



on behalf of the three hospitals as a system. Respondents deny the remaining allegations in paragraph 1.

2. The merger also folded the Highland Park Independent Physician Association (“IPA”) into ENH Medical Group, creating a larger group that included both ENH salaried physicians as

ANSWER: Respondents admit that FNH

Illinois; Glenbrook, a 136-bed hospital; and Highland Park. Respondents deny the remaining allegations in paragraph 5.

6. Prior to the merger Highland Park was offering a broad range of medical and surgical services. In addition, Highland Park was pursuing the offering of open heart surgery through regulatory filings with the state of Illinois and through formation of a joint venture with Evanston.

ANSWER: Respondents admit that prior to the merger Highland Park offered some medical

**JURISDICTION**

9. ENH is, and at all relevant times has been, engaged in commerce within the meaning of the Clayton Act. Before their merger with ENH, Highland Park, a non-profit Illinois corporation, and its parent Lakeland Health Services, Inc., a non-profit Illinois corporation, were engaged in commerce within the meaning of the Clayton Act. ENH's merger with Highland Park constitutes an acquisition under the Clayton Act.

**ANSWER:** Paragraph 9 attempts to state a legal conclusion to which no response is required.

10. ENH Medical Group is, and at all relevant times has been, engaged in commerce within the meaning of the Federal Trade Commission Act.

**ANSWER:** Paragraph 10 attempts to state a legal conclusion to which no response is required.

~~To the extent that a response to this paragraph is deemed necessary, the allegations are denied.~~

13. The merger placed Evanston, Glenbrook, and Highland Park under the control of ENH. The merger established one board of directors, one management staff, and one medical staff. Since

ANSWER: The first sentence of Paragraph 13 states a legal conclusion to which no responsive

media is required. To the extent that any answer is required, however, Defendants state that



alleged anticompetitive effects.

### ENTRY CONDITIONS

19. It is unlikely that entry into the market would remedy, in a timely manner, the anticompetitive effects from the merger. Entry is difficult and likely to take more than two years

that a response to this paragraph is deemed necessary, Respondents state that they are without information sufficient to admit or to deny the hypothetical allegations in the first sentence of this paragraph. Respondents state further that the referenced statutory and regulatory provisions ~~ask for themselves. Respondents lack information sufficient to admit or to deny the remaining~~

allegations in this paragraph, and therefore deny the same.

22. Obtaining a permit to build a new hospital may take several years. The Illinois Health Facilities Planning Act authorizes adversely affected companies to seek judicial review under



**LACK OF MERGER EFFICIENCIES**

24. The merger was not necessary to permit the parties to achieve overriding efficiencies to

[REDACTED]

[REDACTED]

[REDACTED]

vindicate the merger. Should the matter of efficiencies be placed properly in issue, the evidence  
establishes that the merger has not led to lower costs at ENH that led to lower prices. C

[REDACTED]

[REDACTED]

[REDACTED]

**VIOLATION**

27. The merger of ENH and Highland Park has substantially lessened competition in the relevant market, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

ANSWER: Paragraph 27 states a legal conclusion to which no response is required. To the extent that a response to this paragraph is deemed necessary, Respondents deny the allegations in this paragraph.

**COUNT II: MERGER OF HOSPITALS IN VIOLATION OF CLAYTON ACT §7**

28. The allegations of paragraphs 1 through 14 and 19 through 26.

ANSWER: Respondents deny the allegations of paragraphs 1 through 14 and 19 through 26.

admit or deny the allegations regarding the reaction of payors to ENH's prices. Respondents admit that several of ENH's pre-merger contracts with private payors were based on pre-determined per diem prices for each day of inpatient care, and that ENH raised its list prices several times following the merger. Respondents deny the remaining allegations in paragraph 30.

