Acquisition, St. Luke's management and Board of Directors were concerned about the poor quality outcomes and measures at ProMedica's hospitals. (Wakeman, Tr. 2675-2676, *in camera*; Black, Tr. 5720; PX01932 at 019 (Bazeley, Dep. at 69), *in camera*).

686. In fact, St. Luke's feared that the Acquisition by ProMedica would lower St. Luke's quality. (Wakeman, Tr. 2674-3676, *in camera*; Rupley, Tr. 2011, *in camera*; Black, Tr. 5720, *in camera*; PX01130 at 002 (Notes from Due Diligence Meetings, Aug. 26, 2009), *in camera* ("Some of ProMedica's quality outcomes/measures are not very good. Would not want them to bring poor quality to St. Luke's."); *see* PX01016 at 023 (St. Luke's Affiliation Update Dec. 2009), *in camera*).

687. Prior to the Acquisition, ProMedica needed to improve the clinical quality and patient satisfaction at its Lucas County hospitals. (PX00153 at 001 (Oostra (ProMedica) Jan. 2009 e-mail re: ProMedica's "subpar quality scores"); PX01930 at 034 (Reiter, Dep. at 127); PX01904 at 034 (Steele, IHT at 129), *in camera* (TTH struggled to be patient-centered)).

688. Mr. Oostra told Mr. Wakeman that ProMedica needed to improve its quality. (Oostra, Tr. 5998-5999). Mr. Wakeman then informed the St. Luke's Board of Directors that ProMedica "acknowledges they need to improve" quality measures. (PX01030 at 018 (St. Luke's Oct. 2009 Affiliation Analysis Update), *in camera*; *see also* PX01920 at 025 (Wakeman, Dep. at 92-93), *in camera*).

689. Following the Acquisition, executives at ProMedica admit their approach to quality is not keeping pace and "needed to catch up." (PX00527 at 001 (2011 ProMedica executives' emails); Oostra, Tr. 6015-6019). They have described their quality program as involving "too much discussion, process, pages/documents, reporting structures, committees, charts, [and] meetings." (PX00527 at 001 (2011 ProMedica executives' emails); Oostra, Tr. 6024-6025).

690. Employees at ProMedica find the system's quality program to be confusing. ProMedica's Chief Medical Officer noted that "audiences after hearing quality

presentations leave meetings glassy eyed and very confused" and that few employees "can fully explain the PHS approach to quality much less feel compelled to follow." (PX00527 at 001 (2011 ProMedica executives' emails); Oostra, Tr. 6025-6026).

691. Anthem has a quality scoring program that provides financial bonuses to hospitals that perform well on quality measures. (Pugliese, Tr. 1446-1447). None of ProMedica's Lucas County hospitals met the criteria needed to receive a quality bonus in 2010. (Pugliese, Tr. 1447-1448; Oostra, Tr. 6000-6003; PX02453 at 001 (Oct. 2010 email between ProMedica and Anthem)). In fact, TTH scored in the bottom 6th percentile of all hospitals reviewed by Anthem. (PX02453 at 001).

692. Prior to the acquisition, St. Luke's had been named a "highest value hospital" by Leapfrog. No ProMedica hospitals had ever received that recognition since 2006. (Sandusky, Tr. 1310-1311).

D. Physicians Prefer St. Luke's Quality of Care Over ProMedica's

693. Independent physicians testified that St. Luke's is a high quality facility with good quality of care and a patient-centered approach. (Read, Tr. 5294; Andreshak, Tr. 1786-1787, 1790-1791; Marlowe, Tr. 2417-2418; Gbur, Tr. 3110).

694. A hospital's clinical staff is very crucial and important in the care of a patient. The clinical staff assists patients through the admission process, work in the operating rooms, and care for patients while they are recovering. (Andreshak, Tr. 1783-1784). A hospital's clinical staff is very important for reliability. Clinical staff, especially nurses, asses the patients and report changes to the patient's doctor. (Andreshak, Tr. 1785-1786).

695. Independent physicians have found St. Luke's to have good quality clinical staff and nurses, who take pride in their work and are very involved in the care of their patients. (Andreshak, Tr. 1786; *see* Marlowe, Tr. 2409-2410). In contrast, physicians and their patients find ProMedica's Toledo Hospital to be "a lot more impersonal," with a nursing staff that patients feel do not listen to them, and are unresponsive to patient needs. (Andreshak, Tr. 1787-1788; *see also* Marlowe Tr. 2449-2450 (TTH is more "hustle and bustle" than St. Luke's; since St. Luke's obtained access to Paramount, many of his Paramount patients have switch their birthing location from TTH to St. Luke's)).

696. Continuity of care is important for patient satisfaction at a hospital. Patients prefer to have the same nurses throughout their hospital stay. This allows the nurses to develop a rapport with the patients. (Andreshak, Tr. 1784-1785; Marlowe, Tr. 2409-2410, *see* Read, Tr. 5295). Physicians have found the continuity of care of the clinical staff at St. Luke's Hospital to be excellent with the same nurses attending a patient throughout their stay. (Marlowe, Tr. 2409-2410; Andreshak, Tr. 1787, Read Tr. 5294-5295). At ProMedica's hospitals however, Dr. Andreshak testified that he would never have the same nurse due to the high turnover rates and nurses transferring between different floors. (Andreshak, Tr. 1787-1788).

697. Doctors rely on a hospital's administration and nonclinical staff for scheduling. (Andreshak, Tr. 1790). It is important for a patient who is in pain and suffering to have surgery sooner rather than later. (Andreshak, Tr. 1791-1792, 1794).

698. Dr. Andreshak testified that St. Luke's staff was very good about trying to make openings available for scheduling surgeries, even when they were completely booked. (Andreshak, Tr. 1790-1792). On the other hand, Dr. Andreshak had trouble scheduling surgeries at TTH. He often found that they had no scheduled surgery times available, and they were not willing to work with him to try and find a time. (Andreshak, Tr. 1793-1794).

699. Block scheduling is preferable for surgeons because it allows them to do multiple surgeries in the same day at the same hospital. (Andreshak, Tr. 1792-1793). Prior to the Acquisition, Dr. Andreshak had block days at St. Luke's. (Andreshak, Tr. 1793). At TTH, he could not get full block days, and the half-block days he could sometimes get were inefficient due to backed up surgeries. (Andreshak, Tr. 1793-1794).

700. The quality of a hospital's facilities or equipment can impact patients' treatment. Surgeons require a lot of technical equipment to perform surgeries and the quality of the equipment is crucial. Dr. Andreshak found St. Luke's to have all of the specialized equipment he needed. If St. Luke's did not have something he needed, St. Luke's would try to get it for him as long as it was not outside their normal budget. (Andreshak, Tr. 1790). Dr. Gbur found the cardiac facilities at St. Luke's to be the same level of quality as those at TTH and St. Vincent's. (Gbur, Tr. 3108) Luke's inpatient rehabilitation center was high quality. Dr. Andreshak and his patients felt that they got excellent care and improved better than if they had gone to a nursing home rehab facility. (Andreshak, Tr. 1796-1797).

701. St. Luke's provides all of its inpatient obstetric ("OB") services in an LDPR (labor, delivery, post-partum and recovery) setting. Patients receive all of their care in the same room from the time they are admitted to the hospital until they are discharged. (Read, Tr. 5280; Marlowe, Tr. 2407). Many patients prefer this setting because the patient is able to remain in the same room, and will not have a roommate. (Read, Tr. 5292). Remaining in the same room also means that patients will have the same nursing staff throughout their stay. (Marlowe, Tr. 2409-2410).

702. By contrast, The Toledo Hospital's OB ward does not have all private rooms, and patients are moved to a different room in another wing of the hospital for post-partum and recovery. (Marlowe, Tr. 2409-2410; Read, Tr. 5280).

XIV. NEW ENTRY AND EXPANSION WILL NOT COUNTERACT OR DETER THE ANTICOMPETITIVE EFFECTS OF THE ACQUISITION

A. Entry or Expansion Will Not Be Timely, Likely, or Sufficient

1. Entry Will Not Be Timely

703. It would take significantly longer than the two-year timeframe prescribed by the *Merger Guidelines* to plan, obtain zoning, licensing, and regulatory permits, and construct a new hospital in Lucas County. ProMedica's CEO Randall Oostra testified that building even a small hospital the size of Bay Park – which has approximately 80 staffed beds and is far smaller than St. Luke's – would be a "several-year project." (PX01906 at 024 (Oostra, IHT at 92-93), *in camera*).

704. ProMedica's CEO testified that Wildwood Medical Center, ProMedica's new 36-bed orthopedic and spine hospital, took one or two years to plan and 18 months to construct. (Oostra, Tr. 5779-5782).

705. Scott Rupley, St. Luke's' Marketing and Planning Director, testified that it would take "at least two to three years" to plan and open a new hospital. (PX01937 at 042 (Rupley, Dep. at 160), *in camera*).

706. Mercy's Vice President for Business Development and Advocacy, Scott Shook, testified that it took Mercy about four and a half years to develop St. Anne, a hospital with approximately 74 beds, from the "very beginning of planning to the opening" of the hospital. (Shook, Tr. 962). Construction alone took approximately 20 months. (Shook, Tr. 962).

707. Mr. Shook noted that hospitals are "highly regulated" and there are significant licensing and regulatory requirements entailed in opening a new hospital. (Shook, Tr. 963).

708. Constructing a new obstetrics unit and encouraging a sufficient number of obstetricians to utilize and support it would take a substantial amount of time as well. Mercy's Scott Shook testified that it would be very challenging to encourage obstetricians to utilize a new unit since most obstetricians tend to deliver at the hospital that employs them, and it is difficult to recruit new obstetricians. (PX02068 at 005 (¶¶ 20, 21) (Shook, Decl.), *in camera*).

2. Entry Is Not Likely to Occur

a. It is Unlikely That Any Firms Will Open a New Hospital in Lucas County

709. The *Merger Guidelines* explain that for entry to be considered likely, it must be a profitable endeavor, in light of the associated costs and risks. (PX02214 at 032 (§ 9.2) (*Merger Guidelines*)). Constructing a new hospital requires an extraordinarily large, up-front capital investment, and the pay-off is risky and deferred into the future, which makes it highly unlikely that a new hospital competitor will enter the Lucas County hospital market. (PX02148 at 091 (¶ 167) (Town Expert Report), *in camera*).

710. It would cost a substantial amount of money to construct even a basic 35-bed general acute-care hospital in Lucas County. Scott Shook of Mercy testified that it would require at least $55 million in up-front, initial capital to build this type of basic general-acute care

hospital. (PX02068 at 006-007 (¶¶ 25, 26) (Shook, Decl.), *in camera*). By comparison, Mercy spent $75 million on the building and equipment costs to construct 74-bed St. Anne in 2002, even though much of the equipment did not have to be purchased because Riverside Hospital's equipment was transferred to St. Anne. (Shook, Tr. 900, 960-962). Mercy spent an additional $2.6 to 3 million to purchase the land for St. Anne. (Shook, Tr. 961). Today, it would cost even more to build a hospital comparable to St. Anne. (Shook, Tr. 962).

711. ProMedica's CEO Randall Oostra testified that it would cost $350 million or more in today's market to build a hospital with 300 licensed beds similar to St. Luke's. (PX01906 at 023 (Oostra, IHT at 86), *in camera*; *see* PX01937 at 041 (Rupley, Dep. at 157), *in camera* (to build a new, competitive hospital in Lucas County would cost $100 million)).

712. ProMedica admits that building a new hospital, even assuming the entity already owns the land upon which the hospital will be built, could cost millions of dollars. (Response to RFA at ¶ 19). In particular, ProMedica admits that building a new Lucas County hospital with 300 or more licensed beds would cost millions of dollars, even for an entity that already owns the land upon which to build a hospital. (Joint Stipulations of Law and Fact, JX00002A ¶ 10).

713. It is generally understood that it costs approximately $1 million per bed for a new inpatient hospital. (Oostra, Tr. 5899, *in camera*; Nolan, Tr. 6261). In addition, ProMedica's CEO testified that costs have "gone up dramatically" and "continue to go up." (Oostra, Tr. 5899-5900, *in camera*).

714. Charles Kanthak, St. Luke's' Facilities Services Director, estimated that to build a new hospital identical to St. Luke's in northwest Ohio in 2009 would cost $165 million "on the cheap" and over $200 million to "do it right." (PX01257 at 001 (Oct. 2009 email describing St. Luke's' buildings and departments and estimating how much it would cost to build a "replacement" St. Luke's in 2009)).

715. Although ProMedica purchased land in southwest Lucas County around 2000, ProMedica's CEO, Randall Oostra, testified that ProMedica does not have any current plans to build a hospital on that land, better known as the Arrowhead property. (Oostra, Tr. 5897-5898, 5901-5902, *in camera*). After ten years, ProMedica has not constructed any new buildings on Arrowhead. (Oostra, Tr. 5900, *in camera*).

716. Although ProMedica anticipated developing Arrowhead, it had difficulty obtaining debt financing so it froze its capital and "pulled the project back." (Oostra, Tr. 5900-5901). Even up through 2009, one year before ProMedica decided to acquire St. Luke's, plans for developing Arrowhead did not even pass ProMedica's Finance Committee's initial screening process due to "limited capital and higher priorities." (Response to IROG at ¶ 10).

717. ProMedica admitted that its 2010-2012 Strategic Plan does not contemplate or even mention the construction of a new general acute care hospital on ProMedica's Arrowhead property. (Joint Stipulations of Law and Fact, JX00002A ¶ 49).

718. Access to necessary capital is a significant barrier to entry for the vast majority of potential entrants to Lucas County. (PX02148 at 091 (¶ 167) (Town Expert Report), *in camera*).

719. Current economic conditions make it particularly challenging to obtain the necessary capital to undertake significant hospital expansions or to construct a new hospital in Lucas County. ProMedica's CEO, Randall Oostra, testified that hospital systems across the country, including ProMedica, have had difficulty obtaining debt financing and have had to pull back on capital projects. (Oostra, Tr. 5900-5901, *in camera*).

720. David Dewey, St. Luke's VP of Business Development, testified that "it would be more difficult to get [] capital" and establish a new hospital in today's economic environment. (PX01909 at 045 (Dewey, IHT at 174), *in camera*).

721. A 2009 presentation created by St. Luke's senior executives and presented to St. Luke's Board explains how the tight capital markets have made new hospital construction or expansion in Toledo highly unlikely: "ProMedica and Mercy do not want to build in the [southwest] area due to lack of capital access. Also, both have taken on large amounts of debt due to recent major construction projects. [UTMC does] not want to build either." (PX01018 at 006, *in camera*) (St. Luke's presentation: Options for St. Luke's).

722. In his May 2009 planning notes, Scott Rupley, St. Luke's Marketing and Planning Director, declared, "Nobody is going to be able to build anything for awhile. Can't borrow money." (PX01120 at 002 (Scott Rupley notes from Apr. 25 Planning Summit Follow-Up with Nolan)).

723. Ronald Wachsman, ProMedica's Senior Vice President of Managed Care, Reimbursement, and Revenue Cycle Management, testified that "[i]n a healthcare system, a high percentage of the costs are fixed costs." (Wachsman, Tr. 5127). These high fixed costs make it financially challenging to operate and maintain a hospital.

724. The fact that Lucas County already has ample general acute-care inpatient beds to fulfill the needs of the community makes entry or expansion even more unlikely. ProMedica's economic expert, Margaret Guerin-Calvert, testified that "the Toledo market as a whole has excess capacity." (Guerin-Calvert, Tr. 7766).

725. St. Luke's David Dewey testified that "there is enough [hospital service] capacity" in "northwest Ohio as a whole." (PX01909 at 045-046 (Dewey, IHT at 176-177), *in camera*).

726. Mercy's Scott Shook testified that there is an "excess" of inpatient beds among hospitals in the Toledo area. (Shook, Tr. 1040-1041).

727. Lucas County's population currently is flat or declining, making it economically unattractive to add more hospital beds. ProMedica's CEO, Randall Oostra, testified that the metropolitan Toledo market is "declining at about 0.2 percent per year in total." (Oostra, Tr. 6275). Mr. Oostra stated that the number of people being admitted to a hospital in the metropolitan area has been "flat to actually slightly declining over the past years" and he "expect[s] that decline to continue into the future." (Oostra, Tr. 6287).

728. Navigant Consulting's Managing Director, Kevin Nolan, testified to this same fact and included it in Navigant Consulting's executive summary of its January 2011 clinical integration strategy final report to ProMedica. (Nolan, Tr. 6371, *in camera*; PX02386 at 007, *in camera* (Navigant Presentation).

729. St. Luke's CEO, Dan Wakeman, testified that "the general metropolitan Toledo area has seen a population decline in the last ten years." (PX01911 at 015 (Wakeman, IHT at 54), *in camera*).

730. ProMedica's documents also project a flat or declining population for Lucas County. ProMedica's 2010 Environmental Assessment states that "Overall demographics indicate little or no growth for [the] next five years." (PX00159 at 005, *in camera* (ProMedica 2010 Environmental Assessment)). One of the key assumptions in ProMedica's Strategic Plan for 2009 through 2011 is "flat demographics overall." (PX00324 at 005, *in camera* (Overview of PHS Strategic Plan 2009-2011 presentation).

731. Scott Shook agreed that the greater Toledo area's "total population is declining -- stagnant to declining," aging, and not forecast to grow. (Shook, Tr. 1040).

b. It is Unlikely That Any Firms Will Open a New Obstetrics Unit in Lucas County

732. Obstetrics is a very costly service for a hospital to provide. (Shook, Tr. 956).

733. A potential entrant into the Lucas County obstetrics services market would face significant costs and risks associated with constructing and operating a new obstetrics unit, thus making it highly unlikely that such entry or expansion will occur. Mercy's Scott Shook testified that it would be very expensive for a hospital without an obstetrics unit to add one, even if it already had existing space available to build an obstetrics unit. (Shook, Tr. 957).

734. Mr. Shook estimated that establishing a new, financially viable labor-and-delivery unit inside a hospital's existing space would cost at least $10 to $12.6 million. (PX02068 at 005 (¶ 20) (Shook, Decl.), *in camera*).

735. Dr. Jeffrey Gold, Chancellor and Executive Vice President for Biosciences and Health Affairs for the University of Toledo, with management responsibilities for UTMC, testified that if a hospital wanted to manage high-risk births, it would be necessary to

build both an obstetrics unit and a neonatal intensive care unit ("NICU"), as well as ensure that there is sufficient call coverage and emergency department capacity, at a cost of tens of millions of dollars. (Gold, Tr. 222; PX02064 at 003 (¶ 10) (Gold, Decl.)).

736. Determining how many deliveries a hospital must perform per year to break even financially is "dependent upon the hospital and its cost structure and whether or not they have inpatient obstetricians and for how many hours coverage per day, et cetera, so there's varying factors that would go into that." (Shook, Tr. 1047).

737. Licensing restrictions limit how and where an obstetrics unit can be situated within a hospital in Lucas County. Obstetrics units must be separated from other sections of the hospital to limit the spread of infections to or from newborns. (Shook, Tr. 956).

738. In addition to high construction costs, obstetrics units have "high fixed costs" of operation and are expensive to maintain. (Shook, Tr. 956).

739. Mr. Shook testified that Toledo-area hospitals with a Level II or Level III perinatal referral center are required by law to have an in-house obstetrician and an in-house anesthesiologist to provide continuous obstetrical coverage, which are two "extremely expensive" resources, especially when comparing the "cost on a per-case basis versus what are the payments." (Shook, Tr. 956-957).

740. Mr. Shook also noted that since no one knows when a baby will arrive, a "cadre of nurses" must be available at all times in an obstetrics unit to assist with deliveries. (Shook, Tr. 956).

741. Obstetrics services typically do not generate sufficient revenue to cover their costs, making it economically undesirable to expand or build an obstetrics unit. (Shook, Tr. 1141). Mr. Shook of Mercy stated that it is extremely challenging to maintain a financially viable obstetrics unit. (Shook, Tr. 1046).

742. Mr. Shook testified that it is common for a hospital to lose money on its obstetrics services. (Shook, Tr. 1141). Mr. Shook noted that this is particularly true for "normal vaginal deliveries, [in which hospitals] get paid very little in relationship to the cost." (Shook, Tr. 957).

743. David Dewey, St. Luke's Vice President of Business Development, testified that St. Luke's obstetrics unit "does not financially cover its costs." (PX01909 at 062 (Dewey, IHT at 243), *in camera*).

744. Mr. Shook affirmed that "[o]bstetrics is often a money-loser for hospitals because payments tend to be low, but expenses are high." (PX02068 at 004 (¶ 19) (Shook, Decl.), *in camera*).

745. UTMC's Dr. Gold also testified that it is difficult to operate a profitable labor-and-delivery unit. (PX02064 at 003 (¶ 10) (Gold, Decl.)).

746. The decline in the overall birthrate over the last decade in Lucas County makes entry or expansion into obstetrics particularly unappealing. St. Luke's David Dewey, testified that "[t]he overall OB business in northwest Ohio is going down." (PX01909 at 044 (Dewey, IHT at 171), *in camera*).

747. The Project Director of ProMedica's Regional Perinatal Center Program sent an email in September 2010 that provided the statistics for total deliveries in Lucas County, noting that deliveries decreased from 2000 through 2009 and explained that this downward trend has continued through June 2010. (PX01107 at 001) (ProMedica email with subject line "2010 mo delivery count – Lucas Co").

748. Mercy's Scott Shook testified that "[t]here has been in Lucas County a decrease in the number of deliveries over the years … regardless of facility." (Shook, Tr. 958).

749. Scott Shook stated that Mercy discontinued obstetrics services at St. Anne around 2007 or 2008 because St. Anne experienced a "significant decrease" in the volume of its deliveries. (Shook, Tr. 958).

750. Navigant Consulting's Managing Director, Kevin Nolan, testified that the metropolitan Toledo market's "obstetric population, women 18 to 44, is declining." (Nolan, Tr. 6275, *in camera*). Mr. Nolan also testified that the number of women of child-bearing age in the Toledo metropolitan area is "projected to decline over the next five to ten years consistently" meaning "less babies being born" and contracted obstetrics volume. (Nolan, Tr. 6304-6305, *in camera*).

3. Entry Will Not Be Sufficient to Deter or Counteract the Harm that Will Result From the Acquisition

751. Under the *Merger Guidelines*, for entry or expansion to be sufficient, it must replace at least the scale and strength of one of the merging firms in order to replace the lost competition from the merger or acquisition. (PX02214 at 032 (§ 9.3) (*Merger Guidelines*)).

752. Here, any entry that does occur will not be sufficient under the *Merger Guidelines,* for many of the same reasons that entry is unlikely in the first place. Due to the time and significant expense it takes to become established in the market and earn a sufficient return on investment, an entrant would have a difficult time competing successfully in the market and replacing the competition eliminated from the Acquisition. (PX02148 at 091 (¶ 167) (Town Expert Report), *in camera*).

753. Establishing a new hospital, let alone obtaining sufficient market share to earn a sufficient return on investment, is challenging. David Dewey, St. Luke's' Vice President of Business Development, testified that if another hospital entered Lucas County, it "would have to establish its own market share. It would have to hire its own staff, get its

own medical staff support," all of which he stated would be difficult because of the tight capital markets. (PX01909 at 045 (Dewey, IHT at 174), *in camera*).

754. A new entrant also would have a difficult time establishing an obstetrics unit that would sufficiently replace the competition eliminated by the Acquisition. Mercy's Vice President, Scott Shook, stated that "[t]oday, it would take a substantial monetary commitment to construct a birthing center and hire a sufficient number of obstetricians to generate enough deliveries to break even." (PX02068 at 005 (¶ 23) (Shook, Decl.), *in camera*).

755. Mr. Shook also testified: "One of the most significant difficulties with creating a financially viable obstetrics unit is the ability to encourage obstetricians to utilize the new unit." (PX02068 at 005 (¶ 21) (Shook, Decl.), *in camera*).

756. Mr. Shook noted that, in Lucas County, "many obstetricians are employed by ProMedica, which instructs its obstetricians to direct expectant mothers to use ProMedica hospitals," making it difficult for another hospital to gain market share. (PX02068 at 004 (¶ 19) (Shook, Decl.), *in camera*). Therefore, any new obstetrics entry is highly unlikely to be sufficient to restore the competition eliminated by the Acquisition.

B. Out-of-Market Firms are Reluctant to Enter the Toledo Market

757. In 2009, St. Luke's executives communicated to the St. Luke's Board that hospital systems outside of Toledo "have shown reluctance of entering" the Toledo market. (PX01016 at 024, *in camera* (St. Luke's Hospital Board Meeting Affiliation Update presentation, Dec. 15, 2009)).

C. No Planned Entry or Expansion is Contemplated by Out-of-Market Firms

758. Hospitals outside of Lucas County have no plans to build a new hospital in Lucas County. Stanley Korducki, Wood County Hospital's ("WCH") CEO, testified that WCH has no current plans to build a new hospital because WCH has "enough capacity to serve [its] people" and there is no need to invest resources in a new hospital. (Korducki, Tr. 526).

759. Mr. Korducki testified that WCH is not planning on adding any inpatient services. (Korducki, Tr. 519).

760. Mr. Korducki noted that WCH has no plans to expand the hospital in response to ProMedica's acquisition of St. Luke's because WCH is focused on taking care of its own community's needs. (Korducki, Tr. 525-526).

761. Fulton County Health Center's ("FCHC") CEO, E. Dean Beck, similarly testified that FCHC has no plans to expand by building a new hospital in Lucas County because "[t]here are a sufficient number of hospitals in Lucas County." (Beck, Tr. 410).

762. Mr. Beck stated that FCHC does the best job it can to service Fulton County patients and meet their needs and expectations. (Beck, Tr. 410).

763. Mr. Beck explained that FCHC has never changed its service offerings to competitively respond to any of the Lucas County hospitals because FCHC does not "try and compete with them." (Beck, Tr. 410).

764. Mr. Beck stated that FCHC has no plans to increase its number of inpatient beds and does not plan to do so in response to ProMedica's acquisition of St. Luke's. (Beck, Tr. 409). In fact, as a critical access hospital, FCHC is limited by law to 25 inpatient beds, and FCHC already has the maximum allowable beds by law. (Beck, Tr. 409).

765. David Dewey, St. Luke's Vice President of Business Development, testified that he was unaware of any potential hospital entry or expansion in Lucas County. (PX01909 at 040 (Dewey, IHT at 156), *in camera*).

766. Scott Rupley, St. Luke's Marketing and Planning Director, also testified that he was unaware of any hospital or hospital system outside of Lucas County attempting to establish a hospital in Lucas County. (PX01937 at 041 (Rupley, Dep. at 155), *in camera*).

D. No Planned Expansion is Contemplated by Existing Lucas County Hospitals

767. Neither Mercy nor UTMC has plans to construct a new hospital in Lucas County. Around 2004 or 2005, Mercy purchased land in Monclova, in southwest Lucas County, and considered building a "small, 34-bed general medical-surgical facility" in a 50-50 joint venture with physicians. The hospital would have provided limited general medical/surgical care, but would not have offered services such as an intensive care unit. (Shook, Tr. 963-965).

768. Scott Shook, Mercy's Vice President, testified that Mercy has "scrapped" its plans to construct a hospital on its Monclova property. (Shook, Tr. 964). One primary reason Mercy will not build a hospital in Monclova is because the new healthcare reform laws preclude physicians from having a new ownership interest in a hospital. In addition, there has been a "significant decline in the hospital population over the last two decades," and Mercy does not believe that it would be "a good business decision to invest in that very high-cost fixed asset." (Shook, Tr. 966-967). As a result, Mercy has no current plans to construct a new inpatient hospital in the greater Toledo area. (Shook, Tr. 968).

769. Even if ProMedica's acquisition of St. Luke's is blessed, Mercy would not competitively respond by building a new inpatient hospital in the greater Toledo area. (Shook, Tr. 968).

770. Similarly, UTMC's Dr. Jeffrey Gold testified that UTMC does not have any current plans to build a new hospital in or near Lucas County. (Gold, Tr. 223).

771. Dr. Gold also testified that UTMC has no current plans to increase capacity for general acute-care inpatient services, not even in response to ProMedica's acquisition of St. Luke's. (Gold, Tr. 223-224).

772. Mercy has no plans to expand, and UTMC has no plans to offer, obstetrics services in Lucas County, even if rates for obstetrics services rose by a significant amount as a result of the Acquisition. Mercy's Scott Shook testified that it is "highly unlikely" that Mercy will reinstitute obstetrics services at St. Anne because Mercy is "using the space. Currently, [Mercy has] relocated some other services to the obstetrical area." (Shook, Tr. 958-959).

773. Even if Mercy wanted to reconfigure beds at its Lucas County hospitals for obstetrical use, Mr. Shook testified that it would "take some effort to open them up." (Shook, Tr. 1042-1043). Mr. Shook explained that Mercy does not let "space sit idly by" and the space is not "just sitting there being mothballed." (Shook, Tr. 1042-1043).

774. Increasing the number of obstetrics beds also would require additional nurses and other employees to staff the beds. (Shook, Tr. 1042-1043). Therefore, Mr. Shook testified that it is unlikely that Mercy will expand obstetrics services in Lucas County at any point in the near future. (Shook, Tr. 959).

775. Mercy has no plans to build a new obstetrics unit from scratch in the near future. (Shook, Tr. 960).

776. Even if prices for obstetrics services rose by some small but significant amount, it would not induce Mercy to offer any new obstetrics services in Lucas County. (Shook, Tr. 960).

777. UTMC has never offered inpatient obstetrics services and has no current plans to do so. (Gold, Tr. 220). Neither the University of Toledo nor UTMC has even held any meetings about nor budgeted any money toward offering obstetrics services at its hospital. (Gold, Tr. 220-221).

778. UTMC's Dr. Gold also testified that "it is highly unlikely that UTMC will build a new obstetrics or delivery unit in the greater Toledo area in the next few years, if ever" even if rates for obstetrics services increased by "10 to 15 percent." (PX02064 at 003 (¶ 10) (Gold, Decl.)).

XV. THE ACQUISITION PRODUCES NO CREDIBLE MERGER-SPECIFIC EFFICIENCIES TO REBUT THE PRESUMPTION OF COMPETITIVE HARM

779. The *Horizontal Merger Guidelines* ("*Merger Guidelines*") provide a framework within which to assess the efficiencies that Respondent alleges may result from the Acquisition. (PX02214 at 032-034 (§ 10) (Merger Guidelines)). The *Merger Guidelines* place the burden on Respondent to substantiate their efficiency claims. (PX02214 at 032-034 (§ 10) (*Merger Guidelines*)). With a very strong presumption of competitive harm and voluminous evidence strengthening the presumption, this Acquisition would have to

result in extraordinary efficiencies to offset the competitive harm. (*See* Complaint Counsel's Proposed Conclusions of Law Section XX.H.2).

780. The efficiencies alleged by Respondent here fall far short. The alleged efficiencies are not actual cognizable efficiencies, are not merger-specific, or are speculative and unsubstantiated. (Dagen, Tr. 3247; PX02147 at 007-008 (¶ 17) (Dagen Expert Report)). Some of the alleged savings stem from increasing the prices that consumers pay, while others fail to take into account a negative impact on quality of care and patient convenience. All of the asserted efficiency claims appear to have been developed for the purposes of litigation.

A. Respondent Has Not Come Close to Meeting its Burden of Substantiating its Own Efficiency Claims

781. The *Merger Guidelines* put the burden on "*the merging firms* to substantiate efficiency claims." (PX02214 at 032-034 (§ 10) (*Merger Guidelines*) (emphasis added)).

782. A key fact witness that Respondent relies upon to substantiate its efficiencies claims, Gary Akenberger, never testified live in this court. Mr. Akenberger, ProMedica's Senior Vice President of Finance, submitted an affidavit that discussed Respondent's alleged efficiencies. (PX02104 (Akenberger, Decl.), *in camera*; PX02105 (Exhibits to Akenberger, Decl.), *in camera*).

783. During his deposition, Mr. Akenberger described himself as the lead individual responsible for the financial analysis, substantiation, and verification of Respondent's alleged efficiencies. (PX01931 at 025, 026 (Akenberger, Dep. at 93, 100), *in camera*). He stated that he reviewed every individual efficiency claim. (PX01931 at 028 (Akenberger, Dep. at 105), *in camera*). Kathleen Hanley, ProMedica's CFO, testified in court that Mr. Akenberger was one of the key employees familiar with the specifics and details of ProMedica's efficiencies analysis. (Hanley, Tr. 4729, *in camera*).

784. Neither of Respondent's expert witnesses conducted any analyses or offered any opinions on whether Respondent's alleged efficiencies are cognizable under the *Merger Guidelines*. Ms. Guerin-Calvert testified that she has not conducted an efficiencies analysis. (Guerin-Calvert, Tr. 7580; PX01925 at 013 (Guerin-Calvert, Dep. at 42)).

785. Mr. Den Uyl testified that he did not analyze Respondent's claimed efficiencies to determine whether they are cognizable under the *Merger Guidelines*. (Den Uyl, Tr. 6515). For instance, Mr. Den Uyl did not analyze whether Respondent's alleged efficiencies are merger-specific, and he has no expert opinion on the issue. (Den Uyl, Tr. 6515). Mr. Den Uyl testified that he would be qualified to conduct an efficiencies analysis in this case – if he were asked to do so – because he has conducted such analyses in numerous other cases, including cases involving hospital mergers. (Den Uyl, Tr. 6515-6516). However, he was not even asked to conduct such an analysis in this case. (Den Uyl, Tr. 6516).

786. Gabriel Dagen, Complaint Counsel's expert, is the only expert witness in this case who conducted an analysis of the efficiencies alleged by Respondent. Mr. Dagen is the only expert witness in this case who presented an expert opinion on whether Respondent's alleged efficiencies are cognizable under the *Merger Guidelines*. (*See* Dagen, Tr. 3245, *in camera*). For example, Mr. Dagen is the only expert witness in this case who analyzed each of the alleged efficiencies to determine whether they are merger-specific. (*See* Dagen, Tr. 3245, *in camera*).

B. The Asserted Efficiencies Are Not Credible

787. The May 6, 2010 "Efficiencies Analysis of the Proposed Joinder of ProMedica Health System and OhioCare Health System" ("Compass Lexecon Report") is a summary of the efficiencies analysis that was prepared by ProMedica management and the economic consulting firm Compass Lexecon. (PX00020 at 001-039 (Compass Lexecon Report), *in camera*; PX02104 at 002 (¶ 5) (Akenberger, Decl.), *in camera*; PX01906 at 075 (Oostra, IHT at 293), *in camera*).

788. The proposed efficiencies contained in the Compass Lexecon Report represent an "initial plan." (Oostra, Tr. 6148 ("first plan"); PX01906 at 074 (Oostra, IHT at 291), *in camera* ("initial plan")). Mr. Oostra, ProMedica's CEO, testified that the efficiencies contained in the report were "preliminary" and he felt that "if we don't find those efficiencies, we will find other efficiencies." (Oostra, Tr. 6145, 6148; PX01906 at 075 (Oostra, IHT at 294), *in camera*).

789. ProMedica's CFO, Kathleen Hanley, testified that the conclusions in the Compass Lexecon Report were "estimates," and based on a "gut feeling" that the Acquisition would generate savings. (Hanley, Tr. 4728, *in camera*; PX01903 at 054 (Hanley, IHT at 206-207), *in camera*).

790. The Compass Lexecon Report itself contains the following caveat: "estimates . . . are preliminary and subject to further analysis, revision, and substantiation." (PX00020 at 003 (Compass Lexecon Report), *in camera*). The report's executive summary states that the annual efficiencies opportunities contained in the report "may" be accomplished. (PX00020 at 004 (Compass Lexecon Report), *in camera*).

791. Mr. Dagen testified that, with the exception of some "minor changes" contained in the affidavit of Gary Akenberger, Respondent never presented any significant additional analysis, revision, or substantiation of its efficiency claims that was above and beyond what was contained in the Compass Lexecon Report. (Dagen, Tr. 3248, *in camera*).

792. Key St. Luke's personnel who would be best-positioned to assess the likelihood of achieving efficiencies at St. Luke's had little or no input into the efficiencies analysis. Douglas Deacon, St. Luke's Vice President of Professional Services, had not even seen the Compass Lexecon Report before his investigational hearing in September 2010. (PX01908 at 050 (Deacon, IHT at 191-192), *in camera*). His involvement with the development of the analysis was "nil," even though he believed that such an analysis was

"something [he] should be involved with." (PX01908 at 050-051 (Deacon, IHT at 193-194), *in camera*).

793. Eric Perron, St. Luke's Computer Information Systems Director, testified that neither he nor his staff was involved in quantifying the information technology-related savings that Respondent alleges St. Luke's may experience as a result of the Acquisition. (PX01928 at 038 (Perron, Dep. at 145), *in camera*). When presented during his deposition with the portion of the Compass Lexecon Report containing Respondent's alleged EMR savings for St. Luke's, Mr. Perron indicated that he had never seen the document and was unaware of the alleged savings. (PX01928 at 040 (Perron, Dep. at 150-151), *in camera*).

794. Dennis Wagner, St. Luke's Interim Treasurer at the time of the Acquisition, had never before seen the Compass Lexecon Report when he was presented with a copy during his investigational hearing in September 2010. (PX01915 at 040 (Wagner, IHT at 156), *in camera*). Mr. Wagner testified that the report's alleged savings for supply chain efficiencies involved "no[] or very little analysis." (PX01915 at 052 (Wagner, IHT at 204), *in camera*). He said of the speech-and-hearing services efficiency claim: "I don't believe this claim." (PX01915 at 045 (Wagner, IHT at 173), *in camera*).

795. In January 2011, Navigant Consulting completed a study titled "Clinical Integration Strategy" that outlined clinical service consolidation recommendations for ProMedica. (PX00396 ("Clinical Integration Strategy" Executive Summary), *in camera*; PX00479 ("Clinical Integration Strategy" Final Report), *in camera*). Notably, the study primarily addresses relocating existing ProMedica services to existing ProMedica facilities, without explaining what role, if any, the Acquisition plays in facilitating such consolidations. (PX00396 at 008-010 ("Clinical Integration Strategy" Executive Summary), *in camera*). Kevin Nolan, the lead consultant on the project, testified that most of Navigant's recommendations have little to no impact on St. Luke's services. (PX01946 at 019-021 (Nolan, Dep. at 67-75)).

1. **Revenue Enhancements Are Not Cognizable Efficiencies**

796. The numerous claimed revenue enhancement opportunities are not true efficiencies because they merely shift revenue among the participants in the market and, in effect, do nothing more than increase ProMedica's bottom-line. (PX02147 at 077-081 (¶¶ 148-159) (Dagen Expert Report)).

797. Mr. Akenberger, ProMedica's Senior Vice President of Finance, testified that "[an] efficiency relates to expense savings, both capital and operating[,]" and that a price increase is not an efficiency. (PX01931 at 034 (Akenberger, Dep. at 130), *in camera; see also* Dagen, Tr. 3288, *in camera* ("a price increase would be a revenue enhancement, [but] that's not an efficiency")).

798. To be credited, an efficiency must reduce costs, increase output, or improve quality. (Dagen, Tr. 3287-3288, *in camera*; PX02147 at 077 (¶ 149) (Dagen Expert Report)). Respondent's claimed revenue enhancements have none of these consumer-benefitting

effects. (Dagen, Tr. 3288-3289, *in camera*; PX00020 at 029-033 (description of revenue enhancement efficiencies in Compass Lexecon Report), *in camera*).

799. For example, revenue enhancements that Respondent alleges will result from improving St. Luke's coding and charge capture practices have no impact on the quality or quantity of clinical services that St. Luke's provides to patients. (Hanley, Tr. 4733-4735, *in camera*; PX00020 at 030 (Compass Lexecon Report), *in camera*). These practices will merely increase the amount that is paid to St. Luke's by patients (or their insurers) for the same quantity and quality of services. (Hanley, Tr. 4733-4735, *in camera*).

2. Respondent's Alleged Capital Cost Avoidance Opportunities Are Not Cognizable Efficiencies

800. The bulk of the claimed efficiencies from the Acquisition are avoided capital costs. (PX00020 at 006-007 (Compass Lexecon Report summary of efficiencies), *in camera*; PX02104 at 003-004 (chart summarizing alleged efficiencies in Mr. Akenberger's affidavit), *in camera*).

801. In general, capital cost avoidance claims are not cognizable efficiencies. (Town, Tr. 3928-3929 ("removing an expenditure that would create value [is not] an efficiency"); PX02148 at 094 (¶ 172) (Town Expert Report), *in camera*). Firms invest in their businesses to better compete and thus enhance consumer welfare, and if these competition-driven investments are "avoided," consumers generally are left worse off. (PX02148 at 094 (¶ 172) (Town Expert Report), *in camera*).

802. Even if cognizable in theory, several of Respondent's largest capital cost avoidance claims are speculative at best because, in reality, ProMedica had no plans to invest the capital that it claims it would have spent absent the Acquisition. (PX02147 at 048-049 (¶¶ 89-91) (Dagen Expert Report)).

a. Construction of a Hospital at Arrowhead

803. Respondent alleges that, as a result of the Acquisition, it may be able to avoid spending $90 - 100 million on constructing and equipping a new hospital at its "Arrowhead" property (located less than three miles from St. Luke's). (PX00020 at 035 (Compass Lexecon Report), *in camera*; (PX02104 at 016 (¶ 30) (Akenberger, Decl.), *in camera*).

804. Ms. Hanley, ProMedica's CFO, explained that ProMedica acquired St. Luke's "instead of investing millions of dollars in a competing facility." (PX01903 at 063 (Hanley, IHT at 243-244), *in camera*).

805. There is little evidence in the record that ProMedica actually intended to build the Arrowhead hospital absent the Acquisition. (Dagen, Tr. 3279-3280, *in camera* (no strategic plans, capital budgeting documents, or permits for constructing a hospital at Arrowhead); PX02147 at 046-049 (¶¶ 85-89) (Dagen Expert Report); PX02148 at 094-095 (¶¶ 172-173) (Town Expert Report), *in camera*).

806. The only support for the cost of constructing a new hospital at Arrowhead is a single-page document premised on how much ProMedica spent to build Bay Park Hospital earlier in the decade. (PX02105 at 200 (Exhibit to Akenberger, Decl.), *in camera*). Mr. Akenberger testified that he had never seen this document in the ordinary course, and only became aware of it while preparing Respondent's efficiency claims. (PX01931 at 038 (Akenberger, Dep. at 147), *in camera*). Other than this one-page document, Mr. Akenberger, current Senior Vice President of Finance and a financial executive at ProMedica for most of the last decade, has never seen any financial analysis of constructing a hospital at Arrowhead. (PX01931 at 038 (Akenberger, Dep. at 145-146), *in camera*; PX01912 at 004-005 (Akenberger, IHT at 9-11), *in camera*).

807. ProMedica has owned the Arrowhead land for a decade. (PX01906 at 022 (Oostra, IHT at 82), *in camera*). The 2010-2012 Strategic Plan, the most recent such plan to be created prior to ProMedica's merger negotiations with St. Luke's, does not even mention constructing a new hospital at Arrowhead. (Joint Stipulations of Law and Fact, JX00002A ¶ 49; Hanley, Tr. 4720-4721, *in camera*; PX00006 (ProMedica Hospitals' 2010-2012 Strategic Goals and Objectives), *in camera*; PX00007 (ProMedica 2010-2012 Strategic Goals and Objectives), *in camera*). Mr. Akenberger testified that he has never seen a ProMedica Board-approved capital budget that contemplates constructing a hospital at the Arrowhead property. (PX01931 at 039 (Akenberger, Dep. at 150-151), *in camera*).

808. Mr. Akenberger admitted that, even without the Acquisition, it is "possible" that ProMedica would have not gone ahead with constructing a hospital at Arrowhead. (PX01931 at 039 (Akenberger, Dep. at 152), *in camera*).

b. Construction of a Bed Tower at Flower Hospital

809. Respondent also alleges that the Acquisition may enable it to avoid spending $25 to 30 million to construct a second bed tower at Flower Hospital. (PX00020 at 036 (Compass Lexecon Report), *in camera*; PX02104 at 17 (¶ 31) (Akenberger, Decl.), *in camera*). Even if this were a cognizable efficiency in theory, there is no credible evidence that ProMedica had plans to construct a new bed tower at Flower Hospital absent the Acquisition.

810. ProMedica's most recent pre-Acquisition Strategic Plans did not evidence an intention to construct a second bed tower at Flower Hospital. (Joint Stipulations of Law and Fact, JX00002A ¶ 48 ("The construction of a new bed tower at Flower Hospital did not appear on ProMedica's 2010-2012 Strategic Plan."); PX00006 (ProMedica Hospitals' 2010-2012 Strategic Goals and Objectives), *in camera*; PX00007 (ProMedica 2010-2012 Strategic Goals and Objectives), *in camera*). At no time in the two to three years leading up to the Acquisition did ProMedica generate any plans relating to constructing a new bed tower at Flower Hospital. (Hanley, Tr. 4542-4543).

811. The construction of a new bed tower at Flower Hospital has not appeared on any capital budget approved by the ProMedica Board since January 1, 2007. (Joint Stipulations of Law and Fact, JX00002A ¶ 47). Ms. Hanley testified that the Flower Hospital bed tower project "did not end up … at the top of the list from a capital allocation standpoint." (Hanley, Tr. 4541-4542). She also stated that ProMedica's plans for financing the project were "premature until . . . we prioritize [and] authorize [the project,]" and said that such plans had not yet reached the ProMedica Board level. (PX01903 at 064 (Hanley, IHT at 248-249), *in camera*).

812. Furthermore, any alleged savings from the Flower Hospital capital cost avoidance claim are not merger-specific because ProMedica's decision of whether or not to construct a new bed tower at Flower Hospital is not logically connected to its acquisition of St. Luke's. (Dagen, Tr. 3281-3282, *in camera* ("[decision of] whether or not a bed tower is going to be built at Flower Hospital is [] a unilateral decision at Flower"); PX02147 at 049 (¶¶ 90-91) (Dagen Expert Report)).

813. Respondent alleges that the acquisition of St. Luke's enables ProMedica to avoid building the bed tower because St. Luke's facilities have unused capacity that can be utilized by ProMedica. (PX01931 at 042 (Akenberger, Dep. at 162-163), *in camera*). The proposed bed tower would add 136 beds to Flower Hospital, of which 92 would be classified as either psychiatric or skilled nursing facility beds. (PX01931 at 041 (Akenberger, Dep. at 158-160), *in camera*). However, St. Luke's has zero skilled nursing facility or psychiatric beds. (PX01931 at 042 (Akenberger, Dep. at 161-162, 164), *in camera*).

814. Further, the inpatient beds that St. Luke's does have were nearly at full capacity leading up to the Acquisition. (PX00170 at 001, 006 (Mr. Wakeman's Aug. 2010 Memo to St. Luke's Board stating "inpatient capacity is limited" and "our concern is . . . lack of beds"); PX01360 at 001 (Wakeman email concerning June 2010 utilization review), *in camera* ("we're pretty tight,"); PX01292 at 003 (Sept. 2009 St. Luke's Board meeting minutes), *in camera*, ("hospital is close to capacity with inpatients")).

815. Mr. Akenberger admitted it was "possible" that ProMedica may still construct a bed tower at Flower Hospital even now that it has acquired St. Luke's. (PX01931 at 042 (Akenberger, Dep. at 163-164), *in camera*).

c. Implementation of EMR and IT at Standalone St. Luke's

816. Respondent alleges that the Acquisition may save St. Luke's somewhere in the range of $7.6 to 15.7 million in costs relating to implementation of an Electronic Medical Records ("EMR") system and related information technology ("IT") upgrades. (PX00020 at 038 (Compass Lexecon Report), *in camera*; PX02104 at 017-018 (¶ 32) (Akenberger, Decl.), *in camera*). Mr. Dagen noted that the "large range" in possible savings demonstrates that Respondent has not "vetted this [efficiency claim] in great detail." (Dagen, Tr. 3283, *in camera*).

817. As the basis for these alleged savings, the Compass Lexecon Report asserts that St. Luke's would have spent $16 to 24 million to implement EMR and related IT applications as a standalone hospital. (PX00020 at 038 (Compass Lexecon Report), *in camera*). However, Respondent has presented no documents or analysis to substantiate the St. Luke's standalone EMR costs that are contained in the Compass Lexecon Report. (PX01931 at 043, 045 (Akenberger, Dep. at 167-173), *in camera*, (Mr. Akenberger could not identify any substantiation in his affidavit or its exhibits)).

818. St. Luke's Chairman, James Black, believes that St. Luke's standalone costs for implementing IT related to healthcare reform would be between $12 million and $14 million. (Black, Tr. 5701-5702).

819. Respondent's alleged post-Acquisition EMR and IT savings appear to be significantly overstated for other reasons, as well. In calculating how much ProMedica will spend to implement EMR at St. Luke's after the Acquisition, Respondent failed to account for over $1 million in annual maintenance costs. (Dagen, Tr. 3283-3285, *in camera*; PX02147 at 051-054 (¶¶ 95-98) (Dagen Expert Report)). Once these are properly considered, the difference in cost of implementing EMR and related IT at St. Luke's as a standalone and doing so as a part of ProMedica is significantly smaller than Respondent claims. (PX02147 at 051-054 (¶¶ 95-98) (Dagen Expert Report)).

820. It is unclear when ProMedica will begin to implement the EMR and IT systems at St. Luke's, as well as how the timeline for implementation will compare to the timeline that a standalone St. Luke's would have pursued. (PX01931 at 044-045 (Akenberger, Dep. at 172-174), *in camera*; PX01912 at 068 (Akenberger, IHT at 262-263), *in camera*; PX01928 at 037 (Perron, Dep. at 139), *in camera* (ProMedica will start EMR implementation at St. Luke's in **{ }**)). As a result, it is unclear from the evidence whether ProMedica will implement the EMR systems at St. Luke's in time to take advantage of all federal financial incentives. (PX01928 at 037 (Perron, Dep. at 139), *in camera* ("unsure" whether ProMedica will implement EMR at St. Luke's in time to obtain all federal funds); *see* PX01912 at 068 (Akenberger, IHT at 262-263), *in camera*).

821. In contrast, a standalone St. Luke's fully expected to start implementing EMR in time to qualify for all federal funds. (PX01933 at 038-039 (Oppenlander, Dep. at 144-148), *in camera*; PX01928 at 021, 023, 030 (Perron, Dep. at 75-76, 84-85, 113), *in camera*; PX01908 at 055 (Deacon, IHT at 213), *in camera*; PX01281 at 012 ("Finance Pillar Challenge" Presentation); PX01496 at 003 (EMR vendor bid from Dec. 2009 includes ARRA payment schedule); PX01503 at 001, *in camera* (EMR vendor bid in June 2010 indicates that a standalone St. Luke's was "capable of qualifying for meaningful use incentives")).

822. To the extent St. Luke's misses targets to receive federal funds due to ProMedica's slower EMR implementation schedule, the Acquisition will delay EMR's benefits to patients and increase total costs. (PX02147 at 053 (¶ 98) (Dagen Expert Report)).

3. Alleged Efficiencies May Decrease Quality and Access and Increase Costs to Patients

823. ProMedica intends to reduce St. Luke's staffing levels to the levels of Flower Hospital. (PX00020 at 015 (Compass Lexecon Report), *in camera*). This runs contrary to the conclusions of St. Luke's executives in March 2010 that it was important to "maintain current staff levels to help ensure high quality and Press Ganey [patient satisfaction] scores." (PX01047 at 001 (Board Leadership Steering Committee Meeting 3/15/10 Proposed Topics)).

824. Testimony by St. Luke's and ProMedica executives also suggests that cutting staff at St. Luke's could reduce quality of care, but that this fact was not considered when calculating the alleged savings from this alleged efficiency. (PX01909 at 048-049 (Dewey, IHT at 188-189), *in camera* (stating that St. Luke's is "a pretty lean organization" and that cutting staff "would be impacting [] service [and] quality"); PX01912 at 052 (Akenberger, IHT at 199), *in camera* ("quality factor was not captured [in the analysis]")). There has been no analysis put forth showing that St. Luke's was overstaffed prior to the Acquisition, and no analysis of whether reducing St. Luke's staffing can be done without impacting quality of care. (Dagen, Tr. 3272-3273, *in camera*).

825. Given that ProMedica generally has higher reimbursement rates across its various service lines than does St. Luke's, it is likely that any efficiency claim that is predicated on closing a service line at St. Luke's and moving it to a ProMedica facility will result in a price increase to health plans, employers, and patients. (Dagen, Tr. 3255-3256, *in camera* ("if you move a service from a lower priced facility to a higher priced facility, and you do the same number of cases . . . patients and payers are going to be paying higher prices for that service")).

826. Respondent alleges $1.3 million in savings from consolidating inpatient rehabilitation services at Flower Hospital. (PX00020 at 011 (Compass Lexecon Report), *in camera*; PX02104 at 005-006 (¶ 9) (Akenberger, Decl.), *in camera*). This involves closing St. Luke's inpatient rehabilitation center and shifting its patients to Flower Hospital. (PX02104 at 005-006 (¶ 9) (Akenberger, Decl.), *in camera*). After the consolidation, patients who previously chose St. Luke's inpatient rehabilitation center due to its convenience – or other factors, such as its quality of care – no longer have that option. (Nolan, Tr. 6351, *in camera*; Andreshak, Tr. 1796-1797 (St. Luke's inpatient rehabilitation center had "excellent" quality of care); Dagen, Tr. 3256-3257, *in camera*).

827. Dr. Thomas Andreshak, an independent physician in Toledo, testified that St. Luke's inpatient rehabilitation center provided high quality care before it was closed as a result of the Acquisition. (Andreshak, Tr. 1797-1799). His patients – in particular, those who live in Maumee and Bowling Green – are inconvenienced by having to go to Flower Hospital instead of St. Luke's for these services. (Andreshak, Tr. 1797-1799).

828. Revenue from patients who would have gone to St. Luke's inpatient rehabilitation center but must now go to more expensive Flower Hospital will generate $1 million in additional revenue for Flower Hospital compared to what these patients would have paid for the same services at St. Luke's. (PX00905 at 001 (spreadsheet containing calculations of various efficiencies), *in camera*; Dagen, Tr. 3257-3262, *in camera*). This revenue increase is due to the higher reimbursement that ProMedica receives for inpatient rehabilitation services, meaning that the patients who must switch from St. Luke's inpatient rehabilitation center to Flower Hospital's center will incur a price increase as a direct result of the consolidation. (Dagen, Tr. 3257-3262, *in camera*; PX02147 at 054-056 (¶¶ 100-103) (Dagen Expert Report)). As ProMedica's Mr. Akenberger testified, a price increase is not an efficiency. (PX01931 at 034 (Akenberger, Dep. at 130), *in camera*).

829. In his affidavit, Mr. Akenberger revised the savings that ProMedica claims may result from the inpatient rehabilitation consolidation from the original $1.3 million down to $193,000. (PX02104 at 003 (Akenberger, Decl.), *in camera*). Despite the decrease in the claimed savings, the $1 million price increase to patients will still be carried out. (PX02147 at 055-056 (¶¶ 100-103) (Dagen Expert Report)). Furthermore, while the savings are alleged to be $193,000 per year, the cost of the consolidation (*i.e.*, the cost of achieving the alleged savings) is at least { }. (Nolan, Tr. 6367, *in camera*; PX00479 at 015 ("Clinical Integration Strategy" Final Report), *in camera*).

830. Respondent alleges $2.7 million in savings from consolidating heart and vascular services at TTH. (PX02104 at 006-007 (¶ 10) (Akenberger, Decl.), *in camera*; PX02105 at 051 (Exhibits to Akenberger, Decl.), *in camera*). This involves eliminating St. Luke's open heart surgery program. (PX01931 at 034 (Akenberger, Dep. at 131), *in camera*). Patients who previously went to St. Luke's for open heart procedures will have to go to TTH, instead. (PX01931 at 034 (Akenberger, Dep. at 131), *in camera*). As a result, some patients who require immediate open heart procedures will experience a longer ambulance ride on their way to TTH instead of St. Luke's. (Nolan, Tr. 6331-6333, *in camera*). Also, patients who arrive at St. Luke's – or who are already there for another procedure – and then require an open heart procedure will have to be transferred to TTH, instead of receiving that care onsite at St. Luke's. (Nolan, Tr. 6330-6331, 6333-6334, *in camera*; Hanley, Tr. 4743, 4745-4746, *in camera*).

831. Dr. Gbur, an independent physician who performs interventional cardiology procedures at St. Luke's, testified that the elimination of open heart services at St. Luke's could add 10 to 15 minutes of additional transit time for patients who experience a heart attack and must go to a hospital with open heart capabilities for treatment. (Gbur, Tr. 3112-3113).

832. Unlike the inpatient rehabilitation consolidation, Respondent did not disclose how shifting St. Luke's heart and vascular volume to Flower Hospital would impact the revenues earned on those procedures. (PX2105 at 051 (Exhibits to Akenberger, Decl.). However, given that ProMedica's reimbursement for services is on average higher than St. Luke's, a price increase resulting from this consolidation may exceed any actual cost savings generated by it. (PX02147 at 060-061 (¶ 111) (Dagen Expert Report)).

833. Neither the Compass Lexecon Report, Mr. Akenberger's affidavit, nor Navigant's "Clinical Integration Strategy" report discuss in any detail how patient quality of care or convenience will be impacted by consolidating rehabilitation, heart, vascular, and psychiatry services. (PX00020 (Compass Lexecon Report), *in camera*; PX02104 (Akenberger, Decl.), *in camera*; PX00479 ("Clinical Integration Strategy" Final Report), *in camera*; Dagen, Tr. 3257, *in camera* (did not see any analysis by ProMedica of the impact of clinical consolidations on patient convenience)).

C. The Asserted Efficiencies Are Speculative

834. The *Merger Guidelines* state that "[e]fficiency claims will not be considered if they are vague, speculative, or otherwise cannot be verified by reasonable means." (PX02214 at 032-034 (§ 10) (*Merger Guidelines*)).

835. Virtually all of the claimed efficiencies in the Compass Lexecon Report contain the caveat that they "may" be accomplished by the Acquisition. (PX00020 (Compass Lexecon Report), *in camera*).

836. Mr. Akenberger's affidavit acknowledges that ProMedica's verification of the savings identified in the Compass Lexecon Report "is still a work in progress." (PX02104 at 003 (¶ 7) (Akenberger, Decl.), *in camera*).

837. The Compass Lexecon Report alleged that the Acquisition may generate $77,000 in savings relating to speech and hearing services purchased by St. Luke's. (PX00020 at 018 (Compass Lexecon Report), *in camera*). An St. Luke's executive expressed doubt about the savings during his investigational hearing. (PX01915 at 045 (Wagner, IHT at 173), *in camera*). Subsequently, in Mr. Akenberger's affidavit, the alleged savings were reduced to $4,000. (PX02104 at 009 (¶ 15) (Akenberger, Decl.), *in camera*).

838. The Compass Lexecon Report alleged approximately $10 million in capital cost avoidances that subsequently were removed entirely from the list of claimed efficiencies in Mr. Akenberger's affidavit, because ProMedica either decided to go forward with the projects or to abandon the projects for reasons unrelated to the Acquisition. (PX02104 at 003 (¶ 7) (Akenberger, Decl.), *in camera*; PX00020 (Compass Lexecon Report) at 39)).

839. The Compass Lexecon Report asserts that the Acquisition may generate savings from consolidating Oncology, Orthopedics, Women's, Neuro/Stroke, Cancer and Pulmonary services at either a ProMedica or St. Luke's facility. (PX00020 at 013 (Compass Lexecon Report), *in camera*). Mr. Akenberger confirmed that the potential savings from these clinical consolidation are still "not yet quantified." (PX02104 at 006-007 (¶ 10) (Akenberger, Decl.), *in camera*).

840. The Compass Lexecon Report states that ProMedica may realize approximately $1.4 million in savings from lowering St. Luke's physician coverage costs in General Surgery, Obstetrics, and Interventional Services to a median benchmark rate. (PX00020 at 023

(Compass Lexecon Report), *in camera*). Mr. Dagen concluded that these claims are unsubstantiated because, in calculating the savings, Respondent assumed that St. Luke's could lower its physician coverage costs to the benchmark median rate without considering why St. Luke's rates are higher in the first place. (PX02147 at 068-069 (¶¶ 127-128) (Dagen Expert Report)).

841. Indeed, ProMedica executives involved in the efficiencies analysis testified that the St. Luke's and ProMedica physician coverage contracts likely require different duties and, therefore, are not "apples to apples" comparisons. (PX01904 at 048 (Steele, IHT at 182-183, *in camera*); PX01912 at 057 (Akenberger, IHT at 219-220), *in camera*).

842. The alleged annual cost savings in Navigant's "Clinical Integration Strategy" report were "still being refined" by ProMedica as late as December 2010. (PX00506 at 001 (Dec. 2010 email from Andy Hoehn), *in camera*). Between December 2010 and January 2011 (when Navigant produced the final version of its report), the alleged savings decreased from approximately $7 million to $3.4 million. (PX00476 at 011 (Dec. 2010 draft of "Clinical Integration Strategy" report), *in camera*; PX02386 at 014 (Jan. 2011 final version of "Clinical Integration Strategy" report), *in camera*). Further, the $74.4 million cost of implementing Navigant's "Clinical Integration Strategy" recommendations will exceed the projected $3.4 million in annual savings for many years into the future. (Nolan, Tr. 6354-6355, *in camera*; Hanley, Tr. 4747-4749; *in camera*; PX00479 at 014 ("Clinical Integration Strategy" Final Report), *in camera*).

843. Mr. Dagen concluded that many of the other efficiency claims also are unsubstantiated or speculative because the back-up materials submitted by Respondent lacked details necessary to verify the underlying data and methodologies used in the calculations of savings. These claims include, among others: lowering St. Luke's costs for insurance, clinical engineering, marketing, and legal services, transferring St. Luke's pathology lab testing services to TTH, consolidating offsite ancillary services, consolidating pension and investment advisory needs, and eliminating interventional services contracts at St. Luke's. (PX02147 at 061-077 (¶¶ 112-147) (Dagen Expert Report)).

D. The Proposed Efficiencies Are Not Merger-Specific

844. The *Merger Guidelines* "credit only those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects. These are termed merger-specific efficiencies." (PX02214 at 032-033 (§ 10) (*Merger Guidelines*)).

1. St. Luke's Could Have Accomplished the Efficiencies with An Alternative Purchaser

845. In 2009, UTMC executives expressed to St. Luke's executives an interest in pursuing an affiliation with St. Luke's. (Joint Stipulations of Law and Fact, JX00002A ¶ 51)

846. Mr. Dagen concluded that a significant number of the efficiencies claimed by Respondent could be achieved through an affiliation between St. Luke's and UTMC. (PX02147 at 083 (¶ 163) (Dagen Expert Report)). Mr. Den Uyl, Respondent's expert witness, did not conduct any analysis of whether efficiencies alleged to result from the Acquisition could have been attained through a St. Luke's merger with UTMC. (Den Uyl, Tr. 6527).

847. Respondent has admitted that a "St. Luke's affiliation with any potential partner, including UTMC, would have brought certain benefits to patients in the metropolitan Toledo area" and "may have led to certain efficiencies." (Response to RFA at ¶¶ 11-12).

848. Dr. Jeffrey Gold, UTMC Dean, testified that a UTMC-St. Luke's affiliation would make possible "enhancing and improving the level of healthcare services provided to the community." (Gold, Tr. 247). Dr. Gold also testified that a UTMC-St. Luke's affiliation could generate efficiencies in "back-of-the-house functions" such as "finance, information technology, human resources services, and many others," as well as promote "consolidation of clinical services." (Gold, Tr. 245-246).

849. An ordinary course UTMC document laying out the "Business Case" for an affiliation with St. Luke's listed categories of potential savings; many of the UTMC/St. Luke's potential savings are similar to the savings Respondent asserts may result from the Acquisition, including: purchasing, finance, accounting, marketing, information technology, clinical information services, human relations, auditing, legal, ancillary services (*e.g.,* imaging and laboratory), supply purchasing, and professional liability, among others. (PX02206 at 003-004) ("UTMC-OCHS Business Case")).

850. A 2009 St. Luke's Board presentation described various clinical consolidation opportunities that could result from a UTMC affiliation. (PX01035 at 009 (St. Luke's 2009 "Affiliation Analysis Update"), *in camera*; PX00020 at 013 (description of clinical consolidation efficiency in Compass Lexecon Report), *in camera*).

851. In early 2009, St. Luke's CEO, Dan Wakeman, sent an email to St. Luke's CFO at the time, David Oppenlander, that stated: "UTMC has a big McKesson agreement . . . [i]f we were to move down that pathway, that would be [an] inexpensive way to get into one of the big 6 [Health Information Management] systems." (PX01317 at 001; *cf.* PX00020 at 038 (description of EMR efficiency in Compass Lexecon Report), *in camera*).

