

on behalf of the three hospitals as a system. Defendants deny the remaining allegations in

paragraph 1.

2. The merger also folded the Highland Park Independent District Hospital (HIDH) into

ANSWER. Respondents admit that ENLI owns and operates Emergency located in D

Illinois Glenbrook is 126 bed hospital and William D. ...

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.

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

proscribed a value of \$233,528,000 for Highland Park, ENH denies that it made a fair market value determination in that amount. Respondents deny the remaining allegations in paragraph 12.

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.~~

the merger, ENH has collectively negotiated prices for all three hospitals.

ANSWER: The first sentence of Paragraph 13 states a legal conclusion to which no responsive pleading is required. To the extent that any answer is required, however, Respondents state that

~~Highland Park merged into ENH. Respondents agree that the merger was a merger.~~

COUNT I: MERGER OF HOSPITALS IN VIOLATION OF CLAYTON ACT §7

15 The allegations of paragraphs 1 through 14 are incorporated by reference as though fully

set forth herein.

ANSWER: Respondents incorporate by reference their answers to paragraphs 1 through 14

concentration. The merger resulted in a post-merger HHI increase in excess of 500 points to a level exceeding 3000 points.

ANSWER: Paragraph 18 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.

Respondents answer further that the procompetitive benefits of the merger, including, but not

limited to improvements in the quality of patient care throughout the FHIR...

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

the regulations issued by the Planning Board, authorize the Planning Board to deny applications for permits based on various factors. These include, among others, the health care services; the desire for orderly development of health care facilities; and the background, character, and financial fitness of the applicant.

health care services; the desire for orderly development of health care facilities; and the background, character, and financial fitness of the applicant.

ANSWER: Paragraph 21 contains allegations premised on attempts to state legal conclusions in the preceding paragraphs of the complaint and to which no response is required. To the extent 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

extent that a response to this paragraph is deemed necessary. Docket # 10-10141-0001

statutory provisions speak for themselves. Respondents deny the remaining allegations in this paragraph.

LACK OF MERGER EFFICIENCIES

24. The merger was not necessary to permit the parties to achieve overriding efficiencies to 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 for consumers. Rather, the merger has led to large cost increases at ENH that coincided with large price increases for consumers. The ability of ENH and Glenbrook hospitals to increase these operating costs and their charges for general acute care inpatient hospital services without commensurate

Glenbrook hospitals increased substantially.” Respondents are without information sufficient to admit or deny the remaining allegations in paragraph 26, and therefore deny the same.

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 incorporate by reference their answers to paragraphs 1 through 14 and 19 through 26.

29. Following the merger, ENH established a strategy of negotiating with private payers on behalf of the three hospitals as a single system. In many instances, this policy, with the addition of Highland Park to ENH effectively forced private payers to accept price increases that were

ANSWER: Respondents lack information sufficient to admit or deny the alleged comparison of

admit or deny the allegations regarding the reaction of buyers to ENLI's prices. Defendants admit

pay on the basis of discounts from list prices. Respondents lack information sufficient to admit or deny the remaining allegations in paragraph 31(a), and therefore deny the same.

(b) Private HealthCare Group, Inc. v. Evanston Northwestern Healthcare, Inc.

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 measured by Private HealthCare. Evanston also forced Private HealthCare to pay for

(d) Aetna Inc. ("Aetna") is a commercial payer that conducts business in the state of Illinois. As a result of the merger, Aetna faced significantly higher prices for inpatient care. In 2000, ENH raised Aetna's rates by about 45-50% over three years

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

ENH forced Preferred Plan to pay on the basis of discounts from list prices. Respondents lack information sufficient to admit or deny the remaining allegations in paragraph 31(f), and therefore deny the same.

(c) HFN Inc. ("HFN") is a commercial payer that conducts business in the

inpatient care. In 2000, ENH raised HFN's exclusive provider organization ("EPO")

ANSWER: Paragraph 32 states a legal conclusion to which no response is required. To

the extent that a response to this paragraph is demanded, it is demanded in vain.

36. ENH Medical Group also negotiates prices on behalf of about 450 non-salaried or independent physicians. ENH refers publicly to these physicians as affiliated physicians in

to the salaried physicians. These independent or affiliated physicians work at several dozen medical offices in Cook and Lake counties. The independent physicians rent their own office space, hire nurses and other staff, pay for their own computers, telephone, and other office expenses.

some instances ENH Medical Group converted non-union contracts to fee for service contracts

Respondents deny the remaining allegations in paragraph 43.

(e) ENH Medical Group associated an increase in the price of D...

merger was 135% of Medicare RBRVS. Respondents also admit that the rate negotiated between ENH Medical Group and CIGNA and implemented, in 2000, for CIGNA's PPO was 150% of

ANSWER: Paragraph 45 states a legal conclusion to which no response is required. To the

this paragraph.

NOTICE OF CONTEMPLATED RELIEF

Respondents deny that the FTC is entitled to any relief and deny all the allegations contained in the FTC's Notice of Contemplated Relief.

PRINCIPLES OF DEFENSE

Fourth Defense

The undersigned, CIVIL ID: [REDACTED] FBI: [REDACTED] IC: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

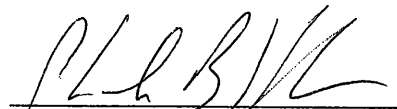
[REDACTED]

WHEREFORE, Defendant requests that the Court award costs and such other relief as deemed just and proper.

and awarding costs and such other relief as deemed just and proper.

Dated: January 11, 2005

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2005, a copy of the foregoing Respondents' First Appended Answer was served (unless otherwise indicated) by email and first class mail on:

Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave. NW (H-106)
Washington, DC 20580