24 ENH 11

All but one of these large customers accepted ENH's significant postmerger increases rather than try to sell a health plan without any of the three ENH hospitals. In each of the following cases in which it sought to raise prices, ENH also negotiated with the payer hospital and physician services

(b) Private HealthCare Systems ("Private HealthCare") is a commercial payer that conducts business in the state of Illinois. As a result of the merger, Private HealthCare faced significantly higher prices for inpatient care. In 2000, ENH raised Private Healthcare's rates at the Evanston and Glenbrook hospitals by about 40% as

some services on the basis of discounts from list prices, which makes payments for hospital services less predictable and potentially even more costly.

ANSWER: Respondents admit that Private HealthCare is a commercial payor that conducts business in the state of Illinois. Respondents further admit that ENH renegotiated its

ANSWER: Respondents admit that Aetna is a commercial payor that conducts business in the state of Illinois. Respondents further admit that ENH renegotiated its contract with Aetna after the merger and that such contract documents speak for themselves. Respondents deny the

characterizations of those contract negotiations. Respondents lack information sufficient to admit or deny the remaining allegations in paragraph 31(d), and therefore deny the same.

(e) Humana Inc. ("Humana") is a commercial payer that conducts business in the state of Illinois. As a result of the merger, Humana faced significantly higher prices for inpatient care. In 2000, ENH raised Humana's PPO rates by about 50-60% as measured by Humana.

ANSWER: Respondents admit that Humana is a commercial payor that conducts business in the state of Illinois. Respondents further admit that ENH renegotiated its contract with Humana after the merger, and that such contract documents speak for themselves. Respondents deny the characterizations of those contract negotiations. Respondents lack information sufficient to admit or deny the remaining allegations in paragraph 31(e), and therefore deny the same.

(f) Preferred Plan, Inc. ("Preferred Plan") is a commercial payer that conducts business in the state of Illinois. As a result of the merger, Preferred Plan

faced significantly higher prices for inpatient care. In 2000, ENH raised Preferred Plan's rates by about 24% as measured by Preferred Plan. ENH also forced Preferred Plan to pay on the basis of discounts from list prices, which makes

(g) HFN, Inc. ("HFN") is a commercial payer that conducts business in the state of Illinois. As a result of the merger, HFN faced significantly higher prices for inpatient care. In 2000, ENH raised HFN's exclusive provider organization ("PPO")

rates by about 21% for Highland Park and 25% at Evanston and Glenbrook hospitals

and raised HFN's PPO rates by higher amounts as measured by HFN.

**ANSWER:** Respondents admit that HFN is a commercial payor that conducts business in the state of Illinois. Respondents further admit that ENH renegotiated its contract with HFN after the merger, and that such contract documents speak for themselves. Respondents deny the

characterizations of those contract negotiations. Respondents lack information sufficient to admit

or deny the remaining allegations in paragraph 21(c), and therefore deny the same.