852. Mr. Wakeman noted that "[t]he community and organizational benefits of [a] partnership [with UTMC] are endless" and that "[i]n terms of reduction of expense, a closer relationship with [UTMC] would provide just as much value as the two systems [Mercy and ProMedica]." PX01406 at 001 (Jul. 2009 Wakeman (St. Luke's) e-mail to Dr. Gold (UTMC)); PX01407 at 001 (Oct. 2009 Wakeman (St. Luke's) e-mail to Dr. Gold (UTMC)); PX01920 at 039 (Wakeman, Dep. at 148-149), *in camera*).

853. St. Luke's also considered affiliating with Mercy. (Wakeman, Tr. 2558). Scott Shook, Vice President of Business Development and Advocacy at Mercy, testified that a merger between Mercy and St. Luke's could produce many efficiencies, **{**

}. (Shook, Tr. 1003, *in camera*). Mr. Shook also believed that an St. Luke's-Mercy merger could generate {

}. (Shook, Tr. 1003-1004, *in camera*).

854. According to an analysis conducted by third party consultants, the potential benefits of an St. Luke's-Mercy affiliation included:

.

(Shook, Tr. 1104-1105, *in camera*; PX02307 at 006 (Aug. 21, 2009 Health Care Future presentation titled "Evaluating a Fully Integrated Relationship"), *in camera*).

2. St. Luke's or ProMedica Could Have Unilaterally Accomplished the Efficiencies

855. Respondent asserts that the Acquisition may generate $4.5 million in savings from eliminating a family practice residency program and replacing it with a regular physician's practice. (PX00020 at 016 (Compass Lexecon Report), *in camera*). Ms. Hanley, ProMedica's CFO, testified that ProMedica will close a family practice residency program housed at a ProMedica (not a St. Luke's) facility after the Acquisition. (Hanley, Tr. 4730, *in camera*). She admitted that ProMedica on its own, separate and apart from the Acquisition, could have consolidated its two family practice residency programs. (Hanley, Tr. 4730-4731, *in camera*). As a result, this efficiency is not merger-specific. (PX02147 at 065-066 (¶¶ 120-121) (Dagen Expert Report)).

856. Respondent asserts that ProMedica will experience savings from consolidating inpatient psychiatry programs at Flower Hospital. (PX2104 at 006 (¶ 10) (Akenberger, Decl.), *in camera*). This alleged efficiency is not merger-specific, however, because it appears that the consolidation could have been accomplished without the Acquisition. (Dagen, Tr. 3264, *in camera*; PX02147 at 058-059 (¶¶ 107-109) (Dagen Expert Report)). In particular, the inpatient psychiatry consolidation involves shifting patients from the TTH's inpatient psychiatry department to Flower Hospital. (PX2104 at 006 (¶ 10) (Akenberger, Decl.), *in camera*). Notably, St. Luke's does not provide inpatient psychiatry services, thus this alleged efficiency does not involve shifting any inpatient psychiatry patients between St. Luke's and Flower Hospital. (PX01931 at 042 (Akenberger, Dep. at 161-162), *in camera*; Nolan, Tr. 6328-6329, *in camera*).

857. Respondent claims that St. Luke's will save approximately $1 million on its purchase of supplies as a result of the Acquisition. (PX00020 at 025 (Compass Lexecon Report), *in camera*). These savings were calculated by estimating how much St. Luke's would spend on its supplies if it were to join a group purchasing organization that ProMedica is already a member of. (Dagen, Tr. 3273-3274; PX02147 at 071-072 (¶¶ 132-133) (Dagen Expert Report)). However, any such savings are not merger-specific because St. Luke's could join the group purchasing organization as a standalone hospital. (Dagen, Tr. 3273-3274, *in camera*; PX02147 at 071-072 (¶¶ 132-133) (Dagen Expert Report)).

858. Respondent asserts that St. Luke's and ProMedica may generate approximately $467,000 in additional revenue from increasing patient referrals between ProMedica and St. Luke's. (PX00020 at 032-033 (Compass Lexecon Report), *in camera*). Mr. Dagen concluded St. Luke's and ProMedica each could have unilaterally increased cross-referrals of patients without the Acquisition in place. (PX02147 at 078-081 (¶¶ 151-155, 159) (Dagen Expert Report)).

859. The *Merger Guidelines* state that "parties may believe that they can reduce costs by adopting each other's 'best practices' or by modernizing outdated equipment. But, in many cases, these efficiencies can be achieved without the proposed merger." (PX02292 at 054-055 (*Commentary on the Merger Guidelines*)). That is the case here.

860. ProMedica intends to reduce St. Luke's staffing levels to reflect ProMedica's practices at Flower Hospital. (PX00020 at 015 (Compass Lexecon Report), *in camera*). This alleged efficiency could be accomplished without the Acquisition because there is nothing proprietary about ProMedica's "best practices" with respect to proper staffing levels, meaning that St. Luke's could have cut staff on its own if it believed doing so was appropriate and would not negatively impact quality of care. (PX02147 at 062 (¶ 114) (Dagen Expert Report)).

861. Respondent asserts approximately $2 million of revenue enhancement as a result of implementing new coding and charge capture practices at St. Luke's. (PX00020 at 030 (Compass Lexecon Report), *in camera*). Mr. Dagen concluded that this alleged efficiency is not merger-specific because St. Luke's could have improved its coding and charge capture best practices on its own. (PX02147 at 078-079 (¶¶ 150-154) (Dagen Expert Report)).

862. Ron Wachsman, ProMedica's Vice President of Managed Care and Reimbursement, testified that the coding and charge capture revenue enhancements are "best practices." (Wachsman, Tr. 5230-5231, *in camera*). The information technology platforms that ProMedica uses to maximize its revenue collections are available through a third party vendor. (Wachsman, Tr. 5230-5231, *in camera*). As a result, Mr. Wachsman acknowledged that St. Luke's may have been able to achieve the $2 million in revenue enhancements on its own. (Wachsman, Tr. 5230, *in camera*).

863. Ms. Hanley, ProMedica's CFO, described these coding and charge capture practices as "very common revenue cycle approaches and techniques that you can go to any seminar and . . . gain information about." (Hanley, Tr. 4735, *in camera*).

864. Dennis Wagner, St. Luke's Finance Director, testified about the coding and charge capture efficiency claim: "I would not think there was that much opportunity, because I believe our routines are proper and correct right now." (PX01915 at 054 (Wagner, IHT at 209), *in camera*). In fact, Navigant Consulting already conducted a coding and documentation study for St. Luke's in 2009. (PX01946 at 007 (Nolan, Dep. at 18-19)).

865. Respondent asserts as an efficiency the revenue enhancement that St. Luke's will experience as a result of becoming an in-network provider in the Paramount provider network. (PX00020 at 031 (Compass Lexecon Report), *in camera*). However, this alleged efficiency could have been accomplished without the Acquisition if Paramount had simply chosen to contract with St. Luke's. (Dagen, Tr. 3289-3290, *in camera*; PX02147 at 080-081 (¶ 158) (Dagen Expert Report)).

866. St. Luke's executives expressed interest in participating in Paramount's provider network prior to the Acquisition. (Wakeman, Tr. 2584-2585; PX01911 at 035 (Wakeman, IHT at 134-135), *in camera* ("we'd really like to get back in")). Mr. Wachsman testified that it was ProMedica's reluctance that prevented St. Luke's from being a part of the Paramount provider network prior to the Acquisition. (PX01905 at 052 (Wachsman, IHT at 203), *in camera*). In particular, ProMedica did not add St. Luke's to Paramount's network prior to the Acquisition due to concerns about the patient volume that ProMedica's hospitals would lose to St. Luke's. (Wachsman, Tr. 5193, *in camera*).

867. Mr. Wakeman testified in court that St. Luke's might have been able to gain access to Paramount's provider network through an affiliation with UTMC, as well. (Wakeman, Tr. 2692, *in camera*; PX01030 at 002 (Affiliation Analysis Update), *in camera*).

E. The Proposed Efficiencies Appear Designed for Litigation

868. Projections of efficiencies may be viewed with skepticism, particularly if they are generated outside of the usual business planning process. (PX02214 at 032-034 (§ 10) (*Merger Guidelines*)).

869. By late 2009, St. Luke's leadership was aware that a transaction with ProMedica would generate an antitrust review. (PX01030 at 017 (St. Luke's 2009 "Affiliation Analysis Update" to the St. Luke's Board, containing HHI calculations), *in camera*).

870. Even before Complaint Counsel's investigation began, ProMedica had budgeted hundreds of thousands of dollars for the anticipated antitrust review, which it expected would last at least several months. (PX00077 at 001 (ProMedica "High Level Timeline"); PX01918 at 024 (Oostra, Dep. at 86-87), *in camera*).

871. A January 2010 document planning for the Acquisition includes references to "[e]fficiency [e]xperts" and "[e]fficiency expert reports" under the column "Antitrust Review." (PX00077 at 001 (ProMedica "High Level Timeline")).

872. ProMedica executives testified that the decision to hire Compass Lexecon was motivated, in part, by the need to present an efficiencies analysis of the Acquisition during FTC review. (Oostra, Tr. 6150; PX01906 at 072-073 (Oostra, IHT at 284-285), *in camera*; PX01903 at 058 (Hanley, IHT at 225), *in camera*). ProMedica hired Compass Lexecon, in particular, because it had extensive experience in dealing with the FTC. (Oostra, Tr. 6150-6151; (PX00077 at 001 (ProMedica "High Level Timeline")).

873. The Compass Lexecon Report includes a summary of the underlying process used to generate and document the asserted efficiencies. The report's summary states that the process was "supervised by antitrust counsel" and that "Compass Lexecon's role . . . was to provide antitrust guidance." (PX00020 at 003 (Compass Lexecon Report), *in camera*). The May 6, 2010 Compass Lexecon Report was completed only weeks before ProMedica signed the Joinder Agreement to acquire St. Luke's. (Oostra, Tr. 6147).

874. After ProMedica received "[u]nfavorable responses from Compass Lex[e]con" because it had not "accomplished enough in savings," ProMedica concluded that it would "need to be more aggressive with a timeline of the first 3-5 years" because the "FTC discounts [the] value of [efficiencies] each year the farther out you go." (PX01136 at 001 (ProMedica "Joinder Efficiencies Opportunities"), *in camera*).

875. Navigant's "Clinical Integration Strategy" report was finalized in January 2011, four months after the Acquisition had been consummated. (PX00479 ("Clinical Integration Strategy" Final Report), *in camera*). Kevin Nolan, the lead consultant on the project, testified that work product generated for the purposes of this report was reviewed by Respondent's antitrust counsel. (Nolan, Tr. 6324, *in camera*).

F. The Claimed Efficiencies Do Not Outweigh the Anticompetitive Harm Resulting From the Acquisition

876. Dr. Town concurred with Mr. Dagen's analysis of ProMedica's alleged efficiencies, and concluded that the alleged benefits of the Acquisition would not outweigh the significant competitive harm that would result from the Acquisition. (Town, Tr. 3607 ("any merger-specific efficiencies are going to be insufficient to outweigh the rather large impact on prices that this acquisition will lead to"); PX02148 at 093-094 (¶ 171) (Town Expert Report), *in camera*).

G. Healthcare Reform Measures Do Not Justify the Acquisition

877. Ongoing healthcare reform provides incentives for providers to form Accountable Care Organizations ("ACO"). (PX01449 at 014-015 (Nov. 2009 "Reform Readiness Assessment" by Kaufman Hall)).

878. Another component of healthcare reform is the installation of Electronic Medical Records ("EMR" or "EHR") systems at hospitals. (Den Uyl, Tr. 6452-6453, *in camera*). Under the American Recovery and Reinvestment Act of 2009, hospitals receive financial incentives for meeting certain "meaningful use" targets for EMR implementation. (PX01281 at 010-012 ("Financial Pillar Challenge" presentation); PX01928 at 014 (Perron, Dep. at 47-48), *in camera*).

879. Because St. Luke's was, prior to the Acquisition, a low-cost and high-quality provider, it was well-positioned to take advantage of pending healthcare reform. (PX01072 at 001 ("Key Messages from St. Luke' Hospital"); Wakeman, Tr. 2620-2621).

880. Furthermore, St. Luke's was in a financial position to implement an EMR system and appeared motivated prior to the Acquisition to do so in time to receive federal subsidies. (PX02147 at 015 (¶ 29) (Dagen Expert Report); PX01933 at 039 (Oppenlander, Dep. at 147-148), *in camera;* PX01908 at 055 (Deacon, IHT at 213), *in camera*).

1. ACO Requirements Have Not Yet Been Finalized

881. Providers in an ACO agree to be accountable for quality, cost, and overall care in exchange for a share of the savings achieved. (PX01449 at 014-015 (Nov. 2009 "Reform Readiness Assessment" by Kaufman Hall)). Savings achieved by an ACO can be shared via contractual relationships, joint ventures, and other methods besides mergers, joinders, or acquisitions. (PX01920 at 030 (Wakeman, Dep. at 111), *in camera*; PX01449 at 020-022 (Nov. 2009 "Reform Readiness Assessment" by Kaufman Hall)). Indeed, it is likely that, absent this Acquisition, an independent St. Luke's would, if invited, participate both in ProMedica's and Mercy's ACOs. (PX01920 at 030 (Wakeman, Dep. at 111-112), *in camera*).

882. Healthcare reform remains in flux, and the nature and form of ACOs remain undetermined. St. Luke's CEO, Mr. Wakeman, noted: "I think we know there's going to be ACOs. Exactly what they're going to look like and who's going to be in them and how they're going to perform has yet to be defined." (PX01920 at 031 (Wakeman, Dep. at 114), *in camera*). Mr. Wakeman also testified that "because [ACOs] haven't been finalized, we don't know what the final rules are at this point." (Wakeman, Tr. 2621; PX01920 at 030-031 (Wakeman, Dep. at 111-114), *in camera* ("[i]t's all speculation")).

883. Randy Oostra, CEO of ProMedica, testified that ACO regulations are "still in draft form" and, as a result, no one is certain what ACOs will look like until the rules are finalized. (Oostra, Tr. 6154). Further, he indicated that ProMedica may not pursue an ACO model at all due to its complexity. (Oostra, Tr. 6154-6155).

884. As a result of the ACO rules not yet being clearly defined, St. Luke's CEO has not studied them in depth. (PX01920 at 031 (Wakeman, Dep. at 114), *in camera*). Further, as of yet there has not been any indication that a hospital must be a part of a health system in order to participate in its ACO. (Wakeman, Tr. 2623-2624).

2. Independent St. Luke's Was Well-Positioned for Healthcare Reform

885. In November 2009, St. Luke's concluded that it was "uniquely positioned for a smooth transition to expected health care reform. The hospital already focuses on quality and cost – key components of reform." (PX01072 at 001 ("Key Messages from St. Luke's Hospital"); Wakeman, Tr. 2620-2621). In particular, Mr. Wakeman noted in an e-mail in 2009 that St. Luke's was in a better position than other organizations in the Toledo community to get its cost structure in line with the expectations of health reform. (PX01408 (Feb. 2009 e-mail from Dan Wakeman, CEO, to David Oppenlander, former CFO); Wakeman, Tr. 2845-2846).

886. In a "Competitive Profile Matrix" prepared in the ordinary course of business, St. Luke's concluded that its "low cost position" and "[i]nformation flow and infrastructure" meant that it had "much already in place to deal with possible upcoming changes" related to healthcare reform. (PX01132 at 004-005, *in camera*).

887. Further, St. Luke's could have likely participated in Lucas County ACOs without the Acquisition. (PX01920 at 030 (Wakeman, Dep. at 111), *in camera*).

888. At the time of the Acquisition, St. Luke's had adequate reserves and cash from operations to fully fund the installation of an EMR system, and still have money left over to fund other capital projects, pay off its debt, and retain sufficient reserves for future use. (PX02147 at 015-016, 041-042 (¶¶ 30, 74-75) (Dagen Expert Report)).

889. St. Luke's ordinary course of business documents indicated that the cost of implementing an EMR system would be approximately $20 million over a seven year period. (PX01496 at 003 (EMR bid from vendor); PX01928 at 027, 029 (Perron, Dep. at 99-100, 109) (indicating that PX01496 represents price of implementing EMR at St. Luke's), *in camera*).

890. St. Luke's concluded that it would qualify for $6.3 million in federal subsidies to help fund its EMR system. (PX01281 at 012 (St. Luke's "Financial Pillar Challenge"); PX01503 at 001 (mid-2010 updated bid from EMR vendor), *in camera*).

891. St. Luke's had a $6 million "placeholder" in its capital budget for EMR. (PX00022 at 002, *in camera*).

892. St. Luke's CFO, Computer Information Systems Director, and CEO all advocated for St. Luke's to go forward with implementing EMR at the start of 2010. (PX01928 at 021, 023, 030 (Perron, Dep. at 75-76, 84-85, 113), *in camera*).

893. Douglas Deacon, St. Luke's Vice President of Professional Services, testified that St. Luke's "would have to move forward" with implementing an EMR system absent the Acquisition. (PX01908 at 055 (Deacon, IHT at 213), *in camera*).

894. St. Luke's Chairman, James Black, testified that St. Luke's could have installed the new IT system on its own (without the Acquisition), given its financial condition and the asset value of its reserve fund. (Black, Tr. 5702).

895. The reason St. Luke's did not begin implementing EMR in early 2010 was the uncertainty caused by the Acquisition talks. (PX01928 at 037 (Perron, Dep. at 138), *in camera*; PX01933 at 039 (Oppenlander, Dep. at 147-148), *in camera*). Mr. Den Uyl, Respondent's own expert witness, testified that St. Luke's fully intended to start implementing EMR in 2010 were it not for the Acquisition. (Den Uyl, Tr. 6575-6576, *in camera*).

XVI. RESPONDENT HAS FAILED TO MEET ITS BURDEN TO SHOW ST. LUKE'S IS A FAILING – OR FLAILING – FIRM

A. St. Luke's is Not a Failing Firm

896. Respondent cannot meet its burden to demonstrate that St. Luke's faced imminent failure and that it adequately pursued less harmful alternatives to the Acquisition, nor has Respondent asserted a failing-firm defense in this proceeding.

897. Respondent has admitted that, at the time of the Acquisition, St. Luke's was not a "failing firm" as defined under the *Horizontal Merger Guidelines* and U.S. Supreme Court precedent. (Joint Stipulations of Law and Fact, JX00002A ¶ 21; Response to RFA at ¶ 42).

B. St. Luke's Successful Rebound Prior to the Acquisition Rebuts Respondent's "Flailing Firm" Claims

898. Before becoming St. Luke's CEO in early 2008, Daniel Wakeman was involved in improving the operating performance of several other hospitals. (Wakeman, Tr. 2473-2474; PX01911 at 008, 011, 013-014 (Wakeman, IHT at 27, 37-38, 45, 51-52), *in camera*).

899. Mr. Wakeman testified that all four of the previous hospitals he managed – he was President of three – experienced significant financial improvement during his tenure. (Wakeman, Tr. 2473-2474; PX01911 at 014 (Wakeman, IHT at 51-52), *in camera* ("positive trajectory in terms of revenue and operation")).

900. When first assessing St. Luke's, Mr. Wakeman concluded that it had "huge potential" because a "decline in revenue, in itself, in an area where you have growth, means opportunity." (PX01911 at 016-017 (Wakeman, IHT at 59-61), *in camera*; Wakeman, Tr. 2481) ("it sat in an optimal or better part of the community in the sense of growth and economic potential")).

901. By 2010, St. Luke's volume and financial viability had improved. (Wakeman, Tr. 2597). Even as of November 2009, Mr. Wakeman referred to St. Luke's as "financially stable[.]" (PX00924 at 001 (Wakeman Nov. 2009 Email).

902. Theresa Konwinski, St. Luke's Vice President for Patient Care Services, wrote in August 2010 that St. Luke's was "growing, not downsizing." (PX01582 at 003 (Konwinski Aug. 2010 Monthly Report), *in camera*).

903. According to James Black, Chairman of St. Luke's Board of Directors, by August 2010, St. Luke's was a profitable and well-performing hospital that was near its capacity. (Black, Tr. 5687). Mr. Black testified that St. Luke's financial indicators were "looking up" in August 2010. (Black, Tr. 5684-5685).

904. Respondent's expert witness, Bruce Den Uyl, testified that in the six months leading up to the consummation of the Acquisition, St. Luke's financial performance had "improved." (Den Uyl, Tr. 6562).

905. Complaint Counsel's expert witness, Gabriel Dagen, concluded that "at the time that it was completing its transaction with ProMedica, St. Luke's was in the middle of executing a successful turnaround" that was "initiated in early 2008 under the direction of St. Luke's new CEO, Mr. Wakeman." (PX02147 at 026 (¶ 49) (Dagen Expert Report)).

1. Wakeman Three-Year Growth Plan, Sustainable Improvements

906. Mr. Wakeman instituted a "Three-Year Plan" in June 2008 that contained five strategic pillars: "Growth, People, Quality, Service, and Finance/Corporate." (PX01026 at 001 (St. Luke's Three-Year Plan); Joint Stipulations of Law and Fact, JX00002A ¶ 39).

907. These pillars included several goals for turning St. Luke's finances around, including: increasing inpatient and outpatient net revenues, growing St. Luke's market share to 40 percent within its "core service area," hiring "core physicians" in various specialties, and attaining "access" to 90 percent of the managed care enrollees in the Toledo area. (PX01026 at 001-002 (St. Luke's Three-Year Plan); RX-56 at 20 (¶ 50) (Den Uyl Expert Report), *in camera*).

908. By the time of the Acquisition – a little over two years into the three-year plan – St. Luke's already had achieved four of the five pillars in Mr. Wakeman's turnaround plan. (Wakeman, Tr. 2593-2594; PX01326 (Wakeman Sept. 2010 Email) ("guess that growth thing worked . . . we did a great job in 4 of the 5 pillars.")).

909. Specifically, with respect to the first pillar, "Growth," Mr. Wakeman was successful on three of the four specific goals identified. (Response to IROG at ¶ 17).

910. Mr. Wakeman's first "Growth" goal was to increase inpatient net revenue by $3.5 million per year, within three years. (PX01026 at 001 (St. Luke's Three-Year Plan).

911. By August 31, 2010, ahead of schedule St. Luke's already had increased inpatient net revenue by more than $3.5 million per year on average. (Joint Stipulations of Law and Fact, JX00002A ¶ 40; Response to IROG at ¶ 17).

912. Mr. Wakeman's next "Growth" goal was to increase outpatient net revenue by $5 million per year, within three years. (PX01026 at 001 (St. Luke's Three-Year Plan).

913. By August 31, 2010, ahead of schedule St. Luke's already had increased outpatient net revenue by more than $5 million per year on average. (Joint Stipulations of Law and Fact, JX00002A ¶ 41; Response to IROG at ¶ 17).

914. Mr. Wakeman's third "Growth" goal was to achieve 40% inpatient market share in its core service area, within 3 years. (PX01026 at 001 (St. Luke's Three-Year Plan).

915. By the end of 2010, ahead of schedule St. Luke's already had achieved more than 40% market share in its core service area. (Response to IROG at ¶ 17).

a. St. Luke's Increased Its Inpatient and Outpatient Net Revenues

916. By April 2009, one year into the three-year plan, St. Luke's already had achieved its goals for increasing inpatient and outpatient net revenues. (Wakeman, Tr. 2594; PX01911 at 042 (Wakeman, IHT at 161-162), *in camera*); PX02147 at 027 (¶ 51) (Dagen Expert Report); Joint Stipulations of Law and Fact, JX00002A ¶¶ 40-41 (both net revenue goals were achieved by Aug. 31, 2010)).

917. St. Luke's total net patient service revenues increased 27 percent from $126.7 million in 2007 to approximately $161.3 million in 2010 (2010 figure calculated by annualizing figures as of Aug. 31, 2010). (PX01265 at 004 (OhioCare Consolidated Statement of Operations as of Aug. 31, 2010)).

918. Kathleen Hanley, ProMedica's CFO, testified that St. Luke's has experienced a positive trend in patient revenues since 2008. (Hanley, Tr. 4701-4702).

919. Mr. Wakeman testified that St. Luke's inpatient and outpatient revenue growth was "significant" during the twelve months prior to the Acquisition's consummation on August 31, 2010. (PX01920 at 010 (Wakeman, Dep. at 30-31), *in camera*; Wakeman, Tr. 2594).

920. This inpatient and outpatient revenue growth "helped turn around the operating performance of St. Luke's and get the hospital closer to positive operating income. (Dagen, Tr. 3182).

b. St. Luke's Increased Its Market Share

921. By the end of the first quarter of 2010, only two years into the three-year plan, St. Luke's surpassed its 40 percent market share goal by achieving a 43 percent share in its core service area (compared to 34.1 percent in 2007). (PX01235 at 003 (St. Luke's market share reports); Response to IROG at ¶ 17; Den Uyl, Tr. 6558 (St. Luke's surpassed its 40 percent market share goal prior to the Acquisition).

922. Based on its own internal reports, St. Luke's market share in its core service area has increased in each year since 2007. (PX01235 at 003; Rupley, Tr. 1974-1975).

923. Respondent has not produced a single ordinary course document, analysis, projection, testimony, or any piece of evidence to demonstrate or suggest that St. Luke's market share would have declined as a standalone hospital, let alone declined so precipitously as to undermine the market concentration-based presumption that the Acquisition is unlawful in both relevant markets. Neither of Respondent's experts, and none of

Respondent's executives or other witnesses concluded that such a market share decline was likely absent the Acquisition.

924. Specifically, Ms. Guerin-Calvert, Respondent’s economic expert, did not project what St. Luke’s market share levels would be absent the Acquisition. (Guerin-Calvert, Tr. 7889).

925. Similarly, Mr. Den Uyl, Respondent’s financial expert witness, did not analyze whether St. Luke’s market share absent the Acquisition would have increased or decreased. (Den Uyl, Tr. 6534). In fact, Mr. Den Uyl has no expert opinion on whether St. Luke’s market share would have increased or decreased absent the Acquisition. (Den Uyl, Tr. 6534).

926. Similarly, Mr. Den Uyl has no expert opinion on whether patient volume at St. Luke’s would have increased or decreased absent the Acquisition. (Den Uyl, Tr. 6531-6532; PX01951 at 015 (Den Uyl, Dep. at 55), *in camera*).

927. Mr. Wakeman testified that, absent the Acquisition, St. Luke’s would have experienced additional volume growth at least through the end of 2010. (Wakeman, Tr. 2616). For instance, even as of late 2010, St. Luke’s expected more volume growth from its addition to the Anthem provider network in July 2009. (PX01915 at 020 (Wagner, IHT at 74)).

c. St. Luke’s Increased Its Number of Employed Physicians

928. Between January 2008 and June 2010, St. Luke’s employed 23 new physicians. (RX-56 at 21 (¶ 53) (Den Uyl Expert Report), *in camera*; *see* PX01278 at 007 (St. Luke’s “Growth” presentation), *in camera*).

929. St. Luke’s pursued its strategy of acquiring physician practices because it expected “that the physicians would generate inpatient and outpatient revenues at St. Luke’s.” (Joint Stipulations of Law and Fact, JX00002A ¶ 42). In its ordinary course, St. Luke’s projected that employing physicians would generate a positive return on investment by 2013. (PX01080 at 003 (“Physician Strategy Investments”)).

930. According to Respondent’s expert witness, Mr. Den Uyl, employing physicians since 2008 increased revenue at St. Luke’s. (Den Uyl, Tr. 6479; RX-56 at 21 (¶ 54) (Den Uyl Expert Report), *in camera*). Mr. Dagen concluded that the physician strategy nearly **{ }** revenues between 2009 and 2010. (Dagen, Tr. 3410, *in camera*).

d. St. Luke’s Increased Its Access to Health Plan Networks

931. St. Luke’s successfully re-negotiated its participation in the Anthem provider network as of July 2009. (Wakeman, Tr. 2530-2531; PX01016 at 005 (Dec. 15, 2010 “St. Luke’s Hospital Board Meeting Affiliation Update”), *in camera*; PX02276 at 002-003 (amendment to the Anthem-St. Luke’s “Provider Agreement,” effective July 2, 2009), *in camera*).

932. As a result, St. Luke's achieved access to { } percent of the managed care enrollees in the Toledo area. (PX01289 at 003 ("Strategic Plan/Pillar Update"), *in camera*).

933. According to Respondent's expert witness, Mr. Den Uyl, St. Luke's readmission to the Anthem provider network increased St. Luke's patient volume and revenue. (RX-56 at 11, 22 (¶¶ 30, 56) (Den Uyl Expert Report), *in camera*); *see also* Dagen, Tr. 3215-3216).

934. Treating Anthem members generated a profit for St. Luke's during the first eight months of 2010. (PX01951 at 032 (Den Uyl, Dep. at 121), *in camera*); PX00512, *in camera* (spreadsheet containing Aug. 2010 year-to-date payer cost ratios). As a result, Mr. Den Uyl acknowledged that the addition to Anthem's provider network was a positive development for St. Luke's financial performance. (PX01951 at 033-034 (Den Uyl Dep. at 128-130), *in camera*).

935. St. Luke's was not an in-network provider with Paramount from 2001 through August 31, 2010. (Joint Stipulations of Law and Fact, JX00002A ¶ 46).

936. Prior to the Acquisition, St. Luke's also sought readmission to Paramount's provider network, which would have resulted in St. Luke's achieving its goal of access to 90 percent of Toledo's managed care enrollees. (Wakeman, Tr. 2584-2585).

937. However, ProMedica made a "business decision" to deny St. Luke's admission to Paramount's provider network. (Hanley, Tr. 4788-4789, *in camera*; PX01903 at 059-060 (Hanley, IHT at 229-231), *in camera*; Wakeman, Tr. 2586). Ronald Wachsman, ProMedica's Director of Managed Care and Reimbursement, testified that ProMedica prevented St. Luke's from becoming a member of the Paramount provider network prior to the Acquisition. (PX01905 at 052 (Wachsman, IHT at 203); Wachsman, Tr. 5193, *in camera*).

e. St. Luke's Expanded Its Outpatient Service Offerings

938. Based on his experience at other hospitals, Mr. Wakeman also set out to increase St. Luke's outpatient revenue ratio to 60 percent, meaning that St. Luke's was to earn 60 percent of its revenues from outpatient procedures. (Wakeman, Tr. 2590-2591; PX01911 at 018, 030 (Wakeman, IHT at 68, 115-116), *in camera*).

939. Increasing a hospital's outpatient ratio is beneficial because outpatient procedures typically generate higher margins than inpatient procedures. (Wakeman, Tr. 2590; Dagen, Tr. 3183; PX02147 at 027 (¶ 50) (Dagen Expert Report)).

940. Indeed, St. Luke's earned a profit on its outpatient cases in both 2009 and the first eight months of 2010. (RX-56 at 24 (Table 15) (Den Uyl Expert Report), *in camera*).

941. St. Luke's increased its outpatient ratio from approximately 40 percent in 2008 to nearly 50 percent as of September 2010. (Wakeman, Tr. 2590-2591; Dagen, Tr. 3182; PX01911 at 030 (Wakeman, IHT at 115), *in camera*).

942. St. Luke's acquired four offsite imaging centers at the close of 2008. (PX01908 at 008-009 (Deacon, IHT at 24-27), *in camera*). These { facilities generated } in profit in 2009. (PX01359 at 043 ("Our Missions" presentation), *in camera*).

943. St. Luke's acquired another imaging center on August 31, 2010. (PX01908 at 008 (Deacon, IHT at 24), *in camera*). St. Luke's former CFO, David Oppenlander, called the acquisition of the imaging center a "no brainer," projecting that it would generate approximately { } in annual profit. (PX01162 at 001, 003 (Dec. 2009 St. Luke's e-mail), *in camera*).

944. Mr. Dagen concluded that St. Luke's was in the midst of a successful financial turnaround at the time of the Acquisition. (Dagen, Tr. 3231; PX02147 at 06 (¶ 14) (Dagen Expert Report). He concluded that Mr. Wakeman's three-year plan was producing the desired results: increasing revenues, market share, and improving St. Luke's operating performance. (Dagen, Tr. 3230; PX02147 at 006 (¶ 14) (Dagen Expert Report)). Any analysis that stops in 2009 and overlooks St. Luke's 2010 financial rebound will provide a misleading view of St. Luke's financial stability. (PX02147 at 006 (¶ 14) (Dagen Expert Report)).

2. Increases in Volume and Occupancy

945. Respondent's expert witness, Mr. Den Uyl, concluded that Mr. Wakeman's three-year plan increased St. Luke's inpatient and outpatient volumes. (Den Uyl, Tr. 6545-6546; RX-56 at 26 (¶ 64) (Den Uyl Expert Report), *in camera*).

946. Mr. Wakeman testified that St. Luke's experienced significant growth in acute inpatient admissions and discharges during the first eight months of 2010. (Wakeman, Tr. 2597-2598). A "2010 Strategic Planning" summary as of August 2010 states that, in the first eight months of 2010, St. Luke's out{patient visits increased } over the previous year. (PX01199 at 001 (St. Luke's Top Three Strategic Issues (Growth), *in camera*).

947. In a memorandum to the St. Luke's Board of Directors, dated September 24, 2010, Mr. Wakeman wrote: "If there was one pillar [St. Luke's] attained a high level of success in [its] strategic plan in the past two years, it would be growth. The hard numbers prove that out, and almost every service." (PX00170 at 006 (Wakeman Aug. 2010 Monthly Report to St. Luke's Board of Directors). The Chairman of St. Luke's Board, James Black, agreed with this statement. (Black, Tr. 5686).

948. Based on annualizing results as of August 31, 2010, St. Luke's total acute inpatient admissions were on pace to reach 11,725 for the full 2010 year, an 18 percent increase from 9,905 in 2007. (PX02129 at 002 (Hanley, Decl. Ex. 1); *see also* Hanley, Tr. 4698-4699 (outpatient visits increasing since 2008)). Inpatient volume increased { } percent in 2010 compared to 2009. (PX00511 at 010 (St. Luke's 2010 Year End Our Mission Presentation), *in camera*).

949. Based on annualizing results as of August 31, 2010, St. Luke's patient days (a measure of inpatient volume) were on pace to reach 45,342 for the full 2010 year, a 21 percent increase from 37,589 in 2007. (PX02129 at 002 (Hanley, Decl. Ex. 1); *see also* Hanley, Tr. 4699 (positive trend in patient days since 2008)). St. Luke's actual end-of-year 2010 patient days was even higher than the projected figure as of August 31, 2010. (Dagen, Tr. 3197).

950. Based on annualizing results as of August 31, 2010, St. Luke's outpatient visits were on pace to reach 221,365 for the full 2010 year, a 49 percent increase from 148,455 in 2007. (PX02129 at 002 (Hanley, Decl. Ex. 1); *see also* Hanley, Tr. 4700-4701 (positive trend in outpatient visits since 2008)). St. Luke's actual end-of-year 2010 outpatient visits figure was even higher than the projected figure as of August 31, 2010. (Dagen, Tr. 3197).

951. The number of cases treated at St. Luke's ambulatory surgery center, Surgi+Care, increased from 2,507 in 2007 to 3,179 as of August 31, 2010 (which would annualize to 4,769 cases for all of 2010). (PX01214 at 006 ("Surgi+Care Board of Manager Meeting")).

952. St. Luke's has increased capacity utilization during Mr. Wakeman's tenure. (Wakeman, Tr. 2637, *in camera*). St. Luke's overall occupancy rate in the twelve months prior to the Acquisition increased by approximately { } percent. (PX01920 at 010 (Wakeman. Dep. at 31), *in camera*). St. Luke's was at or near capacity for inpatient services during multiple periods in August 2010. (Black, Tr. 5682-5683; *see also* PX01403 (Konwinski Mar. 2010 Email) ("the beds are just about full.")).

953. In September 2009, David Oppenlander, St. Luke's CFO at the time, noted that "the hospital is close to capacity with inpatients." (PX01292 at 003 (St. Luke's Board Minutes 9/22/09), *in camera*).

954. A March 2010 letter to the Ohio Department of Health described a "surge in obstetrical patients" at St. Luke's that caused its maternity unit to be "full." (PX01086 at 001 (Konwinski Letter to OH Dep't of Health 3/19/10)).

955. Mr. Wakeman described St. Luke's inpatient capacity in June 2010 as "pretty tight." (PX01360 at 001 (Wakeman Aug. 2010 Email)).

956. In an August 2010 monthly report to the St. Luke's Board of Directors, Mr. Wakeman stated that "inpatient capacity is limited." (PX00170 at 001 (Wakeman Aug. 2010 Monthly Report to St. Luke's Board of Directors)).

957. St. Luke's volume growth in 2010 caused its losses to decrease and its operating cash flow to improve. (Dagen, Tr. 3191-3193; PX01925 at 054-055 (Guerin-Calvert, Dep. at 209-210); PX02129 at 002 (Hanley, Decl. Ex. 1)). This is due to the fact that St. Luke's did not, contrary to Respondent's claims, lose money on the commercial patients who received services at St. Luke's. (Dagen, Tr. 3190-3193).

958. Mr. Den Uyl, Respondent's financial expert, testified that St. Luke's was profitable in the treatment of } members during the first eight months of 2010. (Den Uyl, Tr. 6597-6598, *in camera*; PX01951 at 039-040 (Den Uyl, Dep. at 150-153), *in camera*; *see also* PX02136 at 056 (Guerin-Calvert, Supp. Decl., Table 11); Dagen, Tr. 3239-3240, *in camera*).

959. In the last four months of 2010, St. Luke's received sufficient reimbursement to cover all direct and indirect costs – in other words, total costs – associated with treating { } members. (PX00513 at 001 (spreadsheet of St. Luke's Aug. 31, 2010 year-to-date payor cost coverage ratios), *in camera*; PX001951 at 040 (Den Uyl, Dep. at 155-156), *in camera*; PX01852 at 018-019 (¶ 27) (Dagen Rebuttal Report). In other words, during the last four months of 2010, St. Luke's was profitable with each and every commercial payor. (Den Uyl, Tr. 6599-6600, *in camera*).

960. Even before the Acquisition, St. Luke's covered its direct costs when treating { }. (PX01951 at 039-040 (Den Uyl, Dep. at 150-154), *in camera*; Dagen, Tr. 3239-3240, *in camera*; PX00513 at 001 (spreadsheet of St. Luke's Aug. 31, 2010 year-to-date payor cost coverage ratios), *in camera*).

961. Direct costs are those costs that are directly related to treating a patient, such as medications, supplies, laundry, and labor. (Dagen, Tr. 3189; PX01925 at 043 (Guerin-Calvert, Dep. at 162-164) (defining direct costs as "all of the costs that are directly assigned to [a] specific case").

962. Because St. Luke's covered its direct costs during the first eight months of 2010, growth in St. Luke's patient volume alone improved St. Luke's overall cost coverage ratio. (Dagen, Tr. 3191-3193, 3241-3242, *in camera* ("As patient volume increases . . . – as long as the reimbursement rates are higher than direct costs [–] the cost coverage ratio will improve.")).

963. Mr. Dagen's analysis is confirmed by Mr. Wakeman's statement in an August 2010 monthly report to the St. Luke's Board of Directors – the last such report before the Acquisition – that St. Luke's "positive margin confirms that [St. Luke's] can run in the black if activity stays high." (PX00170 at 001 (Dan Wakeman's Aug. 2010 Monthly Report to St. Luke's Board of Directors)).

3. St. Luke's Had Solid and Improving Financials

964. According to Mr. Den Uyl, during the first 8 months of 2010, St. Luke's "increased revenue and decreased cost." (RX-56 at 11 (¶ 30) (Den Uyl Expert Report), *in camera*; Den Uyl, Tr. 6593-6594, *in camera*). Mr. Dagen testified that, leading up to the Acquisition, St. Luke's experienced "improvement[s] . . . in all – pretty much all . . . financial metrics" and its operating performance indicated that St. Luke's was "turning around [its] operations." (Dagen, Tr. 3187).

a. St. Luke's Profitability Was Improving

965. According to ProMedica's CFO, Kathleen Hanley, St. Luke's operating cash flow margin improved from negative 2.5 percent in 2009 to *positive* 3.8 percent as of August 31, 2010, and its operating income margin improved from -10.3 percent to -2.6 percent during the same time period. (PX02129 at 002 (Hanley, Decl. Ex. 1); Hanley, Tr. 4702-4703; *see also* Wakeman, Tr. 2594-2595; Den Uyl, Tr. 6479; RX-56 at 6-7 (Tables 1, 3) (Den Uyl Expert Report), *in camera*). In other words, during the first eight months of 2010, St. Luke's "produced [positive] cash from the operating revenue on operations." (Hanley, Tr. 4703).

966. St. Luke's operating cash flow margin for the time period January 1, 2010 through August 31, 2010 was an improvement over St. Luke's operating cash flow margin for calendar year 2009. (Joint Stipulations of Law and Fact, JX00002A ¶ 28).

967. As of August 31, 2010, St. Luke's was on track to improve its operating cash flow, or earnings before interest, taxes, depreciation, and amortization ("EBITDA"), nearly by a factor of two over 2009 levels. (PX02129 at 002 (Hanley, Decl. Ex. 1); Hanley, Tr. 4694-4695 (operating cash flow in Exhibit 1 was calculated by removing interest, taxes, depreciation, and amortization from earnings); Dagen, Tr. 3187). St. Luke's actual end-of-year 2010 EBITDA was even higher than the projected figures as of August 31, 2010. (Dagen, Tr. 3198).

968. St. Luke's [EBITDA] for the time period January 1, 2010 through August 31, 2010 [was] an improvement over St. Luke's EBITDA for calendar year 2009. (Joint Stipulations of Law and Fact, JX00002A ¶ 27).

969. St. Luke's operating income for the time period January 1, 2010 through August 31, 2010 was an improvement over St. Luke's operating income for calendar year 2009. (Joint Stipulations of Law and Fact, JX00002A ¶ 29).

970. As of August 31, 2010, St. Luke's was on track to improve its operating income by 43 percent from 2009 levels. (PX02129 at 002 (Hanley, Decl. Ex. 1); Dagen, Tr. 3187). St. Luke's actual end-of-year 2010 operating income was even higher than the projected figures as of August 31, 2010. (Dagen, Tr. 3198).

971. St. Luke's operating margin for the time period January 1, 2010 through August 31, 2010 was an improvement over St. Luke's operating margin for calendar year 2009. (Joint Stipulations of Law and Fact, JX00002A ¶ 30).

972. St. Luke's outpatient and inpatient net revenues both "increased in each calendar year from 2008 through 2010." (Joint Stipulations of Law and Fact, JX00002A ¶¶ 31-32).

973. St. Luke's projected 2010 total net revenues of $168 million for its hospital and all subsidiaries (based on annualizing Aug. 31, 2010 figures) was an increase of 26 percent

over 2007 revenues of $133 million. (PX01003 at 005 (2007 OhioCare Consolidated Financial Report); PX01265 at 004 (OhioCare Consolidated Statement of Operations as of Aug. 31, 2010); *see also* Black, Tr. 5683). Based on actual end-of-year performance, St. Luke's net revenues in 2010 were even higher than the projected figures as of August, 31 2010. (PX02147 at 027 (¶ 50) (Dagen Expert Report)).

974. St. Luke's overall cost coverage ratio (across all payors, including Medicare and Medicaid) improved by nine percent during the first eight months of 2010 (94 percent) compared to all of 2009 (86 percent). (Den Uyl, Tr. 6441, 6606, *in camera*; RX-56 at 10 (Table 6) (Den Uyl Expert Report), *in camera*; Dagen, Tr. 3187; PX01852 at 003 (Table 1), 018-019 (¶ 27) (Dagen Rebuttal Report)).

975. St. Luke's patient volume growth during the last four months of 2010 caused its overall cost coverage ratio (including Medicare and Medicaid) to improve even further, to 99 percent. (Dagen, Tr. 3197).

b. St. Luke's Has Substantial Cash Reserves

976. As of August 31, 2010, St. Luke's had approximately $65 million in cash and investment balances (incorporating both the assets limited as to use and the assets of SLF). (Joint Stipulations of Law and Fact, JX00002A ¶ 34; PX01265 at 001 (OhioCare Consolidated Balance Sheet as of Aug. 31, 2010: sum of "Assets limited as to use" and "Cash and cash equivalents" lines)).

977. As of December 31, 2010, St. Luke's had approximately $70 million in cash and investment balances. (Joint Stipulations of Law and Fact, JX00002A ¶ 35).

978. Mr. Dagen concluded that, based on a review of ordinary course of business documents, it was appropriate to include assets from St. Luke's Foundation and board-designated funds when calculating St. Luke's total "reserves." (PX02147 at 013 (¶ 26 n.21) (Dagen Expert Report)); *see also* (PX01006 at 010 (OhioCare Consolidated Financial Report Dec. 31, 2009)) ("Assets limited as to use include assets designated by the board of directors for future capital improvements, over which the board retains control, and may, at its discretion, subsequently use for other purposes.").

979. Ms. Guerin-Calvert described St. Luke's "days of cash on hand" as of August 31, 2010 as "above its comparables." (PX02136 at 060 (¶ 74) (Guerin-Calvert, Supp. Decl.), *in camera*; *see also* PX01372 at 002 (Moody's Rating Update: St. Luke's, Feb. 3, 2010)).

980. Notably, even in 2009, St. Luke's cash-to-debt ratio was 412 percent, compared to 102 percent for all Moody's-rated hospitals. (PX01372 at 002 (Moody's Rating Update: St. Luke's, Feb. 3, 2010); Brick, Tr. 3474).

981. Consistent with its historical use, St. Luke's could draw from its cash reserves "to invest . . . in appropriate capital projects, as needed." (PX02147 at 015 (¶ 29) (Dagen Expert Report)). In particular, Mr. Dagen concluded that St. Luke's would have been able to

fund necessary capital improvements and growth-minded investments without any additional borrowing. (PX02147 at 006 (¶ 12) (Dagen Expert Report)).

c. St. Luke's Had a Positive Trajectory at Time of Acquisition

982. Mr. Dagen concluded that St. Luke's positive trajectory in 2010 would have caused it to reach increasingly higher levels of EBITDA in the next several years, including positive EBITDA in 2011, 2012, and 2013. (PX02147 at 040-042 (¶¶ 72-74) (Dagen Expert Report)).

983. This positive trajectory would result in a standalone St. Luke's improving its operating income in 2011 and 2012, and reaching positive operating income in 2013. (Dagen, Tr. 3211-3214; PX02147 at 040-042 (¶¶ 72-74) (Dagen Expert Report)).

984. St. Luke's performance in the last quarter of 2010 confirms its positive financial trajectory at the time of the Acquisition. (Dagen, Tr. 3196-3199; PX01952 at 023 (Brick, Dep. at 86)). The fair market value of St. Luke's pension fund improved from $86.2 million, as of August 31, 2010, to $101.9 million by the end of the year due solely to market forces. (Dagen, Tr. 3164-3165). The fair market value of St. Luke's reserve fund improved from $59 million, as of August 31, 2010, to $70 million by the end of the year due solely to market forces. (Dagen, Tr. 3324).

985. St. Luke's net patient service revenue finished 2010 with a 10.5 percent increase over 2009. (PX00596 (St. Luke's Statement of Operations Dec. 31, 2010)).

986. Operating margin increased to -1.1 percent (from -10.3 percent in 2009) and EBITDA margin increased to *positive* 3.8 percent in 2010 (from -2.5 percent in 2009). (PX001265 (OhioCare Consolidated Balance Sheet); PX02129 at 002 (Hanley, Decl. Ex. 1); PX00516 (St. Luke's Business Unit Statement of Revenue & Expenses Dec. 31, 2010), *in camera*).

4. Last Words to the Board as an Independent Hospital

987. On September 24, 2010, Mr. Wakeman sent a "Monthly Report" to the St. Luke's Board of Directors that analyzed St. Luke's operating performance. (PX00170 (Wakeman Aug. 2010 Monthly Report to St. Luke's Board of Directors)). This report covered August 2010, the last month in which St. Luke's was an independent hospital before it was acquired by ProMedica. (Wakeman, Tr. 2601). Mr. Wakeman testified in court that this document reflected accurate and truthful information. (Wakeman, Tr. 2601-2602).

988. In this August 2010 monthly report, Mr. Wakeman advised St. Luke's Board that:

    a. "[I]n the past three years . . . [w]e went from an organization with declining activity to near capacity." (PX00170 at 007).

b. “[W]e have built our volume up to a point where we can produce an operating margin and keep our variable expenses under control.” (PX00170 at 001)

c. “Even with our increased activity, the patient satisfaction scores improved . . . .” (PX00170 at 004).

d. “Our leadership status in quality, service and low cost stayed firmly in place.” (PX00170 at 007).

e. “In the past six months our financial performance has improved significantly. The volume increase and awareness of expense control were key.” (PX00170 at 007).

C. St. Luke’s Not in Grave Danger of Imminent Failure

989. St. Luke’s was not in grave danger of imminent failure. (*See* PX01920 at 037-038 (Wakeman, Dep. at 141-143), *in camera*; PX01915 at 054 (Wagner, IHT at 211), *in camera*; PX01918 at 013 (Oostra, Dep. at 45), *in camera*).

990. St. Luke’s CEO, Dan Wakeman, instituted a turnaround plan in 2008 that was successful and enabled St. Luke’s to improve its financial condition significantly, as evidenced by numerous objective financial indicators. (PX01920 at 005 (Wakeman, Dep. at 13, *in camera*; PX01235 (Toledo Market Share Data); S*ee supra* Section XVI.B.).

991. Complaint Counsel’s financial expert, Mr. Dagen, concluded that St. Luke’s cash reserve and positive EBITDA enabled it to make all necessary debt payments, pay its bills on time, and make necessary capital expenditures throughout the last decade. (PX02147 at 005 (¶ 11) (Dagen Expert Report)).

992. Mr. Dagen also concluded that focusing solely on St. Luke’s operating margin or cost coverage ratios, as Respondent appears to do, does not capture St. Luke’s ability to make investments to maintain facilities and quality of care, as well as grow its business. (PX02147 at 009-011 (¶¶ 20-22) (Dagen Expert Report)).

1. Pension Fund Loss is Misleading

993. St. Luke’s reserve fund and pension fund assets, which are partially invested in equities, have consistently tracked stock market performance over the course of the last decade. (Dagen, Tr. 3162-3164). “[T]he drop in the financial markets in late 2008 accounted for a { } swing between the reserves and the defined benefit pension accounts.” (PX00923 at 001 (Wakeman Mar. 2010 Email), *in camera*).

994. Despite the negative impact of the financial markets, though, St. Luke’s “only accessed the reserves for about { } [between 2008 and 2010] . . . [which was] offset by gains of almost { } in the market . . . .” (PX00923 at 001 (Wakeman Mar. 2010 Email), *in camera*).

995. Focusing solely on the funded status of St. Luke's defined benefits pension plan in 2009 ignores the cyclical nature of financial markets and St. Luke's demonstrated ability to rebound from such events. (PX02147 at 021 (¶ 41) (Dagen Expert Report)).

996. Indeed, Mr. Wakeman described the impact of the financial crisis as "something like a perfect storm idea: equity market disaster, shorten time lines to fund and very conservative calculations create[d] an unrealistic expense on the income statement." (PX01230 at 001 (Wakeman Jan. 2009 Email), *in camera*).

997. The minimum funding requirements for a pension plan are determined by ERISA law. (Arjani, Tr. 6757, *in camera*). The purpose of these funding requirements is to ensure that, in the long run, pension funds have enough assets to satisfy the expected obligations to their beneficiaries. (Arjani, Tr. 6757, *in camera*).

998. To determine whether a pension plan is underfunded according to ERISA, an actuary calculates the adjusted funding target attainment percentage ("AFTAP"). (Arjani, Tr. 6757, *in camera*; PX01951 at 043 (Den Uyl, Dep. at 167), *in camera*). If the AFTAP is below 100 percent, that means that the pension plan is underfunded according to ERISA. (Arjani, Tr. 6758, *in camera*).

999. In the last few years, it was very common to see pension plans underfunded. (Arjani, Tr. 6753, *in camera*; PX01943 at 014 (Arjani, Dep. at 48)).

1000. Many plans became underfunded as a result of declines in stock market investments from 2007 until March 2009, which reduced the market values of most firms' pension fund assets. (Arjani, Tr. 6754, *in camera*; PX01943 at 014 (Arjani, Dep. at 48-49)).

1001. Also, interest rates decreased during this time period, which increased the values of pension funds' expected future obligations. (PX01943 at 014 (Arjani, Dep. at 49)).

1002. According to both ProMedica's current actuary, Neville Arjani, and Respondent's expert witness, Mr. Den Uyl, St. Luke's pension plan has never been certified with an AFTAP funding level { }. (Arjani, Tr. 6764, *in camera*; PX01951 at 042 (Den Uyl, Dep. at 163), *in camera*). St. Luke's pension plan was certified as { } AFTAP-funded as of January 1, 2010. (Arjani, Tr. 6763-6764, *in camera*). The plan was also certified as { } AFTAP-funded as of January 1, 2011. (Arjani, Tr. 6762-6763, *in camera*). St. Luke's pension fund will continue to be certified at { } AFTAP-funded through March 2012. (Arjani, Tr. 6763, *in camera*).

1003. There are no benefit restrictions under ERISA if a pension plan is 80 percent or more AFTAP-funded. (Arjani, Tr. 6759, *in camera*). If a pension plan is between 80 and 100 percent AFTAP-funded, the plan has seven years to make quarterly and annual cash contributions to bring the plan back to 100 percent funded. (Arjani, Tr. 6760-6762, *in camera*).

1004. St. Luke's has until 2016 to bring its pension plan back to 100 percent funded status. (Arjani, Tr. 6764, *in camera*). Based on the actuary's most up-to-date calculations, St. Luke's future required annual cash contributions are approximately { } (Arjani, Tr. 6765, *in camera*).

1005. If St. Luke's continues to make annual{ } payments, based on the most recent analysis, its pension plan will face no restrictions under ERISA. (Arjani, Tr. 6765-6766, *in camera*). Any cash contributions above { } would be strictly elective. (Arjani, Tr. 6766, *in camera*).

1006. Despite fluctuations in St. Luke's pension fund's funded status, a phenomenon experienced by many firms, at no time were payments to pensioners at risk. (Dagen, Tr. 3164-3165). St. Luke's has never missed – or even been late on – a payment to a pension recipient. (Arjani, Tr. 6551; PX01951 at 042 (Den Uyl, Dep. at 163), *in camera*).

1007. Based on the current value of its pension fund{ } and the average annual pension payments { } to St. Luke's retirees, St. Luke's has sufficient funds to meet its obligations to pensioners for the next decade and beyond, even assuming no increase in the value of fund assets. (Dagen, Tr. 3165; PX02147 at 023-024 (¶ 45) (Dagen Expert Report)).

1008. The pension liability that appears on St. Luke's financial statements – and which is used by Respondent to calculate the "funded status" of St. Luke's pension fund – is calculated under a separate set of rules than the AFTAP and does not determine the cash contributions that St. Luke's must make into its pension fund per ERISA. (Arjani, Tr. 6767-6768, *in camera*; Response to RFA at ¶ 45 ("St. Luke's 'pension liability'. . . is not the [AFTAP])). The pension liability does not reflect an actual cash obligation. (Arjani, Tr. 6768, *in camera*; Dagen, Tr. 3167; PX001951 at 043 (Den Uyl, Dep. at 168), *in camera*).

1009. It is not uncommon for firms to have an underfunded pension fund. (Dagen, Tr. 3168). At the end of 2009, St. Luke's pension had a funded status of { } percent, on par with large companies such as ExxonMobil (73.5 percent), CBS (71.1 percent), Disney (69.1 percent), and Motorola (67.0 percent). (PX02147 at 024 (¶ 45) (Dagen Expert Report); PX01060 at 015 (Feb. 2010 St. Luke's Retirement Plan Actuarial Valuation Report), *in camera*; *see also* PX01287 at 017 (St. Luke's Aug. 2010 Our Mission Presentation), *in camera*; Dagen, Tr. 3168-3171).

1010. St. Luke's pension fund assets have increased in value from their 2008 levels. (Black, Tr. 5699-5700). In 2008, the fair market value of the plan assets was { }. (PX02147 at 022-023 (¶ 43) (Dagen Expert Report); PX01060 at 015 (Feb. 2010 St. Luke's Retirement Plan Actuarial Valuation Report), *in camera*). As of September 2010, the fair market value of the {assets had increased to }. (PX01288 at 018 (St. Luke's Sep. 2010 interim financial statements), *in camera*). The fair market value of the pension assets further increased to $101.9 million by the end of 2010. (Dagen, Tr. 3165).

1011. By December 31, 2010, St. Luke's pension liability represented a funded level of{ } percent. (PX02369 at 001 (St. Luke's Pension Plan), *in camera*).

1012. Mr. Arjani estimates that between August 31, 2010 and December 31, 2010, St. Luke's pension liability improved (i.e., decreased) by { }, predominantly due to improvements in the equity markets. (Arjani, Tr. 6755-6756, *in camera*); RX-214 at 1, *in camera*; Dagen, Tr. 3166, 3171 (improvement caused by a "market-driven increase" which "would have happened with or without the [Acquisition]")).

2. St. Luke's Credit Rating is Not a Sign of a Firm in Distress

1013. Moody's Investors Service, Inc. ("Moody's") assigns a credit rating by performing a holistic qualitative and quantitative analysis of the borrower. (PX01370 at 001 (Moody's Rating Methodology); PX02146 at 009-010 (¶ 15) (Brick Expert Report)). Moody's examines certain variables over time and in relation to the industry generally. (PX01370 at 005 (Moody's Rating Methodology); PX02146 at 009-010 (¶ 15) (Brick Expert Report)).

1014. Moody's February 2010 credit rating downgrade was not relevant to St. Luke's because it did not intend to – nor did it need to – borrow money for the foreseeable future. (PX02147 at 18 (¶ 35) (Dagen Expert Report); Hanley, Tr. 4706-4707).

1015. St. Luke's did not attempt to issue new bond debt any time between January 1, 2009 and August 31, 2010. (Joint Stipulations of Law and Fact, JX00002A ¶¶ 37-38).

1016. Ms. Hanley, ProMedica's CFO, testified that Moody's rating had no "practical effect" on St. Luke's in early 2010 because St. Luke's had no intention to borrow money. (Hanley, Tr. 4706-4707).

1017. Immediately before the Acquisition, St. Luke's had a medium-grade, "Baa2" credit rating from Moody's. (PX01372 at 001 (Moody's Rating Update: St. Luke's, Feb. 3, 2010); PX01371 at 004 (Moody's Rating Symbols and Definitions); Brick, Tr. 3474-3475; PX02146 at 005 (¶ 9) (Brick Expert Report)). This is in the same category of credit rating as 28 percent of other hospitals. (PX02146 at 005-006 (¶ 9) (Brick Expert Report)).

1018. As Complaint Counsel's bond-rating expert, Errol Brick, stated, "if Moody's is concerned about a hospital's financial viability, it will not hesitate to reduce that hospital's credit rating to speculative grade." (PX01854 at 002 (¶ 4) (Brick Rebuttal Report)). Had Moody's been concerned about St. Luke's ability to continue to thrive in its marketplace, Moody's would have downgraded St. Luke's to a "Ba" or lower credit rating, as Moody's had done with many hospitals in Massachusetts, New Jersey, and Ohio. (Brick, Tr. 3542-3543).

1019. Investors and the capital markets have an appetite from debt issuers of medium grade risk, with "Baa" rated hospitals and healthcare systems issuing $2.6 billion in debt from

January 2010 through January 2011. (PX02146 at 005 (¶ 9) (Brick Expert Report); PX02146 at 015 (Appendix 1) (Brick Expert Report); Brick, Tr. 3480-3483).

1020. In August 2010, St. Luke's would have been able to access the tax-exempt capital markets for up to $75 million in debt for a reasonable interest rate no more than 7 percent. (Brick, Tr. 3483-3490).

1021. Respondent's expert witness, Mr. Den Uyl, did not analyze – and has no expert opinion on – whether St. Luke's could have issued additional debt as a standalone organization. (Den Uyl, Tr. 6530-6531; PX01951 at 014 (Den Uyl Dep. at 51-52), *in camera*).

1022. Similarly, he did not analyze – and has no expert opinion – on what interest rate St. Luke's would have paid if it had issued additional debt as a standalone hospital. (Den Uyl, Tr. 6531; PX01951 at 014 (Den Uyl Dep. at 51-52), *in camera*).

1023. In its last ratings update for an independent St. Luke's, Moody's identified certain factors that "could change the rating - UP[,]" including: "[c]ontinued growth and stability of inpatient and outpatient volume trends; significantly improved and sustainable operating performance for multiple years; strengthening of debt coverage measures and liquidity balance; improved market share." (PX01372 at 003 (Moody's Rating Update: St. Luke's, Feb. 3, 2010)). Mr. Wakeman testified that St. Luke's had met several of the factors that could lead to a ratings upgrade referenced by Moody's. (Wakeman, Tr. 3034-3035).

1024. Specifically, St. Luke's had experienced growth and stability of inpatient and outpatient volume in the period before the Acquisition and expected to continue this trend as an independent hospital. (PX00170 at 001-002, 006 (Wakeman Aug. 2010 Monthly Report to St. Luke's Board of Directors); PX01915 at 020 (Wagner, IHT at 73-74), *in camera*; Brick, Tr. 3491-3494.

1025. Mr. Den Uyl testified that, in the seven months between the issuance of Moody's downgrade in February 2010 and the consummation of the Acquisition, St. Luke's increased its inpatient and outpatient volumes. (Den Uyl, Tr. 6545-6546; PX001951 at 055 (Den Uyl, Dep. at 213), *in camera*).

1026. St. Luke's operating performance was steady with positive cash flows and, as Mr. Dagen concludes, this trend would have improved even more with time. (PX02147 at 010, 036 (¶¶ 21, 65) (Dagen Expert Report); PX02122 at 041-042 (¶¶ 67, 69, 71-72) (Guerin-Calvert, Decl.); PX02129 at 002 (Hanley, Decl. Ex. 1); Brick, Tr. 3495-3498).

1027. St. Luke's debt coverage measures and liquidity balance had also strengthened before the Acquisition. (PX02146 at 011 (¶ 17, n.37) (Brick Expert Report); PX01854 at 006-007 (¶ 10) (Brick Rebuttal Report)). St. Luke's maximum annual debt service ratio had improved from negative 2.0 in 2009 to *positive* 3.7 in 2010. (PX02129 at 002 (Hanley, Decl. Ex. 1)). Even in 2009, St. Luke's cash-to-debt ratio was 412 percent, compared with a median of 102 percent for all hospitals rated by Moody's. (PX01372 at 004

(Moody's Rating Update: St. Luke's, Feb. 3, 2010); PX01368 at 010 (Moody's 2009 Median Report)).

1028. Finally, St. Luke's market share had increased from 36 percent in 2009 to 43 percent in 2010 within its core service area. (PX01235 at 003 (Toledo Market Share Analysis)). Mr. Den Uyl testified that, in the seven months between the issuance of Moody's downgrade in February 2010 and the consummation of the Acquisition, St. Luke's market share in its core service area increased. (Den Uyl, Tr. 6558; PX001951 at 055 (Den Uyl, Dep. at 213), *in camera*). Mr. Dagen testified that St. Luke's growing market share reflected positively on St. Luke's quality of care, service offerings, and the investments that were made under Mr. Wakeman's turnaround plan. (Dagen, Tr. 3184-3185).

1029. St. Luke's recent financial turnaround has produced results that would have led Moody's to upgrade St. Luke's credit rating. (PX02146 at 009-013 (¶¶ 15-20) (Brick Expert Report); Brick, Tr. 3490-3491).

1030. Respondent's expert witness, Mr. Den Uyl, did not analyze – and has no expert opinion on – what credit rating St. Luke's would have received as a standalone hospital. (Den Uyl, Tr. 6531; PX01951 at 016 (Den Uyl, Dep. at 57-58), *in camera*).

1031. Other factors that would be viewed as positives by Moody's include St. Luke's acquisitions of physician practices to drive volume to the hospital and St. Luke's position as a high-quality and low-cost provider. (Brick, Tr. 3500-3501; PX001369 at 001 (Moody's Quality Initiative Report) ("From a credit perspective, a not-for-profit hospital's focus on a quality agenda can translate into improved ratings through increased volume and market share, operational efficiencies, better rates from commercial payers, and improved financial performance.")).

3. St. Luke's Had Minimal Outstanding Debt

1032. St. Luke's total outstanding debt as of August 31, 2010 was{ }. (PX01265 at 002 (OhioCare Consolidated Balance Sheet as of August 31, 2010: sum of "Current Portion of Long-term Debt" and "Long-term Debt, less current portions"); Joint Stipulations of Law and Fact, JX00002A ¶ 33 ("St. Luke's owed less than $11 million in total bond debt as of Aug. 31, 2010.")).

1033. As of August 31, 2010, St. Luke's had enough cash and investments on its financial statements to pay off all of its outstanding debt. (Joint Stipulations of Law and Fact, JX00002A ¶ 24; Response to RFA at ¶ 48).