**COUNT III: PRICE FIXING OF PHYSICIAN SERVICES  
IN VIOLATION OF FTC ACT § 5**

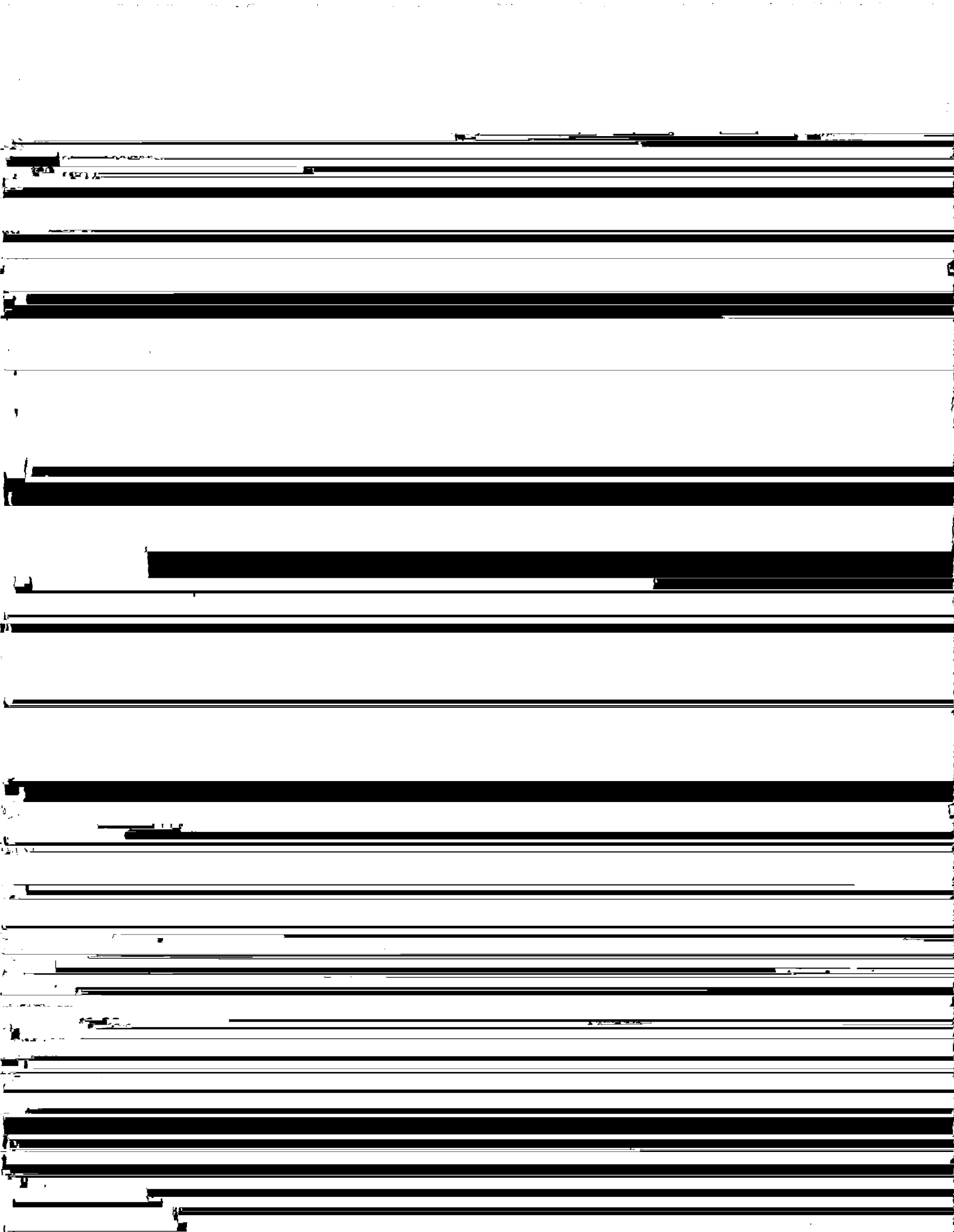
33. The allegations of paragraphs 1 through 14, 26 and 31 are incorporated by reference as though fully set forth herein.

**ANSWER:** Respondents incorporate by reference their answers to paragraphs 1 through 14, 26 and 31.

34. In many instances, ENH also followed a strategy of negotiating hospital services and physician services (through ENH Medical Group) as a package deal, requiring private payers to accept the terms offered for both hospital and physician services, or face termination of both.