1034. St. Luke's has never missed or been late on any debt payment. (PX01920 at 027 (Wakeman, Dep. at 100), *in camera*)). In particular, St. Luke's has never missed or been late on a payment on its Series 2004 bonds, which had $8.6 million outstanding at the time of the Acquisition. (Joint Stipulations of Law and Fact, JX00002A ¶¶ 22-23; Response to RFA at ¶ 47; PX02147 at 039 (¶ 71, n.120) (Dagen Expert Report)).

1035. Notes from a St. Luke's February 2010 Finance Committee meeting described the bond payments as "a car payment" and not a risk to St. Luke's because "we have [] enough cash to completely defease these." (PX01204 at 011 (St. Luke's Finance Committee Notes), *in camera*). Mr. Wakeman testified that St. Luke's considered buying back its bonds in February 2009 using its cash reserves. (Wakeman, Tr. 2569).

1036. Mr. Wakeman stated, "[a]s bond issues go for not-for-profit organizations, it wasn't a large bond issue for a hospital our size." (PX01920 at 029 (Wakeman, Dep. at 107), *in camera*). Mr. Den Uyl, Respondent's expert witness, concluded that St. Luke's had a "relatively small outstanding balance of bonds" at the time of the Acquisition. (RX-56 at 19 (¶ 48) (Den Uyl Expert Report), *in camera*; Dagen, Tr. 3153 (St. Luke's debt is small relative to the typical hospital)).

1037. Bruce Gordon, a former Ambac analyst who oversaw St. Luke's outstanding bonds through the time of the Acquisition, believed that St. Luke's has a "very modest debt position." (Gordon, Tr. 6858, *in camera*). Further, he concluded in early 2010 that St. Luke's cash reserves were "significant" relative to the amount of debt it had outstanding and that St. Luke's had sufficient cash on hand to repay the entire balance of its Ambac-insured bonds. (Gordon, Tr. 6858-6859, *in camera*).

1038. In fact, St. Luke's had sufficient cash and investments at the time of the Acquisition to pay off not just its Ambac-insured bonds, but all of its outstanding debt. (Response to RFA at ¶ 48).

1039. Although a "technical default" of a bond covenant occurred when St. Luke's debt service coverage ratio fell below 1.3, (PX01854 at 006 (¶10) (Brick Rebuttal Report); Gordon, Tr. 6848-6849, *in camera*), St. Luke's has not missed a payment on its Ambac-insured bonds. (Response to RFA at ¶ 47; Black, Tr. 5700). As a result, holders of St. Luke's bonds received every one of their regularly scheduled principal and interest payments in full and on time. (Gordon, Tr. 6850, *in camera*; Black, Tr. 5700).

1040. By the time of the Acquisition, St. Luke's debt service coverage ratio was 3.7, above the 1.3 level that was required. (PX02129 at 002 (Hanley, Decl. Ex. 1); Hanley, Tr. 4708-4710).

1041. Technical bond defaults were common among hospitals and other firms from 2008 to 2010. As Mr. Gordon testified, from 2008 through 2010, {

} that he oversaw experienced technical defaults. (Gordon, Tr. 6851-6852, *in camera*). In fact, the parent company for Mercy, Catholic Health Partners, experienced a technical default in 2009, prompting Mr. Wakeman to note that "many groups are talking with their . . . [b]anks for waivers for [d]ebt service coverage [sic]." (PX01318 at 001 (Wakeman Jul. 2009 Email); PX01920 at 028 (Wakeman, Dep. at 103), *in camera*).

1042. Ambac's only remedy in response to St. Luke's technical default may have been to require St. Luke's to retain an independent consultant to make recommendations for

increasing its debt service coverage ratio. (PX01854 at 006 (¶10) (Brick Rebuttal Report)). Mr. Gordon testified that {

} (Gordon, Tr. 6860, *in camera*).

1043. Finally, Mr. Gordon testified that the{ } performed internally by Ambac concluded that St. Luke's was } { (Gordon, Tr. 6864, *in camera*). Out of }, St. Luke's was placed in { } (Gordon, Tr. 6864, *in camera*). One of the reasons Mr. Gordon gave for this classification was that { } (Gordon, Tr. 6865, *in camera*).

4. St. Luke's Cost-Saving Measures are Not a Sign of a Firm in Distress

1044. St. Luke's engaged in prudent and responsible cost-cutting and expense reductions during 2008 and 2009, as was widespread in the hospital industry. (Brick, Tr. 3561-3562); Wakeman, Tr. 2573-2574; PX01368 at 004-005, 013 (Moody's 2009 Median Report) (showing industry trend reducing expenses and capital expenditures). Mr. Dagen concluded that St. Luke's cost-cutting measures were "sound business practices" that are commonly instituted by well-run businesses. (PX02147 at 034 (¶ 61) (Dagen Expert Report)).

1045. Many businesses, including non-profit hospitals, engaged in the practice of evaluating positions before replacing employees who left voluntarily as a cost-saving measure, as St. Luke's did from 2008 to 2010. (Wakeman, Tr. 2573-2574). Any employee who left St. Luke's would be replaced if the position had a direct impact on the quality of patient care. (Wakeman, Tr. 2574). Mr. Wakeman agreed that this was a good practice. (Wakeman, Tr. 2573).

1046. St. Luke's was the only hospital in Lucas County not to lay off any employees from 2008 to 2010. (Wakeman, Tr. 2572; PX01274 at 001 (Wakeman May 2009 Email), *in camera* ({ })).

1047. In fact, St. Luke's hired additional full-time employees during both calendar years 2009 and 2010. (Joint Stipulations of Law and Fact, JX00002A ¶¶ 44-45).

1048. St. Luke's also did not cut any service lines provided by the hospital. (Black, Tr. 5703-5704).

1049. In the last few years, ProMedica has also been forced to take steps to reduce expenses in response to economic conditions. (PX01918 at 014 (Oostra, Dep. at 48), *in camera*).

1050. In contrast to St. Luke's, ProMedica laid off employees, increased the amount its employees had to pay for health insurance, eliminated services, cut child care services during the same period, and did not replace retiring employees. (PX01918 at 014-015 (Oostra, Dep. at 48-50), *in camera*; Johnston, Tr. 5443-5444).

1051. Even while under a "capital freeze" in 2008 and 2009, St. Luke's spent $14 million and $7 million on capital expenditures in those years, respectively. (Joint Stipulations of Law and Fact, JX00002A ¶ 43; PX01006 at 007 (OhioCare Consolidated Financial Report Dec. 31, 2009); PX02147 at 035 (¶ 63) (Dagen Expert Report); PX01951 at 069 (Den Uyl Dep. at 269), *in camera*; RX-56 at 24 (¶ 61) (Den Uyl Expert Report), *in camera*).

1052. In October 2009, Mr. Wakeman noted that the capital freeze had "melted down quickly" as he signed off on many 'big-ticket" capital items. (Wakeman, Tr. 2575; PX01361 (Wakeman Oct. 2009 Email)).

1053. In 2010, St. Luke's made capital expenditures of approximately $5 million. (Black, Tr. 5702-5703; PX02147 at 035 (¶ 63) (Dagen Expert Report)).

1054. Mr. Den Uyl, Respondent's expert witness, testified that St. Luke's capital spending was lower in the first eight months of 2010 than it was in the last four months of 2010 because St. Luke's was "waiting for the [Acquisition] to go through." (PX001951 at 063 (Den Uyl Dep. at 246-247), *in camera*; Den Uyl, Tr. 6567, *in camera*).

1055. Despite the capital expenditure slowdown in 2009 and 2010, St. Luke's continued to replace medical equipment as needed. (Den Uyl, Tr. 6566-6567; PX01951 at 049 (Den Uyl, Dep. at 191), *in camera*.)

1056. St. Luke's continued to make millions of dollars of strategic investments in 2008 and 2009, including acquiring physician practices and off-site imaging sites, as well as implementing EMR systems at physicians' practices. (Wakeman, Tr. 2575; PX01852 at 005-006 (¶ 8) (Dagen Rebuttal Report)).

1057. As of April 2010, Mr. Wakeman believed that St. Luke's capital spending had enabled it to keep its plant and grounds in great condition. (Wakeman, Tr. 2615-2616; PX01279 at 002 (Apr. 2010 Wakeman Self-Evaluation)).

1058. In mid-2009, St. Luke's briefly considered – and rejected – eliminating service lines as a cost-cutting strategy. (Black, Tr. 5703-5704; PX02136 at 062-063 (¶¶ 80-85) (Guerin-Calvert, Decl. in Prelim. Inj. Proceeding), *in camera*). St. Luke's management presented the option to its Board in August 2010. (*See* PX01018 at 008 (Options for St. Luke's), *in camera*; Wakeman, Tr. 2655-2656, *in camera*). However, discussions about eliminating service lines involved mere "generalities" and St. Luke's management never "developed any distinctive plan" for pursuing the strategy. (PX01909 at 048 (Dewey, IHT at 187), *in camera*).

1059. St. Luke's Board rejected cutting service lines because it would have diminished the hospital's ability to serve its community. (Black, Tr. 5703-5704). St. Luke's Chairman, James Black, testified that service line cuts were not a major topic of discussion because St. Luke's Board found them to be "distasteful." (Black, Tr. 5704; *see also* PX02106 at

004 (¶ 13) (Black, Decl.) ("The Board . . . decided that cutting these service lines was neither in the best interests of the hospital nor the community.")).

1060. St. Luke's management believed that cutting services "would be very painful" and would cause St. Luke's to "no longer be able to fulfill [its] current mission to fully serve the community." (PX01018 at 008 (Options for St. Luke's), *in camera*; PX01909 at 048 (Dewey, IHT at 187-188), *in camera*). According to Mr. Wakeman, "St Luke's ultimately rejected drastic cuts in services and employees because they would have diminished the hospital's ability to serve the community and made it even less attractive to patients, employers, physicians and payors." (PX02102 at ¶ 22 (Wakeman, Decl.)).

1061. As a result, presentations by St. Luke's management to its Board after August 2010 did not discuss eliminating service lines. (*See e.g.*, PX01030 (Oct. 2009 Affiliation Analysis Update), *in camera*; PX01016 (Dec. 2009 Affiliation Update), *in camera*).

1062. In fact, there is no evidence in the record that, after 2009 and during any time leading up to the Acquisition, St. Luke's ever revisited the issue of eliminating service lines as a standalone hospital. Subsequent presentations to St. Luke's Board did, however, discuss the following options: remaining independent and negotiating higher reimbursement rates with certain health plans, a service line joint venture with Mercy, a full affiliation with UTMC or Mercy, and an affiliation with other regional hospitals. (*See e.g.*, PX01030 at 002-006, 021 (Oct. 2009 Affiliation Analysis Update), *in camera*; PX01016 at 012-013, 023-024 (Dec. 2009 Affiliation Update), *in camera*).

5. St. Luke's Losses in 2009 Do Not Indicate Financial Distress

1063. Focusing narrowly on St. Luke's 2008 and 2009 operating performance provides a misleading and inaccurate view of St. Luke's financial viability due to one-time anomalous events stemming from the 2008 financial crisis, as well as higher than normal expenditures related to implementing Mr. Wakeman's three-year turnaround plan. (Dagen, Tr. 3162-3163, 3179-3180; PX02147 at 006 (¶ 14) (Dagen Expert Report)).

1064. St. Luke's books a pension expense on its income statement in order to reflect the annual costs of maintaining a defined benefits pension plan. (PX02147 at 022 (¶ 42) (Dagen Expert Report); Dagen, Tr. 3167-3168). The 2008 financial crisis not only caused St. Luke's pension fund assets to decrease, but it also increased St. Luke's pension expense to $8.8 million in 2009, $6 million higher than in 2008. (PX01006 at 023 (OhioCare Consolidated Financial Report Dec. 31, 2009); PX02147 at 022-023 (¶ 43) (Dagen Expert Report); Black, Tr. 5698).

1065. The increase in St. Luke's pension expense explains a portion of the increase in St. Luke's total expenses in 2009 and, therefore, St. Luke's higher operating loss in 2009 compared to 2008. (PX01016 at 002 (Affiliation Update Board Presentation), *in camera*; PX02147 at 009 (¶ 20) (Dagen Expert Report)).

1066. As David Oppenlander, St. Luke's CFO at the time, wrote: "[t]ake out the effect of the pension plan, [and] the hospital is performing better than last year[.]" (PX01356 at 001 (Oppenlander May 2009 Email)).

1067. However, most of St. Luke's $8.8 million pension expense in 2009 was, in effect, a "paper loss" because St. Luke's only paid $1.5 million in cash into its pension plan for the entire year. (PX01006 at 023 (OhioCare Consolidated Financial Report Dec. 31, 2009); PX02147 at 022-023 (¶ 43 n.54) (Dagen Expert Report); Dagen, Tr. 3173-3174; Black, Tr. 5698).

1068. In 2010, St. Luke's pension expense decreased to $600,000. (PX02369 at 001 (St. Luke's Pension Plan), *in camera*; PX02147 at 023 (¶ 44) (Dagen Expert Report)).

1069. The decline in St. Luke's EBITDA and operating income in 2009 was also caused by an increase in expenses associated with implementing Mr. Wakeman's turnaround plan. (Dagen, Tr. 3176-3179). In 2009, for instance, St. Luke's was making "significant investments in its future," including $4.6 million to operate recently-acquired physician practices (compared to $2.5 million in 2008), as well as other costs associated with increasing hospital staff (i.e., physicians, medical directors, etc.) to accommodate an increase in patient volumes in 2009. (RX-56 at 22 (¶ 55, Table 12) (Den Uyl Expert Report), *in camera*; Dagen, Tr. 3178-3179).

1070. Therefore, St. Luke's losses in 2009 are not indicative of poor financial health. (Dagen, Tr. 3179-3180, 3184 ("you don't typically see investments being made in building physician practices, buying … outpatient … facilities, [and] adding staff [] when [a hospital is] in grave financial difficulties.")).

D. Even in the Worst Case Scenario, St. Luke's Would Have Been Financially Viable for at Least Four to Seven Years

1071. At the end of 2009, St. Luke's CEO told its Board of Directors that St. Luke's would stay open for at least three to seven years if it did not partner with another hospital. (Wakeman, Tr. 2624-2625; PX01920 at 037-038 (Wakeman, Dep. at 141-142), *in camera*; *see also* PX01915 at 054 (Wagner, IHT at 211), *in camera*).

1072. By the time of the Acquisition, St. Luke's financial condition had improved from its position in late 2009. (PX02147 at 021 (¶ 40) (Dagen Expert Report)). The 2010 improvements in the equities markets and St. Luke's positive cash-flow operating margins would, according to Mr. Wakeman's own calculus, extend this timeframe even further. (Wakeman, Tr. 2626; PX01920 at 038 (Wakeman, Dep. at 144-145), *in camera*).

1073. From December 31, 2009 through August 31, 2010, the fair market value of St. Luke's "assets limited as to use" increased as a result of positive performance in financial markets and stock markets. (Joint Stipulations of Law and Fact, JX00002A ¶ 36).

1074. As of August 31, 2010, St. Luke's had approximately $65 million in cash and investment balances. (Joint Stipulations of Law and Fact, JX00002A ¶ 34; PX01265 at 001 (OhioCare Consolidated Balance Sheet as of Aug. 31, 2010: sum of "Assets Limited As to Use" and "Cash and Cash Equivalents" lines); PX01274 at 001 (Wakeman May 2009 Email), *in camera* ("[w]e are blessed to have reserves.").

1075. As of December 31, 2010, St. Luke's held a total of at least $70 million in cash and investment balances. (Joint Stipulations of Law and Fact, JX00002A ¶ 35).

1076. St. Luke's reserves have been, and can continue to be, used for appropriate capital projects. (PX01006 at 010 (OhioCare Consolidated Financial Report Dec. 31, 2009) ("Assets limited as to use include assets designated by the board of directors for future capital improvements . . . over which the board retains control, and may, at its discretion, subsequently use for other purposes.")). St. Luke's "established its investment policy to provide a financial reserve for long-term replacement, modernization and expansion of hospital facilities." (PX01275 at 047 (St. Luke's Credit Presentation)).

1077. St. Luke's has spent an average of $11.3 million annually on capital projects over the past ten years, including a heart center in 2001, a physical rehabilitation center in 2003, and the acquisitions of multiple physician groups and five freestanding imaging centers since December 2008. (PX02147 at 014 (¶ 28) (Dagen Expert Report)).

1078. Prior to the Acquisition, St. Luke's projected the cost of its highest priority capital projects, EMR implementation and private room conversions, to be $14 million and $1.8 million, respectively. (Black, Tr. 5694-5695).

1079. St. Luke's had sufficient funds to complete its high priority capital projects, including EMR implementation and private room conversions. (Black, Tr. 5695-5696; Dagen, Tr. 3213; PX02147 at 015-018 (¶¶ 29-34) (Dagen Expert Report); *see also* PX01908 at 056 (Deacon, IHT at 216), *in camera*).

1080. A standalone St. Luke's fully expected to start implementing its EMR system in early 2010, in time to qualify for all federal subsidy funds. (PX01908 at 055 (Deacon, IHT at 213), *in camera*; PX01281 at 012 (Finance Pillar Challenge Presentation); PX01503 at 001 (EMR implementation timeline), *in camera*; PX01496 at 003 (EMR bid and implementation timeline from a vendor); PX01933 at 038-039 (Oppenlander, Dep. at 144-148), *in camera*; PX01928 at 021, 023, 030 (Perron, Dep. at 75-76, 84-85, 113), *in camera*).

1081. Mr. Den Uyl testified that, absent the Acquisition, St. Luke's "fully intended" to implement EMR starting in 2010. (PX01951 at 044 (Den Uyl, Dep. at 170-171), *in camera*; *see also* Johnston, Tr. 5481-5484, *in camera*).

1082. Mr. Dagen, Complaint Counsel's expert, used a pro forma to conservatively project St. Luke's operating performance in the future based on trial testimony, historical

performance, and ordinary course documents. (Dagen, Tr. 3200-3202; PX02147 at 036 (¶¶ 65-66) (Dagen Expert Report)).

1083. The results of this exercise confirm that, absent the Acquisition, St. Luke's would be able to continue to make growth-minded investments, implement EMR, convert semi-private rooms to private rooms, eliminate its outstanding bond debt, and still have approximately $33 million in cash and reserves at the end of 2013. (Dagen, Tr. 3210-3214; PX02147 at 036 (¶ 65) (Dagen Expert Report)).

1084. Mr. Dagen's pro forma analysis also projects that, at the end of 2013, St. Luke's would have positive EBITDA and positive operating income. (Dagen, Tr. 3211-3214; PX02147 at 036 (¶ 65) (Dagen Expert Report)).

1085. As a result, "but for the acquisition [by ProMedica], St. Luke's would have been … a financially stable organization and able to compete in the marketplace." (Dagen, Tr. 3230-3231).

E. St. Luke's Had Alternatives to ProMedica

1086. St. Luke's considered alternative purchasers to ProMedica, including Mercy, UTMC, and out-of-area systems. (PX01016 at 022-024 (Affiliation Update Board Presentation), *in camera*; Wakeman, Tr. 2558, 2553, 2541-2542; PX01911 at 054 (Wakeman, IHT at 209-210), *in camera*).

1087. Respondent's expert witness, Mr. Den Uyl, did not analyze – and has no expert opinion on – whether St. Luke's could have partnered with an organization other than ProMedica. (Den Uyl, Tr. 6525).

1. Potential Affiliation with UTMC

1088. St. Luke's and UTMC discussed a potential affiliation. (Wakeman, Tr. 2551-2552; PX01030 at 011 (St. Luke's Oct. 30, 2009 Affiliation Analysis Update), *in camera*). In 2009, UTMC executives expressed to St. Luke's executives an interest in pursuing an affiliation with St. Luke's. (Joint Stipulations of Law and Fact, JX00002A ¶ 51).

1089. St. Luke's and UTMC signed a Memorandum of Understanding in early 2009. (PX02203 at 001 (UTMC and OhioCare Memorandum of Understanding); Wakeman, Tr. 2552). This Memorandum was "intended to lay out the framework for the basis of an affiliation and a due diligence process." (Gold, Tr. 233).

1090. By April 2009, UTMC compiled a team of over twenty individuals to handle the due diligence effort for the St. Luke's affiliation, and was expending substantial resources by August 2009 towards that end. (Gold, Tr. 239-240, 244).

1091. St. Luke's and UTMC drafted a Memorandum of Affiliation Terms in mid-2009, before St. Luke's ended its discussions with UTMC. (PX02205 (Aug. 2009 Draft St. Luke's-

UTMC Memorandum of Affiliation); Gold, Tr. 243; PX01916 at 018 (Gold, Dep. at 66-67)). St. Luke's provided comments to UTMC on the draft affiliation agreement. (Wakeman, Tr. 2553-2554).

1092. However, it was St. Luke's, not UTMC that terminated discussions between the two entities. (Gold, Tr. 249; Wakeman, Tr. 2554).

1093. Even as late as January 2010, after St. Luke's had engaged in exclusive discussions with ProMedica, Mr. Wakeman was still aware that UTMC was interested in an affiliation with St. Luke's. (Wakeman, Tr. 2669, *in camera*).

1094. Dr. Gold testified that UTMC's interest inan affiliation with St. Luke's was "sincere." (Gold, Tr. 230-231, 244; PX01916 at 016 (Gold, Dep. at 60)).

1095. As a result, Dr. Gold was "disappointed when St. Luke's informed [UTMC] that its Board of Trustees decided in late Summer 2009 to instead pursue an affiliation with ProMedica, and ended affiliation discussions with UTMC." (PX02064 at 003 (Gold, Decl. ¶ 8)).

1096. At the time St. Luke's terminated affiliation discussions, UTMC was still sincerely interested in moving forward to explore an affiliation with St. Luke's and was still willing to devote substantial resources to that effort. (Gold, Tr. 249).

1097. Partnering with UTMC would have been the best option for the community and would have fit with St. Luke's mission. (PX01112 at 001 (St. Luke's Integration Decision Grid), *in camera*; *see also* Black, Tr. 5739, *in camera*).

1098. "St. Luke's leadership believes this affiliation isin the best interests of the community with the potential partnership leading the way for economic change." (PX01030 at 020 (St. Luke's Oct. 30, 2009 Affiliation Analysis Update), *in camera*).

1099. St. Luke's Board of Directors and executives saw substantial benefits to partnering with UTMC. (PX01920 at 039 (Wakeman, Dep. at 148-149), *in camera*; PX01321 at 002 (St. Luke's Dec. 2009 e-mail), *in camera*; PX01130 at 005 (St. Luke's Recovery/Strategic Plan), *in camera*).

1100. UTMC does not offer obstetrics services, and thus a merger of St. Luke's and UTMC would not increase market share or market concentration in the Lucas County obstetrics services market. (Gold, Tr. 203).

1101. In the market for general acute-care services, the combination of UTMC and St. Luke's would result in a smaller combined share than Mercy, and a combined share more than 60 percent smaller than ProMedica. (PX02148 at 143 (Town Expert Report, Ex. 6), *in camera*; PX02150 at 001 (Market Share Chart)).

1102. UTMC officials also believed that aSt. Luke's/UTMC affiliation could have led to substantial efficiencies, including the same types of efficiencies Respondent claims may result from the Acquisition. (Gold, Tr. 245-246 (including "back-of-the-house functions: finance, information technology, human resources services, and many others that are typically used to run hospitals" and "consolidation of clinical services [which] would allow us to deliver higher volume, higher quality services, and be more efficient."); PX01406 at 001 (Wakeman Jul. 2009 Email) (benefits to UTMC partnership are "endless"); PX01407 at 001 (Wakeman (St. Luke's) Oct. 2009 Email to Dr. Gold (UTMC)) (a UTMC affiliation "would provide just as much [expense reduction] as the two systems [Mercy and ProMedica].")).

1103. UTMC has been profitable for at least the last three years. (Gold, Tr. 269). UTMC recently spent $7 million to expand its intensive care unit, and is currently undergoing "extensive" renovations to its hospital. (Gold, Tr. 224, 266). Dr. Gold testified that it was his understanding from affiliation discussions with St. Luke's that "dollars would flow [to St. Luke's]" and that some of St. Luke's capital needs "would have to be managed by [UTMC]." (Gold, Tr. 267).

1104. ProMedica's CEO, Randall Oostra, testified that UTMC continues to and has made "major" investments in its facilities that are of interest to ProMedica, including upgrading their intensive care unit and making improvements to its campus. (Oostra, Tr. 5815-5816). Mr. Oostra also noted that UTMC built a whole new outpatient wing two or three years ago, and has announced plans to make some major investments in their cancer program. (Oostra, Tr. 5815-5816).

1105. Respondent's expert, Ms. Guerin-Calvert, testified extensively on room renovations and technology upgrades recently under way at UTMC, finding that "UTMC has very recently completed a number of renovations and expansion to its facilities[.]" (Guerin-Calvert, Tr. 7287-7288, 7543). Ms. Guerin-Calvert concluded that "UTMC [has] staked out positions that they want to be survivors in this marketplace and that they have every intent to go forward and make the necessary investments." (Guerin-Calvert, Tr. 7310-7311).

1106. St. Luke's was concerned, however, that UTMC would not be able to deliver sufficient pricing leverage with health plans. (PX01018 at 017 (St. Luke's Partnership Options Presentation), *in camera*) ("Would . . . [UTMC] give us . . . enough managed care clout?"); Black, Tr. 5721-5722, *in camera*; (PX01130 at 004 (St. Luke's Aug. 2009 Due Diligence Meeting Notes), *in camera*) ("Concern that [UTMC] does/may not have as high of reimbursement rates as ProMedica or Mercy"). St. Luke's also feared retaliation by ProMedica if it affiliated with UTMC. (*See supra* at Section X.C).

2. Potential Affiliation with Mercy

1107. St. Luke's and Mercy discussed { } a potential affiliation. (Shook,

Tr. 1003-1004, *in camera*; PX01030 at 011 (St. Luke's Oct. 15, 2009 Affiliation Analysis Update), *in camera*).

1108. At the end of 2009, Mr. Wakeman believed that Mercy was more focused on quality and patient satisfaction than ProMedica. (Wakeman, Tr. 2560).

1109. Nonetheless, St. Luke's ended discussions while Mercy remained interested in an affiliation. (Wakeman, Tr. 2559; PX01922 at 021, 023 (Shook, Dep. at 80, 89), *in camera*). Mercy was surprised and disappointed by St. Luke's decision to end affiliation discussions. (Shook, Tr. 1002, *in camera*).

XVII. RESPONDENT'S EXPERTS FAIL TO REBUT PRESUMPTION THAT THE ACQUISITION IS ILLEGAL

A. Flaws in Margaret Guerin-Calvert's Analysis

1110. Ms. Guerin-Calvert was retained by Respondent to provide an economic assessment of the competitive effects of the Acquisition and to review and respond to the reports provided by Professor Town. (RX-71(A) at 5 (Guerin-Calvert Expert Report), *in camera*).

1111. Ms. Guerin-Calvert concluded that the Acquisition is unlikely to lessen competition for general acute-care services in the Toledo area, despite the unanimous testimony from health plan witnesses at trial that ProMedica will be able to raise rates for hospital services post-Acquisition, due to its increased bargaining power. (RX-71(A) at 5 (Guerin-Calvert Expert Report), *in camera*; (*See supra* at Section XI.).

1112. Ms. Guerin-Calvert did not conduct interviews of third party health plans or hospitals in her analyses of the transaction. (Guerin-Calvert, Tr. 7625-7626). Ms. Guerin-Calvert only conducted interviews of two ProMedica executives, and St. Luke's general counsel in analyzing this transaction. (Guerin-Calvert, Tr. 7617-7625). Ms. Guerin-Calvert did not interview any consumers of hospital services in the Toledo area in conjunction with her analysis in the transaction. (Guerin-Calvert, Tr. 7627-7628).

1113. Ms. Guerin-Calvert toured St. Luke's Hospital, but no ProMedica facility, Mercy facility, or any other hospital discussed in her analysis of the transaction. (Guerin-Calvert, Tr. 7613-7616).

1114. Ms. Guerin-Calvert does not dispute Professor Town's conclusion that a health plan's bargaining leverage is determined, in part, by its ability to contract with alternative hospitals. (*See supra* Section V.). In fact, Ms. Guerin-Calvert agrees that the relevant economic question when evaluating bargaining outcomes is how many alternative providers a health plan could have contracted with when reaching an agreement with a provider. (Guerin-Calvert, Tr. 7950).

1. Ms. Guerin-Calvert's Definition of the Relevant Product Market Fails to Apply the Basic Principles of Competitive Effects Analysis

1115. Ms. Guerin-Calvert failed to implement the Merger Guidelines test to define the relevant product market, and incorrectly concludes that the relevant product market includes services for which ProMedica and St. Luke's did not compete prior to the Acquisition. (PX01850 at 005 (¶ 5) (Town Rebuttal Report), *in camera*).

1116. Product market definition is an exercise intended "[t]o identify one or more relevant markets in which the merger may substantially lessen competition." (2010 Merger Guidelines, § 4; *see* PX01850 at 006 (Town Rebuttal Report), *in camera*). In order to do so, one must identify the substitute products sold by each firm. (2010 Merger Guidelines, § 4.1; *see* PX01850 at 008 (¶ 9) (Town Rebuttal Report), *in camera*).

1117. Ms. Guerin-Calvert admits that her defined product market includes services that St. Luke's did not offer prior to the Acquisition. (Guerin-Calvert, Tr. 7772). Ms. Guerin Calvert defines the relevant product market to be all general acute-care services negotiated between hospitals and health plans, despite the fact that this is a broader group of services than those which ProMedica and St. Luke's offer in common. (Guerin-Calvert, Tr. 7631; PX01850 at 006 (¶ 6) (Town Rebuttal Report), *in camera*).

1118. Ms. Guerin-Calvert admits that if two firms sell products that are not substitutes for each other, a merger between the two firms is unlikely to substantially lessen competition. (Guerin-Calvert, Tr. 7657).

1119. Although Ms. Guerin-Calvert claims the relevant market she defined contains all general acute-care services that are the subject of negotiations between hospitals and health plans, Ms. Guerin-Calvert's market excludes several service lines that are the subject of negotiations between hospitals and health plans. (Guerin-Calvert, Tr. 7637, 7643, 7694, 7649-50).

1120. Ms. Guerin-Calvert does not include outpatient services in the relevant market despite the fact that inpatient and outpatient services are the subject of the same negotiation between health plans and hospitals. (Guerin-Calvert, Tr. 7637).

1121. Professor Town excludes outpatient services from the relevant markets because patients would not substitute from inpatient services to outpatient services in the event of a price increase. (PX02148 at 025 (¶ 44) (Town Expert Report), *in camera*; Town, Tr. 3669-3671). Further, Ms. Guerin-Calvert admits that outpatient services involve a different set or mix of competitors than hospitals. (Guerin-Calvert, Tr. 7640).

1122. Ms. Guerin-Calvert excludes inpatient psychiatric services from her relevant product market, despite the fact that these services are negotiated as part of the same contract as the services in her relevant product market. (Guerin-Calvert, Tr. 7638). Inpatient

psychiatric services are also excluded from Professor Town's relevant product markets. (Guerin-Calvert, Tr. 7638).

1123. Laboratory services, physical and occupational therapy, inpatient rehabilitation, inpatient substance abuse and inpatient long-term acute care services are excluded from Ms. Guerin-Calvert's relevant product market despite the fact that these services are included in the typical health plan agreements between hospitals and health plans. (Guerin-Calvert, Tr. 7638-7639). These services are also excluded from Professor Town's relevant product markets. (*See generally* Town, Tr. 3684-3687).

1124. Ms. Guerin-Calvert excludes MDC-2 (diseases and disorders of the eye) from her relevant product market despite the fact that these services are the subject of the same negotiation between hospitals and health plans as the services in her relevant product market. (Guerin-Calvert, Tr. 7643).

1125. Professor Town excludes MDC-2 from his relevant market because different competitive conditions exist for the services within MDC-2. (Town, Tr. 4027-4028). Ms. Guerin-Calvert admits that MDC-2 has different competitive conditions than most inpatient MDCs. (Guerin-Calvert, Tr. 7643).

1126. Ms. Guerin-Calvert excludes MDC-17 (differentiated neoplasms) from her relevant product market despite the fact that these services are the subject of the same negotiation between hospitals and health plans as the services in her relevant product market. (Guerin-Calvert, Tr. 7694).

1127. Professor Town excluded MDC-17 from his general acute-care market because the competitive conditions for the services in MDC-17 are different. (Guerin-Calvert, Tr. 7646-7647). That is, there is a high outflow to hospitals located outside of the relevant geographic market. (Guerin-Calvert, Tr. 7647).

1128. Ms. Guerin-Calvert claims she has excluded quaternary services from the relevant market (Guerin-Calvert, Tr. 7648), yet in her report she fails to explain how these services were filtered out of the relevant market. (RX-71(A) at 157-158 (Guerin-Calvert Expert Report), *in camera*). Ms. Guerin-Calvert admits that quaternary services are offered by fewer providers and patients are willing to travel farther to receive these services. (Guerin-Calvert, Tr. 7649-7650).

1129. Despite criticizing the cluster market approach used by Professor Town, Ms. Guerin-Calvert employs a cluster market approach in defining the relevant market in this matter. (Guerin-Calvert, Tr. 7634-7637). That is, the services that comprise her relevant product market are not clinical substitutes for one another. (Guerin-Calvert, Tr. 7631-7632).

1130. There is no demand substitution between the different services, including obstetrics services in Ms. Guerin-Calvert's defined relevant market. (Guerin-Calvert, Tr. 7633, 7667-7668). In principle, Ms. Guerin-Calvert agrees with Professor Town that one could go through and evaluate service line by service line to assess the competitive implications

of the acquisition. (Guerin-Calvert, Tr. 7633). As a matter of administrative convenience, it is possible to group these services together in a cluster for purposes of competitive analysis. (Guerin-Calvert, Tr. 7633).

1131. Ms. Guerin-Calvert admits that UTMC and Mercy St. Anne do not offer obstetrics services in the Toledo metropolitan area. (Guerin-Calvert, Tr. 7668-7669). She also admits that these hospitals have no plans to offer these services. (Guerin-Calvert, Tr. 7669).

1132. Ms. Guerin-Calvert includes all tertiary services in the relevant product market. (Guerin-Calvert, Tr. 7652).

1133. All of the hospitals in Lucas County do not provide the entire range of services in Ms. Guerin-Calvert's product market. (Guerin-Calvert, Tr. 7769-7770).

1134. St. Luke's does not provide every service included in Ms. Guerin-Calvert's product market. (Guerin-Calvert, Tr. 7772).

1135. Bay Park does not provide every service included in Ms. Guerin-Calvert's product market. (Guerin-Calvert, Tr. 7773).

1136. UTMC does not provide every service included in Ms. Guerin-Calvert's product market. (Guerin-Calvert, Tr. 7773).

1137. St. Anne does not provide every service included in Ms. Guerin-Calvert's product market. (Guerin-Calvert, Tr. 7773).

1138. Flower does not provide every service included in Ms. Guerin-Calvert's product market. (Guerin-Calvert, Tr. 7773).

1139. Only TTH and St. Vincent provide all of the DRGs that Ms. Guerin-Calvert includes in her product market. (Guerin-Calvert, Tr. 7771).

1140. Ms. Guerin-Calvert claims to disagree with Professor Town that inpatient obstetrical services comprise a relevant product market. However, Ms. Guerin-Calvert admits that UTMC and Mercy St. Anne do not offer obstetrics services in the Toledo metropolitan area. (Guerin-Calvert, Tr. 7668-7669). She also admits that these hospital systems have no plans to offer these services at these locations. (Guerin-Calvert, Tr. 7669).

1141. Ms. Guerin-Calvert admits that patients seeking obstetrics services travel fewer minutes on average to receive inpatient care than patients seeking other general acute-care inpatient services. (Guerin-Calvert, Tr. 7671).

1142. Ms. Guerin-Calvert admitted that if Mercy stopped offering obstetrics services, ProMedica would have an obstetrics monopoly and would be able to raise prices for obstetrics services. (Guerin-Calvert, Tr. 7679, 7680).

2. Ms. Guerin-Calvert Failed to Analyze Market Concentration

1143. Ms. Guerin-Calvert admits that the appropriate starting point in merger analysis involves calculating market shares and HHI concentration indices. (Guerin-Calvert, Tr. 7718-7719; PX01925 at 005 (Guerin-Calvert, Dep. at 11)).

1144. Ms. Guerin-Calvert did not calculate HHIs in conjunction with her analysis of this Acquisition. (Guerin-Calvert, Tr. 7723).

1145. Ms. Guerin-Calvert testified that she has calculated HHIs in previous merger matters where she has testified as an expert, and in all of those instances the merger did not meet the presumption. (Guerin-Calvert, Tr. 7720-7721).

1146. Ms. Guerin-Calvert admits that based on the relevant market she defined for this Acquisition, that the pre-HHI meets the *Merger Guidelines* presumption of a highly concentrated market. (Guerin-Calvert, Tr. 7730).

1147. Ms. Guerin-Calvert admits that the post-HHI would be over 4000 for the relevant markets she has defined. (Guerin-Calvert, Tr. 7730).

3. Ms. Guerin-Calvert's Market Share Analysis Is Flawed

1148. Ms. Guerin-Calvert omitted market share calculations from her expert report filed April 26, 2011, 14 months after she was hired to assess the transaction. (Guerin-Calvert, Tr. 7716). On May 13, during Ms. Guerin-Calvert's deposition, she submitted new market share analysis to the FTC. (Guerin-Calvert, Tr. 7716-7717). On June 30, 2011, Ms. Guerin-Calvert produced another market share table to the FTC. (Guerin-Calvert, Tr. 7717).

1149. Ms. Guerin-Calvert did not calculate market shares for obstetrics or women's services in this matter. (Guerin-Calvert, Tr. 7744).

1150. Ms. Guerin-Calvert testified that theinclusion or exclusion of quaternary services would not change her share analysis. (Guerin-Calvert, Tr. 7695).

1151. Ms. Guerin-Calvert calculated shares by billed charges, despite admitting that billed charges are not the actual prices paid to the hospital by the health plans. (Guerin-Calvert, Tr. at 7734).

1152. Ms. Guerin-Calvert calculated shares for MMO which accounts for 10 percent of the market in Lucas County, but no other health plan, despite having the data from all health plans which would have enabled her to do so. (Guerin-Calvert, Tr. 7734-7735).

4. Ms. Guerin-Calvert's Drive Time Analysis Fails to Address Impact on Patients

1153. In her empirical analysis, Ms. Guerin-Calvert quantifed the incremental drive time for patients in Lucas County to seek care from alternative hospitals, but neglected to quantify the associated welfare loss for those patients. (Guerin-Calvert, Tr. 7698). Ms. Guerin-Calvert's analysis fails to incorporate the substantial record evidence regarding patients' preferences for hospitals, and the cost of increased travel for physicians. (*See supra* Section XI.E.).

1154. Ms. Guerin-Calvert's drive time analysis represents a 40 percent increase in travel time for patients. (Guerin-Calvert, Tr. 7697).

1155. Ms. Guerin-Calvert did not survey patients or Lucas County residents to see what impact a 40 percent increase in drive time would have for those patients. (Guerin-Calvert, Tr. 7698).

5. Ms. Guerin-Calvert's Claims Regarding Excess Capacity in the Market Lack Evidentiary Foundation

1156. Ms. Guerin-Calvert's MSA analysis of populations of similar size to the Toledo area demonstrates that the Toledo area is not an outlier in terms of the number of beds per thousand persons. (Guerin-Calvert, Tr. 7760).

1157. Ms. Guerin-Calvert's MSA analysis of populations of similar size to the Toledo area demonstrates that the Toledo area has fewer competitors than other MSAs. (Guerin-Calvert, Tr. 7760).

1158. The joinder does not change the number of hospitals in Lucas County. (Guerin-Calvert, Tr. 7762). ProMedica has no plans to eliminate or reduce bed capacity as a result of the Acquisition. (Guerin-Calvert, Tr. 7762-7763). ProMedica is adding inpatient capacity by opening Wildwood Orthopedic hospital. (Guerin-Calvert, Tr. 7763).

6. Ms. Guerin-Calvert's Diversion Analysis is Flawed

1159. Ms. Guerin-Calvert did not calculate the diversions from St. Luke's to individual hospitals or hospital systems. (Guerin-Calvert, Tr. 7802).

1160. If St. Luke's were not available, ProMedica would capture the highest percentage of patients relative to any other hospital for all health plans except MMO and BCBS Michigan. (Guerin-Calvert, Tr. 7799).

1161. Diversion to ProMedica from St. Luke's for MMO was increasing over the last four to five years. (Guerin-Calvert, Tr. 7800-7801).

7. Ms. Guerin-Calvert Does Not Present Analysis that Rebuts the Evidence That ProMedica Has the Highest Prices in Lucas County

1162. Ms. Guerin-Calvert makes issue of the complexity of the bargaining relationship between hospitals and health plans, yet ignores testimony that health plans compare the rates charged by hospitals in the ordinary course of business. (*See supra* Section XI).

1163. Ms. Guerin-Calvert did not present analysis to rebut health plan testimony that ProMedica's rates reflect its considerable market power, and are the highest in Lucas County. (*See supra* Section V, XI).

1164. Ms. Guerin-Calvert did not calculate price differentials to refute the case-mix adjusted pricing calculations made by Professor Town. (Guerin-Calvert, Tr. 7859-7867, *in camera*).

1165. Indeed, the only economic expert that actually calculated case-mix adjusted prices was Professor Town. (Guerin-Calvert, Tr. 7859-7867, *in camera*).

1166. Ms. Guerin-Calvert states that elements and conditions of contracting may explain differences in prices across hospitals, but does not conclude that any of these elements and conditions actually explain ProMedica's prices. (RX-71(A) at 37-50 (Guerin-Calvert Expert Report), *in camera*).

1167. Ms. Guerin-Calvert does not conclude that any of the "competitively benign factors" listed in her report explain the price differentials found by Professor Town or by fact witnesses in this matter. (RX-71(A) at 37-50 (Guerin-Calvert Expert Report), *in camera*).

8. Ms. Guerin-Calvert's Analysis of Repositioning is Flawed

1168. Ms. Guerin-Calvert analyzed the impact of "diversion" from St. Luke's to Mercy as a result of Mercy's { }. (RX-71(A) at 29 (¶ 45) (Guerin-Calvert Expert Report), *in camera*). Ms. Guerin-Calvert's analysis predicted that St. Luke's would experience dramatic losses. (RX-71(A) at 29 (¶ 45) (Guerin-Calvert Expert Report), *in camera*).

1169. Ms. Guerin-Calvert's analysis is not a diversion analysis, which, by definition, considers changes in shares resulting from a hypothetical change in price. (*Horizontal Merger Guidelines* § 6.1; PX01850 at 014 (¶ 19) (Town Rebuttal Report), *in camera*).

1170. Ms. Guerin-Calvert's analysis of Mercy's { } fails to examine Mercy's market share over the 16 months of the implementation of the { }. (Guerin-Calvert, Tr. 7880, *in camera*). Mr. Shook testified that Mercy's { } has been { } and has { }. (Shook, Tr. 987, *in camera*).

1171. Ms. Guerin-Calvert did not examine what, if any, impact Mercy's{ } has had on St. Luke's admissions in the 16 months of the strategy. (Guerin-Calvert, Tr. 7882, *in camera*).

1172. Despite Ms. Guerin-Calvert's predictions that St. Luke's would lose market share to Mercy, St. Luke's market share actually increased during the time period of Mercy's { }. (*See generally* Wakeman, Tr. 2519-2520, 2527). Ms. Guerin-Calvert admits that St. Luke's inpatient admissions have increased in this time period. (Guerin-Calvert, Tr. 7883, *in camera*).

9. Ms. Guerin-Calvert's Claims of St. Luke's Financial Distress Are Baseless

1173. Ms. Guerin-Calvert does not claim that St. Luke's is a failing firm under the *Merger Guidelines*. (Guerin-Calvert, Tr. 7885, *in camera*).

1174. Ms. Guerin-Calvert does not project St. Luke's inpatient volume absent the Acquisition. (Guerin-Calvert, Tr. 7885, *in camera*).

1175. Ms. Guerin-Calvert does not project St. Luke's market share absent the Acquisition. (Guerin-Calvert, Tr. 7889, *in camera*).

1176. Ms. Guerin-Calvert did not project St. Luke's future profitability in terms of EBITDA or operating income. (Guerin-Calvert, Tr. 7889, *in camera*).

10. Ms. Guerin-Calvert Does Not Present an Efficiencies Analysis

1177. Ms. Guerin-Calvert did not conduct an efficiencies analysis of the Acquisition. (Guerin-Calvert, Tr. 7913).

1178. Ms. Guerin-Calvert did not analyze whether ProMedica's alleged efficiencies claims are cognizable under the *Horizontal Merger Guidelines*. (Guerin-Calvert, Tr. 7913).

1179. Ms. Guerin-Calvert did not assess whether ProMedica's alleged efficiencies claims are merger specific. (Guerin-Calvert, Tr. 7913).

1180. Ms. Guerin-Calvert did not analyze what efficiencies would result from the partnership of St. Luke's and UTMC. (Guerin-Calvert, Tr. 7914).

11. Ms. Guerin-Calvert's But-For Pricing Analysis is Flawed

1181. Ms. Guerin-Calvert's calculations of St. Luke's but-for pricing analysis are based on a contract negotiation that was never agreed to by the parties, or signed into a contract between a hospital and a health plan. (Guerin-Calvert, Tr. 7870, *in camera*).

1182. Prior to the Aquisition, St. Luke's negotiated a 5-6 percent annual rate increase in its contract with FrontPath. (Guerin-Calvert, Tr. 7872-7873, *in camera*). Yet, Ms. Guerin-Calvert elected not to use this actual price information to calculate St. Luke's but-for pricing. (Guerin-Calvert, Tr. 7872-7873, *in camera*).

1183. Ms. Guerin-Calvert admits that ProMedica negotiated a contract between St. Luke's and MMO under the purview of the hold separate. (Guerin-Calvert, Tr. 7875, *in camera*).

1184. Ms. Guerin-Calvert admits that the hold separate order may have given MMO additional bargaining leverage in negotiations with ProMedica. (Guerin-Calvert, Tr. 7876, *in camera*).

12. Ms. Guerin-Calvert's Analysis and Criticism of the Econometric Model is Incorrect

1185. Ms. Guerin-Calvert's additions to Professor Town's willingness-to-pay model predict a statistically significant price increase of 7.3 percent. (Guerin-Calvert, Tr. 7928). This amounts to an 18 percent price increase at St. Luke's and a 5 percent increase at ProMedica's legacy hospitals. (Guerin-Calvert, Tr. 7928-7929).

1186. Ms. Guerin-Calvert's analysis and criticisms of the*Willingness-to-Pay* merger simulation model are invalid. (PX01850 at 005-006 (¶ 5) (Town Rebuttal Report), *in camera*).

1187. Ms. Guerin-Calvert has put forward no rationale or evidence that factors not included in Professor Town's case-mix adjustment algorithm systematically bias the results. (PX01850 at 066-067 (¶ 101) (Town Rebuttal Report), *in camera*).

1188. Including additional explanatory variables, such as Ms. Guerin-Calvert has done here, is a well-known means to diminish the magnitude and statistical significance of any regression result. (PX01850 at 067 (¶ 102) (Town Rebuttal Report), *in camera*).

1189. This is because the additional variables included by Ms. Guerin-Calvert are correlated with the variable of interest but add no explanatory power that is not already captured by the variables included by Professor Town in the regression model. (PX01850 at 067 (¶ 102) (Town Rebuttal Report), *in camera*).

1190. The addition of redundant explanatory variables can render regression coefficient estimates highly unreliable. (PX01850 at 068-072 (¶ 104) (Town Rebuttal Report), *in camera*).

1191. Ms. Guerin Calvert's addition of Medicare share in the*Willingness-to-Pay* merger simulation model is inappropriate. (PX01850 at 068-072 (¶ 104) (Town Rebuttal Report), *in camera*). Ms. Guerin-Calvert puts forward no rationale for including Medicare share that is consistent with the facts of this case. (PX01850 at 068-072 (¶ 104) (Town Rebuttal Report), *in camera*).

1192. The cost-shifting rationale is inconsistent with economic intuition and Ms. Guerin-Calvert's testimony. (PX01850 at 068-072 (¶ 104) (Town Rebuttal Report), *in camera*). St. Luke's has low prices, and low *Willingness-to-Pay,* and high Medicare share, while ProMedica has high prices, high *Willingness-to-Pay,* and low Medicare share. Ms. Guerin-Calvert puts forward no rationale for the negative relationship between Medicare share and prices. (PX01850 at 068-072 (¶ 104) (Town Rebuttal Report), *in camera*).

1193. Including case-mix index is inappropriate because Profssor Town's prices are already case-mix adjusted. (PX01850 at 068-072 (¶ 104) (Town Rebuttal Report), *in camera*).

1194. Including assets per bed is inappropriate. Even if one assumed that it is a reasonable proxy measure for the quality of a hospital, all hospital attributes that affect patient preferences over hospitals are already accounted for in *Willingness-to-Pay*. (PX01850 at 069 (¶ 104) (Town Rebuttal Report), *in camera*).

1195. Including average hospital*Willingness-to-Pay* is incorrect because doing so is inconsistent with standard bargaining theory. (Town, Tr. 3903-3904). No peer-viewed, published research includes average hospital *Willingness-to-Pay*. (PX01850 at 070 (¶ 104) (Town Rebuttal Report), *in camera*).

1196. Adding correlated but unrelated variables can produce unreliable results, particularly when sample sizes are modest, as they are in hospital merger simulation models. (Town, Tr. 3886).

1197. Notably, even with the inappropriately added variables, Ms. Guerin-Calvert's analysis produces a predicted price increase that is economically significant (7.3 percent) and statistically significant at the 3.8 percent level. (RX-71(A) at 80-81 (¶ 152) (Guerin-Calvert Expert Report), *in camera*).

1198. Professor Town's*Willingness-to-Pay* merger simulation model appropriately accounts for the bargaining power of both the hospital and the MCO. (PX01850 at 067-068 (¶ 103) (Town Rebuttal Report), *in camera*; Town, Tr. 3885). The joint statistical significance of the bargaining power of both the hospital and the MCO is the material consideration in evaluating the precision of the predicted price effect of the merger. (Guerin-Calvert, Tr. 7930-7931).

B. Flaws in Bruce Den Uyl's Analysis

1199. Bruce Den Uyl was retained by Respondent to present his opinions regarding the financial condition of St. Luke's leading up to the Acquisition, as well as to respond to the opinions presented by Complaint Counsel's expert, Gabriel Dagen. (RX-56 at 1 (¶ 1) (Den Uyl Expert Report), *in camera*).

1200. Mr. Den Uyl concluded that, going forward, a standalone St. Luke's faced certain "obstacles" – such as capital needs and health care reform – that it "*might* not be able to achieve." (Den Uyl, Tr. 6503-6504 (emphasis added)).

1201. Mr. Den Uyl was not asked to analyze whether St. Luke's would have been insolvent or a "failing firm" absent its acquisition by ProMedica. (Den Uyl, Tr. 6519-6521). Mr. Den Uyl did not conclude that St. Luke's would be insolvent or "failing" absent the Acquisition, despite having rendered such an expert opinion in at least one prior hospital merger case. (Den Uyl, Tr. 6519-6521).

1202. Mr. Den Uyl did not analyze – and has no expert opinion regarding – how long St. Luke's could have survived as a standalone hospital had it not been acquired by ProMedica. (Den Uyl, Tr. 6521-6522). For example, Mr. Den Uyl did not offer an expert opinion projecting St. Luke's reserve fund levels absent the Acquisition. (Den Uyl, Tr. 6588-6589, *in camera*). At the time of the Acquisition, St. Luke's had $65 million in cash and investments. (Joint Stipulations of Law and Fact, JX00002A ¶ 34).

1203. Mr. Den Uyl also has not analyzed – and has no expert opinion on – whether St. Luke's patient volume or market share would have decreased or increased absent the Acquisition. (Den Uyl, Tr. 6533-6534).

1204. Mr. Den Uyl did not analyze – and has no expert opinion regarding – whether St. Luke's would have been profitable absent the Acquisition, despite having concluded in at least one previous merger case that a hospital was highly unlikely to operate at a profit in the future. (Den Uyl, Tr. 6522-6523). In fact, in this case, Mr. Den Uyl acknowledged that it is "possible" that St. Luke's would have been a profitable standalone hospital absent the Acquisition. (Den Uyl, Tr. 6523-6524).

1205. Mr. Den Uyl did not conclude that St. Luke's financial condition worsened in the months leading up to the Acquisition; to the contrary, Mr. Den Uyl testified that St. Luke's financial performance "improved" during the eight months leading up to the Acquisition. (Den Uyl, Tr. 6562).

1206. Mr. Den Uyl concludes in his own expert report that, during the first eight months of 2010 (prior to the Acquisition), St. Luke's "increased revenues and decreased costs." (RX-56 at 11 (¶ 30) (Den Uyl Expert Report), *in camera*; Den Uyl, Tr. 6593-6594, *in camera*). Mr. Den Uyl's expert report shows St. Luke's improving during the first eight months of 2010 across various financial metrics, including: operating income, EBITDA, and overall cost coverage ratio (*i.e.,* across all payors). (RX-56 at 6-7, 10 (Tables 1, 3, 6) (Den Uyl Expert Report), *in camera*). During trial, Mr. Den Uyl testified that St. Luke's operating income, EBITDA, and overall cost coverage ratio improved during the first eight months of 2010 compared to 2009. (Den Uyl, Tr. 6590-6591, 6603-6604, *in camera*).

1207. Mr. Den Uyl testified that he did not analyze Respondent's claimed efficiencies to determine whether they are cognizable under the *Merger Guidelines*, despite having performed such an analysis in prior hospital merger cases. (Den Uyl, Tr. 6515-6516). For instance, Mr. Den Uyl did not analyze whether Respondent's alleged efficiencies are merger-specific. (Den Uyl, Tr. 6515).

1. Mr. Den Uyl Exaggerates the Need for Rate Increases to Sustain St. Luke's Financial Turnaround

1208. In the eight months leading up to the Acquisition, St. Luke's had profitable contracts with all of its commercial health plans except for one, { }. (Dagen, Tr. 3239-3240, *in camera*; PX00512 at 001 (Aug. 2010 year-to-date payor cost ratio spreadsheet), *in camera*).

1209. During those eight months, contracts with all payors – including{ } and government programs such as Medicare and Medicaid – reimbursed St. Luke's enough to cover all direct costs of treating patients. (PX01951 at 039-040 (Den Uyl, Dep. at 150-154), *in camera*; Dagen, Tr. 3239-3241, *in camera*; PX00512 at 001 (Aug. 2010 year-to-date payor cost ratio spreadsheet), *in camera*).

1210. By the last four months of 2010, St. Luke's was earning a profit when treating patients for every commercial health plan, including { }. (Den Uyl, Tr. 6598-6000, *in camera*; PX01852 at 018-019 (¶ 27) (Dagen Rebuttal Report); PX00513 (Sept. through Dec. 2010 payor cost ratio spreadsheet), *in camera*).

1211. Mr. Dagen concluded that, because St. Luke's received reimbursement in 2009 and the first eight months of 2010 that was sufficient to cover all direct costs of treating patients, volume growth improved St. Luke's profitability – irrespective of reimbursement rate increases. (Dagen, Tr. 3189-3193; 3198-3199; 3239-3241, *in camera* ("[a]s long as you're making a contribution to your indirect costs . . . it's beneficial to add the next patient"); PX01852 at 017 (¶ 25) (Dagen Rebuttal Report); PX00519 (2009 payor cost ratio spreadsheet), *in camera*; PX00512 (Aug. 2010 year-to-date payor cost ratio spreadsheet), *in camera*).

1212. Mr. Dagen's forward-looking pro forma shows that, absent the Acquisition, continued volume growth could have acted as the primary driver of a continued financial turnaround at St. Luke's. (*See* PX02147 at 036-042 (¶¶ 65-76) (Dagen Expert Report); PX01950 at 042-043 (Dagen, Dep. at 161-162), *in camera*).

2. Mr. Den Uyl Relied on a Flawed and Misleading Financial Metric to Estimate St. Luke's Cash Flow

1213. Mr. Den Uyl relied on a measurement of "operating cash flow less capital expenditures" to conclude that St. Luke's was struggling financially prior to the Acquisition. (Den Uyl, Tr. 6534-6535; RX-56 at 7-8 (¶¶ 21-22) (Den Uyl Expert Report), *in camera*).

1214. Mr. Den Uyl admitted, however, that "operating cash flow less capital expenditures" does not appear as a line-item on the financial statements of any hospital. (Den Uyl, Tr. 6535). And St. Luke's did not use this metric in its ordinary course prior to the Acquisition. (Den Uyl, Tr. 6535-6536; Wakeman, Tr. 2596).

1215. The "operating cash flow less capital expenditures" metric does not take into account the value of a hospital's reserve fund. (Den Uyl, Tr. 6539). As a result, "operating cash flow less capital expenditures" does not in itself distinguish a hospital with $5 million in cash reserves from a hospital with $5 billion in cash reserves. (Den Uyl, Tr. 6539). As a result, Mr. Den Uyl admitted that he would want to look at a metric other than just "operating cash flow less capital expenditures" before rendering an opinion about a company's financial health. (Den Uyl, Tr. 6538-6539).

1216. Mr. Dagen concluded that Mr. Den Uyl's "operating cash flow minus capital expenditures" metric was "based on the incorrect premise that cash flow from operations must be sufficient to cover the entire cost of capital expenditures in a given year." (PX01852 at 011-012 (¶¶ 15-17) (Dagen Rebuttal Report)). Further, the measurement is flawed and can provide "meaningless" results because it does not account for the size of a company's cash reserves. (Dagen, Tr. 3225-3227).

3. Mr. Den Uyl's Analysis Overstates the Significance of St. Luke's Pension Shortfall

1217. Mr. Den Uyl relied on St. Luke's "accrued pension liability" as an indicator of future cash contributions that St. Luke's would be legally required to make in order to adequately fund its defined benefits pension plan. (Den Uyl, Tr. 6446-6447, *in camera*; RX-56 at 11 (¶¶ 31-32, Table 7) (Den Uyl Expert Report), *in camera*).

1218. However, St. Luke's pension liability does not represent an immediate cash outlay owed by St. Luke's. (Arjani, Tr. 6768, *in camera*; *see also* PX01852 at 014-015 (¶ 22) (Dagen Rebuttal Report)). Further, the pension liability does not determine whether a pension plan is "at risk" under ERISA law, and it has no bearing on the cash contributions that St. Luke's is required to make into its pension plan. (Arjani, Tr. 6758, 6767-6768, *in camera*; *see also* PX01852 at 014-015 (¶ 22) (Dagen Rebuttal Report)).

1219. The figure that reflects "at risk" status and actually determines cash funding requirements is the "Adjusted Funding Target Attainment Percentage," or "AFTAP," which is never even mentioned in Mr. Den Uyl's analysis. (Arjani, Tr. 6757-6759, 6768, *in camera*; Den Uyl, Tr. 6446-6447, *in camera,* 6549-6550; RX-56 at 11-13 (¶¶ 31-34) (Den Uyl Expert Report), *in camera*; *see also* PX01852 at 014-016 (¶¶ 22-23) (Dagen Rebuttal Report)).

1220. St. Luke's pension fund has never been funded below**{ }** according to the AFTAP calculation and, as a result, has never been **{ }** (Arjani, Tr. 6764, *in camera*; Den Uyl, Tr. 6550). ERISA law grants St. Luke's until 2016 to get its pension plan back to a 100% funding level. (Arjani, Tr. 6764, *in camera*).

1221. Mr. Den Uyl acknowledged that St. Luke's has never missed or been late on a payment to a pension recipient. (Den Uyl, Tr. 6551). And Mr. Den Uyl did not conclude that St. Luke's would have failed to make payments to pensioners absent the Acquisition. (Den Uyl, Tr 6551-6552). According to Mr. Dagen's analysis, St. Luke's has sufficient funds

in its pension plan today to cover its payout obligations for many years into the future. (Dagen, Tr. 3165; PX02147 at 023-024 (¶ 45) (Dagen Expert Report).

1222. Mr. Den Uyl's analysis of St. Luke's pension fund ends at August 31, 2010. (RX-56 at 11-13 (¶¶ 31-34) (Den Uyl Expert Report), *in camera*). However, within just four months of the Acquisition's closing, St. Luke's pension liability improved by almost { } – having decreased from approximately { } to { } – almost exclusively as the result of financial market performance. (PX02363 at 001 (Jan. 31, 2011 Financial Statement Disclosures as of Dec. 31, 2010), *in camera*; PX02369 at 001 (Findley Davies' Pension Update), *in camera*; Arjani, Tr. 6755, *in camera*; PX01943 at 027 (Arjani, Dep. at 101-102), *in camera*; *see also* PX01852 at 016 (¶¶ 24) (Dagen Rebuttal Report)).

4. Mr. Den Uyl's Alternative Pro Forma is Based on Unfounded Assumptions

1223. In presenting his own version of a pro forma of a standalone St. Luke's financial performance from 2011 to 2013, Mr. Den Uyl makes several changes to the assumptions that Mr. Dagen has used in his own model. However, Mr. Den Uyl testified that he is not presenting his alternative projections of a standalone St. Luke's as what would actually have happened absent the Acquisition. (Den Uyl, Tr. 6585-6587, *in camera*).

1224. Although his alternate pro forma shows end-of-year reserve fund levels for each year from 2011 to 2013, Mr. Den Uyl has not offered the expert opinion that these reserve fund levels were the likely outcome for St. Luke's absent the Acquisition. (Den Uyl, Tr. 6588-6589, *in camera*; PX01951 at 070 (Den Uyl, Dep. at 274), *in camera*).

1225. Although his pro forma shows St. Luke's depleting its reserve fund by 2012, Mr. Den Uyl testified that he has not concluded that St. Luke's reserve fund was, in fact, likely to be depleted by 2012 – or even 2013 – absent the Acquisition. (Den Uyl, Tr. 6588-6589, *in camera*).

1226. Mr. Den Uyl's alternate pro forma is unreliable because it is based on assumptions that lack foundation in the factual record. (PX01852 at 019-022 (¶¶ 28-32) (Dagen Rebuttal Report)). For instance, at the time of the Acquisition, St. Luke's had $65 million in cash and investments, which grew to at least $70 million by the end of 2010. (Joint Stipulations of Law and Fact, JX00002A ¶¶ 34-35). Mr. Den Uyl's model, however, shows St. Luke's depleting its reserve fund as early as 2012, despite the fact that he could not identify a single ordinary course document that projected such a scenario. (Den Uyl, Tr. 6587, *in camera*).

1227. Further, Mr. Den Uyl's results directly contradict the ordinary course analysis of St. Luke's CEO, Daniel Wakeman, who at the end of 2009 believed St. Luke's could have survived as a standalone hospital for at least another three to five years – and even longer if the financial markets improved and St. Luke's attained positive operating cash flow. (Wakeman, Tr. 2625; *see also* PX01852 at 020 (¶ 28) (Dagen Rebuttal Report)

(indicating that, indeed, St. Luke's financial performance did improve significantly from the time that Mr. Wakeman made his late 2009 projections); s*ee also* PX02147 at 026 (¶ 48) (Dagen Expert Report) (broad market rally from Aug. 31, 2010 through Dec. 31, 2010)).

1228. In his alternate pro forma, Mr. Den Uyl decreases St. Luke's starting reserve fund level at the beginning of 2011 by { } in order to account for the "restricted" status of certain St. Luke's funds. (RX-56 at 42 (Table 22) (Den Uyl Expert Report), *in camera*; Den Uyl, Tr. 6458-6461, *in camera,* 6500). However, Mr. Den Uyl testified that restricted funds can be reclassified into unrestricted funds by St. Luke's Board of Directors, and that St. Luke's could have reclassified at least { } of its restricted funds into unrestricted funds absent the Acquisition. (PX01951 at 047-048 (Den Uyl, Dep. at 183-184, 187, *in camera*).

1229. Mr. Dagen concluded that ordinary course documents supported the notion that St. Luke's can access its restricted funds to fund operations, if necessary. (PX01852 at 004-005 (¶ 7) (Dagen Rebuttal Report); PX00038 at 006 (May 2010 Compass Lexecon efficiencies report), *in camera* ("ability to use . . . for other purposes"); PX01599 at 002 (St. Luke's "2011 Strategic Planning" dated Aug. 25, 2010, indicating an intention to "[m]ove resources from Insurance Reserve account to Funded Depreciation account ($7MM-$9MM, as available)"),*in camera*).

1230. In his alternate pro forma, Mr. Den Uyl uses a five percent annual expense growth rate. (Den Uyl, Tr. 6502; RX-56 at 43 (¶100) (Den Uyl Expert Report), *in camera*). However, Mr. Den Uyl testified that he has not concluded that expenses of a standalone St. Luke's would have actually grown five percent annually in future years. (Den Uyl, Tr. 6585-6587, *in camera*; PX01951 at 067 (Den Uyl, Dep. at 262), *in camera*).

1231. Mr. Den Uyl also acknowledged that he is not aware of a single ordinary course document projecting a five percent expense growth rate for St. Luke's in 2011. (PX01951 at 067 (Den Uyl, Dep. at 264), *in camera*).

1232. In contrast, Mr. Dagen relied on several ordinary course documents for the three percent expense growth rate that he used in his pro forma. (PX01852 at 023-025 (¶¶ 33-35) (Dagen Rebuttal Report); PX01590 at 021 (2011 Financial Plan Summary), *in camera*; PX01592 at 001 (St. Luke's 2011 Budget and 2012-2013 Forecasts), *in camera*.

1233. In his alternate pro forma, Mr. Den Uyl uses capital expenditures that are, over the time period from 2011 to 2013, { } million higher than the amount of expenditures that Mr. Dagen uses in his model. (RX-56 at 42 (Table 22) (Den Uyl Expert Report), *in camera* ({ } million from 2011 to 2013); PX02147 at 039 (¶ 71) (Dagen Expert Report) ($37.6 million from 2011 to 2013)). For example, Mr. Den Uyl assumed that St. Luke's would spend { } million on capital expenditures in 2011 alone, whereas Mr. Dagen's pro forma assumed that St. Luke's would spend $14.5 million. (RX-56 at 42 (Table 22) (Den Uyl Expert Report), *in camera*; PX01852 at 023 (Table 4) (Dagen Rebuttal Report)).

1234. However, Mr. Den Uyl acknowledged that he did not conclude that a standalone St. Luke's would actually spend { } million on capital expenditures in 2011. (Den Uyl, Tr. 6585-6587, *in camera*; PX01951 at 069 (Den Uyl, Dep. at 270), *in camera*).

1235. Mr Den Uyl also testified that he could not recall a single ordinary course document that projected St. Luke's would spend approximately { } million on capital expenditures in 2011. (PX01951 at 069 (Den Uyl, Dep. at 270-272), *in camera*).

1236. In contrast, Mr. Dagen relied on ordinary course documents for the annual capital expenditure that he used in his pro forma. (PX02147 at 039 (¶ 71) (Dagen Expert Report); PX01494 at 010 (St. Luke's Capital Budget), *in camera* (projects { } in capital spending in 2011, and a total of { } from 2011 through 2013); PX00396 at 012-013 (Navigant Consulting Report), *in camera* (projects { } in capital spending in 2011, and a total of { } from 2011 through 2013)).

XVIII. REMEDY

A. Divestiture is the Proper Remedy and Will Restore Competition

1237. Prior to the Acquisition, ProMedica and St. Luke's competed vigorously against each another, particularly in southwest Lucas County. (Town, Tr. 3596; PX02148 at 054-055, 076 (¶¶ 95, 136) (Town Expert Report), *in camera*; *See supra* Section X). This competition resulted in lower healthcare costs, higher quality, and greater choice for Lucas County residents. (PX02148 at 084-088 (¶¶ 155-161) (Town Expert Report), *in camera*; *See supra* Sections XI-XIII). Even ProMedica's CEO acknowledges that competition between hospitals benefits the local community by resulting in enhanced customer service, higher quality care, better access for patients, and improved facilities. (Oostra, Tr. 6039).

1238. The Acquisition eliminates these benefitsof competition and creates anticompetitive harm for consumers in the form of increased healthcare costs, reduced choice, lower clinical quality, and diminished quality of patient experience. (Town, Tr. 3600-3601, 3605-3606; PX02148 at 058-059 (¶ 104) (Town Expert Report), *in camera*).

1239. A complete divestiture of St. Luke's by ProMedica is required in order to restore these benefits and the competition eliminated by the Acquisition. (*See* Complaint Counsel's Proposed Order at Part II, Section O and Complaint Counsel's Proposed Conclusions of Law at XX.I.).

B. Divestiture Is Straightforward Because the FTC's Hold Separate Agreement Maintained St. Luke's as a Viable Hospital

1240. ProMedica entered into a Hold Separate Agreement with the FTC prior to the consummation of the transaction. (PX00069 at 001 (Hold Separate Agreement)). Under

the preliminary injunction order of U.S. District Judge David A. Katz, ProMedica must continue "to abide by [the] terms of the current Hold Separate Agreement until either (1) the completion of all legal proceedings by the Commission challenging the Acquisition, including all appeals, or (2) further order of the Court, including upon the request of the Commission before completion of such legal proceedings." (*Federal Trade Commission v. ProMedica Health System, Inc.*, 2011 U.S. Dist. LEXIS 33434 at *41; 2011-1 Trade Cas. (CCH) P77,395).

1241. Due to the Hold Separate Agreement, St. Luke's has remained a viable entity that can be relatively easily divested from ProMedica. The Hold Separate Agreement requires ProMedica to "maintain the viability, competitiveness, and marketability of St. Luke's." (PX00069 at 001 (Hold Separate Agreement)). The Hold Separate Agreement accomplishes this requirement by prohibiting ProMedica from:

a. eliminating, transferring, or consolidating "any clinical service that is offered at St. Luke's on the day before the Acquisition is consummated" (PX00069 at 001);

b. terminating any St. Luke's employees (except "for cause consistent with the procedures in place at St. Luke's on the day before the Acquisition") (PX00069 at 001);

c. modifying, changing, or cancelling any physician privileges at St. Luke's in place on the day before the Acquisition (however "ProMedica may revoke the privileges of any individual physician consistent with the practices and procedures in place at St. Luke's on the day before the Acquisition") (PX00069 at 001); or

d. terminating, or causing or allowing termination of any contract between a health plan and St. Luke's (PX00069 at 001).

1242. If a health plan's contract with St. Luke's expires during the term of the Hold Separate Agreement, ProMedica must offer to "continue to accept the same terms of the contract for the remaining term" of the Hold Separate Agreement. (PX00069 at 001 (Hold Separate Agreement)). Ronald Wachsman, ProMedica's Senior Vice President of Managed Care, Reimbursement, and Revenue Cycle Management, confirmed that ProMedica has complied with this provision. (Wachsman, Tr. 5074, *in camera*). This provision gives health plans additional leverage in negotiating St. Luke's rates with ProMedica that health plans would not have had otherwise. (Town, Tr. 3857, 4370-4371, 4474).

1243. The Hold Separate Agreement maintains St. Luke's viability by requiring ProMedica to "provide sufficient working capital to operate St. Luke's at its current rate of operation." (PX00069 at 001 (Hold Separate Agreement)).

C. Divestiture Is Straightforward Because St. Luke's Has Not Significantly Integrated with ProMedica

1244. Although St. Luke's intended to implement an electronic medical record ("EMR") system on its own in 2010, the plan was put on hold due to the Acquisition. (Johnston, Tr. 5484, *in camera*). By July 2011, ProMedica and St. Luke's had only developed a time line describing what steps were needed to achieve the government's meaningful use requirements for EMR, but no actual implementation had occurred. (Johnston, Tr. 5380-5381)

1245. Although ProMedica commissioned an architect to provide final St. Luke's facility renovation plans, there is no evidence that this renovation has occurred. (Johnston, Tr. 5372).

1246. After receiving FTC approval, ProMedica removed St. Luke's Inpatient Rehabilitation Center and consolidated inpatient rehabilitation services at Flower. (Oostra, Tr. 5907-5908, *in camera*). ProMedica replaced St. Luke's vacant inpatient rehabilitation space with medical-surgical beds and private rooms. (Hanley, Tr. 4681, 4814, *in camera*; Johnston, Tr. 5374).

1247. Despite testimony from Lori Johnston, St. Luke's CFO/COO, that ProMedica has initiated a project to add 17 more private rooms to St. Luke's (Johnston, Tr. 5376-5377), ProMedica's CEO testified that ProMedica is "making no investment at St. Luke's at this point for private rooms," absent the small number of private rooms created in St. Luke's former inpatient rehabilitation space. (Oostra, Tr. 5907, *in camera*).

D. Anticompetitive Harm Will Result if No Divestiture or Remedy

1. ProMedica Plans to Increase Hospital Reimbursement Rates

1248. Under the Agreement, ProMedica has taken over the management and negotiation of St. Luke's contracts with health plans. (Oostra, Tr. 6134-6135; Wachsman, Tr. 5095-5096; PX00058 at 058 (Joinder Agreement, Ex. 9).

1249. The Acquisition has eliminated significant, beneficial competition. As a result, health plans, employers, and St. Luke's Board and executives expect ProMedica to increase St. Luke's rates significantly. (*See supra* Section XI.A. If St. Luke's rates increase to the rates at ProMedica's hospitals, as health plans expect, this would represent a rate increase of more than 70 percent, on average. (PX02148 at 037 (¶ 68) (Town Expert Report), *in camera* (stating that ProMedica's prices were **{** percent higher than St. Luke's); PX02125 at 027 (Town, Decl., Ex. 4, *in camera*) (severity adjusted price differential between ProMedica and St. Luke's)).

1250. Without a divestiture, Lucas County employers and their employees will suffer substantial, immediate, and irreversible harm from higher healthcare-insurance prices, as

ProMedica plans to raise St. Luke's rates as soon as possible. (Wachsman, Tr. 5083, *in camera*; PX01927 at 022-023 (Wachsman, Dep. at 82-83, 85-87), *in camera*).

1251. Ultimately, higher healthcare costs will be borne by Lucas County residents, many of whom already are struggling financially. (*See supra* Section XII). In response, some Lucas County employers may reduce healthcare benefits for their employees, and some insured employees may forgo medical treatment due to higher out-of-pocket expenses. (*See supra* Section XII).

2. The Joinder Agreement Does Not Maintain the Competitive Viability of St. Luke's as an Independent Hospital

1252. In addition to the significant harm that will result from ProMedica's ownership of a once-vibrant rival, it is uncertain that ProMedica will preserve St. Luke's as a stand-alone, full-service general acute-care hospital. Under Section 7.1 of the Joinder Agreement ("Agreement"), ProMedica is only obligated to retain six specified service categories at St. Luke's. (PX00058 at 023 (Joinder Agreement § 7.1) (the covered service categories are: emergency room, ambulatory surgery, inpatient surgery, obstetrics, inpatient nursing, and a CLIA-certified laboratory)). Even for these basic service categories, the Agreement does not include minimum operational or quality standards.

1253. ProMedica's CEO, Randall Oostra, confirmed that any services not listed in Section 7.1 of the Agreement are not protected from being transferred or eliminated from St. Luke's. (Oostra, Tr. 6136). ProMedica's CEO also affirmed that ProMedica could choose to eliminate or transfer these services from St. Luke's to another ProMedica hospital. (Oostra, Tr. 6138).

1254. ProMedica faces no obligation whatsoever to preserve critical services at St. Luke's such as oncology, cardiology, orthopedics, radiology and imaging, spinal neurosurgery, pediatrics, and diabetes care, among others. (Oostra, Tr. 6136-6138; *compare* PX00058 at 023 (Joinder Agreement § 7.1) *with* PX02102 at 002 (Wakeman, Decl. ¶ 5) (listing current services); RX-51 at 40 (Wakeman, Dep. at 152-153), *in camera*; *see also* PX00396 at 002-003 (Navigant Consulting, Clinical Integration Strategy: Executive Summary, Jan. 11, 2011), *in camera* (seven areas analyzed for potential consolidation or "reconfiguration.")).

1255. ProMedica is explicitly examining what services can be changed at its hospitals, including St. Luke's. (Oostra, Tr. 6139; PX00396 at 002-003 (Navigant Consulting, Clinical Integration Strategy: Executive Summary, Jan. 11, 2011), *in camera* (seven areas analyzed for potential consolidation or "reconfiguration.")). ProMedica hired Navigant Consulting to study the "rationalization of services" at ProMedica's hospitals, including St. Luke's. (Oostra, Tr. 6139).

1256. If, for example, ProMedica were to discontinue open-heart surgery at St. Luke's (which is permissible under the Agreement), this could undermine the overall viability of St. Luke's Heart Center and its interventional cardiology program. (*see* Gbur, Tr. 3112-3113

(local cardiologist concerned that if St. Luke's open heart program is removed it will affect his ability to do cardiac interventions at St. Luke's)).

1257. ProMedica can amend the Agreement with approval from St. Luke's Board, which is subject to the exercise of ProMedica's reserve powers. (Oostra, Tr. 6133-6134; PX00058 at 051-052 (Joinder Agreement § 17.3).

1258. ProMedica already has considerable control over St. Luke's Board. ProMedica has the power to approve all nominations to the St. Luke's Hospital Board and St. Luke's Foundation Board. (Oostra, Tr. 6132). ProMedica has the power to remove any St. Luke's trustee from the board with or without cause. (Oostra, Tr. 6132). After an initial term, ProMedica can appoint any board member to St. Luke's board. (Oostra, Tr. 6132). ProMedica has the power to authorize and approve amendments to St. Luke's governing documents, including St. Luke's articles of incorporation and bylaws. (Oostra, Tr. 6132-6133).

1259. ProMedica also has significant power over St. Luke's financial decisions. ProMedica has the power to authorize and approve all nonbudgeted operating and capital expenditures of St. Luke's above half a million dollars. (Oostra, Tr. 6133). ProMedica has the power to authorize and approve any incurrence of debt at St. Luke's. (Oostra, Tr. 6133).

3. ProMedica Plans to Close and Consolidate Hospital Services and to Reduce Staffing at St. Luke's

1260. Gary Akenberger – ProMedica's Senior Vice President of Finance and the lead individual responsible for the financial analysis, substantiation, and verification of Respondent's alleged efficiencies – indicated in his affidavit that Respondent intends to close services lines and reduce staffing at St. Luke's. (*See, e.g.,* PX02104 at 005-007 (¶¶ 9-10, 13) (Akenberger, Decl.), *in camera*; PX01931 at 025-026, 034 (Akenberger, Dep. at 93, 100, 131), *in camera*).

1261. The Compass Lexecon report initially identified several of St. Luke's service lines as candidates for consolidation, including heart/vascular, orthopedics, women's obstetrics and gynecology (OB/GYN), neuro/stroke, cancer, and pulmonary services. (PX00020 at 013 (Compass Lexecon Report), *in camera*). ProMedica then hired Navigant specifically to determine which services to transfer or consolidate. (PX00222 at 002 (Navigant Service Line and Clinical Integration Report), *in camera*; *see also* PX01912 at 033, 043 (Akenberger, IHT at 122-125, 162-164), *in camera*).

1262. In January 2011, Navigant analyzed seven service lines for consolidation, including open-heart surgery, and it also looked at integration opportunities in psychiatry and rehabilitation services. (PX01946 at 016 (Nolan, Dep. at 56-57); PX00396 at 003, 008-010 (Navigant Consulting, Clinical Integration Strategy: Executive Summary, Jan. 11, 2011), *in camera* (the seven service lines were cancer, heart and vascular, neurosciences, orthopedics, women's (obstetrics and gynecology), pediatrics, and gastroenterology/urology)).

1263. Navigant recommended that { } (Nolan, Tr. 6302-6303, 6328, *in camera*).

1264. Navigant also recommended that { } (Nolan, Tr. 6299, *in camera*).

1265. ProMedica has already closed St. Luke's inpatient rehabilitation center and consolidated these services at Flower Hospital. (Oostra, Tr. 5907-5908, *in camera*). This has resulted in fewer, less convenient inpatient rehabilitation options for St. Luke's rehabilitation patients. (Andreshak, Tr. 1797-1799).

1266. Assuming that Flower has higher average rates forinpatient rehabilitation services than St. Luke's, a health plan, employer, or self-pay patient will pay more to receive these services after the inpatient rehabilitation consolidation. (Hanley, Tr. 4739-4740, *in camera*).

1267. In the recent past, ProMedica has closed service lines at its legacy hospitals. (Oostra, Tr. 6138 (ProMedica's CEO acknowledged that ProMedica closed obstetrical services at its hospital in Tecumseh, Michigan)).

1268. The same process of service consolidation took place at Flower following its acquisition by ProMedica in the mid-1990s. ProMedica's CFO, Kathleen Hanley, testified that Flower had a significant number of redundant practices, and ProMedica consolidated service lines and department heads. (PX01903 at 045 (Hanley, IHT at 172), *in camera*).

1269. ProMedica also plans to reduce staffing at St. Luke's. Compass Lexecon's report indicates that ProMedica plans to lower St. Luke's overall staffing levels to those of Flower Hospital. (PX00020 at 015 (Compass Lexecon Report), *in camera*). The Agreement does not prevent ProMedica from immediately reducing the number of St. Luke's employees.

1270. St. Luke's has a strong reputation for quality and patient care in the community. (Wakeman, Tr. 2477-2478). ProMedica's CEO agreed that prior to the Acquisition, St. Luke's was a patient-centered hospital and "maintained a real strong patient focus." (Oostra, Tr. 6028). St. Luke's ranks highly in quality and patient satisfaction scores, and patient satisfaction levels at St. Luke's have increased further, relative to last year. (RX-51 at 6, 24 (Wakeman, Dep. at 16-17, 89), *in camera*; PX00390 at 001 (May 2010 ProMedica Press Release); PX01072 at 001 (Key Messages from St. Luke's)).

1271. Despite St. Luke's rapid growth in patient volume in 2010, patient satisfaction and quality were unaffected and remained at very high levels. (Wakeman, Tr. 2495-2498; Black, Tr. 5685, 5690).

1272. Providing uninterrupted, high-quality patient care and patient safety were the precise reasons that St. Luke's chose not to lay off employees and in fact *continued hiring* over the past two years. (RX-51 at 8-9 (Wakeman, Dep. at 22-27), *in camera*; *see also* PX01274 at 001 (Wakeman e-mail), *in camera*).

1273. ProMedica's Chief Financial Officer testified that ProMedica "continually look[s] for opportunities to downsize or right-size programs and services." (Hanley, Tr. 4798, *in camera*). In fact, during the recent economic downturn, ProMedica laid off employees, closed its daycare center, and eliminated services that it previously offered to Toledo residents. (Oostra, Tr. 6125-6126). ProMedica's policies and actions suggest that staffing and services at St. Luke's are likely to be reduced post-Acquisition.

1274. ProMedica alleges that the Acquisition may enable it to avoid constructing a new hospital at its Arrowhead property near Maumee and a new bed tower at Flower Hospital. (PX02104 at 005-007 (¶¶ 9-10, 13) (Akenberger, Decl.), *in camera*). If true, then the Acquisition could very well be "removing an expenditure that would create value" to Toledo consumers. (Town, Tr. 3928-3929). Firms invest in their businesses to better compete and thus enhance consumer welfare, and if these competition-driven investments are "avoided," consumers generally are left worse off. (PX02148 at 094 (¶ 172) (Town Expert Report), *in camera*). Kathleen Hanley, ProMedica's CFO, admitted that a new hospital at Arrowhead would be in "direct competition" with St. Luke's, and that ProMedica acquired St. Luke's "instead of investing millions of dollars in a *competing facility*." (PX01903 at 063 (Hanley, IHT at 243-245), *in camera* (emphasis added)).

XIX. WITNESS BACKGROUNDS

A. Lay Witnesses Who Testified at Trial

1. Complaint Counsel's Witnesses

a. Third Party Hospitals

<u>**Edward Beck**</u>

1275. Mr. Beck is the Administrator of Fulton County Health Center ("FCHC"), and has held that position for 36 years. He has worked at FCHC for almost 43 years, and was the Director of Finance prior to becoming Administrator. As Administrator, Mr. Beck's responsibilities include the day-to-day operations of the hospitals, overseeing the medical staff, and setting the strategic plan and vision for FCHC. (Beck, Tr. 369-371). Mr. Beck also oversees contract negotiations with commercial health plans. (Beck, Tr. 370, 406, 426).

1276. Mr. Beck has held officer positions with the Hospital Council of Northwest Ohio and the Hospital Financial Management Organization, and has been a member of those organizations for over 30 years. (Beck, Tr. 372-374). He has also been involved with the

Ohio Hospital Association's hospital committee for several years. (Beck, Tr. 372).

1277. Mr. Beck has a bachelor's degree in business from Defiance College. (Beck, Tr. 375).

1278. Mr. Beck testified during the administrative proceeding pursuant to a subpoena. (Beck, Tr. 369-370). Prior to testifying, he made himself available and spoke with counsel for the Respondent. (Beck, Tr. 370).

1279. FCHC is a general acute-care hospital located in Wauseon, Ohio, in Fulton County. It is a nonprofit hospital with a 14-member board of directors. FCHC opened in 1973, and is currently a critical access hospital. (Beck, Tr. 376, 382).

1280. As a critical access hospital, FCHC has a maximum of 25 inpatient beds, can only retain patients for 96 hours average over a year, and is allowed a 10-bed psychiatric unit. (Beck, Tr. 376-377). Of the 25 inpatient beds at FCHC, seven are designated critical care beds, five are obstetric beds, and the remaining beds are medical-surgical beds. (Beck, Tr. 378).

Dr. Jeffrey Gold

1281. Dr. Jeffrey Gold serves as Chancellor and Executive Vice President for Biosciences and Health Affairs and Dean of the College of Medicine for the University of Toledo. (Gold, Tr. 184). Dr. Gold joined the University of Toledo as Dean of the College of Medicine in 2005. (Gold, Tr. 186). The University of Toledo owns the University of Toledo Medical Center ("UTMC," formerly called the Medical College Hospital), which it acquired when it merged with the Medical College of Ohio in 2006. (Gold, Tr. 186).

1282. UTMC is an academic medical center that provides tertiary and quaternary care to the community. (Gold, Tr. 192-193). UTMC's mission is to support the academic needs of the University of Toledo and, "in so doing, deliver healthcare that exemplifies the highest quality of knowledge and skill and professionalism." (Gold, Tr. 192-193).

1283. Notably, UTMC does not offer (and has never offered) inpatient obstetrics services, which includes labor and delivery. (Gold, Tr. 203).

1284. Dr. Gold is responsible for UTMC and its clinics. (Gold, Tr. 190). The staff members who negotiate with health plans on behalf of UTMC also report directly to Dr. Gold, and he discusses any significant negotiations with the University of Toledo's senior leadership team. (Gold, Tr. 190-191).

1285. Dr. Gold serves as chair of the board of the physician practice plan, which is the full-time practicing faculty of the University. (Gold, Tr. 190). As the chief academic officer for all health sciences, Dr. Gold is responsible for the academic programs in the College of Medicine, the College of Nursing, the College of Pharmacy, and the allied health programs of the University of Toledo and all the clinical and basic science research of these programs. (Gold, Tr. 190).

1286. Dr. Gold is an accomplished cardiac surgeon and has taught medicine at several well-known institutions. Dr. Gold received his undergraduate degree from Cornell University College of Engineering and subsequently received his medical degree from Cornell University. (Gold, Tr. 185). Next, he performed five years of general surgery at Presbyterian Healthcare System in New York, followed by an adult cardiac surgery residency and fellowship at Brigham and Women's Hospital in Boston. (Gold, Tr. 185). Dr. Gold completed his training at Boston Children's Hospital as a congenital heart surgeon. (Gold, Tr. 185). Dr. Gold is board certified in cardiothoracic surgery. (Gold, Tr. 186-187).

1287. In addition to his work as a cardiothoracic surgeon, Dr. Gold has worked in a teaching capacity. (Gold, Tr. 186). Within the Department of Cardiothoracic Surgery in New York Presbyterian Hospital and Cornell University College of Medicine, Dr. Gold advanced from assistant to associate to full professor of cardiothoracic surgery. (Gold, Tr. 186). Next, Dr. Gold became Chair of the Department of Cardiothoracic and Vascular Surgery at the Albert Einstein College of Medicine and Montefiore Medical System in New York until assuming his role at the University of Toledo. (Gold, Tr. 186).

1288. Dr. Gold sits on the Council of Medical Education for the American Medical Association and is a member of the House of Delegates representing the Society of Thoracic Surgeons, which he has been a board member of for many years. (Gold, Tr. 187). He also sits on the American Heart Association's liaison committee for medical education, which accredits all medical schools in the United States and Canada. (Gold, Tr. 187). Dr. Gold has been affiliated or employed with approximately 10 or 11 different hospital associations over the course of his career. (Gold, Tr. 187-188).

1289. Dr. Gold has been recognized by students, by faculty, and by colleagues for distinguished service, and by the American Heart Association through its Lifetime Achievement Award, as well as through many other honors. (Gold, Tr. 189).

1290. In July 2010, the University of Toledo and ProMedica signed an agreement stating that the University of Toledo would manage ProMedica's academic activities. (Gold, Tr. 191-192). This led to the formation of the Academic Health Center Corporation "which has a duly represented board and has a number of responsibilities in the areas of research and in the areas of education." (Gold, Tr. 192). Dr. Gold holds several positions on the Academic Health Center Corporation and devotes approximately 10 to 20 percent of his time to it. (Gold, Tr. 191-192).

Stanley Korducki

1291. Mr. Korducki is the President of Wood County Hospital ("WCH"). (Korducki, Tr. 446). He joined WCH as Assistant Administrator in 1996. (Korducki, Tr. 455-456). In 2001, Mr. Korducki became the President of WCH. (Korducki, Tr. 461). As President, Mr. Korducki sits on the WCH Board of Trustees and is responsible for, among other things,

hospital operations, vision planning, the medical staff, and financial management. (Korducki, Tr. 462; *see also* Korducki, Tr. 463-468).

1292. Mr. Korducki has an undergraduate degree and baccalaureate in business administration from Marquette University and a Master's Degree in health services administration from The Ohio State University. (Korducki, Tr. 446-447).

1293. After graduating from Ohio State in 1982, Mr. Korducki worked for 10 years at Children's Hospital in Milwaukee, Wisconsin, where he held various positions, progressing from administrative fellow/resident to Vice President of Professional Services. (Korducki, Tr. 447, 449).

1294. In 1992, Mr. Korducki joined St. Mary's Hospital in Centralia, Illinois as Vice President for Planning and Marketing. (Korducki, Tr. 451).

1295. Mr. Korducki moved to Washington, DC in 1994, and provided independent consulting services to area hospitals and other organizations, including Children's National Medical Center. (Korducki, Tr. 453-454).

1296. WCH is a general acute-care hospital located in Bowling Green, Ohio, in Wood County. It is a not-for-profit hospital association and operates about 85 staffed beds. (Korducki, Tr. 475-477). WCH's average daily census is about 38. (Korducki, Tr. 478-479). WCH is the only hospital in Northwest Ohio with a Center of Excellence in bariatrics. (Korducki, Tr. 512).

Scott Shook

1297. Scott Shook is the Senior Vice President of Business Development and Advocacy for Mercy's regional office in Toledo, Ohio. (Shook, Tr. 859-860, 869-870). Mr. Shook assumed the position of Senior Vice President for Strategic Initiatives in early 2002, and even though his title has changed to Mercy's Senior Vice President of Business Development and Advocacy, his responsibilities remain the same. (Shook, Tr. 869).

1298. In his business development role, Mr. Shook is responsible for searching for business opportunities for Mercy in the Toledo area. (Shook, Tr. 870). He analyzes five service lines: cardiology, neurology/orthopedics, trauma, outreach, and oncology, to determine what Mercy's strengths and weaknesses are and how to develop and improve the quality, efficiency, and patient satisfaction for these services. (Shook, Tr. 870). Mr. Shook also has operational responsibility for Mercy's oncology infusion centers and trauma transport services. (Shook, Tr. 871). In the advocacy role, Mr. Shook has the "primary responsibility in the [Toledo] region for liaisoning with all levels of government" and serves on advocacy committees for Catholic Healthcare Partners and the Ohio Hospital Association. (Shook, Tr. 870-871). Approximately 80 percent of Mr. Shook's time is spent on business development and the remainder on advocacy. (Shook, Tr. 871).

1299. Mercy is a not-for-profit hospital system owned by Catholic Healthcare Partners. (Shook, Tr. 889-890). Mercy falls within the northern division of Catholic Healthcare Partners and is headquartered in Toledo with six hospitals in northwest Ohio. (Shook, Tr. 890). Within the Toledo area, Mercy operates St. Vincent, St. Anne, and St. Charles. (Shook, Tr. 892). St. Vincent is a tertiary facility, while the others are general acute-care facilities. (Shook, Tr. 892). Notably, St. Anne does not provide obstetrical services. (Shook, Tr. 899-900).

1300. Mr. Shook is a member of Mercy's senior management group and its senior organizational group. (Shook, Tr. 872). Mercy's operational group examines monthly reports on the operation of Mercy's hospitals, transportation system, and infusion centers and determines what plans should be implemented or changed in Mercy's services. (Shook, Tr. 872-873). Both the operational and senior management groups discuss and approve proposed implementations or changes to Mercy's services. (Shook, Tr. 873).

1301. Mr. Shook is also a member of Mercy's strategic planning group. (Shook, Tr. 871-872). Mr. Shook attends Mercy's board of trustees' business development and finance committees meetings as staff. (Shook, Tr. 875, 883). Mr. Shook provides regular updates to the board on the progress of past projects that they approved, updates on strategic initiatives, and legislative updates. (Shook, Tr. 884-885).

1302. Mr. Shook has a long history of experience in the healthcare field. Prior to his current position, Mr. Shook worked in several positions at Riverside Hospital, which eventually became part of the Mercy system. (Shook, Tr. 864-867). In 1980, Mr. Shook's first role at Riverside was as CFO, and four years later he became the COO. (Shook, Tr. 864-865). After working as COO for three years, Mr. Shook assumed the role of CEO around 1994 after Riverside's CEO left. (Shook, Tr. 865-866). As CEO, Mr. Shook had responsibility for the entire hospital, including strategic planning. (Shook, Tr. 866-867). He served as Riverside's CEO until Riverside was acquired by the Sisters of Mercy, which eventually became Mercy Health Partners. (Shook, Tr. 867-868). Mr. Shook left the position of CEO to work in his current position in Mercy's regional office in Toledo in 2002. (Shook, Tr. 869-870).

1303. Prior to his positions at Riverside, Mr. Shook served as the Assistant Financial Director and Administrator of the Family Practice Residency Program at Mercy Hospital of Toledo from 1975 through 1980. (Shook, Tr. 863-864). Before joining Mercy Hospital of Toledo, Mr. Shook worked as an internal auditor from 1973 through 1975 at St. Luke's Hospital, which was then located in the Old West End section of Toledo. (Shook, Tr. 862-863).

1304. Mr. Shook's first position in healthcare was with Blue Cross of Northwestern Ohio in 1968 as a summer intern auditor. (Shook, Tr. 860). That health plan eventually was merged with others and is now part of Medical Mutual of Ohio. (Shook, Tr. 861-862). After serving in the U.S. Marine Corps, Mr. Shook worked through 1973 as an auditor, auditing Medicare cost reports and Blue Cross hospital cost reports. (Shook, Tr. 861-862).

1305. Mr. Shook holds a graduate and undergraduate degree in accounting from the University of Toledo which he earned in 1975 and 1970 respectively. (Shook, Tr. 860-861). Mr. Shook also taught a healthcare economics course at the University of Toledo for ten years. (Shook, Tr. 868). The course examined healthcare trends and contained actual case studies of the economics of opening a new service line in a hospital. (Shook, Tr. 868-869).

b. Health Plans

Thomas McGinty

1306. Mr. McGinty is the Director of Network Development for Humana, and has held that title since 2003. (McGinty, Tr. 1156).

1307. Mr. McGinty is responsible for Humana's contracts with hospitals, physician groups and ancillary services. (McGinty, Tr. 1160-1161). He is responsible for all of Ohio except the for the metropolitan Cincinnati and Dayton areas. (McGinty, Tr. 1161).

1308. Mr. McGinty has 35 years of experience working in the healthcare industry. He has worked on both the provider side and on the health plan side. (McGinty, Tr. 1160). Prior to working at Humana, Mr. McGinty worked for WellPoint Health Networks, where he was the executive director of network development, and Kaiser Permanente, where he was a regional operations administrator. (McGinty, Tr. 1156-1158). On the provider side, he was an administrator at Lakewood Hospital, a community hospital with 410 beds located near Cleveland, Ohio. (McGinty, Tr. 1158-1159).

1309. Humana is a national health plan and is headquartered in Louisville, Kentucky. Humana is in all 50 states plus Puerto Rico, with more than 14 million lives nationally. (McGinty, Tr. 1154-1155).

1310. Since Mr. McGinty joined Humana in 2003, Humana has had a presence in Lucas County. (McGinty, Tr. 1156). Mr. McGinty visits Lucas County about 5 to 10 times a year. (McGinty, Tr. 1167).

1311. In Lucas County, Humana has about 2,000 commercial members and 7,000 Medicare Advantage members. (McGinty, Tr. 1168).

1312. Humana had more than 1,000 Medicare Advantage discharges at St. Luke's in 2010. (McGinty, Tr. 1270).

Donald Pirc

1313. Mr. Pirc is currently Medical Mutual of Ohio's ("MMO") vice president of network management for Ohio, Indiana, and Kentucky. (Pirc, Tr. 2160). While Mr. Pirc has been in his current position at MMO for six months, he has worked for MMO for almost 21

years. (Pirc, Tr. 2160, 2165-2166).

1314. In his current position, Mr. Pirc is responsible for contracting with hospitals, physicians, and ancillary providers in these states, to have these providers treat MMO's members at pre-negotiated reimbursement rates. (Pirc, Tr. 2160). Specifically, Mr. Pirc is responsible for contracting with hospitals in Lucas County, Ohio. (Pirc, Tr. 2162).

1315. Mr. Pirc has approximately seventeen years of experience negotiating with healthcare providers on behalf of MMO, and approximately eight years negotiating with healthcare providers in Lucas County, Ohio. (Pirc, Tr. 2172).

1316. Mr. Pirc oversees a staff of approximately 50 MMO employees, who handle the day-to-day activities of managing provider contracts and negotiating provider reimbursement rates. (Pirc, Tr. 2161). Mr. Pirc receives information about the activities in this office from a director who reports directly to him. (Pirc, Tr. 2161).

1317. During the five to six years prior to his assumption of his current position, Mr. Pirc was MMO's director of network management for Northern Ohio and Indiana. (Pirc, Tr. 2166). In that position, Mr. Pirc was responsible for overseeing the management and negotiation of MMO's contracts with hospitals, physicians, and ancillary providers in northern Ohio and Indiana. (Pirc, Tr. 2166; PX01944 at 003 (Pirc, Dep. at 8)). Mr. Pirc's responsibilities in that position also required him to be familiar with, among other things, the scope of services and quality of care offered at the Toledo-area hospitals and the preferences of MMO's members with respect to these hospitals. (Pirc, Tr. 2166-2167).

1318. Before becoming MMO's director of network management for northern Ohio and Indiana, Mr. Pirc spent approximately three years as MMO's manager of professional contracting in Northern Ohio and parts of Indiana. (Pirc, Tr. 2169). MMO's Northern Ohio region includes the Toledo area. (Pirc, Tr. 2169).

1319. Mr. Pirc's other previous positions at MMOinclude being a hospital contractor in the Ohio region encompassing Akron, Canton, and Youngstown, a physician contractor, and a member of the customer service branch of MMO's operations department. (Pirc, Tr. 2170-2171). He has personally participated in provider contract negotiations with hospitals and physicians. (Pirc, Tr. 2170-2171).

1320. The experience that he gained as a member of the customer service branch of MMO's operations department informed Mr. Pirc's ability to negotiate provider contracts on behalf of MMO by teaching him about the workings of the healthcare system and of health insurance. (Pirc, Tr. 2171-2172).

1321. Mr. Pirc holds a bachelor's degree from John Carroll University and a master's degree in business administration from Cleveland State University. (Pirc, Tr. 2172).

1322. MMO is a health insurance company. (Pirc, Tr. 2175). MMO is a mutual company, and as such, it is owned by its policyholders or members. (Pirc, Tr. 2172-2173).

1323. MMO does not pay dividends. (Pirc, Tr. 2173). All of the revenue that MMO generates in excess of claims and other costs is saved and used to pay future claims, as opposed to being distributed to shareholders in the model of a Wall Street firm. (Pirc, Tr. 2173).

1324. In 2010, MMO set a profit goal of zero and earned a margin of zero to one percent. (Pirc, Tr. 2173).

1325. MMO's customers are primarily employer groups. (Pirc, Tr. 2175). MMO has both fully-insured and self-insured customers. (Pirc, Tr. 2175). About 60 percent of MMO's commercially insured membership is self-insured and about 40 percent is fully-insured. (Pirc, Tr. 2274).

1326. MMO has state-wide healthcare provider networks in Ohio, Indiana, Georgia, and South Carolina. MMO also has healthcare provider networks in 17 counties in Kentucky. (Pirc, Tr. 2174).

1327. MMO offers PPO, POS, and HMO products. (Pirc, Tr. 2174-2175). Approximately 85 percent of MMO's business runs through the PPO product. (Pirc, Tr. 2175). About eight to ten percent of MMO's business runs through the HMO product. (Pirc, Tr. 2175). The remainder runs through the POS product. (Pirc, Tr. 2175).

1328. Approximately 1.4 million individuals in Ohio have health insurance through MMO. (Pirc, Tr. 2177-78). Approximately 90,000 to 100,000 individuals in Lucas County have health insurance through MMO. (Pirc, Tr. 2177-2178; PX 1944 at 004 (Pirc, Dep. at 10, *in camera*)).

1329. MMO's market share in Lucas County is about 25 percent. (Pirc, Tr. 2178; PX01944 at 010 (Pirc, Dep. at 36, *in camera*)). In terms of the size of its membership, it is one of the largest health plans in Lucas County, roughly neck-in-neck with Paramount. (PX01944 at 010 (Pirc, Dep. at 37)).

1330. Mr. Pirc did not meet or speak with representatives of the FTC to prepare for his testimony at trial. (Pirc, Tr. 2162-2163).

1331. MMO has an ongoing business relationship with ProMedica, and this relationship is an important part of Mr. Pirc's work at MMO. Mr. Pirc does not bear any ill will towards ProMedica. (Pirc, Tr. 2164).

James Pugliese

1332. Mr. Pugliese has been employed by Anthem/WellPoint ("Anthem") for 26 years. (Pugliese, Tr. 1427).

1333. For the past six years, Mr. Pugliese has been the Regional Vice President of Provider Engagement and Contracting for Anthem in Northern Ohio. (Pugliese, Tr. 1420).

Northern Ohio includes the northern part of the state, including the area from Toledo to Youngstown to just south of Canton, Ohio. (Pugliese, Tr. 1420).

1334. As Regional Vice-President of Provider Engagement and Contracting, Mr. Pugliese oversees and participates in contract negotiations with hospitals and physicians. (Pugliese, Tr. 1421). Mr. Pugliese regularly interfaces with Anthem's sales and marketing team. (Pugliese, Tr. 1422). He participates in sales and marketing staff meetings, as well as informal discussions with the sales and marketing team about provider relationships and Anthem's network. (Pugliese, Tr. 1422-1423). Mr. Pugliese travels to Lucas County about once every two months. (Pugliese, Tr. 1438).

1335. Previously, for ten years, Mr. Pugliese was the Director of Contracting at Anthem for the Akron-Canton, Ohio market. (Pugliese, Tr. 1426). Before that, he was an Area Representative – a provider (primarily physician) service position – for Anthem for five years. (Pugliese, Tr. 1426). Prior to that, he was an auditor for the Anthem business line that manages Medicare plans with hospitals and physicians. (Pugliese, Tr. 1426).

1336. Mr. Pugliese has a Bachelor of Science degree in accounting from the University of Akron. (Pugliese, Tr. 1427).

1337. WellPoint is a national health insurer. (Pugliese, Tr. 1420). WellPoint is the parent company for the Anthem organization, also known as Community Insurance Company in Ohio, and markets products in various states under the Anthem Blue Cross and Blue Shield name. (Pugliese, Tr. 1427, 1530-1531).

1338. Anthem offers health-plan products in Lucas County, primarily to employers, as well as to individuals and Medicare beneficiaries. (Pugliese, Tr. 1429). Anthem's employer customers include large employers, national businesses that are based in Toledo, mid-size and small employers. (Pugliese, Tr. 1429-1430). About half of Anthem's commercial business in Lucas County consists of self-insured business. (Pugliese, Tr. 1432).

1339. Anthem's primary product in Lucas County is a broad-access PPO product (and a narrower Medicare Advantage network) that does not require primary care physician authorization to see a specialist. (Pugliese, Tr. 1434-1435). Anthem also provides HMO, POS, and traditional indemnity plans in Ohio. (Pugliese, Tr. 1532). Individuals (commercial customers) primarily purchase PPO products. (Pugliese, Tr. 1430). Unlike Anthem's commercial products, the Medicare Advantage product is marketed directly to individuals approaching age 65. (Pugliese, Tr. 1435-1436).

1340. Anthem's significant competitors in Lucas County include MMO, Paramount, United, Aetna, and Cigna. (Pugliese, Tr. 1436). Anthem is one of the three largest health plans in Lucas County, along with Paramount and MMO. (Pugliese, Tr. 1436).

Greg Radzialowski

1341. Mr. Radzialowski is Senior Network Manager at Aetna Health Insurance. (Radzialowski, Tr. 582). He has been in this position for seven years. (Radzialowski, Tr. 583). In this position, he is responsible for ensuring that Aetna's hospital and physician network in northern Ohio is adequate and competitive. (Radzialowski, Tr. 583).

1342. Aetna's northern Ohio territory consists of 42 counties in northeast and northwest Ohio, including Lucas County and the metro-Toledo area. (Radzialowski, Tr. 587-588).

1343. Mr. Radzialowski is directly involved in hospital-contract negotiations. (Radzialowski, Tr. 589-590). He oversees a staff of nine contract negotiators, one of whom lives and works full time in Lucas County, and he travels to Lucas County approximately four to six times per year. (Radzialowski, Tr. 583, 591-592).

1344. Mr. Radzialowski has an undergraduate degree from the University of Notre Dame, as well as a master's degree in hospital administration and a master's degree in business administration from the University of Michigan. (Radzialowski, Tr. 607-608). For his degree in hospital administration, he studied hospital economics. (PX01938 at 032 (Radzialowski, Dep. at 125)).

1345. After graduate school, Mr. Radzialowski worked for three years as a business administrator in a hospital department at the Cleveland Clinic. (Radzialowski, Tr. 605).

1346. Subsequently, Mr. Radzialowski worked for three years as a practice administrator for a group of orthopedic surgeons. (Radzialowski, Tr. 604-605).

1347. Mr. Radzialowski then worked at Medical Mutual of Ohio ("MMO") for three years as a hospital contractor. (Radzialowski, Tr. 603). He was responsible for provider contracts in Akron, Canton, and Youngstown, Ohio. (Radzialowski, Tr. 604).

1348. Mr. Radzialowski joined Aetna as a hospital contractor, a position he served in for three years. (Radzialowski, Tr. 602). In that position, he was responsible for provider contracts in Akron, Canton, and Youngstown, Ohio. (Radzialowski, Tr. 603).

1349. Aetna is a national health insurance company that sells medical, dental, and disability-coverage products mainly to large, national corporations. (Radzialowski, Tr. 608).

1350. Aetna's health insurance products include HMO, Managed Choice (point of service), and PPO products. (Radzialowski, Tr. 601-602, 613). Nationally, approximately 50% of Aetna's business consists of HMO sales, 20% consists of POS/MC, and 30% consists of PPO. (Radzialowski, Tr. 613). Aetna offers a Medicare Advantage product as well. (Radzialowski, Tr. 617).

1351. In Lucas County, Aetna has approximately 34,000 members, of which 30,000 are commercial members and 4,000 are Medicare Advantage members. (Radzialowski, Tr. 618, 626). Of Aetna's 30,000 commercial members, approximately 10,000 are fully insured and 20,000 are self-funded. (Radzialowski, Tr. 626).

1352. In Lucas County, Aetna's primary competitors are MMO, Anthem, United, FrontPath, and Paramount. (Radzialowski, Tr. 626). Aetna estimates that its commercial market share in Lucas County is approximately 10%. (Radzialowski, Tr. 626-627).

Barbara Sandusky

1353. Ms. Sandusky is a self-employed healthcare management and employee benefits consultant in Toledo, Ohio, who has worked with FrontPath since 1994. (Sandusky, Tr. 1276-77). Ms. Sandusky lives in Sylvania, a northwest suburb of Toledo, and has lived in the Toledo area for more than 30 years. (Sandusky, Tr. 1282-1283).

1354. As a self-employed consultant, Ms. Sandusky has assisted clients in building PPO networks in Ohio, Indiana, Michigan, North Carolina, and California and worked on strategic engagements with hospitals across the United States. (Sandusky, Tr. 1279).

1355. Ms. Sandusky's primary responsibility with FrontPath has been to contract with healthcare providers – including hospitals, physicians, and ancillary care providers – to create FrontPath's PPO network that covers northwest Ohio and parts of Michigan and Indiana. (Sandusky, Tr. 1280-1281). Ms. Sandusky has been responsible for all of FrontPath's hospital negotiations in Lucas County from 1994-2005 and from 2007 to the present. (Sandusky, Tr. 1281). Ms. Sandusky reports to FrontPath's CEO, Ms. Susan Szymanski. (Sandusky, Tr. 1282).

1356. Prior to becoming a self-employed consultant, Ms. Sandusky worked as Chief Operations Officer for a hospital consortium, a consultant with an employee benefits healthcare management firm, and held positions relating to home healthcare, outpatient services, acute care, and healthcare administration. (Sandusky, Tr. 1278).

1357. Ms. Sandusky has a bachelor's degree from Bowling Green University and a J.D. from the University of Toledo. (Sandusky, Tr. 1277-1278).

1358. FrontPath is a not-for-profit business coalition on health. It is a membership organization, governed by its members and managed by its members. FrontPath's members are public and corporate entities and labor organizations. (Sandusky, Tr. 1283-1284).

1359. Some of FrontPath's public entity members include the City of Toledo, Lucas County, Wood County, Toledo area firefighters, and school districts. (Sandusky, Tr. 1284). FrontPath's corporate entity members include Libbey Glass and Owens-Illinois. (Sandusky, Tr. 1285-1286). FrontPath's labor organization members include construction trades such as the plumbers and carpenters. (Sandusky, Tr. 1285).

1360. The employers that are involved as FrontPath's members range anywhere from 200-300 to 10,000 employees or participants. (Sandusky, Tr. 1286).

1361. FrontPath members participate in the PPO network and some participate in the pharmacy benefit management program. (Sandusky, Tr. 1284-1287).

c. Employers

Kent Buehrer

1362. Mr. Buehrer is President of Buehrer Group Architectural and Engineering, Inc. ("Buehrer Group"), located in Maumee, Ohio, approximately two miles east of St. Luke's. (Buehrer, Tr. 3057-3058). Mr. Buehrer became President of Buehrer Group in 2001. (Buehrer, Tr. 3060).

1363. Buehrer Group was founded in 1984 and provides non-residential architecture and engineering services to a variety of public and private clients, primarily in Ohio and southeastern Michigan. (Buehrer, Tr. 3060-3061). The company has 24 employees. (Buehrer, Tr. 3061).

1364. Mr. Buehrer is actively involved in managing one-third to one-half of the company's projects, as well as the company's employee benefits, including health insurance. (Buehrer, Tr. 3061-3062).

1365. Mr. Buehrer currently resides in Monclova Township, which is approximately 500 feet outside the city limits of Maumee. (Buehrer, Tr. 3058). Apart from his time in college, Mr. Buehrer has lived in either Monclova or Maumee his entire life. (Buehrer, Tr. 3059).

1366. Buehrer Group and St. Luke's have both made contributions to local community projects, including the Performing Arts Center at Maumee High School, as well as the Maumee Public Library and the Waterville Branch Library. (Buehrer, Tr. 3070-3071).

Hugh Caumartin

1367. From 1997 through January 1, 2011, Hugh Caumartin served as Superintendent of Bowling Green Schools. (Caumartin, Tr. 1833). During this time, Mr. Caumartin was responsible for overseeing the healthcare benefits for employees of Bowling Green Schools. (Caumartin, Tr. 1833).

1368. Mr. Caumartin also served as Chairman of the Wood County Schools Health Consortium ("Consortium") during his last two years as Superintendent of Bowling Green Schools, and prior to that, served as Vice Chairman of the Consortium for eight years. (Caumartin, Tr. 1833).

1369. The Consortium was created in the mid-1980s by school districts throughout Wood County who formed a coalition for the sole purpose of purchasing healthcare and sharing the financial risk amongst themselves. (Caumartin, Tr. 1833-1835, 1866).

1370. The Consortium is self-insured and pays its own claims and healthcare costs. (Caumartin, Tr. 1836). Including individuals, spouses, and children, the Consortium's health plan currently covers approximately 1,500 lives. (Caumartin, Tr. 1841). A large concentration of Consortium members' employees reside in Perrysburg, Rossford, and Northwood, located in northern Wood County near St. Luke's. (Caumartin, Tr. 1850).

1371. Prior to his time at Bowling Green Schools and the Consortium, Mr. Caumartin worked as a Senior Account Executive for Medical Mutual of Ohio in direct sales of accounts to large employers in northwest Ohio, including Lucas and Wood counties. (Caumartin, Tr. 1829-1832). Through his work with clients, Mr. Caumartin discovered what factors were important to employers and employees in selecting a health plan, such as having a network that includes a broad range of high quality of care providers that are close to employees' homes. (Caumartin, Tr. 1830-1831).

Kenneth J. Lortz

1372. Mr. Lortz has been the Director of the United Auto Workers ("UAW"), Region 2B since April 2009. (Lortz, Tr. 1681). As Director of Region 2B, Mr. Lortz is responsible for all UAW members and retirees in the state of Ohio. (Lortz, Tr. 1681-1682). Mr. Lortz regularly meets with his staff of 19 servicing representatives to discuss bargaining issues. (Lortz, Tr. 1692-1693).

1373. Region 2B includes the entire state of Ohio and is headquartered in Maumee, Ohio. (Lortz, Tr. 1681). Region 2B covers between 41,000 and 50,000 active members and approximately 130,000 retirees. (Lortz, Tr. 1687, 1690). Approximately 20,000 active UAW members and approximately 45,000 to 50,000 UAW retirees currently reside throughout Lucas County, including southwest Lucas County. (Lortz, Tr. 1687, 1690-1691).

1374. The UAW is a labor organization, which negotiates collective bargaining agreements between UAW members and their employers including benefits, such as healthcare coverage. (Lortz, Tr. 1681, 1693-1694).

1375. Mr. Lortz has a long history with the UAW. In 1974, he was elected as a union steward at his home plant, Atlas Crankshaft, and served in that position for six years. (Lortz, Tr. 1683). Mr. Lortz has also held positions on the UAW shop bargaining committee at Atlas Crankshaft, was President of the local union and served in that position for three years, and served as a servicing representative for UAW, Region 2B. (Lortz, Tr. 1683-1684).

1376. In 2002, Mr. Lortz was appointed Assistant Director for Region 2B. (Lortz, Tr. 1682). Mr. Lortz served as Assistant Director until becoming Director of the region in 2009.

(Lortz, Tr. 1682). As Assistant Director, Mr. Lortz worked closely with the negotiating staff to provide advice on negotiations with employers. (Lortz, Tr. 1682-1683).

Kathleen Neal

1377. Ms. Neal serves as Director, Integrated Healthcare and Disability, at Chrysler Group, LLC in Auburn Hills, Michigan. (Neal, Tr. 2085).

1378. Ms. Neal has "overall responsibility for benefits in the United States and Canada, including healthcare, disability, nonoccupational disability, and life insurance programs." (Neal, Tr. 2085). Her responsibilities include procuring healthcare benefits for employees in the Toledo area, as well as the administration, compliance, performance management, and overall purchasing of healthcare benefits for Chrysler, which is self-insured for its health insurance. (Neal, Tr. 2085-2086, 2088, 2097).

1379. Ms. Neal started working for Chrysler in 1987 as a healthcare benefits analyst and has been continuously promoted into progressively responsible positions in the company. (Neal, Tr. 2086-2087). From 2005 through 2008, Ms. Neal served as Senior Manager of Chrysler's Benefits Group. (Neal, Tr. 2087). In this position, she was responsible for the performance and measurement of Chrysler's healthcare plans, including their "hospital, surgical, medical, pharmacy, dental, and vision plans" and ascertaining whether these benefits were competitive and adequate for Chrysler's employees and retirees and their families. (Neal, Tr. 2087-2088). In March 2009, Ms. Neal was promoted to her current position of Director, Integrated Healthcare and Disability. (Neal, Tr. 2088).

1380. Chrysler Group is "an automotive manufacturer in the United States, Canada, and Mexico … [with] brands Chrysler, Dodge, Jeep … [and] an alliance with Fiat Automotive Group." (Neal, Tr. 2085).

1381. Chrysler has several facilities in the Toledo area, including an assembly plant, a machining operation, and a small transport facility. (Neal, Tr. 2090). Of the employees who are eligible to receive health insurance in the Toledo area, 2,563 are included in Chrysler's health plan. (Neal, Tr. 2091). When dependents such as spouses and children are included, the health plan covers approximately 8,900 lives. (Neal, Tr. 2091).

d. Physicians

Dr. Thomas Andreshak

1382. Dr. Andreshak is an orthopedic surgeon practicing at Consulting Orthopedic Associates ("COA"), a private practice with two offices in the Toledo area. (Andreshak, Tr. 1744, 1746). One of COA's offices is located closer to the city of Toledo in its Sylvania township, and the other office is located outside of Toledo in the Bowling Green community. (Andreshak, Tr. 1746-1748).

1383. Dr. Andreshak holds an M.D. and is certified by the American Board of Orthopedic Surgery to practice orthopedic surgery. (Andreshak, Tr. 1741-1742). As an orthopedic surgeon, he performs procedures such as hand and spine surgery and hip replacement. (Andreshak, Tr. 1742).

1384. Dr. Andreshak is Co-Chair of the Departments of Orthopedics at both Mercy St. Vincent Hospital and St. Luke's, positions for which he receives no compensation. (Andreshak, Tr. 1745).

1385. Dr. Andreshak has been an independent practitioner in the Toledo area for 18 years, during which time he has never been employed by any hospital. (Andreshak, Tr. 1745).

1386. At the COA offices, Dr. Andreshak provides consultations, x-ray examinations, and some minor care to his patients. (Andreshak, Tr. 1749).

1387. Dr. Andreshak performs an average of 12 to 15 surgeries per week. (Andreshak, Tr. 1751). He performs surgeries at one of five hospitals where he has admitting privileges: St. Luke's, Mercy St. Vincent Hospital, Flower Hospital, The Toledo Hospital, and Wood County Hospital. (Andreshak, Tr. 1751-1753). However, he performs most of his surgeries at either St. Luke's or Mercy St. Vincent Hospital. (Andreshak, Tr. 1753).

1388. Dr. Andreshak received his undergraduate degree from Loyola University of Chicago, and attended Chicago Medical School. He completed his internship and residency at UTMC. (Andreshak, Tr. 1743). Dr. Andreshak then received an additional year of specialized training during a fellowship in reconstructive spine surgery at the Medical College of Wisconsin, Milwaukee. (Andreshak, Tr. 1743).

Dr. Charles Gbur

1389. Dr. Charles Gbur is an interventional cardiologist who has practiced in the Toledo area for approximately 15 years. (Gbur, Tr. 3098). Dr. Gbur currently practices at Ohio Heart and Vascular Consultants (legally named Paradox Consulting), a practice he owns with his wife, who is also a cardiologist. (Gbur, Tr. 3098, 3101, 3104).

1390. Ohio Heart and Vascular Consultants' office is located directly on the campus of St. Luke's Hospital. (Gbur, Tr. 3104). Dr. Gbur holds privileges at St. Luke's, The Toledo Hospital, Flower, Bay Park, St. Vincent, St. Charles, and St. Anne. (Gbur, Tr. 3105). However, he admits most of his patients to St. Luke's. (Gbur, Tr. 3105).

1391. As an interventional cardiologist, Dr. Gbur performs procedures in both inpatient and outpatient settings. (Gbur, Tr. 3103). Diagnostic catheterizations are typically outpatient procedures, whereas interventional procedures, such as angioplasties and stents, are usually overnight, inpatient procedures. (Gbur, Tr. 3103-3104).

1392. Dr. Gbur came with his wife to the Toledo area to work at the Medical College of Ohio in the mid-1990s. (Gbur, Tr. 3101). After about two or three years, they formed their own

private practice in Perrysburg, which they operated for about seven years. (Gbur, Tr. 3102). During the next three years, they worked with Northwest Ohio Cardiology Consultants, a large cardiology practice based in Toledo with offices in the Northwest Ohio and Southeastern Michigan area. (Gbur, Tr. 3102). Dr. Gbur worked primarily in the cardiac catheterization labs at The Toledo Hospital, St. Vincent, or St. Luke's. (Gbur, Tr. 3102-3103).

1393. Dr. Gbur received his undergraduate degree from Youngstown State University. (Gbur, Tr. 3098-3099). He attended medical school and performed his residency at The Ohio State University. (Gbur, Tr. 3099). Dr. Gbur performed his cardiology training at the Medical College of Virginia in Richmond. He is board certified in internal medicine, cardiology (with added qualifications in interventional cardiology), and undersea and hyperbaric medicine. (Gbur, Tr. 3099).

Dr. Christopher Marlowe

1394. Dr. Christopher Marlowe has practiced obstetrics and gynecology ("OB/GYN") as an independent solo practitioner in south Toledo for over 30 years. (Marlowe, Tr. 2388-2389).

1395. Dr. Marlowe holds obstetrics privileges at The Toledo Hospital and St. Luke's, and recently acquired obstetrics privileges at St. Vincent. (Marlowe, Tr. 2387, 2397). Dr. Marlowe delivers approximately 120 babies per year. (Marlowe, Tr. 2388-2389). Nearly all of the deliveries that Dr. Marlowe performs are split between St. Luke's and The Toledo Hospital. (Marlowe, Tr. 2397). Dr. Marlowe holds gynecological privileges at The Toledo Hospital, St. Luke's, and St. Anne. (Marlowe, Tr. 2397).

1396. Although Dr. Marlowe practiced OB/GYN with two other physicians in Michigan for a year and a half, he desired to return home to Toledo, where he was born and raised. (Marlowe, Tr. 2391-2392).

1397. Dr. Marlowe currently serves as Chair of Gynecology at St. Anne and is on St. Anne's medical staff executive committee and Physicians-Hospital Organization ("PHO") board. (Marlowe, Tr. 2387, 2394). Dr. Marlowe is chairman of the PHO credentialing committee. (Marlowe, Tr. 2394). He has served as Chair of Obstetrics at St. Luke's and was the Chair of OB/GYN at Riverside Hospital. He served as Chair of Obstetrics at St. Anne up until its obstetrics unit closed in 2005. (Marlowe, Tr. 2387-2388).

1398. Dr. Marlowe attended The Ohio University for undergraduate work and went to medical school at Universidad Autónoma de Guadalajara, in Guadalajara, Mexico. (Marlowe, Tr. 2391). Dr. Marlowe also received training at Morristown Memorial Hospital in Morristown, New Jersey and performed his residency at Beaumont Hospital in Royal Oak, Michigan. (Marlowe, Tr. 2391).

e. Respondent's Executives

Scott Rupley

1399. Mr. Rupley is the marketing and planning director for St. Luke's, a position which he has held for the past 12 years. (Rupley, Tr. 1904). He has been employed by St. Luke's for 23 years, and a member of St. Luke's management team for 20 years, (Rupley, Tr. 1903, 1910).

1400. As marketing and planning director, Mr. Rupley is responsible for supporting and coordinating St. Luke's strategic planning processes in addition to completing certificate of need applications, coordinating market research and patient satisfaction studies, supporting the planning of new clinical services, preparing market share reports, and marketing the occupational health services program. (Rupley, Tr. 1907-1908).

1401. As part of St. Luke's management team, Mr. Rupley meets monthly with other St. Luke's managers. (Rupley, Tr. 1910). Mr. Rupley also attends senior leadership committee meetings and St. Luke's Board of Directors' planning council meetings. (Rupley, Tr. 1910-1911; Wakeman, Tr. 2640, *in camera*). The planning council is a committee of St. Luke's board of directors that assesses how St. Luke's is performing on its strategic objectives and discusses other strategic issues related to the hospital. (Rupley, Tr. 1911).

1402. Mr. Rupley helped create every key presentation that was used to inform St. Luke's Board on its decision to pursue an affiliation. (*See* Wakeman, Tr. 2656, *in camera* (Mr. Rupley involved in creating PX01018); *see also* PX01911 at 021, 044, 056, 062 (Wakeman, IHT at 77-78, 169-171, 218, 241), *in camera* (Mr. Rupley involved in creating PX01016, PX01022, PX01029, PX01030)). Mr. Rupley was also involved in conducting St. Luke's 2006 environmental assessment. (Wakeman, Tr. 2786).

1403. Mr. Rupley has presented his reports to St. Luke's CEO, Mr. Wakeman, the planning council, and the Board of Directors' executive committee as marketing and planning director. (Rupley, Tr. 1910-1913). Specifically, Mr. Rupley reports on growth objectives at St. Luke's, physician activity and affiliations, consumer preferences of members of St. Luke's community, as well as quality service, and finance objectives. (Rupley, Tr. 1912-1913).

1404. Mr. Wakeman has specifically sought out Mr. Rupley to perform certain projects. (PX01937 at 007 (Rupley, Dep. at 18-19), *in camera*). These include: market analyses, market studies, and community presentations. (PX01937 at 007 (Rupley, Dep. at 19), *in camera*).

1405. Mr. Rupley played a supporting role in the due diligence efforts to find St. Luke's a partner or affiliate. (Rupley, Tr. 1914-1915). He also prepared materials for Mr. Wakeman related to an affiliation for presentation to St. Luke's Board of Directors. (Rupley, Tr. 1915-1916).

1406. Mr. Rupley has been involved in most major strategic planning activities conducted at St. Luke's in the last five years. (Rupley, Tr. 1916).

1407. Mr. Rupley has also made public speaking appearances on behalf of St. Luke's. (Rupley, Tr. 1913-1914).

1408. Prior to his current position, Mr. Rupley was the marketing and planning coordinator at St. Luke's. (Rupley, Tr. 1904). In that position, Mr. Rupley's responsibilities included completing certificate of need applications, coordinating market research and patient satisfaction studies, supporting the planning on new clinical services, preparing market share reports, and marketing the occupational health services program. (Rupley, Tr. 1904).

1409. Mr. Rupley received a bachelor's of science degree from The Ohio State University and a master's degree in business administration focusing on healthcare administration and marketing from the University of Toledo. (Rupley, Tr. 1903).

1410. Mr. Rupley has received strong performance reviews in his tenure at St. Luke's. (Rupley, Tr. 1916).

1411. Mr. Rupley met with counsel for approximately seven hours prior to his testimony at trial. (Rupley, Tr. 1901).

Daniel Wakeman

1412. Mr. Wakeman has been President and CEO of St. Luke's since February 2008. (Wakeman, Tr. 2475-2476). One of his responsibilities has been to facilitate the strategic planning process by presenting recommendations to the St. Luke's Board of Directors and executing on approved strategic initiatives. (Wakeman, Tr. 2483-2484).

1413. Mr. Wakeman also oversaw St. Luke's capital budgeting process and the tracking of its financial performance, productivity, and quality of care. (Wakeman, Tr. 2485-2486).

1414. St. Luke's Chairman, James Black, testified that Mr. Wakeman has performed his duties as CEO and President of St. Luke's in an excellent manner. (Black, Tr. 5670). Mr. Wakeman has never received a negative performance review from St. Luke's Board of Directors. (Black, Tr. 5671).

1415. David Oppenlander, CFO of St. Luke's until the end of 2009, testified in his deposition that he considered Mr. Wakeman to be a "visionary" and "instrumental" to such accomplishments as getting St. Luke's back into Anthem's provider network. (PX01933 at 060-061 (Oppenlander, Dep. at 232, 236), *in camera*; *see also* PX01524 at 001 (Oppenlander email to Wakeman: "[y]ou bring the long term visioning SLH needs")).

1416. Mr. Wakeman testified that each of the four hospitals he managed before becoming St. Luke's CEO in early 2008 – he was President of three of those hospitals – experienced significant financial improvement during his tenure. (Wakeman, Tr. 2473-2474; PX01911 at 014 (Wakeman, IHT at 51-52), *in camera* ("positive trajectory in terms of revenue and operation")).

1417. Once at St. Luke's, Mr. Wakeman implemented a "Three-year Plan" in June 2008 that contained five strategic pillars: "Growth, People, Quality, Service, and Finance/Corporate." (PX01026 at 001 (St. Luke's Three-Year Plan); Joint Stipulations of Law and Fact, JX00002A ¶ 39).

1418. The three-year plan's strategic pillars included goals for turning St. Luke's financial performance around. (PX01026 at 001-002 (St. Luke's Three-Year Plan); RX-56 at 20 (¶ 50) (Den Uyl Expert Report), *in camera*). By the time of the Acquisition – a little over two years into the three-year plan – St. Luke's already had achieved four of the five pillars in Mr. Wakeman's turnaround plan. (Wakeman, Tr. 2593-2594).