**ANSWER:** Respondents deny the allegations in paragraph 34.

35. Faculty Practice Associates, which ENH controls, employs about 460 physicians. These





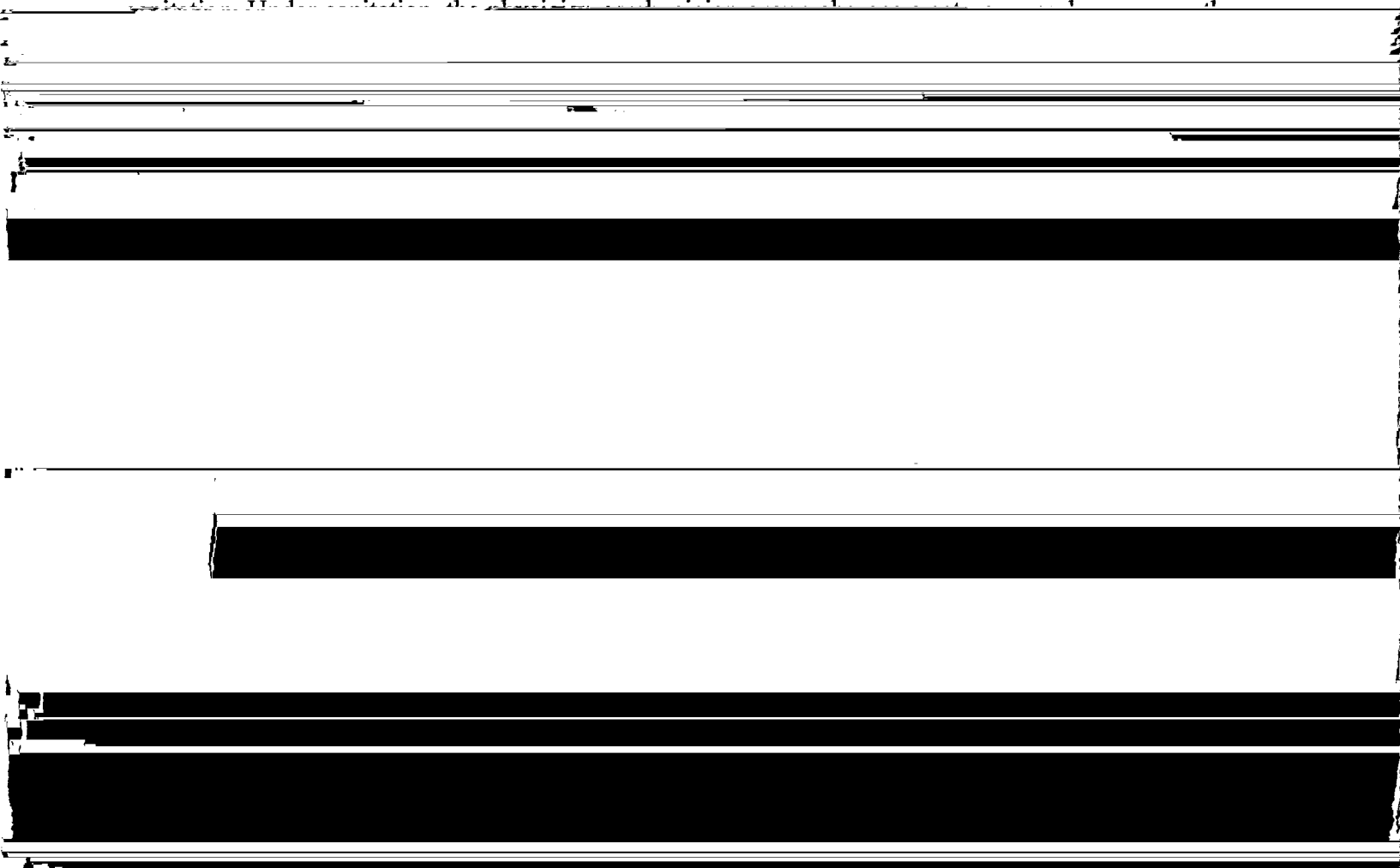
40. About 300 of the 450 independent or affiliated physicians formerly contracted through the Highland Park IPA. Following the merger, the ENH Medical Group established prices for about 910 physicians - about 460 salaried physicians and 450 independent physicians, including about 300 formerly affiliated with the Highland Park IPA. Following the merger, the ENH Medical Group raised prices.