1419. Mr. Wakeman testified that St. Luke's experienced "significant" growth in inpatient and outpatient revenue – as well as in acute inpatient admissions, discharges, and outpatient visits – prior to the Acquisition. (Wakeman, Tr. 2594, 2597-2598; PX01920 at 010 (Wakeman, Dep. at 30-31), *in camera*). Mr. Wakeman also testified that St. Luke's operating cash flow margin (*i.e.,* EBITDA margin) and operating income improved significantly prior to the Acquisition. (Wakeman, Tr. 2594-2596).

1420. At the end of 2009, Mr. Wakeman told St. Luke's Board of Directors that St. Luke's would stay open for at least four to seven years if it did not partner with another hospital. (Wakeman, Tr. 2624-2625; PX01920 at 037-038 (Wakeman, Dep. at 141-142), *in camera*).

1421. Mr. Wakeman spent eighteen hours with Respondent's counsel preparing for his trial testimony. (Wakeman, Tr. 2462-2463).

2. Respondent's Witnesses

<u>Neville Arjani</u>

1422. Mr. Arjani is a principal and chief actuary at Findley Davies. (Arjani, Tr. 6721). He has been chief actuary for Findley Davies since 2000, and is responsible for the actuarial practice, as well as monitoring actuarial standards and practices. (Arjani, Tr. 6722).

1423. Findley Davies is a human resource and employee benefits consulting firm. It provides actuarial and administration services relating to defined benefit pension funds. (Arjani, Tr. 6721).

1424. ProMedica has been an actuarial client of Findley Davies since at least 2000 when Mr. Arjani joined the company. (Arjani, Tr. 6774). Mr. Arjani has personally worked with

ProMedica as his client for more than ten years, and considers ProMedica to be a large and important client. (Arjani, Tr. 6774). ProMedica is also a client of other practices at Findley Davies. (Arjani, Tr. 6774).

1425. Prior to the Acquisition, St. Luke's has not been an actuarial client of Findley Davies. (Arjani, Tr. 6775). St. Luke's was a client of Towers Watson, a competitor to Findley Davies. (Arjani, Tr. 6775-6776). Mr. Arjani and Findley Davies had tried to get St. Luke's business for actuarial services but did not succeed in doing so until after ProMedica acquired St. Luke's. (Arjani, Tr. 6775-6776). Findley Davies will now be providing all actuarial services to St. Luke's for the foreseeable future. (Arjani, Tr. 6776).

1426. Respondent's counsel notified Mr. Arjani approximately two and a half months prior to his testimony that he would be called to testify. (Arjani, Tr. 6771). Mr. Arjani met with Respondent's counsel for approximately four hours the day before testifying. (Arjani, Tr. 6771-6772).

1427. Mr. Arjani had an idea of some of the questions he would be asked by Respondent's counsel while on the witness stand. (Arjani, Tr. 6772). Mr. Arjani and Respondent's counsel discussed the answers to questions that he would be asked while testifying. (Arjani, Tr. 6772).

1428. Mr. Arjani spent time discussing a memo with ProMedica employee and witness Lori Johnston in conjunction with this litigation. (Arjani, Tr. 6773).

1429. Mr. Arjani charged the time that he spent preparing for his testimony and testifying at trial to ProMedica. (Arjani, Tr. 6773).

James Black

1430. Mr. Black is the Chairman of the Board of Directors of St. Luke's Hospital. (Black, Tr. 5529). He has been a member of the Board since 2000. (Black, Tr. 5529). Mr. Black assumed chairmanship of the Board in March of 2010, and his term will run until March of 2012. (Black, Tr. 5538).

1431. Mr. Black previously served as Vice-Chairman of the Board. (Black, Tr. 5542-5543). He also serves on the St. Luke's Foundation Board. (Black, Tr. 5540).

1432. Since the Acquisition, Mr. Black now also serves on the Toledo metro acute-care hospital council, the investment council, and the board development council of ProMedica Health System. (Black, Tr. 5547-5549).

1433. Mr. Black met with counsel for about eight to ten hours in preparation for his testimony at trial. (Black, Tr. 5667-5668).

Bruce Gordon

1434. Mr. Gordon currently works for Radian Asset Assurance, a bond insurer that guarantees the payment of principal and interest on bonds that are issued by various organizations. (Gordon, Tr. 6783).

1435. At Radian, Mr. Gordon's responsibility is to conduct credit reviews of the companies that issued Radian-insured bonds. (Gordon, Tr. 6784). Mr. Gordon's portfolio of companies primarily consists of hospitals and healthcare systems. (Gordon, Tr. 6784).

1436. From October 2007 until October 2010, Mr. Gordon was First Vice President at Ambac Assurance, also a bond insurer. (Gordon, Tr. 6784).

1437. At Ambac, Mr. Gordon's responsibilities included conducting credit reviews of Ambac's existing insurance commitments. (Gordon, Tr. 6785). His portfolio of approximately 50 to 70 companies consisted of hospitals and healthcare systems. (Gordon, Tr. 6785-6786).

1438. While at Ambac, Mr. Gordon had primary responsibility for tracking the performance of St. Luke's Series 2004 bonds, which were insured by Ambac. (Gordon, Tr. 6789).

1439. Mr. Gordon testified that St. Luke's has a "very modest debt position." (Gordon, Tr. 6858). He also testified that, in early 2010, St. Luke's cash reserves were "significant" relative to the amount of debt it had outstanding and that St. Luke's had sufficient cash on hand to repay the entire balance of its Ambac-insured bonds. (Gordon, Tr. 6858-6859).

1440. Mr. Gordon testified that an{ } performed internally by Ambac con{cluded that St. Luke's was not considered an } (Gordon, Tr. 6864, *in camera*). Out of }, St. Luke's was placed in the category associated with the { } – in part due to St. Luke's { }. (Gordon, Tr. 6864-6865, *in camera*).

1441. For purposes of the{ }, Mr. Gordon did not have access to { }. (Gordon, Tr. 6865-6866, *in camera*). As a result, Mr. Gordon was not aware of { }. (Gordon, Tr. 6869-6870, 6873, 6876, 6878, *in camera*). Mr. Gordon testified that, had he been aware of them, he { }. (Gordon, Tr. 6869-6871, 6874-6878, *in camera*).

Kathleen Hanley

1442. Ms. Hanley has been the Chief Financial Officer ("CFO") of ProMedica since 1995. (Hanley, Tr. 4500-4501). Ms. Hanley has also served as the Chief Strategic Planning and

Business Development Officer since July 2010 and the President of ProMedica Indemnity Corporation, ProMedica's captive insurance company since 2006. (Hanley, Tr. 4517).

1443. Ms. Hanley is among the most highly paid executives at ProMedica, receiving over $670,000 in salary and compensation in 2009 and the same, if not more, in 2010. (Hanley, Tr. 4686-4687). Forty percent of Ms. Hanley's compensation is a bonus determined by the compensation committee of ProMedica. (Hanley, Tr. 4687).

1444. As CFO of ProMedica, Ms. Hanley is responsible for providing oversight of the financial planning, budgeting, capital planning, treasury, risk management, and audit functions at ProMedica. (Hanley, Tr. 4501). Ms. Hanley reports directly to ProMedica's CEO, Randall Oostra. (Hanley, Tr. 4501).

1445. As Chief Strategic Planning and Business Development Officer, Ms. Hanley is responsible for developing a three-year strategic plan for ProMedica. (Hanley, Tr. 4520).

1446. As President of ProMedica Indemnity Corporation, Ms. Hanley oversees the corporation responsible for bearing professional and general liability risk as well as ProMedica's insurance and risk management functions. (Hanley, Tr. 4521-4522).

1447. Ms. Hanley supports several ProMedica board committees: the finance committee, the investment committee, the audit and compliance committee, and the indemnity corporation board. (Hanley, Tr. 4523).

1448. Ms. Hanley has worked for the Respondent for 30 years. (Hanley, Tr. 4684).

1449. Ms. Hanley was personally and significantly involved in a leadership role in the acquisition of St. Luke's – an important event for ProMedica as an organization. (Hanley, Tr. 4692).

1450. Ms. Hanley is not directly involved in the negotiations of provider contracts with commercial payers in Toledo. (Hanley, Tr. 4515).

1451. Ms. Hanley testified that she has no basis to testify on the seasonality of St. Luke's business and its impact on St. Luke's performance during the last four months of 2010, beyond her experience at ProMedica. (Hanley, Tr. 4827, *in camera*).

1452. In preparation for her testimony, Ms. Hanley met with counsel for approximately five hours. (Hanley, Tr. 4682).

Lori Johnston

1453. Ms. Johnston is the Chief Financial Officer and the Chief Operating Officer of St. Luke's. (Johnston, Tr. 5303, 5306). Ms. Johnston reports directly to both St. Luke's

CEO, Daniel Wakeman, and ProMedica's Senior Vice President of Finance, Gary Akenberger. (Johnston, Tr. 5303).

1454. Ms. Johnston has had a title at St. Luke's only since September 1, 2010, as a result of the Acquisition. (Johnston, Tr. 5421).

1455. Ms. Johnston had no responsibilities relating to St. Luke's prior to September 1, 2010. (Johnston, Tr. 5424). For example, she had no responsibilities relating to: negotiations on behalf of St. Luke's, competitive strategies on behalf of St. Luke's, seeking debt or financing on behalf of St. Luke's, decision making on behalf of St. Luke's, or development of goals for or implementation of Mr. Wakeman's three-year turnaround plan. (Johnston, Tr. 5424-5426).

1456. Ms. Johnston has worked for the Respondent for 15 years. (Johnston, Tr. 5415). Ms. Johnston's compensation, including the size of her bonus, is determined by the board of ProMedica Health System. (Johnston, Tr. 5416). The scope of Ms. Johnston's responsibilities is also determined by the ProMedica board of directors. (Johnston, Tr. 5416-5417).

1457. Ms. Johnston has never worked for a health plan. (Johnston, Tr. 5420).

1458. Ms. Johnston has never participated in a negotiation relating to the rates a commercial health plan would pay to ProMedica, St. Luke's, or any other hospital for hospital services. (Johnston, Tr. 5420-5421).

1459. Ms. Johnston was not involved in negotiations between ProMedica and St. Luke's relating to the Acquisition. (Johnston, Tr. 5426). She neither conducted a formal efficiencies analysis nor did she quantify the efficiencies that might be achieved through the Acquisition. (Johnston, Tr. 5427). Ms. Johnston never met with Compass Lexecon to discuss how efficiencies might be achieved through the Acquisition. (Johnston, Tr. 5428). She did not see or review Compass Lexecon's report on efficiencies prior to the Acquisition. (Johnston, Tr. 5428). As of February 4, 2011 (more than five months after the Acquisition), Ms. Johnston had not had direct dealings with Compass Lexecon. (Johnston, Tr. 5428-5429).

1460. Ms. Johnston is not an expert on the specifics of bond covenants or in seeking debt financing. (Johnston, Tr. 5449, 5461).

1461. Ms. Johnston is currently not involved in obtaining financing at any of the ProMedica hospitals. (Johnston, Tr. 5461-5462).

1462. Ms. Johnston is not a pension plan expert. (PX01926 at 007 (Johnston, Dep. at 19), *in camera*). She is neither an actuary nor an expert on actuarial accounting. (Johnston, Tr. 5505, *in camera*). Similarly, Ms. Johnston is not an expert on pension plan accounting. (PX01926 at 009 (Johnston, Dep. at 28-29, *in camera*).

1463. Ms. Johnston had not heard of the acronym "AFTAP" at the time of her deposition in February 2011 and at the time of her testimony in July 2011 could still not identify what the acronym "AFTAP" meant. (Johnston, Tr. 5506-5507).

1464. Ms. Johnston met with ProMedica's counsel on three separate occasions for a total of 10 to 11 hours to prepare for her testimony and was compensated by ProMedica for this time, and for her time testifying at trial. (Johnston, Tr. 5417-5419).

Kevin Nolan

1465. Mr. Nolan has been the managing director responsiblefor the healthcare strategy practice at Navigant Consulting since 2002. (Nolan, Tr. 6246). Mr. Nolan's responsibilities include selling and delivering engagements to healthcare clients. (Nolan, Tr. 6250).

1466. Respondent's counsel reviewed Navigant's work product before it was discussed with ProMedica with respect to the clinical integration strategy project. (Nolan, Tr. 6324).

1467. Navigant and Mr. Nolan did not do a detailed review of St. Luke's financials. (Nolan, Tr. 6376). Mr. Nolan's level of knowledge of St. Luke's financial condition was at the "30,000 foot" level. (Nolan, Tr. 6376).

1468. ProMedica, not Navigant, generated the efficiencies estimates in the Navigant report. (Nolan, Tr. 6364-6365). Navigant only reviewed the efficiencies estimates for reasonableness. (Nolan, Tr. 6365).

1469. Mr. Nolan does not know how ProMedica and St. Luke's calculated the efficiencies estimates. (Nolan, Tr. 6365). Mr. Nolan also does not know how much, if any, of the efficiencies savings in the Navigant report are tied to moving services out of St. Luke's. (Nolan, Tr. 6365).

1470. Mr. Nolan is not a quality expert. (Nolan, Tr. 6338)

1471. Since at least 2009, Navigant has engaged in a recurring relationship with both St. Luke's and ProMedica. (Nolan, Tr. 6388). Mr. Nolan testified that Navigant hopes to obtain additional projects from ProMedica in the future. (Nolan, Tr. 6388).

1472. Mr. Nolan was the lead individual on a clinical integration project that Navigant conducted for ProMedica between 2010 and 2011. (Nolan, Tr. 6382). Navigant was paid $200,000 for its services. (Nolan, Tr. 6382). Navigant also earned between $50,000 and $85,000 for assisting ProMedica during its due diligence process for the Acquisition. (Nolan, Tr. 6385-6386).

1473. Mr. Nolan oversaw several projects that Navigant performed for St. Luke's in the last couple of years, including: a coding and documentation study in 2009, support for St. Luke's Board retreats in both 2009 and 2010, and technical assistance to St. Luke's

evaluation of affiliation options. (Nolan, Tr. 6382-6385). Navigant also performed a managed care reimbursement study for St. Luke's in 2009. (Nolan, Tr. 6385).

1474. Mr. Nolan was represented by Respondent's legal counsel in all matters relating to his trial and deposition testimony in this matter. (Nolan, Tr. 6389). Bills associated with Mr. Nolan's legal representation in this matter were sent to ProMedica. (Nolan, Tr. 6391). In addition, Mr. Nolan has also been paid by ProMedica for the time he has spent preparing for and attending his deposition and examination in court. (Nolan, Tr. 6392).

Randall Oostra

1475. Mr. Oostra is President and CEO of ProMedica Health System. He has held this position for almost two years. (Oostra, Tr. 5759).

1476. Mr. Oostra spends half of his time on externally focused events such as community outreach and half of his time on internally focused events such as meetings with the executive council, other management groups, and the board. (Oostra, Tr. 5761-5762).

1477. Mr. Oostra joined ProMedica Health System in 1997. (Oostra, Tr. 5763). Before October 2009, Mr. Oostra was the President and Chief Operating Officer. (Oostra, Tr. 5764). Mr. Oostra has also served as ProMedica's Director of Strategic Planning and Business Development. (Oostra, Tr. 5768).

1478. Mr. Oostra has a bachelor of arts degree in biology, a medical technology degree, a master's degree in science, a master's degree in healthcare administration, and a doctorate in management. (Oostra, Tr. 5770).

1479. With respect to ProMedica's contracting with health plans, Mr. Oostra is involved at a high level with the strategy and general parameters underlying these contracts, including ProMedica's approach to reimbursement rates. (Oostra, Tr. 6079). At the very least, Mr. Oostra has a general understanding of the contracting process and of the dynamic between health plans and ProMedica. (Oostra, Tr. 6079).

1480. Mr. Oostra called the CEO of MMO specifically to discuss the testimony of MMO's Vice President of Network Management during this trial. (Oostra, Tr. 5961-5962).

John Randolph

1481. Mr. Randolph is employed by Respondent ProMedica Health System and has worked there for his entire 30-year career. (Randolph, Tr. 7053-7054). Mr. Randolph reports to Randall Oostra, the President and CEO of the Respondent. (Randolph, Tr. 7054). ProMedica determines the scope of Mr. Randolph's responsibilities at Paramount, as well as his promotions, his salary, and his bonuses and incentives. (Randolph, Tr. 7054).

1482. Mr. Randolph has held multiple business roles within ProMedica concurrently with serving as president of Paramount, including as Chief Merger and JV Acquisitions

Officer and Chief Construction and Property Management Officer. (Randolph, Tr. 7055-7056).

1483. Mr. Randolph serves on ProMedica's Managed Care Oversight Committee with ProMedica's Director of Managed Care Contracting Ron Wachsman, CFO Kathy Hanley and CEO Randall Oostra. (Randolph, Tr. 7056-7057).

1484. Mr. Randolph serves on the Executive Council with the heads of other business units at ProMedica and the CEO. (Randolph, Tr. 7057). The Executive Council meets to discuss operational and policy matters. (Randolph, Tr. 7057).

1485. Mr. Randolph previously served on the Customer Services Steering Council, in connection with his previous responsibilities for ProMedica's customer satisfaction services. (Randolph, Tr. 7057-7078).

1486. In 2008, Mr. Wachsman shared terms and dates from Anthem's contract with Mr. Randolph that were not publicly available at the time. (Randolph, Tr. 7088-7090).

Dr. Elizabeth Read

1487. Dr. Read is an OB/GYN employed by ProMedica. (Read, Tr. 5290). Dr. Read serves as the section chief of the obstetrics department at St. Luke's Hospital. (Read, Tr. 5264).

1488. Dr. Read joined WellCare Physician Group at the end of 2008 as a generalist OB/GYN physician. (PX01935 at 005 (Read, Dep. at 13)). WellCare Physician Group was affiliated with St. Luke's at the time she joined. (PX01935 at 005 (Read, Dep. at 13)).

1489. Dr. Read does not participate on any of St. Luke's committees. (PX01935 at 006 (Read, Dep. at 16)).

1490. Dr. Read performs roughly 60 percent of her deliveries at St. Luke's Hospital. (Read, Tr. 5291).

1491. Dr. Read's offices are located near St. Luke's, and this proximity is a reason she chooses to focus her practice at St. Luke's. (PX01935 at 009 (Read, Dep. at 29)).

1492. Dr. Read enjoys practicing at St. Luke's "because their obstetrical care is delivered in a LDRP concept where your labor, delivery, recovery, post-partum can stay in the same room." (PX01935 at 008-009 (Read, Dep. at 25-26)). This clinical factor is a reason she chooses to focus her practice at St. Luke's. (PX01935 at 008-009 (Read, Dep. at 25-26)).

1493. Patients who come to Dr. Read's practice recognize that Dr. Read performs most of her deliveries at St. Luke's and they will generally go to St. Luke's if they are comfortable with that hospital. (PX01935 at 016 (Read, Dep. at 56-57)).

1494. Dr. Read has not performed any deliveries at Wood County Hospital. (PX01935 at 016 (Read, Dep. at 57))

Gina Sheridan

1495. Ms. Sheridan has been employed by UnitedHealth Group ("United") for almost six years. (Sheridan, Tr. 6609-6610).

1496. She has been the Executive Director of Evercare, a division of United, since December 2010, with ultimate responsibility for its network, marketing and sales, provider relations, clinical, profit and loss. (Sheridan, Tr. 6611-6612). Evercare is a long-term health organization, Medicare Advantage plan. (Sheridan, Tr. 6611).

1497. Prior to joining Evercare, Ms. Sheridan was the Vice President of Network Management at United Healthcare. (Sheridan, Tr. 6612). She was responsible for all aspects of the provider network, including contracting with hospitals, physicians, and ancillary groups, including hospitals in Lucas County. (Sheridan, Tr. 6612-6613).

1498. Ms. Sheridan has a total of 25 years of managed care contracting experience. (PX01902 at 005 (Sheridan, IHT at 11-13), *in camera*).

Ronald Wachsman

1499. Mr. Wachsman is the Senior Vice President for Managed Care, Reimbursement and Revenue Cycle Management at ProMedica Health Systems. (Wachsman, Tr. 4833). He has held this position for about two years. (Wachsman, Tr. 4836).

1500. Mr. Wachsman is responsible for ProMedica's relationships with managed care companies, monitoring government reimbursement issues, and billing. (Wachsman, Tr. 4833). Mr. Wachsman negotiates with commercial health plans who contract with ProMedica Health System hospitals, including its Lucas County hospitals. (Wachsman, Tr. 4833-4836).

1501. Mr. Wachsman's bonus is tied to obtaining favorable rates for ProMedica in negotiations with commercial health plans. (Wachsman, Tr. 5097-5099).

1502. Mr. Wachsman, and other members of ProMedica's system management, have taken over managed care contracting for St. Luke's since the Acquisition. (Wachsman, Tr. 5095-5096). No one associated with St. Luke's prior to the Acquisition has directly participated in contract negotiations since the Acquisition, nor will they going forward under ProMedica's current plans. (Wachsman, Tr. 5096).

1503. Mr. Wachsman has been employed by ProMedica or its predecessor his entire career, over 20 years. (Wachsman, Tr. 4837-4838).

B. Expert Witnesses Who Testified at Trial

1. Complaint Counsel's Witnesses

a. Gabriel Dagen

1504. Gabriel Dagen has worked for the Federal Trade Commission's ("FTC") Bureau of Economics Office of Accounting and Financial Analysis for the last thirteen years. (Dagen, Tr. 3138; PX02127 at 001 (Gabriel Dagen Resume)). For the last eight years, he has held the position of Assistant Director. (Dagen, Tr. 3138; PX02127 at 001 (Gabriel Dagen Resume)). Before becoming Assistant Director, Mr. Dagen was a Senior Financial Analyst for three years. (Dagen, Tr. 3139; PX02127 at 001 (Gabriel Dagen Resume)).

1505. As Assistant Director, Mr. Dagen is the principal accounting and financial advisor to the FTC. (PX02127 at 001 (Gabriel Dagen Resume)). He also conducts financial seminars for FTC staff. (PX02127 at 001 (Gabriel Dagen Resume)).

1506. While at the FTC, Mr. Dagen has analyzed the financial condition of over fifty companies, including over a dozen hospitals. (Dagen, Tr. 3140-3141). At least half of those instances involved a company that was alleged to be "failing" or "flailing." (Dagen, Tr. 3141).

1507. Since coming to the FTC, Mr. Dagen has personally evaluated efficiency claims in over one hundred matters – including hospital mergers – and has supervised work on hundreds more. (Dagen, Tr. 3141-3142).

1508. Prior to joining the FTC, Mr. Dagen had over twenty years of finance and accounting work experience. (Dagen, Tr. 3139-3140).

1509. Mr. Dagen's most recent private sector position was Vice President of Finance and Administration at Friend's Tire and Fleet Service, Inc. (Dagen, Tr. 3139; PX02127 at 001). As director of the company's financial operations, Mr. Dagen's responsibilities included financial reporting, financial planning, budgeting, and strategic planning. (Dagen, Tr. 3139; PX02127 at 001 (Gabriel Dagen Resume)).

1510. Mr. Dagen has held other finance and accounting positions during his career, including: data processing supervisor, audit manager, controller, and finance consultant. (Dagen, Tr. 3139-3140; PX02127 at 002 (Gabriel Dagen Resume)).

1511. Mr. Dagen received an M.B.A. with a concentration in finance from the University of Maryland. (PX02127 at 002 (Gabriel Dagen Resume)). Mr. Dagen completed accounting courses at Memphis State University. (PX02127 at 002 (Gabriel Dagen Resume); PX02147 at 001 (¶ 1) (Dagen Expert Report)).

1512. Mr. Dagen holds an inactive Certified Public Accountant ("CPA") license in the state of Maryland. (PX02147 at 001 (¶ 1) (Dagen Expert Report)). In accordance with maintaining his CPA, Mr. Dagen has received over 800 hours of continuing professional development credits. (PX02127 at 002 (Gabriel Dagen Resume)).

1513. For his work on this matter, Mr. Dagen has not been compensated above and beyond his regular salary and benefits as an FTC employee. (Dagen, Tr. 3143-3144).

1514. Mr. Dagen was asked to assess St. Luke's ability to sustain itself financially as an independent competitor and to perform a *Horizontal Merger Guidelines* analysis of the efficiency claims asserted by Respondent. (Dagen, Tr. 3144).

1515. Mr. Dagen concluded that, at the time of the Acquisition, "St. Luke's had the financial resources to continue operating as an independent hospital with the same service lines and quality levels." PX02147 at 005 (¶ 10) (Dagen Expert Report)).

1516. Mr. Dagen concluded that "[a]bsent the joinder, St. Luke's was heading toward further financial growth and stability in 2011 and beyond" and that "St. Luke's would have been able to invest in its infrastructure, modernize its facilities, and remain a financially-sound independent hospital." (PX02147 at 006-007 (¶ 16) (Dagen Expert Report)).

1517. Mr. Dagen concluded that Respondent's claimed efficiencies "should not be credited by the Court because they either are not actual efficiencies, do not require the joinder to be accomplished, or are speculative and unsubstantiated." (PX02147 at 005 (¶ 10) (Dagen Expert Report)). His analysis found that a "de minimis portion of the alleged efficiencies might be credited under the *Horizontal Merger Guidelines*." (PX02147 at 007 (¶ 17) (Dagen Expert Report)).

b. Errol Brick

1518. Mr. Brick is the founder, president, and CEO of Killarney Advisors, Inc. (Brick, Tr. 3422). Killarney Advisors, Inc., founded in 1995, provides financial advisory services to nonprofit hospitals, universities, and colleges in connection with their accessing the tax-exempt bond markets. (Brick, Tr. 3422).

1519. In connection with his work at Killarney Advisors, Mr. Brick regularly assists clients to review the financial feasibility of proposed projects, to review the information clients provide to the bond rating agencies relating to their own finances and the proposed project, as well as assists clients throughout the stages of financing from selecting an underwriter until the funds are delivered. (Brick, Tr. 3422-3423). A very important part of this process includes developing a strategy for dealing with the credit rating agencies, assisting with presentations to the credit rating agencies, and analyzing the client's credit rating and the impact of proposed projects on that rating. (Brick, Tr. 3423-3424).

1520. Killarney Advisors' clients include very large academic medical systems, like Johns Hopkins Health System, smaller academic medical systems, like Rush University

Medical Center, and smaller community hospitals, such as those with between 100 and 300 beds. (Brick, Tr. 3423).

1521. Prior to founding Killarney Advisors, Mr. Brick was a vice president in the municipal bond department at Goldman Sachs & Company from 1979 to 1995. (Brick, Tr. 3424). In that position, Mr. Brick provided underwriting services, including assisting clients to develop financing plans, assisting clients with the rating agencies, and structuring bond issues, for healthcare clients. (Brick, Tr. 3425). Mr. Brick raised approximately $4 billion for clients through the issuance of tax-exempt bond during this time. (Brick, Tr. 3425)

1522. From 1976 to 1979, Mr. Brick provided financial advisory services to nonprofit hospitals seeking project financing while he was employed by North Atlantic Capital Corporation. (Brick, Tr. 3425-3426).

1523. From 1972 to 1976, Mr. Brick was a senior management consultant at Touche Ross & Company, now known as Deloitte & Touche. (Brick, Tr. 3426). At Touche Ross & Company, Mr. Brick assisted hospitals to evaluate financial feasibility by investigating and projecting hospital project costs and revenues. (Brick, Tr. 3427).

1524. Mr. Brick received a bachelor's of commerce degree in economics, a certificate in the theory of accountancy, and a master's degree in business administration with a concentration in economics from the University of Witwatersrand in Johannesburg, South Africa. (Brick, Tr. 3427).

1525. Mr. Brick is licensed as a certified public accountant by the State of New York and is licensed as a general securities representative, a general securities principal, and an investment banking agent by FINRA. (Brick, Tr. 3428).

1526. Mr. Brick has previously provided expert testimony before the Maryland Health Services Cost Review Commission relating to access to capital and before the Internal Revenue Service on the use of interest rate swaps to synthetically fix the cost of floating rate debt. (Brick, Tr. 3428-3429). Mr. Brick has also served as a consultant to the FTC in connection with a hospital merger investigation in 2008. (Brick, Tr. 3429).

1527. Mr. Brick was asked to evaluate whether the downgrade of St. Luke's Hospital to Baa2 in any way precluded it from being a significant competitor in the marketplace then and in the future. (Brick, Tr. 3429-3430).

1528. Mr. Brick concluded that the downgrade did not impair St. Luke's ability to be a significant competitor in the market place. (Brick, Tr. 3430).

c. Robert Town

1529. Professor Town is a healthcare economist. (Town, Tr. 3579). His research and teaching focus principally on health economics, competition in healthcare markets, applied

econometrics, the industrial organization of healthcare, and other fields directly related to health economics. (Town, Tr. 3579; PX02148 at 004 (¶ 2), 115 (Ex. 1) (Town Expert Report), *in camera*).

1530. Professor Town received his B.A. in Economics in 1984 from the University of Washington in Seattle. (Town, Tr. 3575).

1531. Professor Town received his M.S. and Ph.D. in economics in 1987 and 1990, respectively, from the University of Wisconsin, Madison. (Town, Tr. 3575). His Ph.D. dissertation focused on theoretical and econometric analysis of mergers, acquisitions, and cartel behavior. (Town, Tr. 3575-3576).

1532. Professor Town is currently an associate professor in the Department of Healthcare Management at the Wharton School of the University of Pennsylvania. (Town, Tr. 3576). He has occupied this position since July 1, 2011. (Town, Tr. 3576). In this position, Professor Town is responsible for teaching students pursuing M.B.A. and Ph.D. degrees and for continuing his research. (Town, Tr. 3576-3577).

1533. Professor Town is also a Research Associate at the National Bureau of Economic Research ("NBER"). (Town, Tr. 3577-3578). The NBER is the largest non-profit economics research organization in the country. (Town, Tr. 3577). One becomes a member by invitation only. (Town, Tr. 3577). Eighteen of the last 33 Nobel Prize winners in Economics are among its members. (Town, Tr. 3578). Professor Town was invited to join as a Faculty Research Fellow in 2004, and was promoted to Research Associate – the equivalent of a tenured position – in 2006. (Town, Tr. 3578).

1534. From 2007 to 2011, Professor Town held the James A. Hamilton Professorship in Health Economics at the University of Minnesota's School of Public Health. (Town, Tr. 3578). At that time, Professor Town was also an Adjunct Professor in that university's Department of Economics. (Town, Tr. 3578-3579).

1535. From 2005 to 2007, Professor Town was an Associate Professor (with tenure), focusing on healthcare management and policy, in the University of Minnesota's School of Public Health. (Town, Tr. 3579-3580).

1536. From 2001 to 2005, Professor Town was an Assistant Professor at the University of Minnesota. (Town, Tr. 3580).

1537. During the majority of his career at the University of Minnesota, Professor Town taught healthcare economics to enrollees of the university's hospital executive training program, a highly ranked program for training established and aspiring hospital employees in hospital administration. (Town, Tr. 3580-3581).

1538. From 1996 to 2001, Professor Town was an Assistant Professor at the Graduate School of Management at the University of California, Irvine. (Town, Tr. 3580-3581). In that position, he taught primarily microeconomics and strategy. (Town, Tr. 3581).

1539. From 1990 to 1996, Professor Town was a Staff Economist in the Antitrust Division at the United States Department of Justice. (Town, Tr. 3581). In that position, he was principally responsible for providing economic analysis on mergers and price-fixing cases. (Town, Tr. 3581). During his time in that position, he reviewed between 30 and 50 mergers. (Town, Tr. 3582).

1540. Professor Town has been an author on numerous peer-reviewed economics articles. (*See* PX02148 at 116-118 (Town Expert Report, Ex. 1), *in camera*). For example:

a. Professor Town co-authored the first paper to implement empirically a simulation of the impact of hospital mergers, accounting for the bargaining dynamic between hospitals and managed care organizations. (Town, Tr. 3582-3583).

b. Professor Town co-authored the first paper to implement empirical methods that allow economists to simulate the effects of policy changes on market structure in the hospital industry over time. (Town, Tr. 3583).

c. Professor Town co-authored an econometric paper that examined the impact of hospital consolidation in the 1990s and 2000s, finding that hospital consolidation in concentrated markets, consistent with the theory, led to higher rates of uninsurance among racial minorities and low-income populations. (Town, Tr. 3583-3584).

d. Professor Town co-authored an econometric paper that calculated the benefits of competition from private Medicare HMO plans. (Town, Tr. 3584).

e. All of these papers involved empirical work by Professor Town. (Town, Tr. 3584).

1541. Several of these papers have been heavily cited in subsequent research. (Town, Tr. 3584). Indeed, Respondent's economic expert cited some of Professor Town's papers in the report she filed during the preliminary injunction proceeding in Federal Court. (Town, Tr. 3584-3585).

1542. Professor Town was retained by the Federal Trade Commission in connection with the current matter in August 2010. (Town, Tr. 3585). The FTC retained him to analyze the competitive impact of ProMedica's acquisition of St. Luke's. (Town, Tr. 3584).

1543. Professor Town concluded that the acquisition of St. Luke's by ProMedica eliminates competition between ProMedica and St. Luke's, increasing their bargaining power, and will result in higher prices at St. Luke's and at ProMedica's legacy hospitals in Lucas County. (Town, Tr. 3600-3601).

2. Respondent's Witnesses

a. Bruce Den Uyl

1544. Respondent's expert witness, Bruce Den Uyl, was asked to assess the financial performance of St. Luke's leading up to the Acquisition. (Den Uyl, Tr. 6412).

1545. Mr. Den Uyl has never been employed by a hospital or physician practice. (Den Uyl, Tr. 6511).

1546. Mr. Den Uyl has never managed the day-to-day finances of a hospital. (Den Uyl, Tr. 6511).

1547. Mr. Den Uyl has never been employed by a health plan and has never directly participated in reimbursement negotiations on behalf of either a health plan or a hospital. (Den Uyl, Tr. 6511-6512).

1548. Mr. Den Uyl does not have a degree in accounting, and has never taken an accounting course. (Den Uyl, Tr. 6513-6514). Mr. Den Uyl also has never taught an accounting course. (PX01951 at 009 (Den Uyl, Dep. at 30), *in camera*; Den Uyl, Tr. 6513).

1549. Mr. Den Uyl does not hold a Certified Public Accountant ("CPA") license. (Den Uyl, Tr. 6513; PX01951 at 009 (Den Uyl, Dep. at 30), *in camera*).

1550. Mr. Den Uyl has never signed a company's financial statements. (Den Uyl, Tr. 6514).

1551. Prior to this litigation, Mr. Den Uyl never had any involvement with the hospitals in Lucas County. (Den Uyl, 6514). For instance, he has never been retained by either St. Luke's or ProMedica in their ordinary course of business. (Den Uyl, Tr. 6514). Outside of this litigation, Mr. Den Uyl has never done any work related to health care in the Toledo area. (Den Uyl, Tr. 6514).

1552. Mr. Den Uyl was retained in this litigation by McDermott, Will & Emery, counsel for Respondent. (Den Uyl, Tr. 6506-6507).

1553. Mr. Den Uyl was paid $645 an hour; he and his staff have billed a total of approximately $500,000 as a result of this litigation. (Den Uyl, Tr. 6509-6511).

1554. Despite concluding that "St. Luke's struggled financially during the years up to the joinder," Mr. Den Uyl admitted that St. Luke's financial performance "improved" during the eight months leading up to the Acquisition. (Den Uyl, Tr. 6503-6504, 6523-6524). In particular, Mr. Den Uyl testified that St. Luke's operating income, EBITDA, and overall cost coverage ratio all improved during the first eight months of 2010 compared to 2009. (Den Uyl, Tr. 6590-6591, 6603-6604, *in camera*).

1555. Mr. Den Uyl also concluded that, going forward, a standalone St. Luke's faced certain "obstacles," such as capital needs and health care reform, that it "*might* not be able to achieve." (Den Uyl, Tr. 6503-6504) (emphasis added).

1556. However, Mr. Den Uyl has not concluded that, absent the Acquisition, St. Luke's would fail or become insolvent, be unprofitable, or even that its patient volumes and market shares would decline. (*See supra* Section XVII.B.).

1557. In fact, Mr. Den Uyl has provided no expert opinion on how long St. Luke's could have survived absent the Acquisition, and he has not projected a standalone St. Luke's operating performance and reserve fund level in future years. (*See supra* Section XVII. B.).

b. Margaret Guerin-Calvert

1558. Ms. Guerin Calvert was hired in February of 2010 by Respondent to assess the competitive effects of ProMedica's acquisition of St. Luke's Hospital. (Guerin-Calvert, Tr. 7576).

1559. Ms. Guerin-Calvert is the Vice-Chairman of Compass Lexecon. (RX-6 at 3 (Guerin-Calvert, Dep. at 5), *in camera*).

1560. Ms. Guerin-Calvert is not a PhD economist. (Guerin-Calvert, Tr. 7591).

1561. Ms. Guerin-Calvert is not an econometrician. By her own admission, she is a consumer of econometrics. (PX01954 at 009 (Guerin-Calvert, Dep. at 32), *in camera*). Ms. Guerin-Calvert's educational experience in econometrics consists of a college course in 1977 and attendance at several one-day long seminars at the Department of Justice and Compass Lexecon. (Guerin-Calvert, Tr. 7592-7598).

1562. Ms. Guerin-Calvert has never published a peer-reviewed paper dealing with econometric modeling or analysis. (Guerin-Calvert, Tr. 7600-7601). Ms. Guerin-Calvert does not program in Stata, a statistical computer program used to perform econometric analysis. (Guerin-Calvert, Tr. 7604-7605).

1563. Prior to testifying in this matter, Ms. Guerin-Calvert has testified in antitrust matters nine times in federal court, and in only one of those instances did she testify for the complainant. (Guerin-Calvert, Tr. 7130-7132).

1564. In antitrust merger matters, Ms. Guerin-Calverthas testified five times, each time for the defense. (Guerin-Calvert, Tr. 7582-7583).

1565. Ms. Guerin-Calvert testified that the 2001 merger of Summit and Alta Bates would not result in anticompetitive price increases. (Guerin-Calvert, Tr. 7606-7610). However, Steven Tenn's paper, *A Case Study of the Sutter Summit Transaction,* found price effects

resulting from post-merger market power. (International Journal of the Economics of Business, Vol. 18, No. 2, February 2011, pps 65-82).

1566. Ms. Guerin-Calvert testified that the merger of Long Island Jewish Memorial and North Shore Hospital in 1997 would not result in anticompetitive price increases. (Guerin-Calvert, Tr. 7611-7613). Florida State University economists Gary Fournier and Yunwei Gai, however, examined the market after the merger and concluded that price increases had occurred in the market. (What does Willingness-to-Pay reveal about hospital market power in merger cases?, Sept. 2006, working paper).

1567. In the past three years, Ms. Guerin-Calvert has presented analysis in support of mergers before the FTC or DOJ at least twelve times. (Guerin-Calvert, Tr. 7583-7584).

C. Witnesses Who Testified by Deposition and/or Investigational Hearing Only

Gary Akenberger

1568. Mr. Akenberger is the Senior Vice President of Finance and Strategic Business Development at ProMedica Health System. (PX01912 at 005 (Akenberger, IHT at 10), *in camera*; PX01912 at 008 (Akenberger, IHT at 25), *in camera*).

1569. Mr. Akenberger is responsible for all accounting within ProMedica and Paramount Health Care. (PX01912 at 009 (Akenberger, IHT at 26-27), *in camera)*. From August 2008 to July 2010, Mr. Akenberger was responsible for mergers and acquisitions undertaken by ProMedica and had oversight responsibilities for the Acquisition. (PX01912 at 009 (Akenberger, IHT at 26-27), *in camera)*.

1570. Mr. Akenberger was one of the lead finance representatives to quantify efficiencies opportunities from the Acquisition and was the lead individual responsible for the financial analysis behind the efficiencies. (PX01931 at at 025 (Akenberger, Dep. at 93), *in camera*).

1571. Mr. Akenberger described himself as the lead individual responsible for the financial analysis, substantiation, and verification of Respondent's alleged efficiencies. (PX01931 at 025, 026 (Akenberger, Dep. at 93, 100), *in camera*). He stated that he reviewed every individual efficiency claim alleged by Respondent. (PX01931 at 028 (Akenberger, Dep. at 105), *in camera*).

1572. Since the Acquisition, Mr. Akenberger has been the "lead finance representative" on a steering committee formed to oversee efficiencies analysis of the Acquisition. (PX02104 at 002 (¶ 4) (Akenberger, Decl.), *in camera*). Mr. Akenberger also leads the steering committee with respect to verifying the financial underpinnings of the alleged efficiencies. (PX02104 at 002-003 (¶ 6) (Akenberger, Decl.), *in camera*).

1573. Kathleen Hanley, ProMedica's CFO, testified in court that Mr. Akenberger was one of the key employees familiar with the specifics and details of ProMedica's efficiencies analysis. (Hanley, Tr. 4729, *in camera*).

1574. Mr. Akenberger submitted an affidavit that discussed Respondent's alleged efficiencies. (PX02104 (Akenberger, Decl.), *in camera*; PX02105 (Akenberger, Decl. Exhibits), *in camera*). In his affidavit, Mr. Akenberger withdrew previously-alleged efficiency claims that Respondent had argued would generate many millions of dollars in savings. (*See* PX02104 at 003 (¶ 7) (Akenberger, Decl.), *in camera*; *see also* PX00020 (Respondent's original submission on alleged efficiencies of the Acquisition), *in camera*).

1575. During his depositions, Mr. Akenberger often struggled to provide details necessary to substantiate the efficiency claims contained in his affidavit and Respondent's efficiency submissions. (*See* PX01931 at 028-029, 040, 043, 051, 053 (Akenberger, Dep. at 106-109, 154, 167, 198-199, 207)). His deposition testimony sometimes suggested that Respondent's efficiency claims were calculated incorrectly, or failed to take into account the possibility of negative effects on patient quality of care. (*See* PX01912 at 052, 057, 059 (Akenberger, IHT at 199-200, 219-220, 227)).

1576. Respondent did not call Mr. Akenberger to testify. Mr. Akenberger was listed on Respondent's final witness list to potentially testify regarding efficiencies and the rationale for the joinder.

Dr. Stephen Bazeley

1577. Dr. Bazeley is a physician operating a family practice with five other physicians in Waterville, Ohio. His practice was established in 1990 and serves about 10,000 to 20,000 patients. (PX01932 at 004 (Bazeley, Dep. at 11-12), *in camera*).

1578. Dr. Bazeley has practiced medicine in the Toledo metropolitan area since 1977. (PX01932 at 006 (Bazeley, Dep. at 18), *in camera*)

1579. Dr. Bazeley maintains admitting privileges at St. Luke's and Flower hospitals but has not admitted a patient to Flower in 7-8 years. (PX01932 at 022 (Bazeley, Dep. at 81), *in camera*).

1580. Dr. Bazeley has an average daily census of 10-16 patients at St. Luke's Hospital. (PX01932 at 023 (Bazeley, Dep. at 86), *in camera*).

1581. Dr. Bazeley has served on St. Luke's Board of Directors since 2000. (PX01932 at 005 (Bazeley, Dep. at 16), *in camera*)

1582. Respondent did not call Dr. Bazeley to testify. Dr. Bazeley was listed on Respondent's preliminary witness list to potentially testify to the competitive effects of the joinder, the rationale for the joinder with ProMedica, the financial condition of St. Luke's, patient

preferences, and physician privileges.

Douglas Deacon

1583. Mr. Deacon is the Vice President of Professional Services at St. Luke's Hospital. (PX01908 at 007 (Deacon, IHT at 19-20), *in camera*). He is also the President of Care Enterprises. (PX01908 at 013 (Deacon, IHT at 43), *in camera*).

1584. Mr. Deacon oversees departments which include ancillary services such as laboratory, radiology and rehab, as well as coordination between those departments and other departments at St. Luke's Hospital. (PX01908 at 013 (Deacon, IHT at 42), *in camera;* PX01908 at 015 (Deacon, IHT at 50), *in camera).*

David Dewey

1585. Mr. Dewey is the Vice President of Business Development at St. Luke's Hospital and the President of the WellCare Physicians Group. (PX01909 at 003, 005 (Dewey, IHT at 8, 15), *in camera*). As the Vice President of Business Development, Mr. Dewey's responsibilities include strategic planning, product development and public relations. (PX01015 at 001 (Resume of David M. Dewey)).

1586. Mr. Dewey has also served as Marketing Director, and Vice President of Information and Marketing Services at St. Luke's. (PX01909 at 004 (Dewey, IHT at 11), *in camera*).

Dr. Lee William Hammerling

1587. Dr. Hammerling is the Chief Medical Officer and President of ProMedica Physician and Continuum Services. (PX01913 at 004 (Hammerling, IHT at 7), *in camera).*

1588. Dr. Hammerling is responsible for developing and implementing the performance improvement plan which monitors quality, patient safety and service at ProMedica. (PX00146 at 002).

1589. Dr. Hammerling is also responsible for the recruitment, operations and integration strategy of the employed physician network at ProMedica. (PX00146 at 002).

1590. Respondent did not call Dr. Hammerling to testify. Dr. Hammerling was listed on Respondent's final witness list to potentially testify to the competitive effects of the joinder, patient preferences, and physician privileges.

Barbara Machin

1591. Ms. Machin has been a member of the St. Luke's Hospital Board of Directors since 1994. (PX01001 at 002; PX01907 at 006 (Machin, IHT at 16), *in camera*).

1592. Ms. Machin served as Chairman of the Board from March 2008 until March 2010. (PX01001 at 002).

Steve Marcus

1593. Mr. Marcus is the Vice President of Clinical Financial Analytics and Integration for ProMedica Health System. (PX01936 at 010 (Marcus, Dep. at 32), *in camera*). He has been in this position since October of 2010. (PX01936 at 010 (Marcus, Dep. at 33), *in camera*).

1594. As the Vice President of Clinical Financial Analytics and Integration, Mr. Marcus is responsible for developing ProMedica's capability to serve as an accountable care organization. (PX01936 at 010 (Marcus, Dep. at 33), *in camera*).

1595. Prior to becoming the Vice President of Clinical Financial Analytics and Integration, Mr. Marcus was Director of Managed Care for ProMedica. (PX01936 at 010 (Marcus, Dep. at 30), *in camera*). As Director of Managed Care, Mr. Marcus was accountable for approximately 50 employees. (PX01936 at 010 (Marcus, Dep. at 31), *in camera*). Mr. Marcus reported directly to the Vice President of Managed Care Revenue Cycle and Reimbursement. (PX01936 at 010 (Marcus, Dep. at 31), *in camera*).

1596. Mr. Marcus has a Bachelor's degree in biology and a Master's degree in economics, both from Bowling Green State University. (PX01936 at 004 (Marcus, Dep. at 7), *in camera*).

Nancy Mullins

1597. Ms. Mullins is the Director of Contracting for CIGNA Healthcare responsible for northeast and northwest Ohio. (PX01900 at 003 (Mullins, IHT at 6)). Ms. Mullins has held this position for almost 10 years. (PX01900 at 003 (Mullins, IHT at 7)).

1598. As Director of Contracting, Ms. Mullins is responsible for developing and maintaining the healthcare provider network in northeast and northwest Ohio. (PX01900 at 003 (Mullins, IHT at 7)).

1599. Ms. Mullins works with sales and marketing teams to understand the needs and preferences of CIGNA customers in northern Ohio. (PX01900 at 003 (Mullins, IHT at 7-8)).

David Oppenlander

1600. Mr. Oppenlander is the former Vice President and Treasurer of St. Luke's Hospital. (Wakeman, Tr. 2652, *in camera*). Mr. Oppenlander was effectively St. Luke's Chief Financial Officer—although St. Luke's did not use that title. (Black, Tr. 5557).

1601. Mr. Oppenlander joined St. Luke's Hospital in September of 2003. (PX01933 at 013 (Oppenlander, Dep. at 42), *in camera*). Mr. Oppenlander left St. Luke's in 2009. (RX-11 at 53-54 (Oppenlander, Dep. at 205-206), *in camera*).

1602. Mr. Oppenlander was responsible for negotiating St. Luke's contracts with health plans, among other matters. (RX-11 at 6 (Oppenlander, Dep. at 16), *in camera*).

Dr. Salvador Peron

1603. Dr. Peron is a urologist at the Toledo Clinic. (PX01948 at 003 (Peron, Dep. at 3)).

1604. Dr. Peron is the chairman of the division of urology at St. Luke's. (PX01948 at 028 (Peron, Dep. at 104)).

1605. Dr. Peron is the medical director of Surgi+Care, an outpatient surgery center on the campus of St. Luke's Hospital. (PX01948 at 006, 008 (Peron, Dep. at 16, 23).

1606. In March 2010, Dr. Peron opened a new office in Bowling Green, Ohio, on the campus of Wood County Hospital. (PX01948 at 006, 024 (Peron, Dep. at 14, 88-89)).

Eric Perron

1607. Mr. Perron was appointed the Computer Information Systems ("CIS") Director at St. Luke's Hospital in February 2006. (PX01928 at 004 (Perron, Dep. at 7), *in camera*).

1608. As CIS director, Mr. Perron is responsible for technology operations and strategic development for technology. (PX01928 at 005 (Perron, Dep. at 10), *in camera*).

1609. In December 2009, Mr. Perron recommended St. Luke's move forward on an EMR contract. (PX01928 at 021 (Perron, Dep. at 75), *in camera*). This decision was not opposed by Mr. Wakeman or any other St. Luke's executive. (PX01928 at 023 (Perron, Dep. at 85), *in camera*).

1610. ProMedica did not consult with Mr. Perron regarding IT or EMR efficiencies calculations in conjunction with the efficiencies analysis of the Acquisition presented by Compass Lexecon. (PX01928 at 040 (Perron, Dep. at 150-152), *in camera*).

Larry Peterson

1611. Mr. Peterson is the Chairman of the ProMedica Health System Board of Trustees, and obtained this position in January of 2009. (PX01901 at 035 (Peterson, IHT at 132), *in camera*).

1612. Mr. Peterson is also the Chairman of the Executive, Compensation and Board Development Committees at ProMedica Health System. (PX01901 at 021 (Peterson, IHT at 77), *in camera*).

1613. Mr. Peterson has been a member of a committee of the ProMedica Health System Board since 2000. (PX01901 at 035 (Peterson, IHT at 133), *in camera*).

<u>Dr. Robert Reiter</u>

1614. Dr. Reiter was the associate chief medical officer and senior vice president for quality and clinical performance improvement for ProMedica. (PX01930 at 004 (Reiter, Dep. at 8)).

1615. Dr. Reiter led and directed ProMedica's system-wide quality and performance efforts in three major areas: quality goals, patient safety, and clinical best practices. (PX01930 at 005 (Reiter, Dep. at 12-13)).

1616. Dr. Reiter did not participate in any merger discussions between ProMedica and St. Luke's. (PX01930 at 014 (Reiter, Dep. at 47)).

1617. During weekly meetings with his direct reports, Dr. Reiter had conversations about the steps it would take to bring St. Luke's into ProMedica's quality efforts. (PX01930 at 016 (Reiter, Dep. at 56)).

1618. Dr. Reiter made a presentation to St. Luke's medical executive committee on ProMedica's system-wide best practice initiative in January 2011. (PX01930 at 014 (Reiter, Dep. at 48)).

1619. Dr. Reiter was listed on Respondent's final witness list to testify regarding quality, but was not called to testify.

1620. Dr. Reiter recently left ProMedica after Mr. Oostra expressed displeasure about his ability to take ProMedica's quality "to the next level" in terms of publishing data and standardizing clinical protocols. (Oostra, Tr. 5939, *in camera*).

<u>Dr. Christopher Riordan</u>

1621. Dr. Riordan is a cardiothoracic surgeon who joined ProMedica Physician Group ("PPG") in October 2009. (PX01949 at 004 (Riordan, Dep. at 7)).

1622. Prior to joining PPG in 2009, Dr. Riordan was a self-employed physician in Toledo since 1997. (PX01949 at 004 (Riordan, Dep. at 7)).

1623. Dr. Riordan has been St. Luke's medical director of cardiovascular services since the program's inception. (PX01949 at 006 (Riordan, Dep. at 14)).

1624. Dr. Riordan also served as medical director for cardiovascular surgery at St. Vincent until August 2009. (PX01949 at 014 (Riordan, Dep. at 49)).

Barbara Steele

1625. Ms. Steele is the Acute Care President of ProMedica Health System As Acute Care President, Ms. Steele is responsible for strategic planning, operations and performance for all of the ProMedica Health System hospitals. (PX01904 at 009 (Steele, IHT at 26, 29), *in camera)*.

1626. Ms. Steele has been employed by ProMedica Health System since 1995. Prior to becoming the President of Acute Care, Ms. Steele was the Chief Operating Officer of The Toledo Hospital and the Regional President for the South and Central Regions of ProMedica Health System. Ms. Steele is also a registered nurse. (PX01904 at 009 (Steele, IHT at 26), *in camera)*.

1627. Respondent did not call Ms. Steele to testify. Ms. Steele was listed on Respondent's preliminary witness list to testify regarding the competitive effects of the joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, and the financial condition of St. Luke's.

Dennis Wagner

1628. Mr. Wagner is the Finance Director at St. Luke's Hospital. (PX01041 at 001). Mr. Wagner has been employed by St. Luke's since 1985. He has also served as Managed Care and Reimbursement Director, Revenue Cycle Director, and Acting Treasurer. (PX01915 at 004 (Wagner, IHT at 10-11), *in camera;* PX01041 at 001).

1629. Mr. Wagner has a Bachelor of Science in Economics from the University of Toledo and is a Certified Public Accountant. (PX01041 at 002).

1630. As Managed Care and Reimbursement Director and Revenue Cycle Director, Mr. Wagner reviewed managed care contract proposals, and analyzed reimbursement rates before forwarding them to legal counsel for review. (PX01915 at 004 (Wagner, IHT at 11-12), *in camera*).

1631. As Acting Treasurer, Mr. Wagner was also responsible for St. Luke's financial statements and reporting to the finance committee. (PX01915 at 021 (Wagner, IHT at 78-79), *in camera*).

1632. As Finance Director, he no longer reports to the finance committee directly or is ultimately responsible for the financial functions at St. Luke's. (PX01915 at 021-022 (Wagner, IHT at 80-81), *in camera*). However, Mr. Wagner retains the responsibilities of Managed Care and Reimbursement Director and Revenue Cycle Director for St. Luke's. (PX01915 at 021-22 (Wagner, IHT at 80-81), *in camera*).

1633. Respondent did not call Mr. Wagner to testify. Mr. Wagner was listed on Respondent's final witness list to testify regarding the competitive effects of the joinder, product and geographic market definition, hospital/health plan contract negotiations, efficiencies,

quality, the financial condition of St. Luke's, rationale for the joinder with ProMedica and negotiations with other potential merger partners.

XX. PROPOSED CONCLUSIONS OF LAW

A. Nature of the Action and Jurisdiction

1. This is a civil action arising under Acts of Congress protecting trade and commerce against restraints and monopolies, and is brought by an agency of the United States authorized by an Act of Congress to bring this action. (Joint Stipulations of Law and Fact, JX00002A ¶ 52).

2. The Federal Trade Commission ("FTC") has jurisdiction over Respondent ProMedica Health System, Inc. ("Respondent" or "ProMedica") and the subject matter of this proceeding pursuant to Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, and Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18, 21(b).

3. The FTC is an administrative agency of the U.S. Government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq*. (2006). The FTC is vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the Clayton Act, 15 U.S.C. § 18. (Joint Stipulations of Law and Fact, JX00002A ¶ 54).

4. Respondent, including its relevant operating subsidiaries, is, and at all relevant times has been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44 (2006), and Section 1 of the Clayton Act, 15 U.S.C. § 12 (2006). (Joint Stipulations of Law and Fact, JX00002A ¶ 53).

B. Clayton Act Section 7 Standard and Conclusions

5. Section 7 of the Clayton Act, as amended, bars acquisitions "where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." (15 U.S.C. § 18 (2006); Joint Stipulations of Law and Fact, JX00002A ¶ 55).

6. "Congress used the words 'may be' . . . to indicate that its concern was with probabilities, not certainties" and to "arrest restraints of trade in their incipiency and before they develop into full-fledged restraints." (*Brown Shoe Co., Inc. v. United States*, 370 U.S. 294, 323 & n.39 (1962) ("requirement of certainty . . . of injury to competition is incompatible" with Congress' intent of "reaching incipient restraints."); *see also United States v. Phila. Nat'l Bank*, 374 U.S. 321, 355, 367 (1963) (a "fundamental purpose of amending § 7 was to arrest the trend toward concentration, the tendency to monopoly, before the consumer's alternatives disappeared through merger . . . ."); *Chicago Bridge & Iron Co. N.V. v. FTC,* 534 F.3d 410, 423 (5th Cir. 2008); *FTC v. CCC Holdings Inc*., 605 F. Supp. 2d 26, 35 (D.D.C. 2009)).

7. ProMedica's acquisition of St. Luke's constitutes an acquisition under Section 7 of the Clayton Act. (Answer at ¶ 10; *United States v. Columbia Pictures Corp.,* 189 F. Supp. 153, 182 (S.D.N.Y. 1960) (Section 7 is "pragmatic" and "primarily concerned with the end result of a transfer of a sufficient part of the bundle of legal rights and privileges . . . to give the transfer economic significance and the proscribed adverse 'effect.'")). As another court stated in applying Section 7 to the merger of two non-profit hospitals, "the inquiry is whether the resulting corporation(s) owns or controls, however that is manifested, the economic power of the prior corporations." (*United States v. Rockford Mem'l Corp*., 717 F. Supp. 1251, 1256 (N.D. Ill. 1989), *aff'd* 898 F.2d 1278 (7th Cir. 1990); *see also United States v. Dairy Farmers of Am., Inc*., 426 F.3d 850, 858 (6th Cir. 2005) (citing with approval those Section 7 cases that "focus on the degree to which the defendant controls the decision-making processes that cause anticompetitive effects, rather than the nature or extent of the acquisition.")).

8. Congress' intent in enacting Section 7 was to prevent unlawful mergers or acquisitions before they created competitive harm. (*Brown Shoe*, 370 U.S. at 318 n.32; *see also FTC v. Procter & Gamble*, 386 U.S. 568, 577 (1967) (Section 7 "was intended to arrest the anticompetitive effects of market power in their incipiency.")).

9. The purpose of the antitrust laws is to protect competition, not competitors. (*Brown Shoe*, 370 U.S. at 320; Joint Stipulations of Law and Fact, JX00002A ¶ 56).

C. Burden of Proof

10. Courts generally analyze Section 7 cases under a burden-shifting framework. (*See*, *e.g.*, *Chicago Bridge*, 534 F.3d at 423; *FTC v. H.J. Heinz, Co.*, 246 F.3d 708, 715 (D.C. Cir. 2001); *United States v. Baker Hughes Inc.*, 908 F.2d 981, 982-83 (D.C. Cir. 1990); *In re Polypore Int'l, Inc.*, 2010 FTC LEXIS 97, at *25 (Dec. 13, 2010)). Under this framework, Complaint Counsel establishes a *prima facie* Section 7 violation by showing that the transaction will result in undue concentration in the relevant market(s). (*Chicago Bridge*, 534 F.3d at 423; *Baker Hughes*, 908 F.2d at 982-83; *Polypore*, 2010 FTC LEXIS 97, at *25).

11. Undue concentration in a relevant market gives rise to a presumption that the transaction substantially lessens competition. (*Phila. Nat'l Bank*, 374 U.S. at 363; *Chicago Bridge*, 534 F.3d at 423; *Dairy Farmers of Am.*, 426 F.3d at 858; *United States v. Citizens & S. Nat'l Bank*, 422 U.S. 86, 120-121 (1975)).

12. Complaint Counsel may establish a *prima facie* case quantitatively or qualitatively, and may further support its *prima facie* case with evidence that anticompetitive effects are likely. (*See FTC v. Butterworth Health Corp.*, 946 F. Supp. 1285, 1289 (W.D. Mich. 1996), *aff'd*, No. 96-2440, 1997 U.S. App. LEXIS 17422 (6th Cir. July 8, 1997) (FTC may make a *prima facie* case with statistical showing of post-merger control of "undue percentage" of relevant market and a "significant increase in [ ] concentration"); *Polypore*, 2010 FTC LEXIS 97, at *25-26 ("qualitative evidence regarding pre-acquisition competition between the merging parties can in some cases be sufficient to

create a *prima facie* case . . .") (citing *In re Chicago Bridge & Iron Co.*, 138 F.T.C. 1024, 1053 (2004)).

13. Once a*prima facie* case is established, the burden shifts to Respondent to rebut the presumption of illegality by producing sufficient evidence to demonstrate that Complaint Counsel's evidence inaccurately predicts the likely competitive effects of the transaction. (*United States v. Marine Bancorporation*, 418 U.S. 602, 631 (1974); *Chicago Bridge*, 534 F.3d at 423; *FTC v. Univ. Health Inc.*, 938 F.2d 1206, 1218-19 (11th Cir. 1991); *Polypore*, 2010 FTC LEXIS 97, at *26).

14. The stronger the *prima facie* case, the greater the Respondent's burden of production on rebuttal. (*Polypore*, 2010 FTC LEXIS 97, at *26 (citing *Heinz*, 246 F.3d at 725; *Baker Hughes*, 908 F.2d at 991)).

15. If the Respondent meets its burden, the burden of production shifts back to Complaint Counsel, who also retains the ultimate burden of persuasion. (*Chicago Bridge*, 534 F.3d at 423 (citations omitted); *Polypore*, 2010 FTC LEXIS 97, at *27).

D. General Acute Care Inpatient Hospital Services Sold to Commercial Health Plans Constitute a Relevant Market

16. A relevant product market is one in which a hypothetical monopolist could increase prices profitably by a "small but significant" amount for a meaningful period of time. (U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* § 4.1.1 (2010) [hereinafter *Merger Guidelines*]).

17. Defining the product market generally focuses on "demand substitution factors, *i.e.*, on customers' ability and willingness to substitute away from one product to another in response to a price increase or . . . reduction in product quality or service." (*Merger Guidelines* § 4).

18. Courts frequently have relied on the *Merger Guidelines* framework to assess how acquisitions impact competition. (*See*, *e.g., Butterworth*, 946 F. Supp. at 1294; *Chicago Bridge* , 534 F.3d at 432 n.11; *Heinz*, 246 F.3d at 716 n.9; *FTC v. Univ. Health Inc.,* 938 F.2d at 1211).

19. Evidence that predicts a price increase for a group of products "can itself establish that those products form a relevant [product] market." (*Merger Guidelines* § 4; s*ee also FTC v. Whole Foods Mkt., Inc*., 548 F.3d 1028, 1046-47 (D.C. Cir. 2008) (Tatel, J., concurring) (CEO's statement that it was buying company to "avoid nasty price wars" was relevant evidence of market definition); *In re Evanston Nw. Healthcare*, No. 9315, 2007 WL 2286195, at *60-61 (FTC Aug. 6, 2007)).

20. The first relevant product market in this case is general acute-care inpatient services ("GAC") sold to commercial health plans. This is a "cluster market" of services that courts consistently have found when analyzing hospital mergers. (*See, e.g., Butterworth,*

No. 96-2440, 1997 U.S. App. LEXIS 17422, at *5; *Univ. Health Inc.*, 938 F.2d at 1210-11; *Rockford Mem'l Corp*., 898 F.2d at 1284; *Evanston,* 2007 WL 2286195, at *45-47).

21. The inpatient services included in the cluster market are not substitutes for one another (*i.e*., appendectomies and knee surgery are not interchangeable). However, the cluster market is used "as a matter of analytical convenience [because] there is no need to define separate markets for a large number of individual hospital services . . . when market shares and entry conditions are similar for each." (*Emigra Group v. Fragomen*, 612 F. Supp. 2d 330, 353 (S.D.N.Y. 2009) (citing Jonathan B. Baker, *Market Definition: An Analytical Overview*, 74 Antitrust L.J. 129, 157-59 (2007)); Joint Stipulations of Law and Fact, JX00002A ¶ 57).

22. The specific inpatient services included in the cluster market are those that both ProMedica and St. Luke's offer, and therefore those for which competition will be affected by the Acquisition. (*FTC v. ProMedica Health Sys*., No. 3:11 CV 47, 2011 U.S. Dist. LEXIS 33434 at * 23-24, *146-147 (N.D. Ohio March 29, 2011); s*ee Little Rock Cardiology Clinic v. Baptist Health*, 573 F. Supp. 2d 1125, 1146 (E.D. Ar. 2008) (excluding cardiologists' services from market definition because "[defendant] does not compete in the cardiologists' service market; it has no market share and therefore no market power in [that market].")).

23. Outpatient services are excluded from the GAC market because they are not substitutes for inpatient services and because they are subject to different competitive conditions (including a different set of providers and different entry conditions) than are inpatient services. (*See Rockford Mem'l Hosp*., 898 F.2d at 1284 (excluding outpatient services from a GAC product market)).

E. Inpatient Obstetrical Services Sold to Commercial Health Plans Constitute a Relevant Product Market

24. Inpatient obstetrical services sold to commercial health plans constitute a separate relevant product market in which the competitive effects of the Acquisition must be analyzed. A separate product market for this service line is necessary because "market shares and entry conditions" are different for obstetrics than for the overall cluster of GAC services. In particular, UTMC and Mercy St. Anne do not offer obstetrical services. (*ProMedica,* 2011 U.S. Dist. LEXIS 33434 at * 24-25, *148-149; s*ee Emigra Group*, 612 F. Supp. 2d at 353 (citation omitted)).

25. Inpatient obstetrical services need not – and should not – be included in the overall general acute-care inpatient services market simply because they are offered within the same facilities as the other services. (*Rockford Mem'l Hosp.,* 898 F.2d at 1284 (Posner, J.) ("Hospitals can and do distinguish between the patient who wants a coronary bypass and the patient who wants a wart removed from his foot; these services are not in the same product market merely because they have a common provider.")).

F. The Relevant Geographic Market is Lucas County

26. Section 7 of the Clayton Act prohibits acquisitions that are likely to lessen competition in "any section of the country," otherwise known as a geographic market. (*Phila. Nat'l Bank*, 374 U.S. at 355-356; Joint Stipulations of Law and Fact, JX00002A ¶ 58).

27. The relevant geographic market within which to analyze the competitive effects of the Acquisition is no broader than Lucas County. Under the case law and *Merger Guidelines*, the relevant question to define the geographic market is whether a hypothetical monopolist controlling *all* Lucas County hospitals could profitably implement a small but significant non-transitory increase in price ("SSNIP"). (*Merger Guidelines* § 4.2; *ProMedica*, 2011 U.S. Dist. LEXIS 33434 at * 25-26, *149).

28. Defining the geographic market is a "pragmatic" undertaking and Complaint Counsel must "present evidence of practical alternative sources to which consumers . . . would turn if the merger were consummated." (*Butterworth,* 946 F. Supp. at 1291; *see generally Phila. Nat'l Bank*, 374 U.S. at 358-62).

G. The Acquisition is Presumed Unlawful in Two Relevant Product Markets Based on Concentration Thresholds

29. "A transaction resulting in a high concentration of market power and creating, enhancing, or facilitating a potential that such market power could be exercised in anticompetitive ways is presumptively unlawful." (*Butterworth*, 946 F. Supp. at 1294 (citations omitted); *see also Phila. Nat'l Bank*, 374 U.S. at 363; *Baker Hughes*, 908 F.2d at 982-83).

30. Market concentration can be measured using the Herfindahl-Hirschman Index ("HHI"), as adopted by the federal antitrust enforcement agencies. (*Merger Guidelines* § 5.3).

31. Courts have likewise adopted and relied on the HHI as a measure of market concentration. (*See, e.g., Univ. Health Inc.*, 938 F.2d at 1211 n.12 (HHI is the "most prominent method" of measuring market concentration); *FTC v. PPG Indus., Inc.*, 798 F.2d 1500, 1503 (D.C. Cir. 1986); *FTC v. Cardinal Health*, 12 F. Supp. 2d 34, 53-54 (D.D.C. 1998); *FTC v. Staples*, 970 F. Supp. 1066, 1081-82 (D.D.C. 1997); *In re Evanston Nw. Healthcare Corp.,* D-9315, Initial Decision at 150 (Oct. 20, 2005) (McGuire, J.) ("The HHI is the most prominent method of measuring market concentration, commonly used by the Department of Justice, the FTC, and the courts in evaluating proposed mergers.") (citing *Butterworth,* 946 F. Supp. at 1294)).

32. The HHI is calculated by summing the squares of the market shares of all firms in the market. A transaction that increases concentration by 200 points or more and results in a highly-concentrated market (HHI over 2,500) is presumed likely to enhance market power. (*Merger Guidelines* § 5.3).

33. Sufficiently large HHI figures establish the FTC's *prima facie* case that a merger is anti-

competitive. (*Heinz,* 246 F.3d at 716 (citing *Baker Hughes,* 908 F.2d at 982-83 & n.3)).

34. The market shares and HHI levels here far exceed levels found to be unlawful by the Supreme Court and other courts. In *Philadelphia National Bank*, the Supreme Court found that a combined market share of 30 percent, with many remaining competitors, violated the Clayton Act. (*Phila. Nat'l Bank*, 374 U.S. at 364). In *University Health Inc.*, the court found that the FTC had "clearly established a *prima facie* case of anticompetitive effect" when it proved that a merger of two nonprofit hospitals would have reduced the number of competitors from five to four and resulted in a combined share of about 43 percent, an increase in HHI of over 630, and a post-merger HHI of 3200. (*Univ. Health Inc.*, 938 F.2d at 1211 & n.12, 1219; *see also FTC v. Bass Bros. Enters., Inc.*, No. C84-1304, 1984 U.S. Dist. LEXIS 16122, at *65 (N.D. Ohio June 6, 1984) (enjoining two mergers that would have resulted in 200 and 300 point increases in HHI); *Cardinal Health*, 12 F. Supp. at 52-53 (enjoining two mergers that would have resulted in 600 and 800 point increases in HHI)).

35. A duopoly, as in the inpatient obstetrical services market here, is presumptively unlawful in and of itself. There is "by a wide margin, a presumption that [a three-to-two] merger will lessen competition . . . ." (*Heinz*, 246 F.3d at 716).

H. Respondent Has Failed to Rebut the Presumption of Likely Harm

36. Proof that an acquisition will increase concentration in one or more relevant markets with significant barriers to entry establishes a *prima facie* case that a merger is anticompetitive. (*Heinz*, 246 F.3d at 716 (likelihood of success demonstrated by showing that market concentration would increase substantially)).

37. The burden shifts to the Respondent to rebut the *prima facie* case by attempting to show that market-share statistics do not accurately reflect the market. (*Heinz.* 246 F.3d at 715; *Baker Hughes*, 908 F.2d at 982-83). "The more compelling the *prima facie* case, the more evidence the defendant must present to rebut it successfully." (*Heinz*, 246 F.3d at 725 (quoting *Baker Hughes*, 908 F.2d at 991)).

38. Section 7 of the Clayton Act does not ask whether any competitor remains, but whether competition is substantially lessened. (*See Evanston*, No. 9315, 2007 WL 2286195, at *14 ("The issue is not whether other hospitals competed with the merging parties, but whether they did so to a sufficient degree to offset the loss of competition caused by the merger.")).

1. There Will Be No Timely, Likely, or Sufficient Entry or Expansion in the Relevant Markets

39. Entry must be "timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects" of a proposed transaction. (*Merger Guidelines* § 9; *United States v. Visa U.S.A., Inc.*, 163 F. Supp. 2d 322, 342 (S.D.N.Y. 2001), *aff'd*, 344 F.3d 229, 240 (2d Cir. 2003); *Cardinal Health*, 12 F. Supp. 2d at 55-58).

40. Respondent must show both that entry is *likely* – meaning both technically possible and economically sensible – and that it will *replace* the competition that existed in both relevant markets prior to the merger. (*See Cardinal Health*, 12 F. Supp. 2d at 56 (quotation omitted); *In re Chicago Bridge*, 138 F.T.C. at 1147 (noting "new entrants and fringe competitors" might not replace lost competition), *aff'd sub nom. Chicago Bridge,* 534 F.3d 410).

41. The higher the barriers to entry, the less likely it is that the "timely, likely, and sufficient" test can be met. (*Visa U.S.A.,* 163 F. Supp. 2d at 342).

42. The history of entry "is a central factor in assessing the likelihood of entry in the future." (*Cardinal Health*, 12 F. Supp. 2d at 56; *Polypore*, 2010 FTC Lexis 97, at *86; *Merger Guidelines* § 9).

2. Respondent's Efficiencies Claims Fail

43. Under the *Merger Guidelines* and related case law, efficiencies claimed by a defendant are not to be credited unless they are merger-specific (*i.e.*, likely to be achievable only by this transaction), substantiated, and of such a character and magnitude that the transaction is not likely to be anticompetitive in any relevant market. (*Merger Guidelines* § 10; *see also Univ. Health Inc.*, 938 F.2d at 1223 ("defendant [cannot] overcome a presumption of illegality based solely on speculative, self-serving assertions"); *Staples*, 970 F. Supp. at 1089).

44. Respondent must prove the Acquisition results in "significant economies and that these economies ultimately would benefit competition and, hence, consumers." (*Univ. Health*, 938 F.2d at 1223, see also *Butterworth*, 946 F. Supp. at 1300).

45. A defendant's "proof of extraordinary efficiencies" must be "more than mere speculation and promises about post-merger behavior." (*Heinz*, 246 F.3d at 720-21).

3. St. Luke's is Not a Failing Firm

46. At the time of the Acquisition, St. Luke's was not a "failing firm" as defined under the *Horizontal Merger Guidelines* and U.S. Supreme Court precedent. (Joint Stipulations of Law and Fact, JX00002A ¶ 21).

4. St. Luke's is Not a Flailing Firm

47. The so-called flailing firm defense requires a "substantial showing that the acquired firm's weakness, which cannot be resolved by any competitive means, would cause that firm's market share to reduce to a level that would undermine the government's *prima facie* case." (*FTC v. Tenet Healthcare Corp.*, 17 F. Supp. 2d 937, 947 (E.D. Mo. 1998), *rev'd on other grounds,* 186 F.3d 1045 (8th Cir. 1999) (citing *Univ. Health*, 938 F.2d at 1221)). Thus, to succeed, Respondent must make a "substantial showing" of an

imminent, steep plummet in St. Luke's market share (from 11.5 percent to less than 2 percent for GAC services and from 9.3 percent to less than 1.3 percent for OB services) such that market concentration falls below levels that trigger the presumption of anticompetitive harm. If Respondent cannot make "the requisite showing that [its] financial weakness would reduce its market share to a level that would undermine the government's *prima facie* case . . . the "flailing firm" defense does not apply." (*FTC v. Tenet Healthcare Corp.*, 17 F. Supp. 2d 937. 947 (E.D. Mo. 1998), *rev'd on other grounds,* 186 F.3d 1045 (8th Cir. 1999).

48. To qualify as a "flailing" firm, a competitor must be so compromised that its future competitive significance is overstated by current market shares. (*See FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109, 153 (D.D.C. 2004) (citing *United States v. Gen. Dynamics Corp.*, 415 U.S. 486, 506-08 (1974)); Joint Stipulations of Law and Fact, JX00002A ¶ 59).

49. "[F]inancial weakness . . . is probably the weakest ground of all for justifying a merger [and it] certainly cannot be the primary justification of a merger." (*Kaiser Aluminum & Chem. Corp. v. FTC*, 652 F.2d 1324, 1339 (7th Cir. 1981)); *see also FTC v. Warner Commc'ns, Inc.*, 742 F.2d 1156, 1164-1165 (9th Cir. 1984)).

50. Courts have strongly disfavored "a weak company defense" because it "would expand the failing company doctrine, a defense which has strict limits." (*Warner Commc'ns*, 742 F.2d at 1164 (internal quotations omitted)).

I. Divestiture is Necessary to Remedy Harm

51. Once Complaint Counsel has established a violation of Section 7, "all doubts as to the remedy are to be resolved in its favor." (*United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 334 (1961)).

52. The Commission has broad discretion to select a remedy so long as it bears a "reasonable relation to the unlawful practice found to exist." (*Jacob Siegel Co. v. FTC*, 327 U.S. 608, 611-13 (1946)).

53. The "principal purpose of relief is to restore competition to the state in which it existed prior to, and would have continued to exist but for, the illegal merger." (*In re B.F. Goodrich Co.*, 110 F.T.C. 207, 345 (1988) (internal quotation omitted)).

54. "[D]ivestiture is the usual and proper remedy where a violation of Section 7 has been found." (*In re. Polypore Int'l, Inc.*, D-9327, initial decision at 329 (FTC March 1, 2010) (Chappell, J.) (citing *E.I. du Pont*, 366 U.S. at 329 ("the very words of § 7 suggest than an undoing of the acquisition is a natural remedy."); *Ford Motor Co. v. United States*, 405 U.S. 562, 573 (1972) ("Complete divestiture is particularly appropriate where asset or stock acquisitions violate the antitrust laws."); *California v. American Stores Co.*, 495 U.S. 271, 285 n.11 (1990) (noting that a person who is allowed to continue holding ownership over stock or assets that created a Section 7 violation would be engaging in a

perpetual violation, and thus, divestiture is the only effective remedy)).

55. Section 11(b) of the Clayton Act's Section 7 provides that the Commission "shall" order a divestiture of "the stock, or other share, capital, or assets, held" in violation of Section 7. (15 U.S.C. § 21(b)).

56. The Supreme Court noted that divestiture is "simple, relatively easy to administer, and sure. It should always be in the forefront of a court's mind when a violation of § 7 has been found." (*E. I. Du Pont,* 366 U.S. at 330-31).

57. "It is axiomatic that the normal remedy specified in Section 7 cases is the divestiture of what was unlawfully acquired." (*In re Olin Corporation*, 113 F.T.C. 400, 584 (1990)).

Respectfully submitted,

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Dated: September 20, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2011, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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I also certify that on September 20, 2011, I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
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I further certify that on September 20, 2011, I delivered via electronic mail a copy of the foregoing to:

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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties or the adjudicator.

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WITNESS INDEX

IN THE MATTER OF
PROMEDICA HEALTH SYSTEM, INC.
DOCKET NO. 9346

COMPLAINT COUNSEL'S WITNESS INDEX

NAME	TITLE	COMPANY	TRANSCRIPT CITE ** TOTAL **	TRANSCRIPT CITE ***IN CAMERA***	DATE	VOLUME
Complaint Counsel's Opening Statements	N/A	N/A	Tr. 07:01-91:22	N/A	5/31/2011	Volume 1
Dr. Jeffrey P. Gold	Doctor; Dean of the College of Medicine; Chancellor & Execuvtive Vice President of Biosciences and Health Affairs	UTMC	Tr. 183:14-367:20	Tr. 344:01-348:19	5/31-6/1/2011	Volume 1 - 2
Edward D. Beck	Administrator	FCHC	Tr. 368:19-445:17	N/A	6/1/2011	Volume 2
Stanley Korducki	President	WCH	Tr. 445:25-574:06	N/A	6/1/2011	Volume 2
Greg Radzialowski	Senior Network Manager	Aetna	Tr. 582:04-852:07	Tr. 681:01-720:13; 787:01-847:03	6/2/2011	Volume 3
Scott E. Shook	Senior Vice President of Business Development & Advocacy	Mercy	Tr. 859:12-1146:01	Tr. 971:01-1020:12; 1078:01-1136:15	6/3/2011	Volume 4
Thomas L. McGinty	Director of Network Development	Humana	Tr. 1154:08-1274:04	N/A	6/20/2011	Volume 5
Barbara J. Sandusky	Self-employed Health Care Management & Employee Benefits Consultant	FrontPath	Tr. 1276:12-1413:03	Tr. 1332:01-1389:03; 1406:01-1412:04	6/20/2011	Volume 5
James Pugliese	Regional VP of Provider Engagement & Contracting for Northern Ohio	WellPoint/Anthem	Tr. 1419:13-1672:03	Tr. 1471:01-1486:18; 1488:01-1527:09; 1585:01-1671:14	6/21/2011	Volume 6
Kenneth J. Lortz	Director of Region 2B	United Auto Workers	Tr. 1679:18-1740:02	N/A	6/22/2011	Volume 7
Dr. Thomas Andreshak	Orthopedic Surgeon	Consulting Orthopedic Associates	Tr. 1740:12-1825:17	N/A	6/22/2011	Volume 7
Hugh Caumartin	Superintendent; Chairman (Retired)	Bowling Green Schools; Wood County Schools Health Consortium	Tr. 1828:14-1893:23	N/A	6/22/2011	Volume 7
Scott A. Rupley	Marketing & Planning Director	St. Luke's Hospital	Tr. 1900:09-2077:19	Tr. 1977:01-2040:06	6/23/2011	Volume 8
Kathleen Neal	Director, Integrated Health Care & Disability	Chrysler Group	Tr. 2084:16-2158:24	N/A	6/29/2011	Volume 9

IN THE MATTER OF
PROMEDICA HEALTH SYSTEM, INC.
DOCKET NO. 9346

COMPLAINT COUNSEL'S WITNESS INDEX

NAME	TITLE	COMPANY	TRANSCRIPT CITE ** TOTAL **	TRANSCRIPT CITE ***IN CAMERA***	DATE	VOLUME
Donald M. Pirc	Vice President of Network Management	Medical Mutual of Ohio	Tr. 2159:15-2380:01	Tr. 2218:01-2255:04; 2258:01-2264:04; 2302:01-2318:07; 2320:01-2379:14	6/29/2011	Volume 9
Christopher L. Marlowe	Doctor of OB/GYN	Solo practioner	Tr. 2386:12-2458:17	N/A	6/30/2011	Volume 10
Daniel Wakeman	President	St. Luke's Hospital	Tr. 2458:25-3057:05	Tr. 2636:01-2705:22; 2886:01-2951:23; 2953:01-3028:02	6/30/2011; 7/5/2011; 7/6/2011	Volume 10 - 12
Kent D. Buehrer	President	Buehrer Group Architecture & Engineering	Tr. 3057:14-3096:21	N/A	7/6/2011	Volume 12
Charles Joseph Gbur	Interventional Cardiologist	Ohio Heart & Vascular Consultants	Tr. 3097:03-3129:14	N/A	7/6/2011	Volume 12
H. Gabriel Dagen (Expert)	Assistant Director of Bureau of Economics, Accounting & Financial Analysis	Federal Trade Commission	Tr. 3136:15-3414:02	Tr. 3235:01-3292:15; 3363:01-3397:12; 3404:01-3413:12	7/7/2011	Volume 13
Errol Brick (Expert)	President & CEO	Killarney Advisors, Inc.	Tr. 3420:07-3569:13	N/A	7/8/2011	Volume 14
Robert J. Town (Expert)	Associate Professor - Healthcare Management Department	Wharton School	Tr. 3574:09-4499:14	Tr. 3718:01-3790:15; 3792:01-3830:20; 4377:01-4419:14	7/18/2011-7/21/2011	Volume 15 - 18
Kathleen S. Hanley	Chief Financial Officer	ProMedica Health System	Tr. 4500:04-4828:01	Tr. 4617:01-4638:08; 4647:01-4675:04; 4717:01-4750:16; 4752:01-4827:16	7/21/2011 & 7/25/2011	Volume 18 - 19
Ronald Wachsman	Senior Vice President, Managed Care, Reimbursement and Revenue Cycle Management	ProMedica Health System	Tr. 4829:09-5251:03	Tr. 4918:01-4932:12; 4940:01-5042:19; 5044:01-5081:11; 5083:01-5091:07; 5139:01-5213:04; 5215:01-5251:03	7/25/2011-7/26/2011	Volume 19 - 20
Elizabeth Read	Generalist OB/GYN	WellCare Physicians Network	Tr. 5261:11-5301:25	N/A	7/27/2011	Volume 21

IN THE MATTER OF
PROMEDICA HEALTH SYSTEM, INC.
DOCKET NO. 9346

COMPLAINT COUNSEL'S WITNESS INDEX

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James E. A. Black	Chairman of the Board	St. Luke's Hospital	Tr. 5529:01-5748:04	Tr. 5626:01-5664:07; 5712:01-5726:04; 5729:01-5741:05	7/28/2011	Volume 22
Randall D. Oostra	President & CEO	ProMedica Health System	Tr. 5757:06-6245:04	Tr. 5862:01-5921:01; 5924:01-5949:19; 6157:01-6198:07	8/8/2011-8/9/2011	Volume 23 - 24
Kevin C. Nolan	Managing Director	Navigant Consulting	Tr. 6246:08-6404:02	Tr. 6267:01-6356:06; 6364:01-6381:14; 6398:01-6403:04	8/9/2011-8/10/2011	Volume 24 - 25
Bruce Den Uyl (Expert)	Managing Director	AlixPartners	Tr. 6404:10-6609:03	Tr. 6436:01-6477:25; 6565:01-6607:24	8/10/2011	Volume 25
Gina M. Sheridan	Executive Director	EverCare (part of UnitedHealth Group)	Tr. 6609:10-6714:02	Tr. 6631:01-6669:04; 6690:01-6713:04	8/10/2011	Volume 25
Neville Arjani	Principal & Chief Actuary	Findley Davies, Inc.	Tr. 6720:07-6779:24	Tr. 6742:01-6769:17	8/11/2011	Volume 26
Bruce Gordon	Vice President of Health Care Risk Management (Previously: First Vice President at Ambac Assurance)	Radian Asset Assurance	Tr. 6781:09-6883:15	Tr. 6790:04-6790:18; 6791:09-6791:14; 6801:20-6805:21; 6819:01-6846:21; 6850:08-6852:15; 6854:07-6855:19; 6856:13-6861:19; 6863:01-6878:24; 6879:07-6883:10	8/11/2011	Volume 26
John C. Randolph	President	ProMedica Insurance Corp.	Tr. 6888:08-7115:01	Tr. 7034:01-7051:07; 7098:01-7107:18; 7113:01-7115:02	8/15/2011	Volume 27
Margaret E. Guerin-Calvert (Expert)	Vice Chairman	Compass Lexecon	Tr. 7122:22-7952:04	Tr. 7355:01-7402:22; 7411:01-7439:04; 7807:01-7835:24; 7839:01-7884:25	8/16/2011-8/18/2011	Volume 28 - 30

EXHIBIT INDEX

In the Matter of
ProMedica Health System, Inc.
Docket No. 9346

Complaint Counsel's
Final Exhibit List

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00001	05/31/2011	Complaint Counsel's Proposed Exhibit List	JX00001* Tr. 46:25-47:02	N	
PX00002-PX00005		**Intentionally not used.**			
PX00006	n/a	The Toledo Hospital 2010-2012 Strategic Goals and Objectives	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00007	n/a	ProMedica Health System 2010-2012 Strategic Goals and Objectives	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00008		**Intentionally not used.**			
PX00009	07/19/2010	PHS Presentation: Credit Presentation	JX00001 Tr. 46:25-47:02	N	Tr. 3502:09; 5872:13; 5873:04; 5876:13; 6972:21
PX00010-PX00014		**Intentionally not used.**			
PX00015	n/a	ProMedica Health System and Subsidiaries Consolidated Financials as of and for the Years Ended Dec. 31 09, and 08, and Independent Auditors' Report	JX00001 Tr. 46:25-47:02	N	Tr. 6129:08,10
PX00016-PX00018		**Intentionally not used.**			
PX00019	07/06/2010	Letter to Gary W. Akenberger (PHS) from Kevin C. Nolan (Navigant Consulting): re: Service Line and Clinical Integration Project	JX00001 Tr. 46:25-47:02	N	
PX00020	05/06/2010	Compass Lexecon Presentation: Efficiencies Analysis of the Proposed Joinder of ProMedica Health System and OhioCare Health System	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4637:01,12; 4647:16; 4650:01; 4651:02,10; 4652:13; 4653:03; 4727:09,13; 4729:23; 4731:17; 4815:12,13; 5868:12; 5869:09,23; 5871:05; 5874:07; 6146:02,04,15; 6151:11
PX00021	n/a	Compass Lexecon Presentation: Consolidation of Inpatient Rehabilitation Services	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00022	n/a	Compass Lexecon Presentation: Consolidation of Heart/Vascular Nuclear Stress Tests	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00023-PX00024		**Intentionally not used.**			
PX00025	n/a	Compass Lexecon Presentation: Improved Staffing Efficiency at St. Luke's	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00026		**Intentionally not used.**			
PX00027	n/a	Compass Lexecon Presentation: Offsite Ancillary Services	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00028	n/a	Compass Lexecon Presentation: Pathology Lab and Speech & Hearing Services	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00029		**Intentionally not used.**			
PX00030	n/a	Compass Lexecon Presentation: Pension Plan/Investment Advisory Fees	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00031	n/a	Compass Lexecon Presentation: Information Technology	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00032		**Intentionally not used.**			
PX00033	n/a	Compass Lexecon Presentation: Physician Coverage	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00034		**Intentionally not used.**			
PX00035	n/a	Compass Lexecon Presentation: Supply Chain Efficiencies	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00036-PX00037		**Intentionally not used.**			
PX00038	n/a	Compass Lexecon Presentation: Other Cost Savings Opportunities	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00039	n/a	Compass Lexecon Presentation: Improve St. Luke's Revenues to Competitive Market Levels	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00040	n/a	Compass Lexecon Presentation: Incremental Volume at SLH from the Addition to Paramount Network	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 7807:07,20; 7809:25; 7810:12
PX00041-PX00043		**Intentionally not used.**			
PX00044	n/a	Compass Lexecon Presentation: Construction of A Second Bed Tower at Flower Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00045		**Intentionally not used.**			
PX00046	n/a	Compass Lexecon Presentation: EMR Implementation and Upgrades of St. Luke's Core IT Applications	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00047-PX00052		**Intentionally not used.**			
PX00053	02/03/2010	Moody's Investors Service Rating Update: Moody's Downgrades St.Luke's Hospital (OH) Bond Rating to Baa2 from Baa1: Outlook Remains Negative	JX00001 Tr. 46:25-47:02	N	Tr. 3007:02,05; 3033:09,14,24; 4590:21; 4591:01,02; 4592:23; 4593:06,22; 4594:05,12,19
PX00054-PX00056		**Intentionally not used.**			
PX00057	01/22/2010	Email to Wu from Walsh: re: Premerger Notification for Proposed Transaction	JX00001 Tr. 46:25-47:02	N	
PX00058	05/25/2010	Joinder Agreement by and among ProMedica Health System, Inc., Ohiocare Health System, Inc., St. Luke's Hospital and St. Luke's Foundation, Inc.	JX00001 Tr. 46:25-47:02	N	Tr. 3012:19; 3013:05; 4365:05; 5851:01,05; 5855:12,25; 6236:13; 6237:18
PX00059	05/06/2010	Compass Lexecon Presentation: Efficiencies Analysis of the Proposed Joinder of ProMedica Health System and OhioCare Health System	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 7103:18,19
PX00060-PX00061		**Intentionally not used.**			
PX00062	06/28/2010	ProMedica Health System: Organization Charts, June 28, 2010	JX00001 Tr. 46:25-47:02	N	

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00063		**Intentionally not used.**			
PX00064	n/a	Resume of Randall D. Oostra	JX00001 Tr. 46:25-4702	N	Tr. 5764:15; 5981:15
PX00065	n/a	Resume of Kathleen S. Hanley	JX00001 Tr. 46:25-47:02	N	
PX00066	n/a	Resume of Larry C. Peterson	JX00001 Tr. 46:25-47:02	N	
PX00067	n/a	Resume of Barbara Steele	JX00001 Tr. 46:25-47:02	N	
PX00068	n/a	Resume of Ronald Wachsman	JX00001 Tr. 46:25-47:02	N	
PX00069	08/10/2010	Letter to David Marx, Jr. from Matthew J. Reilly: re: ProMedica Health System, Inc.'s Proposed Acquisition of St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	
PX00070		**Intentionally not used.**			
PX00071	n/a	Affidavit of Larry Peterson	JX00001 Tr. 46:25-47:02	N	
PX00072		**Intentionally not used.**			
PX00073	04/12/2010	PHS Presentation: St. Luke's Hospital/ProMedica Health System Transaction Summary	JX00001 Tr. 46:25-47:02	N	
PX00074	n/a	PHS Presentation: St. Luke's Hospital/ProMedica Health System Transaction Summary	JX00001 Tr. 46:25-47:02	N	
PX00075-PX00076		**Intentionally not used.**			
PX00077	01/11/2010	St. Luke's Hospital (SLH) and ProMedica Health System (PHS) High Level Timeline	JX00001 Tr. 46:25-47:02	N	Tr. 5847:14
PX00078-PX00085		**Intentionally not used.**			
PX00086	n/a	2010 PHS Rate Summary Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00087	01/01/1999	HIC Hospital Services Agreement The Toledo Hospital	JX00001 Tr. 46:25-47:02	N	
PX00088		**Intentionally not used.**			
PX00089	12/12/2000	HIC Hospital Services Agreement Bay Park Community Hospital	JX00001 Tr. 46:25-47:02	N	
PX00090	01/01/2001	HIC Hospital Services Agreement Flower Hospital	JX00001 Tr. 46:25-47:02	N	
PX00091	03/01/2008	Amendment to Anthem Blue Cross and Blue Shield Hospital Provider Agreement for The Toledo Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5016:08,10,15,19; 5017:06,14; 5021:09
PX00092	05/01/2000	Anthem Blue Cross and Blue Shield Hospital Agreement for The Toledo Hospital	JX00001 Tr. 46:25-47:02	N	
PX00093	03/01/2008	Amendment to Anthem Blue Cross and Blue Shield Hospital Provider Agreement For Flower Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00094	05/01/2000	Anthem Blue Cross and Blue Shield Hospital Agreemen for Flower Hospital	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00095	03/01/2008	Amendment to Anthem Blue Cross and Blue Shield Hospital Provider Agreement for Bay Park Community Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00096	12/10/2001	Anthem Blue Cross and Blue Shield Hospital Agreement at Bay Park Hospital	JX00001 Tr. 46:25-47:02	N	
PX00097-PX00100		**Intentionally not used.**			
PX00101	01/01/2008	Hospital Agreement Between Medical Mutual of Ohio and Flower Hospital 11/5/2007	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00102	01/01/2008	Hospital Agreement Between Medical Mutual of Ohio and Bay Park Community Hospital 11/5/2007	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00103	01/01/2008	Hospital Agreement Between Medical Mutual of Ohio and The Toledo Hospital 11/5/2007	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00104	09/01/2010	Assignment and Assumption Agreement Between OhioCare Health System and St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	
PX00105		**Intentionally not used.**			
PX00106	09/01/2010	Assignment and Assumption of Membership Interest between OhioCare Health System and St. Luke's Hospital	JX00001 Tr. 46:25-4702	N	
PX00107	09/01/2010	Assignment and Assumption of Membership Interest between OhioCare Physicians, LLC and ProMedica Physician Group, Inc.	JX00001 Tr. 46:25-47:02	N	
PX00108	09/01/2010	Stock Power--Transfer Apart from Certificate for Physicians Advantage Management Services Organization	JX00001 Tr. 46:25-47:02	N	
PX00109	09/01/2010	Physicians Advantage Management Services Organization, Inc. Common Shares Certificate	JX00001 Tr. 46:25-47:02	N	
PX00110		**Intentionally not used.**			
PX00111	09/01/2010	Stock Power--Transfer Apart from Certificate for Care Holdings Corp.	JX00001 Tr. 46:25-47:02	N	
PX00112		**Intentionally not used.**			
PX00113	09/01/2010	Community Benefit Agreement between St. Luke's Hospital and WellCare Physicians Group	JX00001 Tr. 46:25-47:02	N	
PX00114	09/01/2010	Certificate of the President and CEO of OhioCare Health System	JX00001 Tr. 46:25-47:02	N	
PX00115	n/a	Certificate of the President and CEO of OhioCare Health System, St. Luke's Hospital, St. Luke's Hospital Foundation	JX00001 Tr. 46:25-47:02	N	
PX00116	09/01/2010	Certificate of the President and CEO of ProMedica Health System, Inc.	JX00001 Tr. 46:25-47:02	N	
PX00117	09/01/2010	Certificate of the Secretary and General Counsel of ProMedica Health System, Inc.	JX00001 Tr. 46:25-47:02	N	Tr. 5882:09; 5883:19
PX00118	n/a	Amended and Restated Code of Regulations of St. Luke's Hospital Foundation, Inc.	JX00001 Tr. 46:25-47:02	N	
PX00119	n/a	Amended and Restated Code of Regulations of St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	
PX00120		**Intentionally not used.**			
PX00121	n/a	Amended and Restated Code of Regulations of Care Enterprises, Inc.	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00122	09/01/2010	Code of Regulations of Care Holdings Corp.	JX00001 Tr. 46:25-47:02	N	
PX00123	09/01/2010	Code of Regulations of Physicians Advantage Management Services Organization, Inc.	JX00001 Tr. 46:25-47:02	N	
PX00124	09/01/2010	Written Consent of the Member of Wellcare Physicians Group, LLC	JX00001 Tr. 46:25-47:02	N	
PX00125	n/a	Certificate of Amendment by Shareholders or Members, St. Luke's Hospital Foundation	JX00001 Tr. 46:25-47:02	N	
PX00126	n/a	Certificate of Dissolution by Members or Directors, OhioCare Health System Inc.	JX00001 Tr. 46:25-47:02	N	
PX00127		**Intentionally not used.**			
PX00128	08/30/2010	Letter to Dan Wakeman (SLH) from Jack C. Randolph (PHS): re: addition of St. Luke's to Paramount	JX00001 Tr. 46:25-47:02	N	Tr. 7005:18
PX00129-PX00137		**Intentionally not used.**			
PX00138	05/25/2010	Joinder Agreement by and among ProMedica Health System, Inc., Ohiocare Health System, Inc., St. Luke's Hospital and St. Luke's Foundation, Inc.	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4627:25; 4630:12; 7570:15,16
PX00139	08/18/2010	First Amendment to Joinder Agreement	JX00001 Tr. 46:25-47:02	N	
PX00140	08/18/2010	Second Amendment to Joinder Agreement	JX00001 Tr. 46:25-47:02	N	
PX00141	08/31/2010	Third Amendment to Joinder Agreement	JX00001 Tr. 46:25-47:02	N	
PX00142	09/01/2010	Side Agreement	JX00001 Tr. 46:25-47:02	N	
PX00143		**Intentionally not used.**			
PX00144	n/a	Resume of Gary Akenberger	JX00001 Tr. 46:25-47:02	N	
PX00145	n/a	Resume of John C. Randolph	JX00001 Tr. 46:25-47:02	N	
PX00146	n/a	Resume of Lee W. Hammerling, M.D.	JX00001 Tr. 46:25-47:02	N	
PX00147-PX00150		**Intentionally not used.**			
PX00151	09/01/2010	Certificate of the President and CEO of Ohiocare Health System, St. Luke's Hospital, St. Luke's Hospital Foundation, Resolutions of the Board	JX00001 Tr. 46:25-47:02	N	
PX00152		**Intentionally not used.**			
PX00153	01/14/2009	E-mail to Oostra, Selman, Hammerling et al. from Steele: re: 100 day approach on quality scores	JX00001 Tr. 46:25-47:02	N	Tr. 4710:18,20,22; 4816:19,23; 5933:05; 5991:20; 6228:19,21; 7848:21
PX00154-PX00156		**Intentionally not used.**			
PX00157	05/10/2010	ProMedica Health System Finance Committee Meeting of the Board of Trustees Business Turnaround Plan OhioCare Health System	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4657:09,13,21; 4659:16; 4790:25; 4791:15,21; 4793:20

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00158	n/a	Efficiency Concepts: Stop the Development of the Orthopedic Hospital at Wildwood	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00159	n/a	2010 Environmental Assessment	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4777:08,11; 4778:23; 4780:08; 4810:10; 6177:19,23; 6178:08,11; 6182:14,18; 6184:10; 6185:22; 6190:17; 6191:21; 6192:17; 6195:15; 6196:21; 6197:06; 7817:24; 7818:14; 7820:24; 7822:18
PX00160	02/15/2010	St. Lukes Service Integration Study Major Components Summary	JX00001 Tr. 46:25-47:02	N	
PX00161-PX00165		**Intentionally not used.**			
PX00166	05/13/2010	ProMedica Health System Sensitivity Analysis	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00167		**Intentionally not used.**			
PX00168	04/02/2010	E-mail to Hanley, Spohn and Akenberger from Hoehn re: Meeting with Denny w/Attach: Reconciliation of 2009 OI to ProForma, Joinder efficiencies Phase 1 and 2 with status	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4664:04; 4665:05,14; 4793:22; 4795:05; 4808:08; 4822:18,24; 4823:16
PX00169	12/31/2011	St. Luke's Hospital Income Statement for the Period ended December 31, 2011	JX00001 Tr. 46:25-47:02	N	
PX00170	09/24/2010	Memo to Board of Directors from Wakeman re: Monthly Report- August 2010	JX00001 Tr. 46:25-47:02	N	Tr. 2600:24; 2601:02,04,19; 2602:02,07; 2606:08,24; 2609:01,05; 3054:21,23; 3055:17; 3056:16,20; 3493:07; 3552:17; 3562:21; 3563:23; 5679:25; 5680:14,16,19; 5681:19; 5685:07; 5686:02; 5687:21; 5689:10; 5745:19,23; 5747:11,16; 6559:03,09,20; 6560:12
PX00171	2008	ProMedica Health System 2008 Physician Practice Development Priorities	Admitted via ALJ's 8/23 Order		
PX00172		**Intentionally not used.**			
PX00173	11/15/2007	ProMedica Health System Finance Committee 2008-2010 Strategic Financial Plan and 2008 Operating and Capital Budgets w/ Kathleen Hanley's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX00174		**Intentionally not used.**			
PX00175	10/23/2008	ProMedica Health System Finance Committee Board of Trustees w/ Kathleen Hanley's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX00176		**Intentionally not used.**			
PX00177	n/a	Metro Toledo Market Share Trend By Product Line 2006-Jan-June 2009	JX00001 Tr. 46:25-47:02	N	
PX00178	n/a	Metro Toledo Inpatient Market Share Trend 2006-YTD June 2009	JX00001 Tr. 46:25-47:02	N	
PX00179	05/21/2009	ProMedica Health System Finance Committee Meeting of the Board of Trustees Market Share Update	JX00001 Tr. 46:25-47:02	N	Tr. 6831:20 (mentioned by mistake)

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00180	n/a	Acute Care Market Share Summary	JX00001 Tr. 46:25-47:02	N	
PX00181-PX00187		**Intentionally not used.**			
PX00188	n/a	Metro Toledo Inpatient Product Line, Women's	JX00001 Tr. 46:25-47:02	N	
PX00189		**Intentionally not used.**			
PX00190	n/a	Metro Toledo PHS Market Share Trend for All Product Lines	JX00001 Tr. 46:25-47:02	N	
PX00191	n/a	Paramount Market Share; Market Share (All Regions) and Commercial Market Share	JX00001 Tr. 46:25-47:02	N	
PX00192		**Intentionally not used.**			
PX00193	n/a	Inpatient Market Share in the Toledo Area (1997-2009)	JX00001 Tr. 46:25-47:02	N	
PX00194-PX00211		**Intentionally not used.**			
PX00212	n/a	PHS Presentation: Property Development Strategy, Owned Property-Additional Development	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00213	n/a	PHS Presentation: Property Development Strategy Land Options	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00214	03/18/2009	PHS Presentation: EC Retreat Stone Oak Country Club w/ Randy Oostra's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 6166:10,12; 6167:08,10; 6171:18
PX00215-PX00220		**Intentionally not used.**			
PX00221	n/a	PHS Presentation: Heart Vascular Institute and Toledo Hospital Campus	JX00001 Tr. 46:25-47:02	N	
PX00222	08/23/2010	Navigant Consulting Presentation: ProMedica Health System Service Line and Clinical Integration Market Trends and Facilities Assessment w/ Steele's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00223	07/15/2010	Akenberger Emails, Handwritten Notes, and Document Entitled: ProMedica Health System FAS 164 Effective Year Ending 2010	JX00001 Tr. 46:25-47:02	N	
PX00224	04/10/2009	Letter to Scott Scarborough(UTMC), Jeffrey C. Kuhn, and Jeffrey W. Martin from Jack C. Randolph (PHS): re: Response to The University of Toledo Medical Center's April 3, 2009 Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 342:07; 344:17; 345:09,25; 7035:19; 7036:05
PX00225		**Intentionally not used.**			

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00226	n/a	PHS Presentation: ProMedica Health Network ProMedica Partnerships	Final Prehearing Conf. Tr. 49:15	N	Tr. 49:15; Tr. 4384:17; 4385:14; 5890:22; 5892:16; 5894:03; 5983:08,17; 5984:09,10,11,15,17,24; 5986:12,14; 5987:03,12,16; 5988:01,12; 5990:01; 6200:24; 6201:07,18,21; 6202:23; 6203:03,06,10; 6205:08; 6209:13; 6214:18,20; 6215:03; 6219:02,09,14,20; 6220:10,18; 6221:03,15; 6222:02,10,21,24: 6223:11; 6224:02,04,10; 6225:03,10,13,16; 6241:23; 6242:08,14; 6243:12,25; 6244:05,11
PX00227-PX00230		**Intentionally not used.**			
PX00231	n/a	Facsimile to Brian McCort from Steve Marcus	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr.1606:03,05,10,17; 1607:03,14,18,21; 1608:22; 1609:10,12; 1610:04; 1665:05,10; 1670:24
PX00232	07/16/2007	PHS Presentation: ProMedica Cancer Institute Regional Cancer Center Executive Retreat Update Presentation	JX00001 Tr. 46:25-47:02	N	
PX00233	n/a	Cost Coverage Analysis - 2009 w/Gary Akenberger's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4389:07,16; 4392:07; 4396:11,17,25; 4397:05; 4398:06; 4399:07,16; 4959:16; 4960:11,20; 5141:07; 5249:18; 6161:09,13,15,17; 6163:25; 6164:05,11,18
PX00234	07/20/2007	Email from Bingham to Clay, Adams, Spohn et al. re: Managed Care Strategy	JX00001 Tr. 46:25-47:02	N	Tr. 59:20
PX00235		**Intentionally not used.**			
PX00236	08/07/2008	E-mail to Steele from Sattler: re: Please review w/ Barbara Steele's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX00237-PX00239		**Intentionally not used.**			
PX00240	05/05/2010	Email to Steele from Sattler: re: FH IP volume from St.Luke's Zip Codes w/ Barbara Steele's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00241	n/a	PHS Presentation: 2005 First and Second Quarter Strategic Thrusts w/ Randy Oostra's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX00242	n/a	Key Strategic Issues 2005-2007	JX00001 Tr. 46:25-47:02	N	
PX00243		**Intentionally not used.**			
PX00244	n/a	ProMedica Health System 2005 Capital Request Central Region	JX00001 Tr. 46:25-47:02	N	
PX00245-PX00246		**Intentionally not used.**			
PX00247	n/a	PHS Presentation: ProMedica Metro-Toledo Service Line and Clinical Integration	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00248	03/14/2005	Steve Marcus's Handwritten Notes re: MMO Nonpar Analysis	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00249	03/06/2009	Memo to Daryl Moreau from Barbara Steele: re: Market Share Info.	JX00001 Tr. 46:25-47:02	N	
PX00250		**Intentionally not used.**			
PX00251	08/06/2007	Email to Marcus and Hutt from Wachsman: re: Managed Care Approach	JX00001 Tr. 46:25-47:02	N	
PX00252-PX00254		**Intentionally not used.**			
PX00255	06/25/2009	Email to Sheahan from Marcus: re: Forecast	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5187:06
PX00256		**Intentionally not used.**			
PX00257	4/20/2009	Letter to Scarborough from Randolph: re: Extension Agreement	Admitted via ALJ's 8/23 Order	Y ordered 8/26	
PX00258	04/06/2010	E-mail to Marcus from Wachsman: re: DRAFT	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00259	08/12/2010	Defiance Regional Medical Center Foundation Board: Meeting of the Board of Trustees	JX00001 Tr. 46:25-47:02	N	
PX00260	03/04/2005	Email to Hanley from Wachsman re: United Healthcare-Whitepaper	JX00001 Tr. 46:25-47:02	N	
PX00261-PX00263		**Intentionally not used.**			
PX00264	04/10/2007	E-mail to Hanley, Oostra, Randolph et al. from Kolodgy: re: Follow-up Data w/ Barbara Steele's handwritten notes	JX00001 Tr. 46:25-47:02	N	Tr. 5103:22; 5104:11; 6072:19,21,24
PX00265	04/10/2009	PHS Presentation: 2009 Environmental Assessment Draft	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00266		**Intentionally not used.**			
PX00267	01/08/2010	E-mail to Hutt from Marcus: re: MMO PPG DRAFT RESPONSE	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00268		**Intentionally not used.**			
PX00269	02/20/2007	ProMedica Health System Managed Care Strategy Meeting	JX00001 Tr. 46:25-47:02	N	
PX00270	04/02/2008	PHS Presentation: Credit Presentation Standard & Poor's	JX00001 Tr. 46:25-47:02	N	Tr. 4757:16,20,24; 4758:06,17; 4759:12; 4810:24; 5963:17; 5964:02,05,17; 5966:01; 5967:23; 5969:20; 5970:06; 5974:15; 5978:02,05; 5985:03,05; 6226:05,11; 6240:08,10; 7740:15,20; 7741:02,03,12; 7746:15
PX00271	04/15/2010	PHS Presentation: Executive Council-Level I-V Retreat	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00272	12/17/2008	Why Not the Best? The Commonwealth Fund: Overall Quality-All Topics (Composite Score) w/ Barbara Steele's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX00273-PX00274		**Intentionally not used.**			
PX00275	07/16/2004	Anthem Blue Cross and Blue Shield (Midwest) Background and Talking Points: Network Changes in the Toledo Market Draft Version 2.5	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00276	n/a	Managed Care Strategy-United, Aetna and Anthem	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00277-PX00280		**Intentionally not used.**			
PX00281	04/03/2003	Presentation: Terminating Managed Care Contracts	JX00001 Tr. 46:25-47:02	N	
PX00282-PX00284		**Intentionally not used.**			
PX00285	03/2005	PHS Presentation: Product Line Development A System-Wide Strategic Approach	JX00001 Tr. 46:25-47:02	N	
PX00286	03/26/2010	Email to Fought and Wachsman from Marcus: re: Anthem look-back	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00287	02/28/2010	Spreadsheet: Anthem Revenue Monthly Variance	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00288	08/24/2010	Central Region Board of Trustees Governance Conference Center 1 & 2	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00289	n/a	Ongoing ProMedica Health System/The Univerity of Toledo Medical Center Discussions	JX00001 Tr. 46:25-47:02	N	Tr. 338:16,21
PX00290	12/2007	PHS Presentation: Hospital Affiliation Model Draft	Final Pre-Trial Hearing Tr. 49:18	N	Tr. 49:18; Tr. 5894:07,16; 5895:18; 5896:08; 5984:05; 5988:21,24; 5989:10,14
PX00291	03/22/2010	E-mail to Drouillard and Jensen from Sattler: re: St.Luke's	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00292-PX00294		**Intentionally not used.**			
PX00295	02/07/2008	E-mail to Sattler and Steele from Wachsman: re: Anthem update	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5007:14; 5010:07; 5207:13
PX00296	05/29/2007	UTMC Presentation: Clinical Outreach and Growth Department of Obsterics and Gynecology	JX00001 Tr. 46:25-47:02	N	
PX00297		**Intentionally not used.**			
PX00298	07/29/2010	E-mail to Wakeman from Johnston: re: stuff	JX00001 Tr. 46:25-47:02	N	
PX00299-PX00300		**Intentionally not used.**			
PX00301	01/04/2010	Toledo, Flower and Bay Park Combined Inpatient Outpatient Summary by Primary Insurance Plan	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00302-PX00317		**Intentionally not used.**			
PX00318	n/a	Presentation: The Heart Vascular Institute and The Toledo Hospital Campus, Evolution and Renewal: Marrying Near Term needs to Long Term Renewal to get more out of Capital	JX00001 Tr. 46:25-47:02	N	
PX00319	n/a	TTH Medical Executive Committee SWOT Analysis Results 2007	JX00001 Tr. 46:25-47:02	N	
PX00320	n/a	KaufmanHall Presentation: ProMedica Health System Historical Credit Analysis and Capital Position Analysis	JX00001 Tr. 46:25-47:02	N	
PX00321		**Intentionally not used.**			
PX00322	03/31/2009	ProMedica Health System Gross Revenues Year-to-date	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00323	03/11/2009	Presentation: Strategic Alliance: Exploring and Mapping the Opportunities University of Toledo & ProMedica	JX00001 Tr. 46:25-47:02	N	
PX00324	n/a	PHS Presentation: Overview of PHS Strategic Plan 2009-2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00325	04/02/2009	Letter to Larry Peterson (PHS), Alan Brass, Dr. Jeffrey Gold et al. from Richard B. Stansley Jr. (UT)	JX00001 Tr. 46:25-47:02	N	Tr. 309:15; 310:01
PX00326		**Intentionally not used.**			
PX00327	n/a	PHS Presentation: Cost/Revenue Transformation-Draft	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00328	n/a	ProMedica/Anthem Preferred Partnership	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00329-PX00331		**Intentionally not used.**			
PX00332	n/a	ProMedica Metro-Toledo Service Line and Clinical Integration	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00333	n/a	Anthem Negotiations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4997:10,20; 4998:10; 5003:09; 5009:01; 5201:13; 5203:25; 5240:09,25
PX00334	05/21/2004	E-mail to Hanley from Wachsman: re: St. Luke's Decision	JX00001 Tr. 46:25-47:02	N	Tr. 4970:20
PX00335-PX00338		**Intentionally not used.**			
PX00339	05/07/2008	E-mail to Oostra, and Hanley from Hammerling: re: st luke meeting	JX00001 Tr. 46:25-47:02	N	Tr. 6054:01,17; 6055:05; 6229:25
PX00340	04/05/2010	E-mail to Steele and Akenberger from Sattler: re: FH IP volume from St. Luke's Zip Codes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00341	04/25/2010	E-mail to Akenberger and Hoehn from Fought: re: FH New Bed Tower	JX00001 Tr. 46:25-47:02	N	
PX00342	10/2009	Flower Hospital New Bed Tower Study, M2 Design	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00343		**Intentionally not used.**			
PX00344	05/06/1999	Email to Bristoll, Randolph, Wachsman et al. from Brass: re: Heart Center at St.Luke's	JX00001 Tr. 46:25-47:02	N	Tr. 7074:04; 7110:21,25; 7111:08;
PX00345	07/19/2006	ACS Healthcare Solutions Presentation: ProMedica Healthcare Managed Care Strategy Strategic Overview Presentations, Presented by Nathan Kaufman	JX00001 Tr. 46:25-47:02	N	
PX00346		**Intentionally not used.**			
PX00347	07/03/2006	E-mail to Hanley, Wachsman, and Oostra from Randolph: re: Nate Kaufman's report	JX00001 Tr. 46:25-47:02	N	
PX00348-PX00350		**Intentionally not used.**			
PX00351	06/02/2006	ProMedica Healthcare Managed Care Strategy, A Strategic Overview: Briefing Document -- Nate Kaufman	JX00001 Tr. 46:25-47:02	N	
PX00352-PX00353		**Intentionally not used.**			
PX00354	n/a	Current Managed Care Issues	JX00001 Tr. 46:25-47:02	N	
PX00355-PX0035		**Intentionally not used.**			

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00358	n/a	PPG OB Recommendations Related to MMO Participation	JX00001 Tr. 46:25-47:02	N	
PX00359	08/30/2005	E-mail to Hanley, Wachsman, and Marcus from Brass: re: United strategy	JX00001 Tr. 46:25-47:02	N	
PX00360-PX00361		**Intentionally not used.**			
PX00362	04/09/2010	Project Patient Issue Summary Memorandum by Deloitte-Draft	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00363	10/10/2000	Managed Care Agreement between Aetna and TTH	JX00001 Tr. 46:25-47:02	N	
PX00364	10/01/2000	Managed Care Agreement between Aetna and Flower Hospital	JX00001 Tr. 46:25-47:02	N	
PX00365	10/01/2010	Facility Participation Agreement between United HealthCare and Flower	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00366	10/01/2010	Facility Participation Agreement between United HealthCare and Bay Park	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 6656:09,13; 6658:08; 6660:12; 6662:18; 6663:05
PX00367		**Intentionally not used.**			
PX00368	04/09/2004	E-mail to Hammerling, Steele, Oostra et al. from Brass: re: Nuclear Treads/NWOCC	JX00001 Tr. 46:25-47:02	N	
PX00369-PX00373		**Intentionally not used.**			
PX00374	n/a	Product Line Development, Women's Services, Overview Presentation	JX00001 Tr. 46:25-47:02	N	
PX00375-PX00377		**Intentionally not used.**			
PX00378	n/a	ProMedica Health System St. Luke's Due Diligence Analysis	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00379	11/19/2008	Moody's Investors Service Rating Update: St. Luke's Hospital, OH	JX00001 Tr. 46:25-47:02	N	Tr. 2832:24
PX00380	05/07/2008	Email to Randolph and Akenberger from Wachsman: re: St. Luke meeting	JX00001 Tr. 46:25-47:02	N	Tr. 5185:11; 5205:07; 7019:17,21; 7020:04; 7022:06; 7028:16; 7081:10,16; 7087:15; 7091:23; 7095:19
PX00381	n/a	ProMedica Health System Hospital Cost Coverage	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00382		**Intentionally not used.**			
PX00383	12/18/2007	ProMedica Health System Proposal	JX00001 Tr. 46:25-47:02	N	
PX00384	07/23/2007	Managed Care Strategy ProMedica Health System OPS Council Presentation	JX00001 Tr. 46:25-47:02	N	
PX00385	01/15/2008	E-mail to Hanley and Wachsman from Marcus: re: Anthem Update	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00386		**Intentionally not used.**			
PX00387	n/a	Spreadsheet: Cost Coverage, Anthem vs. Others	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00388		**Intentionally not used.**			

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00389	n/a	Spreadsheet: Paramount Cost Coverage	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00390	05/26/2010	ProMedica Health System News Release St. Luke's Hospital and ProMedica Health System Sign Definitive Agreement	JX00001 Tr. 46:25-47:02	N	Tr. 13:09
PX00391		**Intentionally not used.**			
PX00392	04/10/2009	PHS Presentation: 2009 Environmental Assessment-Draft	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00393	10/23/2009	Level I-V Management Retreat	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00394	04/04/2000	Spreadsheet: Bay Park Community Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00395	03/29/2010	E-mail to Gorayeb from Hoehn: re: Dan PL 2011 3 26 2010 w/Attach: Dan PL 2011 3 26 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 3361:20,23; 3362:08; 3363:10; 3366:23; 3368:08; 3369:18; 3371:14; 4660:15,17; 4661:02; 4662:15,25
PX00396	01/2011	Navigant Consulting Presentation: Clinical Integration Strategy Executive Summary	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00397	03/19/2010	E-mail to Spohn from Hanley: re: 2010 OFP by Dept	JX00001 Tr. 46:25-47:02	N	
PX00398	n/a	ProMedica Health System 2009 Contingency Planning-Short Term Strategies	JX00001 Tr. 46:25-47:02	N	
PX00399	06/2010	Great Lakes Marketing Presentation: Regional Hospital Research Central Region	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00400-PX00402		**Intentionally not used.**			
PX00403	03/04/2009	Memo to ProMedica Health System Management team from Randy Oostra and Barbara Steele: re: Staff Reductions, Restructuring of Services	JX00001 Tr. 46:25-47:02	N	
PX00404		**Intentionally not used.**			
PX00405	05/07/2008	Email to Hanley, Randolph, Oostra, et al. from Oostra: re: st luke meeting	JX00001 Tr. 46:25-47:02	N	Tr.6046:02,11; 6050:10; 6052:21; 6054:18; 6055:05; 7081:05
PX00406		**Intentionally not used.**			
PX00407	n/a	Managed Care Strategy Recommendations - Aetna, Anthem, MMO and United	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4774:24; 4775:03,11; 5215:16,20
PX00408		**Intentionally not used.**			
PX00409	12/17/2009	ProMedica Health System Finance Committee Board of Trustees	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00410	01/22/2008	Guidelines-Capital and Budgeted Consultants	JX00001 Tr. 46:25-47:02	N	
PX00411	05/21/2004	E-mail to Brass and Wachsman from Hanley: re: Anthem Issues	JX00001 Tr. 46:25-47:02	N	
PX00412	n/a	Anthem Network changes and leakage	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00413		**Intentionally not used.**			

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00414	04/12/2004	E-mail to Wachsman and Hanley from Brass: re: Anthem	JX00001 Tr. 46:25-47:02	N	
PX00415	n/a	Metro Bed Capacity Study COPI Department 2007	JX00001 Tr. 46:25-47:02	N	
PX00416		**Intentionally not used.**			
PX00417	n/a	ProMedica Health System, Corporate Support Services Allocation to St. Luke's, Comparison to Budgeted Expense	JX00001 Tr. 46:25-47:02	N	
PX00418	n/a	PHS Spreadsheet: Paramount, Medicare, and Medicaid Zero-Balance Payment Rate versus Hospital Cost-to-Charge Ratio	JX00001 Tr. 46:25-47:02	N	
PX00419		**Intentionally not used.**			
PX00420	05/21/2007	E-mail to Steele and Hammerling from Oostra: re: rumor	JX00001 Tr. 46:25-47:02	N	
PX00421	03/22/2010	Finance Committee Meeting of the Board of Trustees	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4618:09,14; 4619:10; 4620:22; 4623:07; 4625:06
PX00422	03/03/2010	KaufmanHall presentation: Position and Readiness Assessment, Supplemental Materials	JX00001 Tr. 46:25-47:02	N	
PX00423		**Intentionally not used.**			
PX00424	02/26/2010	E-mail to Akenberger and Bristoll from Fought: re: Ortho Distribution Summary w/Attach: ortho co-mgmt sources, uses and distributions-2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00425	n/a	Implications of Relationship Betweeen Paramount and St. Luke's	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 7096:18; 7098:06; 7099:07; 7113:05,11
PX00426		**Intentionally not used.**			
PX00427	05/05/2010	E-mail to Fought and Akenberger from Sattler: re: FH IP volume from St. Luke's Zip Codes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00428-PX00432		**Intentionally not used.**			
PX00433	06/18/2009	E-mail to Smith, Hoehn and Keller from Johnston: re: Final 01/01/2008 & Estimated 01/01/2009 Valuations	JX00001 Tr. 46:25-47:02	N	
PX00434		**Intentionally not used.**			
PX00435	12/16/2010	E-mail to Armstrong and Marx from Wu: re: Pension Liability	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00436-PX00440		**Intentionally not used.**			
PX00441	11/05/2007	E-mail to Pugliese and Marcus from Wachsman: re: counterproposal w/Attach: proposal 10_24_07	JX00001 Tr. 46:25-47:02	N	
PX00442		**Intentionally not used.**			
PX00443	07/08/2010	E-mail to Wachsman from Marcus w/Attach: CostCovg20100630	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5142:17; 5247:15,18; 5249:15
PX00444		**Intentionally not used.**			
PX00445	11/20/2006	Reiter Organization Chart	JX00001 Tr. 46:25-47:02	N	
PX00446	03/23/2010	PHS Board of Trustees Clinical Quality Update Presentation	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00447-PX00451		**Intentionally not used.**			

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00452	n/a	ProMedica Health System South Region Summary P&L (000's omitted)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00453-PX00457		**Intentionally not used.**			
PX00458	n/a	PHS Spreadsheet: 2010 Compare	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00459	n/a	PHS Spreadsheet: cap	JX00001 Tr. 46:25-47:02	N	
PX00460	n/a	PHS Spreadsheet: cap	JX00001 Tr. 46:25-47:02	N	
PX00461		**Intentionally not used.**			
PX00462	05/01/2000	Amendment to the Anthem Blue Cross and Blue Shield Hospital Provider Agreement	JX00001 Tr. 46:25-47:02	N	
PX00463-PX00464		**Intentionally not used.**			
PX00465	07/06/2010	E-mail to Marcus, Hutt and Wachsman from Marcus: re: United Healthcare Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5046:22; 5047:10,14; 5049:09
PX00466	n/a	Key Considerations for UHC-PHS Relationship	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00467	07/12/2010	E-mail to Marcus from Hutt: re: United Healthcare Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00468	10/05/2005	E-mail to Hanley, Brass and Marcus from Wachsman: re: United Healthcare update	JX00001 Tr. 46:25-47:02	N	
PX00469	08/04/2008	E-mail to Wachsman and Hutt from Marcus: re: Anthem network expansion terms	JX00001 Tr. 46:25-47:02	N	
PX00470	09/26/2005	E-mail to Marcus, Cameron, Hutt et al. from Heck: re: Contract Proposal One of Two	JX00001 Tr. 46:25-47:02	N	
PX00471		**Intentionally not used.**			
PX00472	12/04/2009	E-mail to Marcus from Sandusky: re: Quick peds spec agreement question	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00473	01/18/2006	ProMedica Health System Managed Care Strategy Session	JX00001 Tr. 46:25-47:02	N	
PX00474	03/23/2011	E-mail to Johnston, Arjani, Dansack and Wagner from Russell: re: SLH 2011 Contribution Estimate	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5405:18,21; 6747:07
PX00475	02/16/2011	E-mail to Wakeman from Johnston: re: Better late than never?? w/Attach: Jan 2011 monthly	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00476	12/2010	Navigant Presentation: PHS Clinical Integration Strategy, Final Report, December 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00477		**Intentionally not used.**			
PX00478	12/18/2009	E-mail to Wakeman and Rupley from Nolan: re: checklist w/Attach: Hospital merger Checklist v12 18 09	JX00001 Tr. 46:25-47:02	N	
PX00479	01/2011	Navigant Presentation: PHS Clinical Integration Strategy, Final Report, January 2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5947:10,24; 6283:24; 6354:03; 6355:05; 6364:12,21; 6365:15; 6369:05; 6371:01; 6380:13,20; 6381:01,03