**ANSWER:** Respondents deny the remaining allegations in paragraph 40.

41. The prices charged for physician services are often set by reference to Medicare's Resource Based Relative Value System ("RBRVS"), a system used by the U.S. Centers for Medicare and Medicaid Services to determine the amount to pay for physician services to Medicare patients. The RBRVS approach provides a method to determine fees for specific services. Commercial payers often contract with individual physicians or physician groups at a price level specified as some percentage of the RBRVS fee for a particular year, such as 110% of RBRVS.

**ANSWER:** Respondents admit the allegations in paragraph 41, except that Respondents deny that commercial payers often contract with individual physicians or physician groups at 110% of RBRVS to the extent this paragraph purports to make this allegation.

42. An alternative reimbursement method is for physicians to charge on the basis of



ANSWER: Respondents admit that the rate negotiated between ENH Medical Group and Private HealthCare and implemented in 2000 for Private HealthCare's PPO was 140% of

Group and CIGNA and implemented, in 2000, for CIGNA's HMO was 135% of Medicare RBRVS. Respondents deny the remaining allegations in paragraph 43(d).

(e) ENH Medical Group negotiated an increase in the price for One Health's HMO from 125% of Medicare RBRVS to 140%, and for One Health's PPO from 130% of Medicare RBRVS to 152.5%.

ANSWER: Respondents admit that the rate negotiated, between ENH Medical Group and One Health, and implemented, in 2000, for One Health's HMO was 140% of Medicare RBRVS. Respondents further admit that the rate negotiated between ENH Medical Group and One Health and implemented, in 2000, for One Health's PPO was 152.5% of Medicare RBRVS. Respondents deny the remaining allegations in paragraph 43(e).

~~44. By establishing these and other price increases on behalf of the salaried physicians and~~

the independent physicians, ENH Medical Group engaged in illegal price fixing in restraint of trade. This conduct deprived commercial payers, employers, and individuals of the benefits of competition among physicians.

ANSWER: Paragraph 44 states a legal conclusion to which no response is required. To the extent that a response to this paragraph is deemed necessary, Respondents deny the allegations in this paragraph.

#### VIOLATION

~~45. The contracting for physician services entered into by ENH Medical Group on behalf of~~

**NOTICE OF CONTEMPLATED RELIEF**

Respondents deny that the FTC is entitled to any relief from any of the allegations

contained in the FTC's Notice of Contemplated Relief

**GROUND OF DEFENSE**

Without assuming any burden they would not otherwise bear, Respondents assert the following defenses and reserve their right to raise additional defenses if and when deemed appropriate as the case progresses:

**First Defense**

The Commission's complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**Fifth Defense**

The complaint fails to comply with the requirements of Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), because the issuance of the complaint and relief sought are not in the public interest.

**Sixth Defense**

The merger of Highland Park into ENH yielded significant procompetitive efficiencies that outweigh any alleged anticompetitive effects.

**Seventh Defense**

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The merger of Highland Park into ENH facilitated significant improvements in the quality of patient care throughout the ENH system that outweigh any alleged anticompetitive effects.

**Eighth Defense**

Prior to the merger, Highland Park was a failing firm.

**Ninth Defense**

The merger of Highland Park into ENH was approved by the State of Illinois and is protected under the State Action doctrine.

**Tenth Defense**

Payors voluntarily entered into the contractual arrangements challenged in Count III. Because ENH Medical Group and the payors have voluntarily ceased the conduct alleged in Count III, there presently exists no actual or potential violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Therefore, Count III of the Commission's complaint is moot.

WHEREFORE, Respondents demand judgment dismissing the Complaint with prejudice and awarding costs and such other relief as deemed just and proper.

Dated: July 12, 2004

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2004, a copy of the foregoing Respondents' First Amended Answer was served (unless otherwise indicated) by email and first class mail, postage prepaid, on:

The Honorable Stephen J. McGuire

600 Pennsylvania Ave. NW (H-106)  
Washington, DC 20580  
(two courtesy copies delivered by messenger only)

Thomas H. Brock, Esq.