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00480	12/03/2010	E-mail to Wakeman, Johnston, Dewey et al. from Herrmann w/ Attach: PHS_Clinical Integration Final Report_Dec_03_2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00481	02/28/2011	SLH Contracting Plan-Updated 2/28/11	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00482		**Intentionally not used.**			
PX00483	11/29/2010	E-mail to Walline, Spohn and Wachsman from Ceparski: re: MANAGED CARE UPDATE-EXECUTIVE COUNCIL	JX00001 Tr. 46:25-47:02	N	
PX00484	12/01/2010	ProMedica Health System Executive Council Wednesday, December 1, 2010 Managed Care Update	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5055:15
PX00485	08/27/2010	Letter to Rick Chiricosta from Dan Wakeman: re: Agreement between Medical Mutual of Ohio (MMOH) and St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	Tr. 3017:09
PX00486	12/17/2010	E-mail to Wachsman and Marcus from Hutt: re: MMO-SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00487	12/30/2010	E-mail to Wachsman from Pirc: re: SLH Agreement	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5077:11,14; 5078:01,17
PX00488	12/30/2010	E-mail to Pirc from Wachsman: re: contract continuation	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5078:23; 5079:08
PX00489	01/27/2011	E-mail to Wachsman from Hutt	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00490		**Intentionally not used.**			
PX00491	01/07/2011	E-mail to Wachsman and Marcus from Hutt: re: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5069:13; 5070:01; 5239:08
PX00492	03/02/2011	E-mail to Wachsman from Hutt: re: St. Luke's	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5071:15
PX00493	11/18/2010	E-mail to Wachsman from Ceparski: re: please put in document w/Attach: Anthem Term Sheet	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00494	n/a	Anthem Term Sheet	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00495	01/26/2011	E-mail to Ceparski, Ferrell, Hutt et al. from Ceparski: re: BI-MONTHLY REPORT-JANUARY	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00496	01/28/2011	Letter to Ronald Wachsman from Mark DiCello: re: St. Luke's Hospital Termination Provision	JX00001 Tr. 46:25-47:02	N	
PX00497	02/27/2011	E-mail to Wachsman from Hutt: re: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00498	03/19/2010	E-mail to Wachsman and Hanley from Akenberger: re: From Health Affairs: Hospitals' Profit Margins: When It Comes To Medicare Payments, Some Surprising Findings	JX00001 Tr. 46:25-47:02	N	
PX00499	03/16/2010	E-mail to Wachsman from Marcus: re: reimbursement levels by service w/Attach TTh IP rate level by service	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00500	12/20/2010	E-mail to Wachsman from Marcus w/Attach: 2011 cost coverage analysis final.xls; 2011 cost coverage analysis after MMO 2011 LOA rates	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00501	n/a	St. Lukes Cost Coverage Analysis	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00502	03/21/3010	E-mail to Hanley and Wachsman from Wachsman: re: Anthem documents and summary for discussion with Randy	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5029:05; 5031:01
PX00503	01/17/2007	SLH Spreadsheet: SLH 2006 Adds	JX00001 Tr. 46:25-47:02	N	
PX00504	n/a	SLH Spreadsheet: 2006	JX00001 Tr. 46:25-47:02	N	
PX00505		**Intentionally not used.**			
PX00506	12/02/2010	E-mail to Nolan from Hoehn: re: service line integration	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00507	n/a	SLH Presentation: Our Mission	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00508	12/31/2010	St. Luke's Hospital Statement of Revenues and Expenses	JX00001 Tr. 46:25-47:02	N	
PX00509	02/28/2011	St. Luke's Hospital Foundation Consolidated Balance Sheet	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00510	08/00/2009	Navigant Presentation: Evaluation of Potential Affiliation Partners	JX00001 Tr. 46:25-47:02	N	
PX00511	12/00/2010	SLH Presentation: Our Mission (December 2010)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00512	03/07/2011	SLH Spreadsheet: 2010 Payer Cost Ratio	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 3235:10,18; 6595:19,24; 6606:04,15
PX00513	03/07/2011	SLH Spreadsheet: 2010 Payer Cost Ratio Sep-Dec	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 6599:13; 6606:25; 6607:01,03
PX00514	n/a	Articles for Nursing Accomplishments	JX00001 Tr. 46:25-47:02	N	
PX00515	n/a	St. Luke's Hospital 2010 Hightlights, January-December 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00516	n/a	SLH Spreadsheet: Business Unit Stmt Rev & Exp-Entry Tab	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00517	n/a	St. Luke's Hospital, Statement of Revenues and Expenses, December 31, 2010	JX00001 Tr. 46:25-47:02	N	
PX00518	11/00/2010	SLH Presentation: Our Mission November 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00519	03/07/2011	SLH Spreadsheet: 2009 Payer Cost Ratio	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00520	n/a	PHS Presentation: Mission Statement	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00521	12/31/2010	St. Luke's Hopsital Statement of Revenues and Expenses	JX00001 Tr. 46:25-47:02	N	
PX00522	n/a	Spreadsheet: Narrative	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00523	01/17/2011	Letter to Gerken from Randolph re: Lucas County's violation of its contract with Paramount	JX00001 Tr. 46:25-47:02	N	Tr. 3393:19; 7048:05,20
PX00524	01/04/2011	E-mail to Randolph and Petee from Oostra: re: Lucas County	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 7040:20; 7041:11,17; 7044:24
PX00525	01/07/2011	E-mail to Randolph and Petee from Oostra: re: TALKING POINTS for GERKEN	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 7045:25; 7046:02; 7048:06
PX00526	01/14/2011	E-mail to Hammerling and Polizzi from Oostra: re: confidential	JX00001 Tr. 46:25-47:02	N	Tr. 5936:22; 5939:06
PX00527	01/14/2011	E-mail to Hammerling from Oostra: re: confidential	JX00001 Tr. 46:25-47:02	N	Tr. 5938:11; 6011:13,14,18; 6012:02,09,13; 6015:09; 6020:09; 6023:12; 7923:12,14,24
PX00528	01/05/2011	E-mail to Randolph, Petee, and Kuhn from Oostra: re: Lucas County employee benefits CONFIDENTIAL	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00529	02/01/2011	E-mail to Hammerling, Steele, Johnston et al. from Wakeman: re: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00530	02/21/2011	Memo to Board of Directors from Wakeman: re: Monthly Report - January 2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00531	02/01/2011	E-mail to Konwinski from Johnston: re: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00532	01/11/2011	PHS Presentation: Investor Presentation	JX00001 Tr. 46:25-47:02	N	Tr. 6098:17,20; 6099:151,8; 6232:06
PX00533	10/26/2010	E-mail to Wakeman from Black: re: board meeting	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00534-PX00537		**Intentionally not used.**			
PX00538	08/28/2008	E-mail to Hutt from Walters: re: TPA Issue	JX00001 Tr. 46:25-47:02	N	
PX00539	12/27/2010	E-mail to Sattler from Steele: re: Navigant	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00540		**Intentionally not used.**			
PX00541	04/18/2011	PHS Spreadsheet: PHS Regional Publicly Reported Results (Current Core Measures and HCAHPS) 3Q08-2Q09	JX00001 Tr. 46:25-47:02	N	
PX00542	n/a	Health and Human Services Hospital Comparison	JX00001 Tr. 46:25-47:02	N	
PX00543	02/28/2011	Press Ganey	JX00001 Tr. 46:25-47:02	N	
PX00544	02/17/2010	Patient Satisfaction Update Leadership Group	JX00001 Tr. 46:25-47:02	N	
PX00545	01/2007	Kaufman Strategic Advising LLC Presentation: Peak Performing Hospitals	JX00001 Tr. 46:25-47:02	N	
PX00546	06/09/2006	E-mail to Wachsman from Kaufman: re: did you get the report?	JX00001 Tr. 46:25-47:02	N	
PX00547	02/19/2007	E-mail to Spohn, and Hanley from Wachsman: re: Material from Nate Kaufman w/Attach: promedica 022007	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00548	n/a	PHS Spreadsheet: HCAHPS bar	JX00001 Tr. 46:25-47:02	N	
PX00549	n/a	PHS Spreadsheet: 2010 St. Luke's Hospital Quality Outcomes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00550	n/a	PHS Spreadsheet: Transfers Out Sum	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00551	12/21/2010	PHS Spreadsheet: Patient Charge and Cost Analysis St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00552	03/07/2011	PHS Spreadsheet: Patient Charge and Cost Analysis St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00553	03/07/2011	PHS Spreadsheet: Patient Charge and Cost Analysis St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00554	n/a	Press Ganey, St. Luke's Hospital Report, Inpatient Summary Report, 10/1/2010 - 12/31/2010	JX00001 Tr. 46:25-47:02	N	
PX00555	12/20/2010	Memo to Board of Directors from Wakeman: re: Monthly Report-November 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00556	02/01/2011	E-mail to Ball from Wakeman: re: SLH w/Attach: CMS Attainment Model 1-31-2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00557	10/20/2010	E-mail to Rupley from Wakeman: re: RE: Inpatient Market Share Report	JX00001 Tr. 46:25-47:02	N	
PX00558	02/01/2011	E-mail to Wakeman from Hammerling: re: RE: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00559	02/01/2011	E-mail to Johnston, Konwinski, and Taylor from Wakeman: re: SLH w/Attach: CMS Attainment Model 1-31-2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 3021:13; 3022:24
PX00560	02/07/2011	E-mail to Armstrong, Della Flora, and Vahalik from Perron: re: St. Luke's Acute Care Systems Planning/Direction in view of possible FTC separation order	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00561	02/03/2011	E-mail to Wakeman from Marks: re: .Weekly Update 2-2-11	JX00001 Tr. 46:25-47:02	N	
PX00562	02/28/2011	E-mail to Johnston from Schimmoeller: re: Attorney Client Prvilege-SLH Lab	JX00001 Tr. 46:25-47:02	N	
PX00563	n/a	Clinical Integration Strategy, Draft Communications	JX00001 Tr. 46:25-47:02	N	
PX00564	01/24/2011	Memo to Board of Directors from Wakeman: re: Monthly Report-December 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00565-PX00567		**Intentionally not used.**			
PX00568	09/03/2010	Navigant Presentation: Strategic Context and Planning Principles	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00569	02/09/2011	E-mail to Wakeman from Johnston: re: Accrual of legal and economist fees for January	JX00001 Tr. 46:25-47:02	N	
PX00570	07/08/2009	E-mail to dkr.esq@att.net from Wakeman: re: your mail	JX00001 Tr. 46:25-47:02	N	

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00571	01/10/2011	E-mail to Akenberger, Steele, Wakeman et al. from Johnston: re: Exec Summ	JX00001 Tr. 46:25-47:02	N	
PX00572	02/21/2011	Memo to Board of Directors from Wakeman: re: Monthly Report-January 2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00573	10/12/2010	E-mail to Hermann from Wakeman: re: PPT for Steering Committee Wednesday Morning	JX00001 Tr. 46:25-47:02	N	
PX00574	09/16/2010	E-mail to Hermann from Akenberger: re: A couple items	JX00001 Tr. 46:25-47:02	N	
PX00575	08/2010	OCHS Spreadsheet: Accounts Payable, GL Account 210000, FYE 12/31/10	JX00001 Tr. 46:25-47:02	N	
PX00576	03/25/2010	E-mail to Devlin from Waldie: re: ProMedica matter	JX00001 Tr. 46:25-47:02	N	
PX00577	03/25/2010	E-mail to Devlin from Waldie: re: ProMedica matter	JX00001 Tr. 46:25-47:02	N	
PX00578	n/a	PHS Spreadsheet: Potential 2011 Unbudgeted Impacts	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00579	12/15/2010	Finance Committee Meeting of the Board of Trustees Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00580	02/16/2011	Finance Committee Meeting of the Board of Trustees Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00581	01/19/2011	SLH Leadership Group Minutes	JX00001 Tr. 46:25-47:02	N	
PX00582	03/10/2011	E-mail to Van Panhuys from Caumartin: re: Deposition notice	JX00001 Tr. 46:25-47:02	N	
PX00583	01/26/2011	E-mail to Caumartin from Van Panhuys: re: draft supplemental declaration for your review	JX00001 Tr. 46:25-47:02	N	
PX00584-PX00588		**Intentionally not used.**			
PX00589	09/23/2009	PHS Spreadsheet: The University of Toledo and ProMedica Health System Potential Models	JX00001 Tr. 46:25-47:02	N	
PX00590	09/29/2010	E-mail to Feak from Konwinski: re: My call-in tomorrow	JX00001 Tr. 46:25-47:02	N	
PX00591	11/17/2010	St. Luke's Finance Committee Meeting of the Board of Directors Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00592	05/2010	Memo to Wakeman from Konwinski: re: Monthly Report-April 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00593	06/2010	Great Lakes Marketing Presentation: Regional Hospital Research, Central Region	JX00001 Tr. 46:25-47:02	N	
PX00594	10/21/2009	St. Luke's Hospital, Leadership Group Meeting Minutes	JX00001 Tr. 46:25-47:02	N	Tr. 2951:11; 2953:07
PX00595	10/06/2010	Weekly Happenings/St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00596	12/31/2010	St. Luke's Hospital Statement of Operations Period Ending December 31, 2010	JX00001 Tr. 46:25-47:02	N	

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00597	02/01/2011	ProMedica Health System Obligated Group Official Statement	JX00001 Tr. 46:25-47:02	N	
PX00598	7/6/2010	E-mail to Wachsman from Hoehn: re: preliminary targets 2011-2013	JX00001 Tr. 46:25-47:02	N	
PX00599	01/31/2011	PHS Presentation: Mission Statement, Our Mission is to improve your health and well-being.	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00600	n/a	Spreadsheet: Wellcare Income	JX00001 Tr. 46:25-47:02	N	
PX00601	n/a	Spreadsheet: Cash Flow	JX00001 Tr. 46:25-47:02	N	
PX00602	n/a	PHS Presentation: Market Position Growth Strategies	JX00001 Tr. 46:25-47:02	N	
PX00603	11/22/2010	E-mail to Carlson and Steele from Johnston: re: St.Lukes eICU	JX00001 Tr. 46:25-47:02	N	
PX00604	02/13/2011	E-mail to Burmester from Konwinski: re: Saturday	JX00001 Tr. 46:25-47:02	N	
PX00605	05/20/2010	PHS Presentation: Critical Care & ICU Program Update	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX00606	03/07/2011	SLH Spreadsheet: Patient Charge and Cost Analysis	JX00001 Tr. 46:25-47:02	N	
PX00607	03/07/2011	SLH Spreadsheet: 2009 Per Cost Ratio	JX00001 Tr. 46:25-47:02	N	
PX00608	03/07/2011	SLH Spreadsheet: 2010 Payer cost ratio-Aug.	JX00001 Tr. 46:25-47:02	N	
PX00609	12/21/2010	SLH Spreadsheet: Patient Charge and Cost Analysis	JX00001 Tr. 46:25-47:02	N	
PX00610	03/07/2011	SLH Spreadsheet: Patient Charge and Cost Analysis	JX00001 Tr. 46:25-47:02	N	
PX00611	n/a	Errata for Part III Expert Report of Margaret Guerin-Calvert	JX00001 Tr. 46:25-47:02	N	
PX00612	05/12/2011	E-mail to Liu, Reilly, Perry et al. from Wu: re: Ms. Guerin-Calvert's expert report and production w/Attach: CONFIDENTIAL-Final Errata for MGC Expert Report	JX00001 Tr. 46:25-47:02	N	
PX00613-PX00899		**Intentionally not used.**			
PX00900	n/a	Pre-joinder Toledo Area Hospitals Map	Tr. 905:21	N	Tr. 383:05; 386:02,14; 420:17; 898:15; 904:11; 905:17,21; 913:23; 925:10; 1439:21; 1745:24; 1850:14; 2187:13; 3058:03; 3059:12
PX00901-PX00904		**Exhibits not in evidence.**			
PX00905	n/a	ProMedica Health Sytem/St. Luke's Joinder: Revenue Enhancement/Expense Efficiency Opportunities	Admitted via ALJ's 8/23 Order	Y ordered 8/26	
PX00906-PX00912		**Exhibits not in evidence.**			

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX00913	01/23/2008	E-mail to Brass, Hammerling, Horns et al. from Hanley: re: Guidelines-Capital Freeze and Approvals w/Attach: Guidelines-Capitals and Budgeted Consultants	Admitted via ALJ's 8/23 Order		
PX00914		**Exhibit not in evidence.**			
PX00915	10/21/2010	E-mail to Oostra from Steele re: Anthem Quality Scores	Admitted via ALJ's 8/23 Order	Y ordered 8/26	Tr. 4724:24; 4725:05
PX00916	2009	ProMedica 2009 IRS Form 990: Return of Organization Exempt From Income Tax	Admitted via ALJ's 8/23 Order		
PX00917	1/14/2009	E-mail from Robert Reiter, MD to Linda Yielding & Brian Dick re: 100 day approach on quality scores	Admitted via ALJ's 8/23 Order		
PX00918-PX00919		**Exhibits not in evidence.**			
PX00920	2/8/2011	Email to Wakeman from Wagner re: HCNO November Report	Admitted via ALJ's 8/23 Order		
PX00921	2011	Email to Oostra, Hammerling, Hanley et al from Dale: re: HCNO November Report w/attach: SLH Spreadsheet: November 2010 Final Dschrgs & Days	Admitted via ALJ's 8/23 Order		
PX00922		**Exhibit not in evidence.**			
PX00923	3/3/2010	Email to Machin from Wakeman re: Key Employee Retention Plan	Admitted via ALJ's 8/23 Order	Y ordered 8/26	
PX00924	11/25/2009	Email to Connell, Rupley, Oppenlander et al. from Wakeman re: 990 discussion materials	Admitted via ALJ's 8/23 Order		
PX00925 - PX00939		**Exhibits not in evidence.**			
PX00940-PX00957		**Intentionally not used.**			
PX00958	8/4/2011	Margaret Guerin-Calvert Part III 8/4/2011 Second Deposition Transcript	Admitted via ALJ's 8/23 Order	Y	
PX00959-PX00960		**Exhibits not in evidence.**			
PX00961-PX00999		**Intentionally not used.**			
PX01000	n/a	Resume of Douglas Deacon	JX00001 Tr. 46:25-47:02	N	
PX01001	n/a	Resume of Barbara Machin	JX00001 Tr. 46:25-47:02	N	
PX01002	n/a	Resume of Daniel Wakeman	JX00001 Tr. 46:25-47:02	N	
PX01003	12/31/2007	OhioCare Health System, Inc. and Subsidiaries, Consolidated Financial Report with Additional Information, December 31, 2007	JX00001 Tr. 46:25-47:02	N	
PX01004		**Intentionally not used.**			
PX01005	12/31/2008	St. Luke's Hospital Financial Report, December 31, 2008	JX00001 Tr. 46:25-47:02	N	

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01006	12/31/2009	OhioCare Consolidated Financial Report with Additional Information, December 31, 2009	JX00001 Tr. 46:25-47:02	N	Tr. 3172:10; 3173:16; 3544:23,24,25; 3545:06; 4801:12,19; 4803:05; 5390:03,05,12; 5450:23; 5451:11; 5491:03,12
PX01007	11/25/2009	St. Luke's Hospital Managed Care Opportunity Analysis, November 25, 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01008	12/31/2009	St. Luke's Hospital Financial Report, December 31, 2009	JX00001 Tr. 46:25-47:02	N	
PX01009		**Intentionally not used.**			
PX01010	06/23/2008	St. Luke's Hospital's Three Year Plan (2008-2010) (as of 6-23-08)	JX00001 Tr. 46:25-47:02	N	Tr. 2811:18,21; 2818:19; 3018:16,18; 3020:02; 5662:25; 5582:09,12
PX01011-PX01012		**Intentionally not used.**			
PX01013	12/31/2008	OhioCare Health System, Inc. and Subsidiaries, Consolidated Financial Report with Additional Information, December 31, 2008	JX00001 Tr. 46:25-47:02	N	
PX01014	n/a	Top 10 Commercial Payers, 2009 - Data from EPSi	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01015	n/a	Resume of David Dewey	JX00001 Tr. 46:25-47:02	N	
PX01016	12/15/2009	SLH Presentation: St. Luke's Hospital Board Meeting Affiliation Update, December 15, 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1978:04,05,07,21; 2037:24; 2989:22; 2992:06,11; 2993:10; 2995:09; 3347:23; 3348:06,16; 3559:18; 3564:24; 3567:24; 5650:18,20; 5651:14; 5711:11; 5712:08,13,17
PX01017		**Intentionally not used.**			
PX01018	n/a	SLH Presentation: Options for St. Luke's	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2655:16,19,21; 2656:01,04,06,10,17,24,25; 2662:10,13,18; 2664:07; 2665:12; 2668:14; 2669:20; 2670:10; 2093:06; 2907:15; 2909:16; 2911:18,20; 2917:22; 2919:23; 2923:03; 5713:25; 5714:04,10,20,24; 5715:19; 5717:24; 5724:07
PX01019	07/24/2007	Physician Strategy, Board Executive Committee, July 24, 2007	JX00001 Tr. 46:25-47:02	N	
PX01020		**Intentionally not used.**			
PX01021	n/a	SLH Presentation: St. Luke's Hospital Significant Financial Milestones, 2000-2009	JX00001 Tr. 46:25-47:02	N	
PX01022	n/a	SLH Presentation: St. Luke's Hospital Revenue (and Expense) Milestone Descriptions	JX00001 Tr. 46:25-47:02	N	Tr. 2923:15; 2924:16; 2925:18,21; 2926:01
PX01023		**Intentionally not used.**			
PX01024	n/a	SLH Spreadsheet: Total Inpatient Market Share in the Toledo Area (2007-2009)	JX00001 Tr. 46:25-47:02	N	

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01025	04/24/2007	SLH Presentation: St. Luke's Hospital Approved 2007 Corporate Objectives, Executive Committee, Board of Directors, April 24, 2007	JX00001 Tr. 46:25-47:02	N	
PX01026	06/23/2008	St. Luke's Hospital's Three Year Plan (2008-2010) (as of 6-23-08)	JX00001 Tr. 46:25-47:02	N	Tr. 3018:16
PX01027		**Intentionally not used.**			
PX01028	05/06/2008	SLH Presentation: St. Luke's Hospital Vision, Received endorsement from M.E.C., St. Luke's Board Executive Committee, and OhioCare Health System Board on May 6th, May 27th, and June 3rd, respectively	JX00001 Tr. 46:25-47:02	N	
PX01029	11/25/2009	Navigant Presentation: St. Luke's Hospital Managed Care Opportunity Analysis, November 25, 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1635:19,21; 1636:16; 2987:05,21
PX01030	10/30/2009	SLH Presentation: Affiliation Analysis Update, St. Luke's Board of Directors, October 30, 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2689:15,19,21; 2690:06,13,18; 2691:17,18; 2693:23; 2694:01; 2695:02; 2696:21; 2698:09; 2959:12,24; 2961:04,18; 2962:04; 5737:23; 5738:06,16; 5634:02,06
PX01031-PX01032		**Intentionally not used.**			
PX01033	07/28/2009	St. Luke's Hospital Executive Committee Meeting Minutes, July 28, 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01034		**Intentionally not used.**			
PX01035	n/a	SLH Presentation: Affiliation Analysis Update, St. Luke's Board of Directors, October 30, 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01036-PX01038		**Intentionally not used.**			
PX01039	05/21/2010	Letter to Jamie Black (SLH) from Barbara Machin (SLH): re: Vote for Joinder of St. Luke's Hospital With the Promedica Health System	JX00001 Tr. 46:25-47:02	N	
PX01040	08/11/2009	St. Luke's Hospital Organization Charts 08/11/09	JX00001 Tr. 46:25-47:02	N	
PX01041	n/a	Resume of Dennis Wagner	JX00001 Tr. 46:25-47:02	N	
PX01042-PX01044		**Intentionally not used.**			
PX01045	03/11/2010	Letter to Wendy Codoz (SLH) from Robert Dery and Kristel Adams (Plante & Moran)	JX00001 Tr. 46:25-47:02	N	
PX01046		**Intentionally not used.**			
PX01047	03/15/2010	Board Leadership Steering Committee Meeting 3/15/10 Proposed Topics	JX00001 Tr. 46:25-47:02	N	
PX01048	n/a	Monetization of Existing Capital Assets/ Real Estate	JX00001 Tr. 46:25-47:02	N	
PX01049	03/04/2010	Proposed Efficiences under Joinder Model, WSC edits 3-4-10	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01050		**Intentionally not used.**			
PX01051	n/a	OhioCare Health System, Inc. Efficiency Initiatives	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01052		**Intentionally not used.**			
PX01053	n/a	St. Lukes Hospital, Maumee, Ohio, Analysis-Master Facility Upgrades	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01054	n/a	Joinder Efficiencies-Information Technology	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01055-PX01056		**Intentionally not used.**			
PX01057	n/a	OhioCare Health System Inc. Efficiency Initiatives	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01058-PX01059		**Intentionally not used.**			
PX01060	02/2010	St. Lukes Hospital Retirement Plan, Actuarial Valuation Report, SFAS87, 132(R) and 158 Disclosure for Fiscal Year Ending December 31, 2009 and 2010 Benefit Cost, February 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01061		**Intentionally not used.**			
PX01062	09/13/2010	Memo to Dan Wakeman from Dennis Wagner: re: Monthly Report-August 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01063	04/30/2010	St. Luke's Hospital Statement of Operations, April 30, 2010	JX00001 Tr. 46:25-47:02	N	
PX01064	08/20/2009	Scott's Notes from Meetings with ProMedica (August 20, 2009), Main discussion centered around Heart & Vascular Services	JX00001 Tr. 46:25-47:02	N	
PX01065	n/a	ProMedica Health System/St. Luke's Joinder, Integration Project List-first 60 days	JX00001 Tr. 46:25-47:02	N	
PX01066-PX01068		**Intentionally not used.**			
PX01069	n/a	St. Luke's Hospital Statement of Operations, Period Ending December 31, 2010	JX00001 Tr. 46:25-47:02	N	
PX01070		**Intentionally not used.**			
PX01071	08/31/2010	St. Lukes Hospital Statement of Operations, August 31, 2010; August 2010 Final Re-State	JX00001 Tr. 46:25-47:02	N	
PX01072	11/30/2009	Key Messages from St. Luke's Hospital, November 30, 2009	JX00001 Tr. 46:25-47:02	N	Tr. 13:12; 78:04
PX01073	10/16/2007	For Immediate Release, October 16, 2007: Study Shows St. Luke's Hospital among Top 10 Percent	JX00001 Tr. 46:25-47:02	N	
PX01074-PX01075		**Intentionally not used.**			
PX01076	10/2008	Market Study for St. Luke's Hospital, Study conducted by: Great Lakes Marketing, Toledo, Ohio, October 2008	JX00001 Tr. 46:25-47:02	N	
PX01077	11/18/2008	St. Luke's Market Report 2008, St. Luke's Hospital, November 18, 2008	JX00001 Tr. 46:25-47:02	N	
PX01078-PX01079		**Intentionally not used.**			
PX01080	n/a	NexTen Strategy Work Plan & Agenda	JX00001 Tr. 46:25-47:02	N	
PX01081		**Intentionally not used.**			
PX01082	03/2008	St. Luke's Hospital Senior Leadership Meeting, March 2008	JX00001 Tr. 46:25-47:02	N	
PX01083		**Intentionally not used.**			

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01084	n/a	St. Luke's Hospital 2007 Leadership Balance Sheets	JX00001 Tr. 46:25-47:02	N	
PX01085		**Intentionally not used.**			
PX01086	03/19/2010	Letter to Ohio Department of Health from Theresa Konwinski	JX00001 Tr. 46:25-47:02	N	
PX01087-PX01089		**Intentionally not used.**			
PX01090	04/24/2009	St. Luke's Hospital's Three Year Plan (2008-2010) (as of 4-24-09)	JX00001 Tr. 46:25-47:02	N	
PX01091-PX01094		**Intentionally not used.**			
PX01095	n/a	Our Mission	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01096	n/a	SLH Integration Decision Grid	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01097	n/a	Inpatient/Outpatient	JX00001 Tr. 46:25-47:02	N	
PX01098	06/16/2010	Letter to Dennis Wagner from Janette Russell Gee	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01099	09/03/2010	Letter to Daniel Wakeman from James R. Castle	JX00001 Tr. 46:25-47:02	N	
PX01100-PX01106		**Intentionally not used.**			
PX01107	09/02/2010	Email to Schwarzkopf, Jackson, Frahn et al. from Fritz: re: 2010 6 mo delivery count-Lucas Co	JX00001 Tr. 46:25-47:02	N	
PX01108-PX01110		**Intentionally not used.**			
PX01111	03/26/2008	Scott Rupley's Rough Note from Senior Leadership Retreat	JX00001 Tr. 46:25-47:02	N	Tr. 2783:23; 2787:05; 2789:20; 2790:06
PX01112	n/a	SLH Integration Decision Grid	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01113	n/a	2011 Strategic Planning: Strategic Pillars: Growth, People, Quality, Service & Finance, SLH Top Strategic Issues (Finance)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01114	n/a	Email to Dewey from Rupley: re: Growth Pillar Revenue Goal Status	JX00001 Tr. 46:25-47:02	N	
PX01115	08/31/2010	St. Luke's Hospital Statement of Operations, August 31, 2010	JX00001 Tr. 46:25-47:02	N	
PX01116	03/02/2010	Ohio Health Information Partnership (OHIP) Letter of Intent	JX00001 Tr. 46:25-47:02	N	
PX01117	08/04/2010	Email to Rupley from Wagner: re: Strategic Planning Questions	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01118		**Intentionally not used.**			
PX01119	n/a	Growth Pillar Update	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01120	05/14/2009	Scott Rupley's handwritten notes: April 25th Planning Summit Follow up w/ Casey Nolan	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01121	04/25/2009	Presentation: 2009 Board/Medical Staff Planning Summit w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX01122		**Intentionally not used.**			
PX01123	10/27/2009	SLH Presentation: Affiliation Continuum	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01124	10/20/2009	SLH Presentation: Affiliation Analysis Update (Draft) w/ Scott Rupley's handwritten notes	Admitted 6/23 in trial 2006:02-03	Y ordered 5/25	Tr. 1993:15,16,18,23; 1994:03,11,17; 1998:03; 2004:14; 2005:03; 2006:02; 2026:04,22; 2027:06,09,15; 2030:25; 2032:11
PX01125	10/11/2009	E-mail to Machin and Wakeman from Black: re: Meeting with Promedica Leadership	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2682:18,21; 2684:03; 2940:01; 5725:22; 5729:08,11; 5732:17; 5735:09
PX01126		**Intentionally not used.**			
PX01127	n/a	Competitor Assessment (2000-2008)	JX00001 Tr. 46:25-47:02	N	
PX01128		**Intentionally not used.**			
PX01129	07/28/2009	Executive Committee Meeting Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01130	08/26/2009	Notes from Due Diligence Meetings: Phase II (8-26-09)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 75:05; 168:09; 2672:25; 2673:02; 2677:09; 2679:06; 2682:06,07; 2927:25; 2928:08
PX01131	n/a	2011 Strategic Planning: SLH Top Strategic Issues (Finance)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01132	n/a	Internal Factor Evaluation, External Factor Evaluation, Competitive Profile Matrix	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01133	n/a	TOWS Matrix w/Charlie Kanthak's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX01134-PX01135		**Intentionally not used.**			
PX01136	n/a	ProMedica Health System/OhioCare Health System Joinder Efficiency Opportunities	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01137	09/26/2005	Letter to David M. Oppenlander (St. Luke's) from Michael Newman (First Southwest Company) re: Moody's Credit Review	JX00001 Tr. 46:25-47:02	N	
PX01138	n/a	Detailed Cost-Quality Scoring	JX00001 Tr. 46:25-47:02	N	
PX01139-PX01140		**Intentionally not used.**			
PX01141	n/a	Chart analyzing potential partners	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01142-PX01143		**Intentionally not used.**			
PX01144	01/09/2007	Scott's Rough Notes from Planning Session with Rob Reece	JX00001 Tr. 46:25-47:02	N	Tr. 1966:23,24; 1967:19
PX01145	n/a	Volume scorecard and market shares	JX00001 Tr. 46:25-47:02	N	
PX01146	n/a	Rate Increase Summary Activity w/ Dennis Wagner's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01147		**Intentionally not used.**			
PX01148	n/a	HealthLeaders Toledo Market Overview 2008	JX00001 Tr. 46:25-47:02	N	
PX01149	05/13/2010	Affiliation with ProMedica: Preparation for Board of Directors meeting on May 25, 2010 w/ Dennis Wagner's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01150	n/a	St. Luke's Hospital Recovery Plan/Strategic Plan: 2003-2005 w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX01151	10/13/2010	Navigant Consulting Presentation: Service Line and Clinical Integration Project Steering Committee Draft w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01152	n/a	Paramount Negotiations w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	N	Tr. 1963:13,16,17,19; 1964:08
PX01153-PX01160		**Intentionally not used.**			
PX01161	11/20/2009	Outline for Fall Capsules-November 20, 2009	JX00001 Tr. 46:25-47:02	N	
PX01162	12/30/2009	E-mail to Deacon, Wagner, O'Shea et al. from Oppenlander: re: CRC Analysis w/Attach: Regency Expenses-2009-08	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01163-PX01164		**Intentionally not used.**			
PX01165	12/18/2008	Memo to Barbara E. Machin, Jamie Black, Dale J. Seymour, and William R. Ammann from Dan Wakeman	JX00001 Tr. 46:25-47:02	N	Tr. 5596:20; 5618:04
PX01166-PX01168		**Intentionally not used.**			
PX01169	10/2008	Great Lakes Marketing Presentation: Market Study for St. Luke's Hospital w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	N	Tr. 1947:03,09; 2060:11,21; 2062:04; 2063:18; 2048:25; 4083:18,22,25; 4084:03,13,17,19; 4085:06; 4086:01; 4088:16
PX01170	n/a	SLH Presentation: How can St. Luke's Hospital help you control your healthcare costs? w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	N	Tr. 1924:12,14; 1925:05; 1927:22; 1928:25; 2049:16,20; 2050:02,15,20; 2051:12
PX01171	08/22/2009	E-mail to Feak, Buker, Quinlan et al. from Tjan: re: Due Diligence Phase II Meeting	JX00001 Tr. 46:25-47:02	N	
PX01172	08/28/2009	E-mail to Rupley, Rasch from Connell: re: Recommendation from August 26 Due Diligence Meeting w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 73:16,20,21; 1988:16,18; 2025:07
PX01173-PX01192		**Intentionally not used.**			
PX01193	08/16/2010	E-mail to Oostra, Steele, Johnston et al. from Wakeman: re: update	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01194		**Intentionally not used.**			
PX01195	n/a	Audited Financial Statements 2003, 2004, 2005	JX00001 Tr. 46:25-47:02	N	
PX01196		**Intentionally not used.**			
PX01197	n/a	Consolidated Financial Statements, OhioCare Health System, Inc. and Subsidiaries, Years ended December 31, 2001 and 2000 with Report of Independent Auditors	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01198		**Intentionally not used.**			
PX01199	n/a	2010 Strategic Planning: SLH Top Three Strategic Issues (Growth)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01200-PX01201		**Intentionally not used.**			
PX01202	n/a	OhioCare Ambulatory Surgery Center, LLC 2010 OFP For the period ended December 31, 2010	JX00001 Tr. 46:25-47:02	N	
PX01203		**Intentionally not used.**			
PX01204	02/17/2010	Finance Committee Meeting Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01205-PX01206		**Intentionally not used.**			
PX01207	01/16/2007	Memo to Board of Directors from Frank J. Bartell III: re: Monthly Report-December 2006	JX00001 Tr. 46:25-47:02	N	
PX01208	n/a	Data comparing St.Luke's Hospital, UTMC, ProMedica, Mercy Health Partners for 2003-2008	JX00001 Tr. 46:25-47:02	N	
PX01209	n/a	Why Not The Best? How do patients rate the hospital overall?	JX00001 Tr. 46:25-47:02	N	
PX01210	07/31/2010	St. Luke's Hospital-Maumee, Ohio, Statement of Operations, July 31, 2010	JX00001 Tr. 46:25-47:02	N	
PX01211		**Intentionally not used.**			
PX01212	n/a	Contract terms with Medical Mutual	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01213		**Intentionally not used.**			
PX01214	09/29/2010	Presentation: Surgi+Care Board of Managers Meeting, Wednesday, September 29, 2010	JX00001 Tr. 46:25-47:02	N	
PX01215	09/22/2010	Navigant Consulting Presentation: ProMedica Health System Market and Facility Assessment Summary	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 6280:13,22
PX01216	08/23/2010	Navigant Consulting Presentation: ProMedica Health System Service Line and Clinical Integration Market Trends and Facilities Assessment	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 6270:20; 6276:06; 6324:20,23,24; 6325:04,23; 6326:12; 6327:15
PX01217		**Intentionally not used.**			
PX01218	08/23/2010	Navigant Consulting Presentation: ProMedica Health System Service Line and Clinical Integration Market Trends and Facilities Assessment w/ Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01219-PX01220		**Intentionally not used.**			
PX01221	09/23/2010	Navigant Consulting Presentation: ProMedica Health System Service Line and Clinical Integration Preliminary Integration Options w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 6339:10,15; 6340:22; 6341:22; 6343:03; 6345:01; 6377:22; 6378:08; 6379:17; 6398:08,12,20; 6401:16,24; 6402:05,20
PX01222-PX01224		**Intentionally not used.**			
PX01225	10/12/2010	Dave Dewey's handwritten notes: Doc Summary	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01226	10/13/2010	Navigant Consulting Presentation: Service Line and Clinical Integration Project Steering Committee Draft w/ Dave Dewey's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01227	05/25/2010	SurgiCare/SLH Surgery department Meeting Minutes w/ Dave Dewey's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX01228	10/18/2009	E-mail to Wakeman from Oppenlander: re: PowerPoint to bring Board up to speed on affiliation activites	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01229	08/20/2009	E-mail to Wakeman from Oppenlander: re: clarification and next steps	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2650:16,19,21,23; 2651:04,07,12,20; 2652:09
PX01230	01/09/2009	E-mail to Oppenlander from Wakeman: re: Pension	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2839:11
PX01231	10/13/2009	E-mail to Oppenlander from Wakeman: re: September statements/annual loss	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01232	08/05/2009	E-mail to Wakeman from Oppenlander: re: discussion updates	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2886:10; 2887:01; 2893:21; 2895:14; 5627:13,17
PX01233	11/11/2009	SLH Presentation: EMS Capsules, November 11, 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01234	10/06/2010	E-mail to Ball, Deacon, Dewey et al. from Wakeman: re: August 2010 HCNO Hospital Utilization Review w/Attach: 2010_08 Inpatient Data-each cat by Hosp; 2010_08 Totals all categories by Hospital; 2010 08 Outpatient data by Hospital; Memo August 2010 Util Review & revision-ltrhd	JX00001 Tr. 46:25-47:02	N	
PX01235	n/a	Spreadsheet: Total Inpatient Market Share in the Toldeo Area (1997-2010*)	JX00001 Tr. 46:25-47:02	N	
PX01236	n/a	Spreadsheet: Total Inpatient Market Share in the Toldeo Area (1997-2010*)	JX00001 Tr. 46:25-47:02	N	
PX01237	n/a	OhioCare Health System, Inc. Efficiency Initiatives w/ Dennis Wagner's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01238-PX01239		**Intentionally not used.**			
PX01240	n/a	Press Ganey St. Luke's Hospital Inpatient Summary Report 4/1/2010-6/30/2010	JX00001 Tr. 46:25-47:02	N	
PX01241	01/10/2007	E-mail to Management, Quimby, Anderson et al. from Ball: re: Educational Audio-Conference Series	JX00001 Tr. 46:25-47:02	N	
PX01242-PX01245		**Intentionally not used.**			
PX01246	n/a	I. Growth Pillar (Dave Dewey)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01247-PX01250		**Intentionally not used.**			
PX01251	n/a	St. Luke's Affiliation/Partner Ballot	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01252		**Intentionally not used.**			
PX01253	07/02/2008	E-mail to Oppenlander from Wakeman: re: Transfer of Funds	JX00001 Tr. 46:25-47:02	N	
PX01254		**Intentionally not used.**			

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01255	n/a	SLH Presentation: St. Luke's Hospital Foundation Disbursement Policy	JX00001 Tr. 46:25-47:02	N	
PX01256	12/09/2009	E-mail to Oppenlander from Wakeman: re: CIGNA Review of Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01257	10/19/2009	E-mail to Osinowo from Deacon: re: Hospital Construction	JX00001 Tr. 46:25-47:02	N	
PX01258	01/23/2010	E-mail to Wakeman from Wagner: re: Request for Revised rates	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01259	11/04/2009	St. Luke's Hospital Board of Directors November 4, 2009 Meeting Minutes	JX00001 Tr. 46:25-47:02	N	
PX01260		**Intentionally not used.**			
PX01261	11/05/2009	St. Luke's Hospital Leadership Group Meeting Minutes	JX00001 Tr. 46:25-47:02	N	
PX01262	10/16/2006	Letter to Dave Oppenlander (St. Luke's) from Micheal Lewis (Medical Mutual): re: Letter of Agreement between Medical Mutual of Ohio and St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	
PX01263		**Intentionally not used.**			
PX01264	n/a	St. Luke's Hospital Foundation Articles of Incorporation	JX00001 Tr. 46:25-47:02	N	
PX01265	08/31/2010	Spreadsheet: OhioCare Health System, Inc. and Subsidiaries, Details of Consolidated Balance Sheet	JX00001 Tr. 46:25-47:02	N	
PX01266	n/a	Service Line Strategies Overview w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX01267	n/a	Cardiac and Vascular: Planning Staff Core Assumptions	JX00001 Tr. 46:25-47:02	N	
PX01268-PX01270		**Intentionally not used.**			
PX01271	05/29/2008	Letter to Scott Rupley (St. Luke's) from Karen Hartman (Corazon): re: strategy development for collaborative Heart Center between St. Luke's and the University of Toledo	JX00001 Tr. 46:25-47:02	N	
PX01272		**Intentionally not used.**			
PX01273	n/a	Spreadsheet: OhioCare Health System, Inc. Consolidated Balance Sheet	JX00001 Tr. 46:25-47:02	N	
PX01274	05/29/2009	E-mail to Wakeman from Tennant: re: cardiac surgery	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01275	n/a	Credit Presentation Regarding St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	
PX01276	06/25/2009	E-mail to Burmeister from Rupp: re: Quick Question	JX00001 Tr. 46:25-47:02	N	
PX01277	06/25/2009	Spreadsheet: Building Costs	JX00001 Tr. 46:25-47:02	N	
PX01278	n/a	SLH Presentation: Growth	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01279	04/07/2010	Performance Evaluation: President/CEO, St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	
PX01280	n/a	Organizational Leadership	JX00001 Tr. 46:25-47:02	N	
PX01281	n/a	SLH Presentation: Finance Pillar Challenge!!	JX00001 Tr. 46:25-47:02	N	
PX01282	n/a	Joinder Efficiencies-Information Technology	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01283	10/14/2009	E-mail to Wakeman from Oppenlander: re: September statements/annual loss	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2942:14
PX01284	03/07/2008	E-mail to Oppenlander and Wakeman from Ammann: re: Transfer of Funds	JX00001 Tr. 46:25-47:02	N	Tr. 2821:16
PX01285	03/29/2010	E-mail to Rupley from Wagner: re: anthem	JX00001 Tr. 46:25-47:02	N	
PX01286	12/11/2009	Spreadsheet: OKOCostAll St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01287	n/a	SLH Presentation: Our Mission	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 3168:18,21; 5507:16
PX01288	n/a	SLH Presentation: Our Mission	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01289	04/25/2009	SLH Presentation: St. Luke's Hospital Board/ Medical Staff Planning Retreat-DRAFT w/ Theresa Konwinski's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01290-PX01291		**Intentionally not used.**			
PX01292	09/22/2009	St. Luke's Hospital Board of Directors September 22, 2009 Meeting Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01293		**Intentionally not used.**			
PX01294	n/a	E-mail to Wagner from O'Shea: re: Regency Expenses-2010 Proforma wo Nuc Med	JX00001 Tr. 46:25-47:02	N	
PX01295	n/a	Spreadsheet: St. Luke's Hospital Cash Flow Analysis CAPM	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01296	12/05/2008	Physician Services Independent Contractor Agreement	JX00001 Tr. 46:25-47:02	N	
PX01297	08/25/2008	Physician Services Independent Contractor Agreement	JX00001 Tr. 46:25-47:02	N	
PX01298	n/a	Spreadsheet: 2010 Volume Scorecard	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01299	08/04/2010	E-mail to Dewey, Konwinski, Miller et al from Rupley: re: Surgeon Ranking Stats & Discharge Reports for July	JX00001 Tr. 46:25-47:02	N	
PX01300	n/a	Spreadsheet: Yearly Surgery Rankings by Practice by Procedures	JX00001 Tr. 46:25-47:02	N	
PX01301	10/07/2010	E-mail to Johnston, Wagner, Lane et al. from Egan: re: Surgicare's September Financials	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01302	10/30/2010	Spreadsheet: Surgi+Care, LLC Balance Sheet As of September 30, 2010	JX00001 Tr. 46:25-47:02	N	
PX01303	02/26/2008	St. Luke's Hospital Executive Committee Meeting Minutes	JX00001 Tr. 46:25-47:02	N	Tr. 2777:07; 2779:22; 5565:12; 5566:03; 5569:10; 5574:03,14
PX01304	07/30/2010	E-mail to Wagner and Ngo from Gullett: re: drafts	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01305	n/a	Strategic Action Plan, Finance/Corporate Pillar (Oppenlander) w/ Dennis Wagner's handwritten notes	JX00001 Tr. 46:25-47:02	N	
PX01306-PX01311		**Intentionally not used.**			
PX01312	08/16/2009	E-mail to Wakeman from Oppenlander: re: Board Leadership Meeting	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01313		**Intentionally not used.**			
PX01314	06/30/2009	Letter to Daniel Wakeman (St. Luke's) from Christine D. Allen (Ohio Department of Health): re: Hospital Number 1224	JX00001 Tr. 46:25-47:02	N	
PX01315-PX01316		**Intentionally not used.**			
PX01317	01/08/2009	E-mail to Oppenlander from Wakeman: re: analyzed	JX00001 Tr. 46:25-47:02	N	Tr. 2835:19
PX01318	07/06/2009	E-mail to Oppenlander from Wakeman: re: CHP FYI…..ohhhhhh	JX00001 Tr. 46:25-47:02	N	
PX01319-PX01320		**Intentionally not used.**			
PX01321	12/06/2009	E-mail to Wakeman and Dewey from Oppenlander: re: Preparations for Board Discussion on Dec. 15	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01322	08/11/2010	E-mail to Wakeman and Konwinski from Rupley: re: June 2010 HCNO Hospital Utilization Review	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01323-PX01325		**Intentionally not used.**			
PX01326	09/24/2010	E-mail to Rupley from Wakeman: re: St. Luke's Inpatient Discharges	JX00001 Tr. 46:25-47:02	N	
PX01327		**Intentionally not used.**			
PX01328	01/19/2010	St.Luke's Hospital Board Steering Committee Meeting Minutes w/ Scott Rupley's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01329		**Intentionally not used.**			
PX01330	08/19/2009	St. Luke's Hospital Finance Committee Meeting Minutes	JX00001 Tr. 46:25-47:02	N	
PX01331		**Intentionally not used.**			
PX01332	n/a	Internal Factor Evaluation, External Factor Evaluation, Competitive Profile Matrix	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01333		**Intentionally not used.**			
PX01334	n/a	Spreadsheet: SLH Primary Service Area (Core and Non-Core)-Total Discharges	JX00001 Tr. 46:25-4702	Y ordered 5/25	
PX01335		**Intentionally not used.**			
PX01336	n/a	Spreadsheet: FY 2007 Hospital Cost per Discharge (CMA, WIA), Composite Quality Scores	JX00001 Tr. 46:25-47:02	N	

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01337	12/12/2007	General Information; Monclova Site Plan Review	JX00001 Tr. 46:25-47:02	N	
PX01338	09/24/2009	E-mail to Wakeman from Oppenlander: re: update after last night's board meeting	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2931:17; 2932:07; 2934:05
PX01339	n/a	St. Luke's Strategic Plan Primer (2010-2012)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01340		**Intentionally not used.**			
PX01341	n/a	Spreadsheet: St. Luke's Hospital Statistical Reporting For the Year 2007	JX00001 Tr. 46:25-47:02	N	
PX01342	08/31/2010	St. Luke's Hospital Statement of Operations	JX00001 Tr. 46:25-47:02	N	
PX01343	12/31/2007	St. Luke's Hospital Statement of Operations	JX00001 Tr. 46:25-47:02	N	
PX01344	12/31/2008	Spreadsheet: St. Luke's Hospital Combining Balance Sheet	JX00001 Tr. 46:25-47:02	N	
PX01345		**Intentionally not used.**			
PX01346		**Intentionally not used.**			
PX01347	12/31/2006	OhioCare Health System, Inc. and Subsidiaries, Consolidated Financial Report with Additional Information, December 31, 2006	JX00001 Tr. 46:25-47:02	N	
PX01348	n/a	St. Luke's Hospital Statement of Operations, December 31, 2009	JX00001 Tr. 46:25-47:02	N	
PX01349	n/a	St. Luke's Hospital Statement of Operations, December 31, 2008	JX00001 Tr. 46:25-47:02	N	
PX01350	03/25/2010	Spreadsheet: St. Luke's Hospital Income Statement for the period ended December 31, 2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01351	10/2004	St. Luke's Hospital Application for the 2004 Ohio Award for Excellence	JX00001 Tr. 46:25-47:02	N	
PX01352	04/12/2008	St. Luke's Hospital Board and Medical Staff Planning Retreat	JX00001 Tr. 46:25-47:02	N	Tr. 2512:01,02,04,08,11,17,21; 2514:15; 2515:05,14; 2521:02; 2523:14; 2798:19; 2801:03,10; 2804:25; 2807:16; 2809:03; 5574:16,21; 5575:08
PX01353		**Intentionally not used.**			
PX01354	12/31/2009	Press Ganey St. Luke's Hospital Inpatient Summary Report 10/1/2009-12/31/2009 w/ Doug Deacon's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01355	n/a	July 2010 Outpatient Report	JX00001 Tr. 46:25-47:02	N	
PX01356	05/14/2009	E-mail to Wakeman from Oppenlander: re: Surgicare w/Attach: SurgiCare Financials 04-09	JX00001 Tr. 46:25-47:02	N	Tr. 2874:02
PX01357	01/18/2010	E-mail to Pirc and Wagner from Wagner: re: Modified language & Request for response	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01358		**Intentionally not used.**			
PX01359	01/19/2010	FC December 2009 Financials-Leadership presentation	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01360	08/10/2010	E-mail to Ball, Cedoz, Deacon et al. from Wakeman: re: June 2010 HCNO Hospital Utilization Review w/Attachments	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01361	10/09/2010	E-mail to Wakeman from Oppenlander: re: capital items	JX00001 Tr. 46:25-47:02	N	Tr. 2937:10
PX01362	n/a	SLH Spreadsheet: St. Luke's Hospital Capital Budget 2009	JX00001 Tr. 46:25-47:02	N	
PX01363	11/12/1990	Forbes: Lies of the Bottom Line	JX00001 Tr. 46:25-47:02	N	
PX01364	06/2010	Towers Watson Insider: Prevalence of Retirement Plans by Type in the Fortune 100	JX00001 Tr. 46:25-47:02	N	
PX01365	06/29/2009	E-mail to Oppenlander from Wakeman: re: AMBAC	JX00001 Tr. 46:25-47:02	N	
PX01366	12/15/2009	E-mail to Patel from Oppenlander: re: OH, St. Luke's Hospital-Moody's Data Requests & Dial in number (Update Call Mon, Dec 21st 10-12pmEST)	JX00001 Tr. 46:25-47:02	N	
PX01367	12/1/2009	E-mail to Wakeman from Oppenlander: re: Moody prep	JX00001 Tr. 46:25-47:02	N	
PX01368	08/25/2010	Moody's Investor Service: Not-for-Profit Healthcare Medians for Fiscal Year 2009 Show Improvement Across All Major Ratios and All Rating Categories	JX00001 Tr. 46:25-47:02	N	Tr. 3475:07
PX01369	01/2008	Moody's Investor Service: Clinical Quality Initiatives Have Positive Long-Term Impact on Not-for-Profit Hospital Bond Ratings	JX00001 Tr. 46:25-47:02	N	Tr. 3453:03; 3554:24
PX01370	01/2008	Moody's Investor Service: Not-for-Profit Hospitals and Health Systems	JX00001 Tr. 46:25-47:02	N	Tr. 3444:16; 3510:04,12; 3511:05; 3515:07:3518:15; 3546:16
PX01371	01/2011	Moody's Investor Service: Rating Symbols and Definitions	JX00001 Tr. 46:25-47:02	N	Tr. 3531:19
PX01372	02/03/2010	Moody's Investor Service: Rating Update: Moody's Downgrades St. Luke's Hospital (OH) Bond Rating to Baa2 from Baa1; Outlook Remains Negative	JX00001 Tr. 46:25-47:02	N	Tr. 3465:24; 3490:25; 3495:03; 3509:19; 3512:13; 3543:18; 6544:01,03; 6545:06
PX01373-PX01376		**Intentionally not used.**			
PX01377	06/24/2009	E-mail to Wakeman from Ammann: re: update	JX00001 Tr. 46:25-47:02	N	
PX01378	12/18/2008	E-mail to Wakeman from Dewey re: transparency message	JX00001 Tr. 46:25-47:02	N	Tr. 2499:18,21,24; 2500:04,06; 2503:12
PX01379		**Intentionally not used.**			
PX01380	10/15/2008	Dan Wakeman's Perrysburg Chamber of Commerce Presentation Outline (October 15, 2008 at 11:30 a.m., Carrinor Manor)	JX00001 Tr. 46:25-47:02	N	Tr. 2532:07,16,19; 2533:07; 2535:21
PX01381	10/15/2008	SLH Presentation: Healthcare Value Equation, Dan Wakeman, St. Luke's Hospital, Perrysburg Chamber of Commerce	JX00001 Tr. 46:25-47:02	N	
PX01382-PX01383		**Intentionally not used.**			
PX01384	n/a	SLH Spreadsheet: SLH Paid FTE Reporting for the Year 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01385		**Intentionally not used.**			

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01386	n/a	SLH Spreadsheet: St. Luke's Hospital 2011 Budget Hours	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01387	05/26/2010	Letter to Wakeman from Community Members	JX00001 Tr. 46:25-47:02	N	
PX01388-PX01389		**Intentionally not used.**			
PX01390	08/10/2009	Framing the SLH Strategy Discussion for Dan Wakeman and the Board	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2639:24,25; 2640:04,08,11,16,21,24; 2642:21; 2643:08,11; 2644:12; 2899:20
PX01391		**Intentionally not used.**			
PX01392	09/2010	St. Luke's Hospital Retirement Plan Actuarial Valuation Report Adjusted Funding Target Attainment Percentage-1/1/2010 by Towers Watson	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5402:09,12
PX01393-PX01396		**Intentionally not used.**			
PX01397	09/28/2019	E-mail to Johnston, Wagner, and Ball from Jung: re: St. Luke's Hospital Retirement Plan Funded Status	JX00001 Tr. 46:25-47:02	N	Tr. 5399:08,11; 5400:23; 5451:11
PX01398	03/11/2008	Wakeman presentation notes to Maumee Chamber of Commerce Membership Luncheon	JX00001 Tr. 46:25-47:02	N	
PX01399		**Intentionally not used.**			
PX01400	11/25/2009	E-mail to Connell, Rupley, Oppenlander et al. from Wakeman: re: Ohio Average Cost	JX00001 Tr. 46:25-47:02	N	
PX01401	09/09/2010	E-mail to Wakeman from Konwinski: re: Maternity capacity request	JX00001 Tr. 46:25-47:02	N	
PX01402	03/19/2010	E-mail to Konwinski and Cedoz from Wakeman: re: Busy, busy OB!	JX00001 Tr. 46:25-47:02	N	
PX01403	03/19/2010	E-mail to Konwinski from Wakeman: re: Full house	JX00001 Tr. 46:25-47:02	N	
PX01404		**Intentionally not used.**			
PX01405	11/09/2010	E-mail to Wakeman from Goligoski: re: Last Tuesday's Board Meeting	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01406	07/25/2010	E-mail to Wakeman from Gold: re: Follow up	JX00001 Tr. 46:25-47:02	N	Tr. 2869:16,20
PX01407	10/13/2009	E-mail to Wakeman, Dewey, Oppenlander et al. from Wakeman: re: next steps	JX00001 Tr. 46:25-47:02	N	Tr. 356:04,08; 328:02,06; 329:05,17; 330:08; 331:24; 2955:24; 2956:04; 2958:01
PX01408	02/21/2009	E-mail to Wakeman from Oppenlander: re: bond buy back	JX00001 Tr. 46:25-47:02	N	Tr. 2845:16
PX01409	07/12/2010	E-mail to Johnston, Wakeman, Dewey et al. from Wakeman: re: May 2010 HCNO Hospital Utilization Review	JX00001 Tr. 46:25-47:02	N	Tr. 2598:05,07,10
PX01410	03/24/2009	E-mail to Wakeman, Oppenlander, Dewey et al. from Perron: re: Deliverables-pending	JX00001 Tr. 46:25-47:02	N	
PX01411-PX01417		**Intentionally not used.**			
PX01418	n/a	SLH Presentation: Detailed Cost and Revenue-Per Case	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01419-PX01423		**Intentionally not used.**			

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01424	10/06/2009	Phase II Partnering Discussions Round #2, October 6, 2009	JX00001 Tr. 46:25-47:02	N	
PX01425-PX01428		**Intentionally not used.**			
PX01429	n/a	SLH Spreadsheet: CCR data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01430	08/26/2009	Notes from Due Diligence Meetings: Phase II (8-26-09)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01431		**Intentionally not used.**			
PX01432	06/22/2009	E-mail to *SLH Broadcast from Wakeman: re: Great Job-Thank You	JX00001 Tr. 46:25-47:02	N	
PX01433-PX01435		**Intentionally not used.**			
PX01436	03/2008	Senior Leadership Meeting Strategic Quality Initiative, March 2008	JX00001 Tr. 46:25-47:02	N	
PX01437-PX01443		**Intentionally not used.**			
PX01444	07/29/2010	E-mail to Wakeman from Johnston: re: stuff	JX00001 Tr. 46:25-47:02	N	Tr. 5431:25; 5432:05,15
PX01445		**Intentionally not used.**			
PX01446	02/05/2010	E-mail to Rupley and Dewey from Connell: re: St. Lukes Contact Form-any concerned citizen	JX00001 Tr. 46:25-47:02	N	
PX01447		**Intentionally not used.**			
PX01448	03/26/2008	Scott Rupley's Rough Note from Senior Leadership Retreat 3-26-08	JX00001 Tr. 46:25-47:02	N	
PX01449	11/02/2009	Reform Readiness Assessment by KaufmanHall	JX00001 Tr. 46:25-47:02	N	
PX01450	03/10/2009	Finance Committee, March 10, 2009	JX00001 Tr. 46:25-47:02	N	
PX01451-PX01452		**Intentionally not used.**			
PX01453	n/a	Recovery Plan-Work Session, Corporate Communications, May 13-Present Plan	JX00001 Tr. 46:25-47:02	N	
PX01454-PX01456		**Intentionally not used.**			
PX01457	12/15/2009	St. Luke's Hospital Board of Directors Minutes, December 15, 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2997:25; 5645:24; 5646: 04
PX01458		**Intentionally not used.**			
PX01459	n/a	SLH Presentation: Affiliate with Whom?	JX00001 Tr. 46:25-47:02	N	
PX01460	04/20/2009	Memo to St. Luke's Employees	JX00001 Tr. 46:25-47:02	N	Tr. 2857:18,23
PX01461-PX01462		**Intentionally not used.**			
PX01463	07/2010	Memo to Wakeman from Konwinski: re: Monthly Report-June 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01464-PX01469		**Intentionally not used.**			
PX01470	11/16/2009	E-mail to Mattison from Wakeman: re: UT Dept of Medicine	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2645:13,18,21

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01471	05/2010	Hospital Council of NW Ohio Hospital Utilization Review	JX00001 Tr. 46:25-47:02	N	
PX01472-PX01477		**Intentionally not used.**			
PX01478	n/a	SLH Market Description/Demographic Points to Make at the April 12 Board/Med Staff Retreat	JX00001 Tr. 46:25-47:02	N	
PX01479	n/a	2010 Capital Budget by Department	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01480	n/a	SLH Timeline 4/15/2009 to 1/1/2015	JX00001 Tr. 46:25-47:02	N	
PX01481-PX01482		**Intentionally not used.**			
PX01483	05/2010	Adult Special Care-ICU Data	JX00001 Tr. 46:25-47:02	N	
PX01484-PX01487		**Intentionally not used.**			
PX01488	03/18/2010	E-mail to Wagner, Burmeister and Cedoz from Rupley: re: St. Luke's Hospital Mgd Care Black Box w/Attach: Payer Profile Duedilig	JX00001 Tr. 46:25-47:02	N	
PX01489		**Intentionally not used.**			
PX01490	09/29/2010	SurgiCare Board of Manager's Meeting	JX00001 Tr. 46:25-47:02	N	
PX01491	08/25/2010	Contract Summary: Comparison of Existing Reimbursement Terms Among Contracts	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01492	08/07/2009	E-mail to Rupley from Oppenlander: re: Pacemakers	JX00001 Tr. 46:25-47:02	N	
PX01493	11/27/2009	Letter to Dave Tewey [sic] (St. Luke's Hospital) from Araby Thornewill (Data Advantage, LLC)	JX00001 Tr. 46:25-47:02	N	
PX01494	n/a	2011 Capital Budget by Department	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01495	11/04/2009	E-mail to Perron, Oppenlander and Smeraski from Misencik: re: Eclipsys Revised Subscription Pricing	JX00001 Tr. 46:25-47:02	N	
PX01496	n/a	Eclipsys Spreadsheet: SLH 7 Yr Cash Flow	JX00001 Tr. 46:25-47:02	N	
PX01497	n/a	Extension of PHS Core Applications to SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01498	04/02/2010	E-mail to Perron from Della Flora: re: Extension of PHS Applications	JX00001 Tr. 46:25-47:02	N	
PX01499	10/11/2010	E-mail to Wagner from Johnston: re: Prioritization of Capital	JX00001 Tr. 46:25-47:02	N	
PX01500	n/a	Spreadsheet: PHS System Conversion Project Breakdown-2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01501	06/29/2010	E-mail to Caswell and Swint from Perron: re: Affinity Support	JX00001 Tr. 46:25-4702	N	
PX01502	06/29/2010	E-mail to Wakeman, Houston and Sipp et al from Perron: re: Allscripts and Eclipsys to Merge	JX00001 Tr. 46:25-47:02	N	

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01503	n/a	Standard 3-Phase Implementation Approach	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01504	02/12/2009	E-mail to Wakeman from Rupley: re: Waterville Chamber luncheon Thursday February 19 Noon	JX00001 Tr. 46:25-47:02	N	
PX01505	09/11/2009	E-mail to Dewey and Oppenlander from Rupley: re: Medical staff alignment	JX00001 Tr. 46:25-47:02	N	
PX01506	11/18/2009	E-mail to Rupley from Gillen: re: Composite Scores Story	JX00001 Tr. 46:25-47:02	N	Tr. 1920:10,11,13,16; 1922:03; 2059:07,22
PX01507-PX01509		**Intentionally not used.**			
PX01510	07/13/2010	ProMedica-St. Luke's Clinical Integration Study Individual/Group Interview Candidates (7-13-10)	JX00001 Tr. 46:25-47:02	N	
PX01511	n/a	Scott Rupley's Handwitten Notes	Admitted via ALJ's 8/23 Order		
PX01512-PX01513		**Intentionally not used.**			
PX01514	05/06/2004	SLH Presentation: World-Class Care… St. Luke's Hospital …Close to Home	JX00001 Tr. 46:25-47:02	N	Tr. 1969:22,25
PX01515		**Intentionally not used.**			
PX01516	12/16/2009	E-mail to Wakeman, Ammann, Machin et al. from Black: re: Board Affiliation Presentation for Dec 15	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01517	11/05/2009	E-mail to Rasch and Wagner from Oppenlander: re: Cigna Termination.doc w/Attach: Cigna Termination	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01518	11/09/2009	E-mail to Perron, Oppenlander, and Smeraski from Misencik: re: SWLF Version of Final Proposal w/Attachments	JX00001 Tr. 46:25-47:02	N	
PX01519	08/08/2005	SLH Presentation: 2005 Corporate Objectives Review	JX00001 Tr. 46:25-47:02	N	
PX01520	11/24/2009	E-mail to Wakeman and Wagner from Oppenlander: re: Aetna.xls w/Attach: Aetna	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01521	11/24/2009	E-mail to Wakeman and Wagner from Oppenlander: re: Cigna.xls w/Attach: Cigna	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01522	07/13/2009	E-mail to Oppenlander from Scarborough: re: Pension Articles	JX00001 Tr. 46:25-47:02	N	
PX01523	n/a	SLH Spreadsheet: SLH CAPBUD10	JX00001 Tr. 46:25-47:02	N	
PX01524	12/17/2009	E-mail to Wakeman and Oppenlander from Oppenlander: re: revs	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01525		**Intentionally not used.**			
PX01526	08/07/2009	E-mail to Wakeman from Oppenlander: re: Pacemakers	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01527		**Intentionally not used.**			
PX01528	11/04/2009	E-mail to Oppenlander, Wakeman, Lauterjun et al. from Pirc: re: Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01529		**Intentionally not used.**			

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01530	03/24/2009	SLH Board of Directors Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01531-PX01532		**Intentionally not used.**			
PX01533	06/23/2009	SLH Board of Directors Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01534		**Intentionally not used.**			
PX01535	01/26/2010	SLH Board of Directors Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01536-PX01537		**Intentionally not used.**			
PX01538	01/05/2010	Email to Bazeley and Wakeman from Gold: re: St. Luke's Hospital and U of T	JX00001 Tr. 46:25-47:02	N	
PX01539		**Intentionally not used.**			
PX01540	08/18/2010	SLH Finance Committee Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01541	03/14/2011	Subpoena Ad Testificandum Deposition Notice to Stephen D. Bazeley, M.D.	JX00001 Tr. 46:25-47:02	N	
PX01542	06/01/2010	Forbearance and Waiver Agreement	JX00001 Tr. 46:25-47:02	N	Tr. 6844:17,19,22; 6845:14
PX01543-PX01546		**Intentionally not used.**			
PX01547	03/11/2010	Letter to Daniel Wakeman (St. Luke's Hospital), Dennis Wagner (St. Luke's Hospital), and Wendy Cedoz (St. Luke's Hospital) from Bruce Gordon (Ambac Assurance Corporation): re: $15,670,000 City of Maumee, Ohio, Hospital Facilities Revenue Refunding Bonds Series 2004 (St. Luke's Hospital)	JX00001 Tr. 46:25-47:02	N	Tr. 3008:13,14
PX01548	08/18/2009	Strategic Assessment of St. Luke's Hospital and Competing Hospitals	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01549-PX01554		**Intentionally not used.**			
PX01555	n/a	Employee Name: Scott Rupley	JX00001 Tr. 46:25-47:02	N	
PX01556-PX01558		**Intentionally not used.**			
PX01559	n/a	SLH Spreadsheet: Final	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01560	08/27/2009	E-mail to Rasch from Rupley: re: Notes and Recommendation from August 16 Due Diligence Meeting w/Attach: DD Phase II Notes	Admitted 6/23 in trial Tr. 2017:08-09	Y ordered 5/25	Tr. 2006:05,12,15; 2010:07; 2011:24; 2013:03; 2015:15; 2016:22; 2017:01,08,09,23; 2019:10,11,19; 2022:20; 2023:03,20
PX01561	08/18/2009	E-mail to Rupley from Oppenlander: re: Due Diligence at St. Luke's Hospital (Maumee, OH)	JX00001 Tr. 46:25-47:02	N	
PX01562-PX01563		**Intentionally not used.**			
PX01564	n/a	SLH Strategic Action Plan (1st Year of 2011-2013 Plan)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01565-PX01571		**Intentionally not used.**			

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01572	06/11/2009	Memo to Daniel Wakeman from David M. Dewey: re: Monthly Report-May 2009	JX00001 Tr. 46:25-47:02	N	
PX01573-PX01577		**Intentionally not used.**			
PX01578	02/16/2011	Weekly Happenings/St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	
PX01579	11/23/2010	2011-2013 Financial Plan	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01580	01/27/2010	E-mail to Black, Machin and Seymour from Wakeman: re: general thoughts	JX00001 Tr. 46:25-47:02	N	
PX01581		**Intentionally not used.**			
PX01582	n/a	Memo to Daniel Wakeman from Theresa Konwinski: re: Monthly Report-August 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01583	11/15/2009	E-mail to Ammann, Black, Machin et al. from Wakeman: re: updates	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2971:19; 2977:18,23
PX01584	n/a	SLH Strategic Action Plan (1st Year of 2011-2013 Plan)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01585	12/07/2009	SLH Spreadsheet: 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01586	12/09/2009	St. Luke's Hospital Finance Committee Meeting Minutes	JX00001 Tr. 46:25-47:02	N	
PX01587	n/a	2011 WellCare Physicians Group operating assumptions w/Dennis Wagner's handwritten notes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01588		**Intentionally not used.**			
PX01589	n/a	SLH Spreadsheet: 2010 Capital Budget Spending, Additional Worksheets Follow	JX00001 Tr. 46:25-47:02	N	
PX01590	10/20/2010	PHS Presentation: 2011 Financial Plan Summary, St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 3371:18,23,24; 3373:10,13,16; 3374:03
PX01591	10/13/2010	E-mail to Wagner and Hoehn from Corbo: re: 2011-2013 budget & fcst templates	JX00001 Tr. 46:25-47:02	N	Tr. 3371:18; 3374:07,13
PX01592	n/a	SLH Spreadsheet: Inflationary Assumptions	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 3371:19; 3374:13; 3375:10
PX01593	11/14/2008	E-mail to Rupley from Kaiser: re: Cardiac Cath/Surgery Waiver Information, Bay Park Hospital	JX00001 Tr. 46:25-47:02	N	
PX01594	n/a	3701-84-30 Adult cardiac catheterization service standards	JX00001 Tr. 46:25-47:02	N	
PX01595		**Intentionally not used.**			
PX01596	12/13/2007	Letter to Fellow Employee from Frank J. Bartell	JX00001 Tr. 46:25-47:02	N	
PX01597	07/28/2009	St. Luke's Hospital Employment Vacancy Review & Posting Policy	JX00001 Tr. 46:25-47:02	N	Tr. 2842:14; 2843:23
PX01598	10/29/2009	E-mail to Wakeman from Rupley: re: Affiliation Education Presentation and Health Care Reform Presentation	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01599	08/25/2010	E-mail to Rupley from Wagner: re: 2011 Strategic Planning w/Attach:2011 Strategic Planning	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01600	n/a	Closing Date: May 30, 2008	JX00001 Tr. 46:25-47:02	N	
PX01601	07/27/2009	Asset Purchase Agreement	JX00001 Tr. 46:25-47:02	N	
PX01602	n/a	Actuarial Valuation Report Pension Contribution-January 1, 2008 Revised, St. Luke's Hospital Retirement Plan	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01603	n/a	August 2010 Monthly Report Wellcare/Physician Services	JX00001 Tr. 46:25-47:02	N	
PX01604	n/a	Actuarial Valuation Report FAS 87 NPBC for December 31, 2008, St. Luke's Hospital Retirement Plan	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01605	01/23/2009	OhioCare Health System, Inc. Executive Committee Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01606	09/16/2010	E-mail to Konwinski from Feak: re: I want you guys to do me a favor-you too, Tina. w/Attach: 2010 Activities-Clinical Informatics & Ambulatory Specialties	JX00001 Tr. 46:25-47:02	N	
PX01607	11/25/2008	SLH Presentation: 2008 Market Report St. Luke's Board Executive Committee	JX00001 Tr. 46:25-47:02	N	
PX01608	10/13/2010	E-mail to Johnston and Wagner from Perron: re: VISICU demo	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01609	08/12/2009	E-mail to Atzinger-Grube, Wagner and Banks from Buker: re: Infusion Pump Integration	JX00001 Tr. 46:25-47:02	N	
PX01610	10/08/2010	E-mail to Konwinski from Grabarczyk: re: Standardized insulin orders	JX00001 Tr. 46:25-47:02	N	
PX01611	09/29/2010	E-mail to Konwinski from Punches: re: glucose	JX00001 Tr. 46:25-47:02	N	
PX01612	02/03/2010	Memo to Theresa Konwinski from Christina Feak: re: Monthly Report, Clinical Information and Pain Clinic-January 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01613	08/31/2009	E-mail to Roush, Konwinski, Grant et al. from Kuhn: re: IV Pumps	JX00001 Tr. 46:25-47:02	N	
PX01614	09/04/2008	St. Luke's Hospital Value Analysis Team-Executive Steering Committee Meeting Minutes	JX00001 Tr. 46:25-47:02	N	
PX01615	09/01/2009	E-mail to Konwinski, Tennant, Taylor et al. from Buker: re: IV Pumps	JX00001 Tr. 46:25-47:02	N	
PX01616		**Intentionally not used.**			
PX01617	08/13/2008	E-mail to Nowacki from Wakeman: re: Wings tickets	Admitted via ALJ's 8/23 Order		
PX01618-PX01799		**Intentionally not used.**			
PX01800	01/01/2004-03/31/2011	Aetna Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01801	01/01/2004-03/31/2011	Anthem/WellPoint Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01802	01/01/2004-03/31/2011	CIGNA Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01803	01/01/2007-03/31/2011	FrontPath/MedAssets Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01804	01/01/2004-03/31/2011	Humana Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01805	01/01/2004-03/31/2011	Medical Mutual of Ohio Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01806	01/01/2004-03/31/2011	United Healthcare Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01807	01/01/2004-03/31/2011	Blue Cross Blue Shield of Michigan Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01808	01/01/2004-03/31/2011	Paramount Health Care Data	JX00001 Tr. 46:25-47:02	N	
PX01809	01/01/2007-06/30/2010	Michigan Health & Hospital Association Service Corporation Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01810	01/01/2004-06/30/2010	Ohio Hospital Association Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01811	01/01/2004-03/31/2011	ProMedica Health System Data	JX00001 Tr. 46:25-47:02	N	
PX01812	01/01/2004-03/31/2011	St. Luke's Hospital Data	JX00001 Tr. 46:25-47:02	N	
PX01813	01/01/2004-03/31/2011	Mercy Health Partners Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01814	01/01/2004-03/31/2011	University of Toledo Medical Center Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01815	01/01/2004-03/31/2011	Fulton County Health Center Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01816	01/01/2004-03/31/2011	Wood County Hospital Data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01817	2004-2010	CMS Cost Report Data and DRG/MS-DRG Weights	JX00001 Tr. 46:25-47:02	N	
PX01818	N/A	Robert Town's Expert Report Backup Programs	Admitted via ALJ's 8/23 Order		
PX01819-PX01849		**Intentionally not used.**			
PX01850	05/06/2011	Rebuttal Report of Robert J. Town, Ph.D.	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4039:15; 4089:25; 4094:22; 4277:20; 4280:20; 4317:22; 4338:13; 4339:19; 4492:22; 4495:04; 4496:24,25
PX01851		**Intentionally not used.**			
PX01852	05/06/0211	Rebuttal Expert Report of H. Gabriel Dagen	JX00001 Tr. 46:25-47:02	N	Tr. 3316:12,14; 3319:01
PX01853		**Intentionally not used.**			

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01854	05/06/2011	Rebuttal Expert Report of Errol H. Brick	JX00001 Tr. 46:25-47:02	N	Tr. 3541:19; 3544:20; 3547:09; 3549:17; 3550:10
PX01855-PX01899		**Intentionally not used.**			
PX01900	09/13/2010	Nancy Mullins (Cigna) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y for 12:24-14:08; 14:25-15:09; 29:06-30:24; 31:09-32:01; 32:12-14; 33:02-22; 34:18-37:15; 38:01-11; 38:17-22; 39:07-40:14; 40:24-46:02; 47:17-23; 48:07-11; 49:07-50:06; 50:16-18; 51:01-25; 52:22-53:04; 53:14-25; 54:07-15; 55:02-13; 56:07-57:04; 58:14-59:06; 60:03-62:07 ordered 5/25	
PX01901	09/13/2010	Larry Peterson (ProMedica) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01902	09/13/2010	Gina Sheridan (United Healthcare) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01903	09/14/2010	Kathy Hanley (ProMedica) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4762:23
PX01904	09/15/2010	Barbara Steele (ProMedica) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01905	09/16/2010	Ronald Wachsman (ProMedica) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5117:14,17,21
PX01906	09/17/2010	Randall Oostra (ProMedica) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 6109:02,06; 6110:16,19; 6111:04,07,08,20; 6116:04
PX01907	09/27/2010	Barbara Machin (SLH) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01908	09/28/2010	Douglas Deacon (SLH) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01909	09/29/2010	David Dewey (SLH) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01910	09/30/2010	John Randolph (ProMedica) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01911	09/30/2010	Daniel Wakeman (SLH) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01912	10/01/2010	Gary Akenberger (ProMedica) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4386:10
PX01913	10/04/2010	Lee Hammerling (ProMedica) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01914	10/14/2010	Donald Pirc (MMO) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y for 14:15; 15:23; 16:01-02; 16:05; 16:09-12; 17:09; 23:18-21; 24:02-16; 25:24-26:09; 27:20-21; 28:08-14; 35:09-10; 35:12; 35:14; 35:16-17; 35:19; 35:22-23; 36:18-22; 37:0l; 40:17; 44:22-45:07; 45:16-25; 46:22-24; 48:04-11; 50:01-09; 51:17-22; 52:02-54:25; 55:17-56:19; 60:21-61:23; 63:06-64:12; 64:15-65:18 ordered 5/25	
PX01915	10/15/2010	Dennis Wagner (SLH) Investigational Hearing Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01916	01/31/2011	Jeffrey Gold, M.D. (UTMC) PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01917	01/31/2011	Greg Radzialowski (Aetna) PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y for 9:5-14; 12:11-21:09; 21:17-24:12; 26:05-27:05; 28:07-29:21; 29:25-48:04; 49:06-13; 51:24-52:22; 60:24-61:22; 62:18-64:07; 64:17-78:12; 78:20-79:22; 83:10-86:20; 87:11-88:02; 89:05-92:01; 92:11-96:22; 97:12-23; 100:23-101:17; 103:03-09; 104:12-106:21; 107:01-108:04 ordered 6/2	
PX01918	02/01/2011	Randall Oostra (ProMedica) PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01919	02/01/2011	James Pugliese (Anthem) PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y for Exhibit 5, Exhibit 6, Exhibit 7, and Exhibit 8; 15:22-24; 16:04-05, 16-20, 25; 17:06, 11-12, 15-19, 22-24; 18:07; 19:1-6,18, 21; 19:24-20:01; 20:18-19, 21, 25; 21:11; 21:21-22:01-10; 22:24-23:01-04; 23:08-12, 16-17, 20-21; 24:14-15; 25:07-10,14,17; 26:11-28:12; 29:15-17, 21; 30:01, 09,19; 32:11-13; 33:22-23; 34:09-10,19; 41:23-43:16; 43:24-44:02; 44:17,19; 46:09,11; 46:14-47:06; 47:14-18; 48:02-50:09; 51:06,19-20; 53:20-54:09; 55:21-56:11; 57:06-09; 57:25-60:23; 61:15 ordered 5/25	
PX01920	02/01/2011	Daniel Wakeman (SLH) PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2502:07
PX01921	02/02/2011	Errol Brick PI Deposition Transcript Designations	Tr. 46:25-47:02	N	Tr. 3519:18; 3560:08

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01922	02/03/2011	Scott Shook (Mercy) PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y for 8:24-9:09; 9:21-10:02; 10:18-11:16; 11:19-14:02; 14:15-16; 15:09-18; 16:03-15; 17:09-18:06; 18:23-19:24; 20:06-22:15; 22:24-23:16; 24:01-10; 25:09-15; 26:18-20; 27:01-12; 28:13-29:17; 30:04-09; 33:10-17; 33:20-35:02; 35:05-19; 35:23-40:02; 40:17-41:04; 41:19; 41:23-42:11; 42:15-24; 43:05-07; 43:17-19; 43:21-23; 44:10-13; 46:02-04; 46:07-47:05; 47:11-48:04; 48:19-21; 49:02-04; 50:04-12; 50:21-51:03; 51:14-19; 52:07-09; 52:12-22; 53:03-54:04; 54:07-13; 54:15-55:10; 55:14-56:02; 56:06-12; 56:16-57:03; 58:09-12; 58:21-24; 59:04-11; 59:20-60:01; 60:04-61:13; 62:07-12; 62:17-63:09; 63:18-64:09; 66:05-08; 66:17-68:04; 68:08-21; 69:17-23; 70:01-72:10; 72:14-73:05; 73:08-09; 73:12-14; 73:19-20; 73:24-74:04; 78:05-06; 78:22-24; 79:19-80:12; 80:16-19; 81:01-04; 82:04-17; 83:02-84:09; 84:24-85:23; 86:01-02; 86:05-15; 86:21-88:10; 88:17-89:13; 89:18-90:12; 90:19-91:15; 91:22-24; 92:04-07; 92:09-93:20; 93:23-95:08; ordered 5/25	
PX01923	02/03/2011	Robert Town PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01924	02/04/2011	H. Gabriel Dagen PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01925	02/04/2011	Margaret Guerin-Calvert PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01926	02/04/2011	Lori Johnston (ProMedica) PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 5462:14; 5504:02,12; 5505:20
PX01927	02/04/2011	Ronald Wachsman (ProMedica) PI Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01928	03/22/2011	Eric Perron (SLH) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01929	03/24/2011	Jamie Black (SLH) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01930	03/24/2011	Robert Reiter, M.D. (ProMedica) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01931	03/25/2011	Gary Akenberger (ProMedica) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 3525:19

*JX00001 admitted during Final Prehearing Conf.

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PX01932	03/25/2011	Stephen Bazeley, M.D. (SLH) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01933	03/25/2011	David Oppenlander (SLH) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01934	03/28/2011	Bruce Gordon (AMBAC) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y for 26:18-30:12; 34:09-37:11; 61:08-16; 67:22-69:08; 70:09-13; 70:22-71:03; 72:24-73:18; 76:11-19; 79:01-22; 112:12-116:19; 118:12-119:12; 121:17-23; 135:04-25; 147:24-148:09; 149:21-150:06 ordered 5/25	
PX01935	03/30/2011	Elizabeth Read, M.D. (SLH) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01936	03/31/2011	Steve Marcus (ProMedica) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01937	03/31/2011	Scott Rupley (SLH) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01938	04/04/2011	Greg Radzialowski (Aetna) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y for 8:03-08; 9:03-13:16; 15:25-20:20; 21:03-32:13; 34:01-36:02; 36:24-40:02; 40:15-20; 40:25-41:14; 41:24-42:22; 43:02-21; 44:03-46:22; 47:05-08; 48:03-50:13; 51:01-56:02; 56:09-57:25; 58:09-60:10; 60:13-61:05; 61:17-64:20; 65:04-67:18; 68:01-69:25; 71:12-75:25; 76:13-78:07; 81:08-10; 84:17-24; 85:06-18;87:03-90:19; 90:22-25; 91:16-92:08; 93:13-94:14; 94:21-97:14; 98:24-100:09; 100:15-102:16; 102:21-103:15; 103:23-106:08; 110:11-110:17; 110:15-111:07; 112:03-114:09; 114:13-122:17; 130:04-133:10; 133:14-18; 134:23-137:04; 137:17-138:10 Ordered 6/2	
PX01939	04/05/2011	Gina Sheridan (United Healthcare) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01940	04/05/2011	Scott Shook (Mercy) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y for 10:17-24; 12:17-21; 13:3; 13:5-18:14; 20:8-22:13; 28:18-20; 42:8-16; 43:14-18; 44:10-45:17; 46:25-47:11; 64:12-67:25; 68:15-19; 68:23-69:19; 70:19-71:1; 71:21-25; 72:4-8; 75:7-76:1; 76:9-77:6; 77:10-79:12; 79:17-80:4; 89:25-90:14; 92:10-17 ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01941	04/05/2011	Daniel Wakeman (SLH) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01942	04/06/2011	James Pugliese (Anthem) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y for Exhibit 13, Exhibit 14; 8:19-9:02; 19:12-20; 22:03-07; 24:18-25:25; 26:18-27:06; 29:06-30:04; 32:12-22; 37:14-39:01; 40:01-41:16; 42:19-43:01; 43:09-19; 46:20-47:01; 49:03-50:22; 51:01-54:13; 58:11-59:05; 59:21 60:05; 61:04-62:01; 62:09-20; 66:01-67:17; 68:02-17; 70:20-71:21; 72:03-73:18; 74:01-08; 74:16-76:01; 77:21-78:06; 79:18-81:06; 81:19-23; 82:05-83:09; 87:18-89:03; 93:04-94:09; 95:08 98:17; 100:05-102:16; 103:09-105:16; 106:16-23; 108:03-16; 109:08-16; 111:15-115:05; 115:11-21; 117:04-24; 118:17-119:01; 119:07-15; 120:12-121:14; 123:13-124:07 ordered 5/25	
PX01943	04/07/2011	Neville Arjani (Findley Davies) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y for 46:03; 53:15-55:10; 56:09-12; 56:23-57:08; 57:24-58:01; 59:08-21; 65:10-71:11; 74:11-14; 75:17-80:03; 98:14-103:25; 105:14-24; 106:24-107:01; 118:20-119:24; 120:03-20; 1212:11-15; 124:13-126:12; 130:02-04 ordered 5/25	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01944	04/07/2011	Donald Pirc (MMO) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y for 10:23; 11:02-04; 11:08; 11:12; 11:16; 11:22; 14:02; 16:14; 16:16-25; 17:07-12; 18:06; 18:15-17; 20:03-14; 21:01-08; 21:15-20; 21:25-22:05; 22:18-23; 24:06-09; 24:20-25:01; 25:21; 26:05-27:05; 28:23-29:01; 29:06; 29:08-12; 29:18-22; 30:01-02; 32:05; 34:13-17; 34:22-35:04; 35:09; 35:11-18; 36:03-13; 36:25; 39:11-40:11; 42:03-09; 45:10; 46:14-18; 46:23-47:01; 47:06; 47:10-20; 47:23-48:24; 49:9-50:6; 52:13; 52:15-55:4; 62:7-17; 62:22-24; 72:15; 72:19; 72:24; 73:5; 73:10-17; 76:5; 76:7-16; 77:11-78:11; 82:23; 83:5-10; 83 :14-84:5; 84:20; 85:24-86:1; 86:3-19; 87:16; 87:22; 87:25; 88:03; 88:06; 88:18-20; 88:22-24; 89:22-90:02; 90:11-16; 90:20-91:06; 92:16; 92:19-20; 94:07-17; 95:02; 95:07-25; 96:03-09; 96:12-16; 96:19; 97:10-17; 97:19-23; 97:25-98:02; 98:04-17; 98:19-25; 99:02-09; 99:11-14; 99:16-100:05; 100:07-22; 102:13-103:01; 103:04-07; 103:10; 105:21-106:06; 106:09-13; 106:15; and 108:04-05 ordered 5/25	
PX01945	04/07/2011	Ronald Wachsman (ProMedica) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01946	04/08/2011	Kevin Nolan (Navigant) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01947	04/14/2011	Randall Oostra (ProMedica) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX01948	03/22/2011	Salvador Peron, M.D. Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01949	03/23/2011	Christopher Riordan, M.D. (ProMedica) Part III Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01950	05/09/2011	H. Gabriel Dagen PIII Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 8/26	
PX01951	05/10/2011	Bruce Den Uyl PIII Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	Y ordered 8/26	Tr. 6533:07,13; 6556:10; 6568:10
PX01952	05/10/2011	Errol Brick PIII Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	Tr. 3530:17; 3547:20
PX01953	05/10/2011	Robert J. Town PIII Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01954	05/13/2011	Margaret Guerin-Calvert PIII Deposition Transcript Designations	JX00001 Tr. 46:25-47:02	N	
PX01955	05/16/2011	Aetna Authentication Declaration	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01956	05/18/2011	BCBSM Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01957	05/16 & 05/18/2011	CIGNA Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01958	5/31/2011	FrontPath/MedAssets Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01959	6/8/2011	Humana Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01960	05/18/2011	Medical Mutual of Ohio Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01961	05/17/2011	United Healthcare of Ohio Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01962	05/20/2011	WellPoint, Inc. Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01963	05/16/2011	Fulton Co. Health Center Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01964	05/18/2011	Mercy Health Partners Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01965	05/16/2011	University of Toledo Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01966	05/19/2011	Wood County Hospital Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01967	05/18/2011	Ambac Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01968	05/16/2011	Findley Davies Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01969	05/16/2011	Michigan Health & Hospital Assoc. Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01970	05/25/2011	Navigant Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01971	05/17/2011	Ohio Hospital Association Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01972	05/18/2011	Towers Watson Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01973	6/7 & 6/14/2011	CMS Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01974	n/a	Crum Manufacturing Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01975	05/16/2011	Louisville Title Agency/N.W. Ohio, Inc. Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01976	05/25/2011	The Mannik & Smith Group, Inc. Authentication Declaration	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX01977	05/16/2011	Perrysburg Board of Education Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01978	05/26/2011	UAW Authentication Declaration	JX00001 Tr. 46:25-47:02	N	
PX01979-2055		**Intentionally not used.**			
PX02056	09/21/2010	Signed Declaration of Stanley Korducki (WCH)	JX00001 Tr. 46:25-47:02	N	
PX02057	09/20/2010	Signed Declaration of E. Dean Beck (FCHC)	JX00001 Tr. 46:25-47:02	N	Tr. 433:19
PX02058-PX02063		**Intentionally not used.**			
PX02064	10/18/2010	Signed Declaration of Jeffrey Gold (UTMC)	JX00001 Tr. 46:25-47:02	N	
PX02065	10/11/2010	Signed Declaration of Susan Szymanski (FrontPath)	JX00001 Tr. 46:25-47:02	N	
PX02066		**Intentionally not used.**			
PX02067	10/19/2010	Signed Declaration of Greg Radzialowski	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02068	10/18/2010	Signed Declaration of Scott Shook (Mercy)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1049:01
PX02069-PX02071		**Intentionally not used.**			
PX02072	11/19/2010	Signed Declaration of Anthony Firmstone (Anthem)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02073	11/17/2010	Signed Fax Declaration of Thomas L. McGinty (Humana)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02074-PX02077		**Intentionally not used.**			
PX02078	12/17/2010	Signed Declaration of Gretchen Kline (United)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02079		**Intentionally not used.**			
PX02080	12/14/2010	Signed Declaration of Doug Darland (BCBS Michigan)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02081-PX02099		**Intentionally not used.**			
PX02100	01/10/2011	Declaration of Randall D. Oostra	JX00001 Tr. 46:25-47:02	N	
PX02101	01/10/2011	Exhibits for Declaration of Randall D. Oostra	JX00001 Tr. 46:25-47:02	N	
PX02102	01/10/2011	Declaration of Daniel Wakeman	JX00001 Tr. 46:25-47:02	N	
PX02103	01/10/2011	Exhibits for Declaration of Daniel Wakeman	JX00001 Tr. 46:25-47:02	N	
PX02104	12/23/2010	Declaration of Gary Akenberger (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02105	12/23/2010	Exhibits for Declaration of Gary Akenberger (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 3269:15,16

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02106	01/27/2011	Declaration of James E.A. Black, II	JX00001 Tr. 46:25-47:02	N	
PX02107		**Intentionally not used.**			
PX02108	01/28/2011	Declaration of Lori A. Johnston	JX00001 Tr. 46:25-47:02	N	Tr. 3344:07; 5438:10; 5441:03; 5444:25; 5458:07; 5474:04; 5480:24; 5485:22
PX02109	01/28/2011	Exhibits for Declaration of Lori A. Johnston	JX00001 Tr. 46:25-47:02	N	Tr.5368:11; 5474:25; 5475:05,13; 5478:01
PX02110		**Intentionally not used.**			
PX02111	01/26/2011	Declaration of Kleia Luckner	JX00001 Tr. 46:25-47:02	N	
PX02112	01/26/2011	Exhibit for Declaration of Kleia Luckner	JX00001 Tr. 46:25-47:02	N	
PX02113		**Intentionally not used.**			
PX02114	01/26/2011	Declaration of Salvador Peron, M.D.	JX00001 Tr. 46:25-47:02	N	
PX02115	12/22/2010	Affidavit of Barbara Steele	JX00001 Tr. 46:25-47:02	N	
PX02116	12/22/2010	Exhibits for Affidavit of Barbara Steele	JX00001 Tr. 46:25-47:02	N	
PX02117	01/28/2011	Declaration of Ronald Wachsman (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4921:20,22; 4922:04,10
PX02118	01/28/2011	Exhibits for Declaration of Ronald Wachsman (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4919:07,13; 4921:03,09; 4930:09; 4918:10,16; 4919:03; 4922:02,15,18; 4932:09; 4940:13,15,21; 4941:14; 5057:16; 5058:20
PX02119	01/28/2011	Declaration of Dennis Wagner	JX00001 Tr. 46:25-47:02	N	
PX02120	01/28/2011	Exhibits for Declaration of Dennis Wagner	JX00001 Tr. 46:25-47:02	N	
PX02121	01/27/2011	Supplemental Declaration of Daniel Wakeman	JX00001 Tr. 46:25-47:02	N	
PX02122	01/10/2011	Declaration of Margaret Guerin-Calvert	JX00001 Tr. 46:25-47:02	N	
PX02123	01/10/2011	Exhibits for Declaration of Margaret Guerin-Calvert	JX00001 Tr. 46:25-47:02	N	
PX02124	01/12/2011	Declaration of Dr. Robert J. Town (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02125	01/12/2011	Exhibits for Declaration of Dr. Robert J. Town (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02126	01/11/2011	Declaration of H. Gabriel Dagen	JX00001 Tr. 46:25-47:02	N	
PX02127	01/11/2011	Exhibits for Declaration of H. Gabriel Dagen	JX00001 Tr. 46:25-47:02	N	

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02128	01/10/2011	Affidavit of Kathleen S. Hanley	JX00001 Tr. 46:25-47:02	N	
PX02129	01/10/2011	Exhibits for Affidavit for Kathleen S. Hanley	JX00001 Tr. 46:25-47:02	N	Tr. 3304:14; 3399:21; 3411:14; 5511:07,10
PX02130	01/31/2011	Declaration of Errol H. Brick	JX00001 Tr. 46:25-47:02	N	Tr. 3506:11,17; 3524:24; 3526:17
PX02131	01/31/2011	Exhibits for Declaration of Errol H. Brick	JX00001 Tr. 46:25-47:02	N	
PX02132	01/31/2011	Supplemental Declaration of H. Gabriel Dagen	JX00001 Tr. 46:25-47:02	N	
PX02133	01/31/2011	Exhibits for Supplemental Declaration of H. Gabriel Dagen	JX00001 Tr. 46:25-47:02	N	
PX02134-PX02135		**Intentionally not used.**			
PX02136	01/31/2011	Supplemental Declaration of Margaret Guerin-Calvert (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02137	01/31/2011	Exhibits for the Supplemental Declaration of Margaret Guerin-Calvert (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02138	01/31/2011	Supplemental Declaration of Dr. Robert J. Town (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02139	01/31/2011	Exhibits for Supplemental Declaration of Dr. Robert J. Town (Filed Under Seal)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02140	n/a	Exhibit to Declaration of Gary Akenberger	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02141	n/a	Exhibit to Declaration of Gary Akenberger	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02142-PX02145		**Intentionally not used.**			
PX02146	04/12/2011	Brick Part III Report	JX00001 Tr. 46:25-47:02	N	Tr. 3481:01,08; 3528:15; 3531:15
PX02147	04/12/2011	Dagen Part III Report	JX00001 Tr. 46:25-47:02	N	Tr. 3313:20

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02148	04/12/2011	Town Part III Report	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 3934:14; 3938:18; 3939:14; 3976:12; 3977:04,11; 3982:17; 3984:01,05,10; 3986:10; 4001:17; 4002:22; 4004:12,20,25; 4011:10; 4015:15; 4019:18,25; 4020:24; 4041:25; 4042:03; 4064:04; 4080:11; 4089:21; 4102:03; 4103:03; 4107:17; 4109:15; 4122:13,20; 4147:08,10,15; 4148:11; 4151:23; 4152:11; 4153:04; 4160:16; 4164:06; 4170:14; 4171:07,09; 4172:20; 4173:02,09; 4175:03; 4176:02; 4187:16,23; 4188:07,17,23; 4191:17; 4196:06,18; 4198:13,19; 4199:05,17; 4202:17; 4205:05; 4216:01; 4222:04,06,13; 4230:20; 4231:07; 4235:02; 4243:22; 4245:19,23; 4247:16; 4248:06; 4249:05; 4251:13,21; 4255:11; 4261:10; 4263:02,05; 4266:14; 4272:09; 4273:08; 4279:03; 4286:08; 4287:13; 4293:18; 4294:08; 4299:25; 4300:03; 4303:02,05; 4305:12; 4311:13; 4314:18; 4316:23; 4321:10; 4329:18; 4331:18; 4332:03; 4337:10; 4351:22; 4352:13; 4354:02; 4355:04; 4356:23; 4492:22; 7159:01,12,13; 7466:17; 7467:17; 7471:05; 7473:07; 7475:08,19; 7476:22; 7478:03; 7480:05; 7485:05; 7490:15
PX02149	04/12/2011	Dagen Part III Exhibit	JX00001 Tr. 46:25-47:02	N	
PX02150	n/a	2009-2010 General Acute-Care and Inpatient Obstetrics Market Share data	JX00001 Tr. 46:25-47:02	N	
PX02151	n/a	Salvador E. Peron, M.D.	JX00001 Tr. 46:25-47:02	N	
PX02152	n/a	Opinion (Katz, J.), *FTC and State of Ohio v. ProMedica* , 3:11-cv-47	JX00001 Tr. 46:25-47:02	N	
PX02153	n/a	Foundation dollars at work	JX00001 Tr. 46:25-47:02	N	
PX02154	05/17/2010	The University of Toledo and ProMedica Sign Major Academic Partnership	JX00001 Tr. 46:25-47:02	N	
PX02155	n/a	Medicare Hospital Survey of Patients' Hospital Experiences Graph	JX00001 Tr. 46:25-47:02	N	
PX02156	n/a	Quality Check-Compare	JX00001 Tr. 46:25-47:02	N	

*JX00001 admitted during Final Prehearing Conf.

PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02157	n/a	Why Not The Best-Overall Recommended Care	JX00001 Tr. 46:25-47:02	N	
PX02158	n/a	Why Not The Best-Percent of Patients Highly Satisfied	JX00001 Tr. 46:25-47:02	N	
PX02159-PX02199		**Intentionally not used.**			
PX02200	05/05/2009	Preliminary Due Diligence Request-Draft	JX00001 Tr. 46:25-47:02	N	Tr. 311:15
PX02201	05/18/2009	The University of Toledo Medical Center/St. Lukes Hospital Due Diligence Effort	JX00001 Tr. 46:25-47:02	N	Tr. 239:23; 240:15; 353:21,23,25; 354:5; 313:19; 315:01,17; 316:25
PX02202	05/26/2009	OCHS Due Diligence Request	JX00001 Tr. 46:25-47:02	N	Tr. 317:24
PX02203	04/09/2009	Memorandum of Understanding Between the University of Toledo and Ohiocare Health System, Inc.	JX00001 Tr. 46:25-47:02	N	Tr. 232:20; 233:02,19; 238:07; 296:03,09; 297:01; 299:12, 25; 300:06; 307:11; 308:12; 2855:02,08,10; 2856:03; 2857:14
PX02204		**Intentionally not used.**			
PX02205	08/10/2009	Memorandum of Affiliation Terms between The University of Toledo and OhioCare Health System, Inc.	JX00001 Tr. 46:25-47:02	N	Tr. 243:06,08; 300:25; 301:17; 304:08; 315:24
PX02206	06/08/2009	UTMC-OCHS Business Case (DRAFT)	JX00001 Tr. 46:25-47:02	N	Tr. 256:12,19
PX02207-PX02208		**Intentionally not used.**			
PX02209	07/20/2010	E-mail to Mathieu from Radzialowski: re: Quick Toledo Facts	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02210	n/a	Spreadsheet: Lucas County Marketshare by Hospital (2009 Atena Commercial Data)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 705:11,17
PX02211		**Intentionally not used.**			
PX02212	01/01/2009	1-1-09 Increase in Toledo Hospital Rates	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 790:10,17; 792:03
PX02213		**Intentionally not used.**			
PX02214	08/19/2010	Horizontal Merger Guidelines (8/19/2010)	JX00001 Tr. 46:25-47:02	N	
PX02215	08/31/2004	Letter to David Oppenlander (SLH) from Elizabeth Dery (Anthem)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1587:24; 1591:18
PX02216	02/08/2005	Letter to David Oppenlander from Elizabeth Dery (Anthem)	JX00001 Tr. 46:25-47:02	N	
PX02217-PX02218		**Intentionally not used.**			
PX02219	08/27/2009	Fulton County Health Center Annual Marketing and Planning Report Analyzing 2008	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02220-PX02221		**Intentionally not used.**			
PX02222	n/a	Nancy Mullin's handwritten notes: Parties- Hospital Toledo Hosp/Flower/Bay Park	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02223-PX02236		**Intentionally not used.**			

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02237	06/19/2008	Anthem Blue Cross and Blue Shield Hospital Agreement between St. Luke's Hospital and Anthem	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1614:01,12
PX02238-PX02243		**Intentionally not used.**			
PX02244	01/03/2008	E-mail McCort, Wachsman, and Pugliese from Marcus: re: Position gap summary on non-compensation terms	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1494:12
PX02245	11/09/2007	Letter to James Pugliese (Anthem) from Ronald Wachsman (PHS): re: Hospital Agreement and Letter of Understanding between Anthem and ProMedica	JX00001 Tr. 46:25-47:02	N	Tr. 1489:10
PX02246		**Intentionally not used.**			
PX02247	12/31/2007	ProMedica Health System Proposal, Dec. 2007	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02248	12/19/2007	E-mail to Wachsman, Marcus and Pugliese from Mccort: re: Anthem Proposal 12-18-2007 w/Attachments	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02249	11/12/2007	ProMedica Health System Proposal, November,12 2007	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02250-PX02252		**Intentionally not used.**			
PX02253	n/a	Anthem/ProMedica Health System Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02254		**Intentionally not used.**			
PX02255	n/a	CIGNA Spreadsheet: Negotiation Template	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02256-PX02265		**Intentionally not used.**			
PX02266	07/13/2009	E-mail to Cooper from Scarborough: re: Pension Articles	JX00001 Tr. 46:25-47:02	N	Tr. 323:08
PX02267	06/09/2006	E-mail to Mullins from Beard: re: St.Lukes Maumee-Escalate for Contract Review Committee	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02268-PX02269		**Intentionally not used.**			
PX02270	03/06/2006	Cost Comparison-Promedica	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02271-PX02272		**Intentionally not used.**			
PX02273	02/20/2008	Letter to Ron Wachsman from James S. Pugliese: re: Letter of Agreement Between Anthem Blue Cross Blue Shield and ProMedica Health System, Inc.	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1497:09; 1501:04; 1607:01,12
PX02274		**Intentionally not used.**			
PX02275	11/04/2009	E-mail to Oppenlander, Wakeman, Lauterjung et al. from Pric: re: Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2232:11; 2235:13; 2349:01; 2350:09,15; 2353:17; 4403:19; 4404:13; 7418:06,15; 7419:16
PX02276	06/19/2008	Amendment to the Anthem Blue Cross and Blue Shield Hospital Provider Agreement	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1502:21; 1503:03; 1619:14; 1620:22; 1621:02
PX02277	10/12/2009	E-mail to Hendrix from Radzialowski: re: Toledo Contracting Update	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 705:11,17,22,25; 706:03,18,22: 708:05,10
PX02278-PX02279		**Intentionally not used.**			

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02280	n/a	General Observations/Questions	JX00001 Tr. 46:25-47:02	N	Tr. 2341:01,13; 2342:24; 2343:21; 2346:20; 2376:09; 4401:04,15,20; 4415:11; 7416:07,16
PX02281	n/a	Rev and Cost per Case	JX00001 Tr. 46:25-47:02	N	
PX02282	03/31/2004	Letter to Dave Oppenlander from Medical Mutual of Ohio: re: Letter of Agreement between Medical Mutual of Ohio, its Affiliates and Divisions, (collectively "MMO") and St.Luke's Hospital ("Hospital")	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2337:05
PX02283	08/27/2010	Letter to Rick Chiricosta from Dan Wakeman re: Agreement between Medical Mutual of Ohio (MMOH) and St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	
PX02284	01/25/2010	E-mail to Wagner, DiMasso and Church-Schlotfeldt from Pirc: re: Modified language & Request for response	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2353:22; 2354:17
PX02285-PX02287		**Intentionally not used.**			
PX02288	06/25/2010	White Paper Mercy Southwest Strategy Draft	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 972:07; 973:02; 974:01; 983:18; 1008:07; 1010:05; 1111:01; 1115:13; 1117:04
PX02289		**Intentionally not used.**			
PX02290	03/09/2010	Mercy Business Development Committee Meeting Minutes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1011:17; 1130:18
PX02291	12/13/2010	Email to Breininger from Hutt: re: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02292	03/2006	FTC and DOJ Commentary on the Horizontal Merger Guidelines	JX00001 Tr. 46:25-47:02	N	
PX02293	10/16/2009	Mercy Board of Trustees Retreat Meeting	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 998:15; 1004:25; 1016:07
PX02294	07/20/2004	Letter to David Oppenlander (SLH) from Elizabeth Dery (Anthem)	JX00001 Tr. 46:25-47:02	N	
PX02295	01/07/2011	E-mail to Hutt from Breininger and Radzialowski: re: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 831:10; 840:07; 828:14
PX02296	11/20/2008	Handwritten notes: ProMedica	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1483:21; 1656:13; 1657:11,15,20
PX02297	n/a	Printouts from Bloomberg and Municipal New Issue Database	JX00001 Tr. 46:25-47:02	N	
PX02298	01/2011	Curriculum vitae of Robert J. Town	JX00001 Tr. 46:25-47:02	N	
PX02299	n/a	Care Chex Hospital Quality Ratings 2011 Overall Hospital Care, Toledo-Fremont, OH	JX00001 Tr. 46:25-47:02	N	
PX02300	12/11/2008	The Leapfrog Group Identifies Nation's "Highest Value" Hospitals	JX00001 Tr. 46:25-47:02	N	
PX02301	n/a	Quality Check-Compare Hospital Quality Ratings	JX00001 Tr. 46:25-47:02	N	
PX02302-PX02306		**Intentionally not used.**			

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02307	08/21/2009	Discussion Materials-Evaluating a Fully Integrated Relationship	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1098:04; 1104:03
PX02308-PX02311		**Intentionally not used.**			
PX02312	07/25/2009	E-mail to Russell from Gold: re: Please print the enclosed and/or attached document(s)	JX00001 Tr. 46:25-47:02	N	
PX02313	n/a	Spreadsheet: 2009 Payer Cost ratio	JX00001 Tr. 46:25-47:02	N	
PX02314	n/a	GDAHA: Dayton Area Hospital Healthcare Costs	JX00001 Tr. 46:25-47:02	N	
PX02315	3/2005	Care for Ohio report: Twice the Price: What uninsured and underinsured patients pay for hospital	JX00001 Tr. 46:25-47:02	N	
PX02316	n/a	University of Toledo Medical Center CID Project	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02317		**Intentionally not used.**			
PX02318	n/a	UT-OCHS Relationship Template: DRAFT	JX00001 Tr. 46:25-47:02	N	Tr. 305:04
PX02319	11/04/2009	OCHS-UT Strategic Visioning Session	JX00001 Tr. 46:25-47:02	N	Tr. 331:10
PX02320-PX02322		**Intentionally not used.**			
PX02323	n/a	Answer to Question #18	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02324-PX02346		**Intentionally not used.**			
PX02347	02/15/2010	Exhibit A Fee Schedule and Reimbursement Terms	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02348		**Intentionally not used.**			
PX02349	11/22/2010	E-mail to Pirc, Hutt, DiMasso et al. from Wachsman: re: St. Luke's	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2356:23
PX02350	12/02/2010	E-mail to Pirc, Lauterjung, Macino and Church from DiMasso: re: St. Luke's/ProMedica Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2357:03
PX02351-PX02353		**Intentionally not used.**			
PX02354	04/13/2010	Letter to Bruce Gordon (Ambac Assurance Corporation) from Wendy Cedoz: re: $15,670,000 City of Maumee, Ohio, Hospital Facilities Revenue Refunding Bonds Series 2004 (St. Luke's Hospital) (the "Bonds")	JX00001 Tr. 46:25-47:02	N	
PX02355	12/11/2009	Letter to Ambac Assurance Corporation from David Oppenlander (St. Luke's Hospital): re: $15,930,000 City of Maumee, Ohio Hospital Facilities Revenue Refunding Bonds, Series 2004 (St. Luke's Hospital) (the "Bonds")	JX00001 Tr. 46:25-47:02	N	Tr. 6806:16,21; 6808:01; 6811:22; 6812:01
PX02356		**Intentionally not used.**			
PX02357	02/01/2009	Hospital Services and Compensation Schedule Effective 2/1/2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02358-PX02359		**Intentionally not used.**			

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02360	01/12/2011	E-mail to Arjani, Dansack, Russell et al. from Payden: re: Pension Plans (PHS & SL)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02361		**Intentionally not used.**			
PX02362	01/31/2011	Letter to Martin Dansack (ProMedica) from Neville Arjani (Findley Davies): re: ProMedica Health System, Inc. Cash Balance Retirement Plan w/Attach: Findley Davies Actuarial Valuation, ProMedica Health System, Inc. Cash Balance Retirement Plan	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02363	01/31/2011	Letter to Martin Dansack (ProMedica) from Neville Arjani (Findley Davies): re: St. Luke's Hospital Retirement Plan w/Attach: Findley Davies Actuarial Valuation, St. Luke's Hospital Retirement Plan	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02364	n/a	Findley Davies Spreadsheet: Total Summary	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02365	11/22/2010	E-mail to Arjani from Russell: re: St Lukes Exh	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02366	n/a	Findley Davies Spreadsheet: Pension-St. Lukes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02367	01/01/2010	St. Luke's Hospital Retirement Plan Actuarial Valuation Report Pension Contribution-January 1, 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02368	03/01/2011	E-mail to Dansack and Arjani from Russell: re: Revised St Lukes Pension Update Exh	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02369	n/a	Findley Davies Spreadsheet: Pension Update-St. Luke's Pension Plan	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02370	n/a	Health Care Provider Summary Disclosure Form St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02371	02/01/2011	All Payer Appendix St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02372	02/01/2011	All Payer Appendix Toledo Hopsital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02373	02/01/2011	All Payer Appendix Flower Hospital and Bay Park Community Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02374		**Intentionally not used.**			
PX02375	n/a	Hospital Comparison Program Inpatient Procedures	JX00001 Tr. 46:25-47:02	N	
PX02376	01/26/2011	E-mail to Gee from Mitchell: re: St. Lukes Hospital-legal documents	JX00001 Tr. 46:25-47:02	N	
PX02377	02/01/2010	E-mail to Pugliese, Hinkle and Bloomquist from Firmstone: re: ProMedica and St. Luke's	JX00001 Tr. 46:25-47:02	N	Tr. 1519:18
PX02378	08/23/2010	E-mail to Arison, Bennawit, Bokar et al. from Pugliese: re: Bloomberg: Powerful Hospital Monopolies May Inflate Costs	JX00001 Tr. 46:25-47:02	N	
PX02379	04/06/2010	E-mail to Firmstone and McIntire from Pugliese: re: ProMedica article	JX00001 Tr. 46:25-47:02	N	Tr. 1522:11
PX02380	11/02/2010	E-mail to Pugliese, Firmstone and Cannon from Rollins: re: ProMedica Hospitals compared to St. Lukes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1506:11; 1518:11,14; 1669:05

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02381	11/06/2007	E-mail to Persinger, Hinkle, Hoeflinger et al. from Pugliese: re: Confidential: Toledo Market Developments w/Attach: Toledo Market Developments	JX00001 Tr. 46:25-47:02	N	Tr. 1478:24; 1658:06; 1659:12
PX02382	01/21/2010	E-mail to Cannon from Pugliese: re: Request for Revised Rates	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1508:22; 1509:02; 1512:07; 1629:18; 1634:17,25; 1637:24; 1638:09
PX02383	01/27/2011	E-mail to Gee, Best, and Woods from McCormick: re: St Luke's Renewal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02384	01/24/2011	E-mail to Hutt from Gee: re: St. Lukes Hospital	JX00001 Tr. 46:25-47:02	N	
PX02385	01/19/2011	MMO-SLH Provider Agreement, Effective 1/19/2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 2251:20,23; 2252:04,11,22;
PX02386	01/00/2011	Navigant Presentation: PHS Clinical Integration Strategy, Final Report, January 2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 4736:04,10,16,17,20,23; 4746:23; 4750:07; 4752:07; 4754:14; 4811:16,23; 4812:22; 4815:17,24
PX02387	06/17/2010	E-mail to Simmons, Shields, and DeBruzzi from Nolan: re: Promedica Health System w/Attach: NC and ProMedica SLH Proposal V1	JX00001 Tr. 46:25-47:02	N	
PX02388	04/25/2009	E-mail to Preskitt from Nolan: re: deck and to do's from St. Luke's discussion today w/Attach: St.Lukes-Navigant Discussion 042409	JX00001 Tr. 46:25-47:02	N	
PX02389	06/22/2010	Navigant Presentation: PHS Service Line and Clinical Integration, Proposal Presentation	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02390	06/09/2009	Navigant Presentation: SLH Potential Opportunities for Improvement-Coding & Documentation, Revenue Cycle, and Strategic Pricing	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02391	11/12/2010	E-mail to Arjani from Russell: re: St Luke's Funding Target Cash Flows	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02392	n/a	Findley Davies Spreadsheet: St. Luke's Hospital Retirement Plan 01/01/2010 Target Liability Cash flows	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02393	08/02/2010	E-mail to Pinnick, Autry, and Hermann from Nolan: re: FTC considerations	JX00001 Tr. 46:25-47:02	N	
PX02394	04/26/2010	E-mail to Nolan, Hurley, and Williamson from Masters: re: Conference Call with St. Luke's w/Attach: ProMedica Apr 26 V4	JX00001 Tr. 46:25-47:02	N	
PX02395	07/30/2010	E-mail to Autry and DeBruzzi from Nolan: re: Gary Akenberger would like to have a conversation	JX00001 Tr. 46:25-47:02	N	
PX02396	10/19/2010	E-mail to Burik from Nolan: re: Toledo	JX00001 Tr. 46:25-47:02	N	
PX02397-PX02400		**Intentionally not used.**			
PX02401	01/00/2010	Navigant Reponse to Request for Affiliation Assistance (with ProMedica), Presented to St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	
PX02402	05/11/2009	Navigant Response to Request for Due Diligence Assistance (with UTMC), Presented to St. Luke's Hospital	JX00001 Tr. 46:25-47:02	N	

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PX02403	08/28/2009	E-mail to Masters from Nolan: re: Due Diligence/Strategy Materials from St. Luke's Hospital w/Attach: St. Luke's Strategic Analysis Paper rev 8-20-09	JX00001 Tr. 46:25-47:02	N	
PX02404		**Intentionally not used.**			
PX02405	03/18/2010	E-mail to Mastesr from Nolan: re: St. Luke's Hospital Mgd Care Black Box	JX00001 Tr. 46:25-47:02	N	
PX02406	08/24/2009	E-mail to Rupley from Nolan: re: Due Diligence at St. Luke's Hospital (Maumee, Oh)	JX00001 Tr. 46:25-47:02	N	
PX02407	01/25/2008	ProMedica Health System, Toledo, Ohio, On Going Negotiation Points of Interest Complied January 25, 2008	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02408	12/11/2009	E-mail to Pugliese from Cannon: re: St. Luke's w/Attach: St Luke Rate Comparison	JX00001 Tr. 46:25-47:02	N	Tr. 1623:10; 1626:06; 1627:23; 1628:18
PX02409	01/05/2010	E-mail to Pugliese and Cannon from Rollins: re: St. Lukes Toledo	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02410	12/02/2010	E-mail to Cannon from Marcus: re: St Lukes 2011 rates for review w/Attach: St. Lukes PCS 2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02411	03/10/2011	Letter to Christine Garrett Devlin from Ken Lortz	JX00001 Tr. 46:25-47:02	N	
PX02412	n/a	Aetna Spreadsheet: Lucas County Summary	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02413	11/12/2010	E-mail to Radzialowski from Breininger: re: St Luke's discussion w/Attach: StLukes(ProMedica)APS	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 825:18
PX02414	01/01/2011	St. Anne Mercy Hospital Hospital Services and Compensation Schedule for Commerical Products	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02415	01/01/2011	St. Charles Mercy Hospital Hospital Services and Compensation Schedule for Commercial Products	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02416	01/01/2011	St. Vincent Mercy Medical Center Hospital Services and Compensation Schedule for Commerical Products	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02417	01/01/2011	Letter to AJ Westfall from Michelle M. Daniels	JX00001 Tr. 46:25-47:02	N	
PX02418	01/01/2010	St. Luke's Hospital Hospital Services and Compensation Schedule	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02419	01/01/2011	St. Luke's Hospital Hospital Services and Compensation Schedule	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 690:03,13
PX02420	02/15/2010	The University of Toledo University Medical Center Hospital Services Compensation Schedule	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02421	n/a	Aetna List of Plans	JX00001 Tr. 46:25-47:02	N	
PX02422	02/11/2011	E-mail to MacDonald from Radzialowski: re: ProMedica	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 833:15
PX02423	01/07/2011	E-mail to Hutt and Radzialowski from Breininger: re: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

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PX02424	01/03/2011	E-mail to Hutt and Radzialowski from Breininger: re: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02425	01/01/2011	St. Luke's Hospital Hospital Services and Compensation Schedule	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02426	12/01/2010	E-mail to Timm, Mathieu and Breininger from Radzialowski: re: ProMedica update bullet points	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02427	n/a	Humana's Responses to ProMedica Health System Inc.'s Subpoena Buces Tecum	JX00001 Tr. 46:25-47:02	N	
PX02428	10/14/2010	E-mail to Breininger from Marcus: re: SCM 7503269 The Toledo, Flower, Bay Park Community Hospitals	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02429	01/05/2010	E-mail to Marcus from Breininger: re: Charge Master Rate Adjustment Response to ProMedica Health System Notice (The Toledo Hospital, Flower Hospital, Bay Park Community Memorial Hospital, Defiance Regional Medical Center and Fostoria Community Hospital) w/Attach: ToledoFlowerBayParkChargemasterComp1-1-2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02430	12/08/2009	Letter to Wagner from Kilpinen and Radzialowski: re: notification of SLH charge master increase	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02431	12/01/2009	Letter to Breininger from Wagner: re: SLH increase in rates	JX00001 Tr. 46:25-47:02	N	
PX02432	02/11/2011	E-mail to Hill, Breininger, Holdren et al. from Radzialowski: re: ProMedica defends merger bid in U.S. district court	JX00001 Tr. 46:25-47:02	N	
PX02433	01/26/2011	E-mail to Radzialowski, Breininger, Lukaszewicz et al. from Hill: re: Mercy was open to St. Luke's venture (Letter to the Editor)	JX00001 Tr. 46:25-47:02	N	
PX02434	12/13/2010	E-mail to Radzialowski from Breininger: re: SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02435	11/12/2010	E-mail to Radzialowski from Mathieu: re: St Luke's/ProMedica discussion	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02436	09/09/2010	E-mail to Mitchell, Gee, and Sheridan from Kniery: re: FPA - Section 3.2 (Clarifying sentence)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02437	03/08/2011	Aetna Spreadsheet: HMO Membership by Zip Code/County, 2010 and 2011	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02438-PX02439		**Intentionally not used.**			
PX02440	n/a	Aetna Spreadsheet: 2011 PPO Medical Membership by County	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02441	09/29/2008	E-mail to Timm from Radzialowski: re: top 15 w/Attach: Top 15 Hospitals 2009	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02442	n/a	Comments to Anthem Amendment response date Jan 16	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02443	03/14/2008	E-mail to Jesser and Convey from Firmstone: re: Good news story	JX00001 Tr. 46:25-47:02	N	Tr. 1594:21,23; 1596:24; 1600:12
PX02444	02/20/2008	E-mail to Mccort and Pugliese from Marcus w/Attachments	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

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PX02445	04/06/2009	E-mail to Ashley and Firmstone from Pugliese: re: REVIEW please, St. Luke's Toledo Hosp joining network	JX00001 Tr. 46:25-47:02	N	
PX02446	02/05/2008	E-mail to Mccort and Pugliese from Marcus w/Attachments	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02447	02/07/2008	E-mail to Pugliese, Mccort and Marcus from Wachsman: re: Prep for our call tomorrow 02/08/20085 w/Attach: proposal 02 07 08	JX00001 Tr. 46:25-47:02	N	
PX02448	02/12/2010	E-mail to Stopki and Cannon from Pugliese: re: Anthem proposal w/Attach: ProMedica prof ltr 02 2010	JX00001 Tr. 46:25-47:02	N	
PX02449	12/16/2008	E-mail to Oppenlander, Wakeman and Mccort from Pugliese: re: Leapfrog Group names "Highest Value" U.S. hospitals	JX00001 Tr. 46:25-47:02	N	Tr. 1443:20,21; 1568:06
PX02450	01/29/2010	E-mail to Murray, Cannon, Tirpak et al. from Firmstone: re: Hospital renewal calendar w/Attach: OH--Market Purchasing Calendar 20100216 (FINAL DRAFT TO TONY)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02451	12/02/2009	E-mail to Marcus from Cannon: re: 2010 hospital price increase w/Attach: ProMedica PCS Effective 01-01-10 (BayPark, Flower, Toledo)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02452	02/17/2010	E-mail to Pugliese, Gerhart, Ceppo et al. from Cannon: re: January 1 Chargemaster Increase First Look-please review data	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02453	10/19/2010	E-mail to Marcus from Cannon: re: CONFERENCE CALL-QUALITY SCORING w/Attach: Document	JX00001 Tr. 46:25-47:02	N	Tr. 1447:02; 1566:20; 5198:22; 6001:22,25
PX02454	12/20/2007	E-mail to Jesser, Firmstone, and Mccort from Pugliese: re: ProMedica Peer Charts w/Attach: Peer Charts Dec2007 (With 12% ProMedica Inrease)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1514:19; 1515:01; 1662:15,22; 1663:23
PX02455	06/01/2002	E-mail to Cannon and Rollins from Pugliese: re: Anthem 7/1/09 Schedules	JX00001 Tr. 46:25-47:02	N	
PX02456	06/05/2009	E-mail to Marcus from Cannon: re: PCS updated with new drg w/Attach: ProMedica PCS Effective 07-01-2009 (BayPark Flower Toledo)	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02457	12/11/2007	E-mail to Pugliese, Mccort, Smith et al. from Wachsman: re: 11/28/07 letter and moving forward	JX00001 Tr. 46:25-47:02	N	
PX02458	11/05/2010	E-mail to Pugliese, Arison, Bennawit et al. from Smith: re: territory, responsibility assignments + org chart w/Attach: Ohio PEC Map Nov 1 with REPS	JX00001 Tr. 46:25-47:02	N	
PX02459	03/06/2007	E-mail to Tirpak, Icsman, Mccort et al. from Pugliese: re: organizational changes w/Attachments	JX00001 Tr. 46:25-47:02	N	
PX02460	11/09/2009	E-mail to Goff, Maxwell and Cannon from Smith: re: ohio map w/Attach: Ohio PEC Map FEB 09	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02461	08/19/2010	E-mail to Cannon from Smith: re: Anthem Proposal 12-18-2007	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02462	02/02/2007	E-mail to Margevicius, Arison, Donahue et al. from Pugliese: re: OHIO Announcment	JX00001 Tr. 46:25-47:02	N	
PX02463	08/16/2010	E-mail to Firmstone and Jesser from Pugliese: re: ProMedica	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

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PX02464	08/23/2010	E-mail to Rollins and Pugliese from Cannon: re: St Lukes-need infor for internal rate audit w/Attachments	JX00001 Tr. 46:25-47:02	N	
PX02465	07/13/2010	E-mail to Firmstone from Pugliese: re: Quarterly OH county report w/Attach: Ohio MSA July 2009 Share	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02466	12/08/2010	E-mail to Snyder, Thompson and Cannon from Pugliese: re: Mercy Defiance Hospital	JX00001 Tr. 46:25-47:02	N	
PX02467	n/a	St Luke's Rate Comparison	JX00001 Tr. 46:25-47:02	N	
PX02468	10/25/2010	E-mail to Hinkle and Firmstone from Strong: re: Narrow Network Analysis	JX00001 Tr. 46:25-47:02	N	
PX02469	n/a	Anthem Spreadsheet: Ohio Local Group Narrow Network Analysis	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02470	02/04/2008	E-mail to Wachsman, Mccort and Marcus from Pugliese: re: prep for our call tomorrow 02/05/20085 w/Attach: proposal 02 05 08	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02471	12/27/2007	E-mail to Wachsman, Mccort, Pugliese et al. from Wachsman: re: Anthem Proposal 12-18-2007	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02472	n/a	Anthem Spreadsheet: Summary Calcs	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02473	n/a	Rate Adjustment Methodology	JX00001 Tr. 46:25-47:02	N	
PX02474	n/a	Cigna Spreadsheet: Summary Cost Comparison-Promedica	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02475	02/15/2008	Exhibit A: Fee Schedule and Reimbursement Terms for SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02476	11/26/2006	Hospital Services Agreement Draft	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02477	n/a	Health Care Options	JX00001 Tr. 46:25-47:02	N	
PX02478	n/a	Benefits Enrollment Guide	JX00001 Tr. 46:25-47:02	N	
PX02479	n/a	Memo to All Employees from Louisville Title: re: Health Insurance	JX00001 Tr. 46:25-47:02	N	
PX02480	12/08/2009	E-mail to Bruning from Beshalske: re: Mannik & Smith Group	JX00001 Tr. 46:25-47:02	N	
PX02481	n/a	Handwritten Notes: Things we can do to save money	JX00001 Tr. 46:25-47:02	N	
PX02482	07/07/2008	Memo to MSG Insurance Eligible Employees from Gregg: re: 2007 Insurance Plan Renewals	JX00001 Tr. 46:25-47:02	N	
PX02483		**Intentionally not used.**			
PX02484	n/a	UTMC Presentation: Commercial Payer Analysis	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02485	n/a	All Payer Appendix, Mercy St. Vincent Medical Center, Charge Master	JX00001 Tr. 46:25-47:02	Y ordered 5/25	

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PX02486	n/a	UHC Presentation: Market Competiveness Summary, Atlanta, GA	JX00001 Tr. 46:25-47:02	Y ordered 6/2	
PX02487	10/24/2008	UnitedHealth Networks, Appendix NM-10a	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02488	03/17/2011	Hospital Comparison Program, Toledo, OH	JX00001 Tr. 46:25-47:02	Y ordered 6/2	
PX02489	03/17/2011	Hospital Comparison Program, St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 6/2	
PX02490	03/17/2011	Hospital Comparison Program, UTMC	JX00001 Tr. 46:25-47:02	Y ordered 6/2	
PX02491	03/17/2011	Hospital Comparison Program, WCH	JX00001 Tr. 46:25-47:02	Y ordered 6/2	
PX02492	n/a	Hospital Comparison Program Methodology	JX00001 Tr. 46:25-47:02	N	
PX02493	02/08/2011	E-mail to Gee and McCormick from DiCello: re: St Lukes Hospital HPM/SAM - UHC Counter	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02494	n/a	All Payer Appendix, St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02495	n/a	UHC Notes: St Luke's Current Contract	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02496	n/a	SLH 2011 Promedica Initial Proposal Calculations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02497	n/a	Hospital/ASC Pricing Request Form	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02498	n/a	SLH 2011 Rate Escalator Calculations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02499	n/a	SLH 2011 Promedica Initial Proposal Calculations	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02500	02/28/2011	E-mail to McCormick from Gee: re: St Luke's UCRT Updates-Final 2011 Deal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02501	n/a	UnitedHealthcare Product Portfolio	JX00001 Tr. 46:25-47:02	N	
PX02502	n/a	UnitedHealthcare Employer Resource Council (ERC)	JX00001 Tr. 46:25-47:02	N	
PX02503	n/a	Hospital Financial Analysis, St. Luke's Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02504	04/06/2010	E-mail to Radzialowski from Fahnoe: re: Another question for BP	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 794:05; 818:06,25
PX02505	12/30/2009	E-mail to Radzialowski from Breininger: re: Aetna Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 814:04
PX02506	01/06/2010	E-mail to Marcus from Breininger: re: Aetna Metro 2010 Rates	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02507	n/a	Aetna Spreadsheet: New Contract Rates (2) Additional Sheets Follow	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 814:21; 815:04; 816:22

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02508	01/15/2009	E-mail to Wagner and Hill from Breininger: re: Hospital Based Radiological & Imaging Services/St. Lukes 1.14.09	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02509	01/01/2009	Hospital Services and Compensation Schedule, SLH	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02510	07/22/2010	E-mail to Breininger, Holdren, Lukaszewicz et al. from Radzialowski: re: Lucas County-St. Luke's purchase by ProMedica w/Attach: Impact of ProMedica Acquisition of St Lukes 2010	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 701:24; 702:13,20; 703:06,08,23; 705:06
PX02511	09/20/2010	Report on Knee Replacement	JX00001 Tr. 46:25-47:02	N	
PX02512	10/06/2008	E-mail to Marcus and Radzialowski from Breininger: re: Aetna Proposal	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 809:14
PX02513	09/26/2008	E-mail to Radzialowski from Breininger	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02514	08/17/2009	E-mail to Breininger from Marcus	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02515	03/15/2011	E-mail from Holdren: re: 2011 St. Vincent COLA.DOC w/Attach: 2011 St. Vincent COLA	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02516	03/15/2011	E-mail from Holdren: re: 2011 St. Charles COLA w/Attach: 2011 St. Charles COLA	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02517	03/15/2011	E-mail from Holdren: re: 2011 St. Anne COLA.DOC w/Attach: 2011 St. Anne COLA.DOC	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02518	04/01/2011	E-mail to Radzialowski from Breininger: re: Policy Changes	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02519	03/02/2011	E-mail to Hutt and Lukaszewicz from Breininger: re: St. Luke's	JX00001 Tr. 46:25-47:02	N	Tr. 835:21; 836:01
PX02520	11/30/2010	E-mail to Marcus, Hutt and Radzialowski from Breininger: re: Toledo/Flower/Bay Park Updated S&C w/Attachments	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 690:03,13
PX02521	11/08/2010	E-mail to Radzialowski from Holdren: re: St. Rita and St. Anne charge master	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02522	11/02/2010	Letter to Erin Holdren (Aetna) from Jennifer B. Atkins (Mercy)	JX00001 Tr. 46:25-47:02	N	
PX02523	02/22/2010	E-mail to Marcus from Beininger: re: Promedica-Flower Hospital, The Toledo Hospital, and Bay Park Community Memorial Hospital w/Attachments	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02524	01/01/2010	St. Anne Mercy Hospital Hospital Services and Compensation Schedule for Commerical Products	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02525	01/01/2010	St. Charles Mercy Hospital Hospital Services and Compensation Schedule for Commercial Products	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02526	01/01/2010	St. Vincent Mercy Medical Center Hospital Services and Compensation Schedule for Commerical Products	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02527	08/20/2004	St. Luke's Hospital Bond Information	JX00001 Tr. 46:25-47:02	N	Tr. 3457:13

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PX Number	Date	Document Title	Admissibility	In Camera	Trial Transcript Citation
PX02528	06/11/2003	Moody's Downgrades to Ba1 From Baa3 the Rating Assigned to Mount Sinai-NYU Medical Center Health System (NY). Outlook is Negative	JX00001 Tr. 46:25-47:02	N	
PX02529	n/a	Gabe Dagen's handwritten notes: Steve Rosen	JX00001 Tr. 46:25-47:02	N	
PX02530		**Intentionally not used.**			
PX02531	04/05/2010	E-mail to Radzialowski, Fahnoe, Rizzo et al. from Hatzikostas: re: Toledo/NW OH Discount Analysis-Questions	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02532	09/00/2008	Mercy Health Partners Brand Attribute Market Fit Study-08031	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr. 1088:11; 1128:15
PX02533	01/01/2008	Hospital Agreement Between Medical Mutual of Ohio and Flower Hospital	JX00001 Tr. 46:25-47:02	Y ordered 5/25	
PX02534	11/00/2007	Mercy Health Partners Hospital Marketing Study St. Vincent Mercy Children's Market Area November, 2007	JX00001 Tr. 46:25-47:02	Y ordered 5/25	Tr.1090:09; 1129:24
PX02535	n/a	Curriculum vitae of Jeffery Philip Gold, M.D.	JX00001 Tr. 46:25-47:02	N	Tr. 185:01; 191:13

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