

[The page contains several lines of text that are almost entirely obscured by heavy black redaction bars. Only a few faint fragments of text are visible, such as "SECRET" at the top right and some illegible characters in the middle and bottom sections.]

healthcare services they provide to residents in the Rockford area. Additionally, the affiliation of OSF and RHS is the best, if not the only, way to adapt to the region's changing healthcare needs and achieve what "decades of competition" among the three Rockford healthcare systems has not—containment of the spiraling cost of healthcare. In short, the affiliation is procompetitive and in the public interest.

2. The Affiliation by Defendants' own admission is procompetitive and in the public interest.

10. Health plans must offer at least two of the Rockford hospitals to be marketable to local residents. As a result, every major health plan network in the Rockford region includes two, but not all three, of the Rockford hospitals. After the Acquisition, no health plan could continue to offer a multi-hospital network in Rockford without facing the substantially higher rates that will be demanded by the merged OSF and RHS.

ANSWER: RHS denies the allegations contained in Paragraph 10.

ANSWER: RHS admits that it has been engaged in commerce or in activities affecting

commerce within the meaning of the Clayton Act. RHS does not admit that it has

constitutes an acquisition under Section 7 of the Clayton Act. RHS lacks knowledge and information sufficient to admit or deny the allegations as applied to OSF and, therefore, denies them.

B.

Respondents

14. Respondent OSF is a not-for-profit health care system incorporated under and by virtue

RHS states that approximately 123 of the physicians that Rockford Health Physicians (“RHPH”)

C.

Employers and Health Plans

16 Competition between health plans in the Rockford, Illinois, market.

second stage to attract patients by offering better services, amenities, convenience, quality of care, and patient satisfaction than their competitors offer.

ANSWER: RHS denies the allegations contained in Paragraph 18.

D.

19. Under the terms of the affiliation agreement signed on January 31, 2011, OSF will

will hold reserve powers over the governance and operations of RHS. OSF's reserve powers will grant it control and ultimate authority over all significant business decisions of RHS, including strategic planning, operating and capital budgets, large capital expenditures, and significant borrowing and contracting.

ANSWER: RHS admits that the affiliation agreement was signed on January 31, 2011.

concentration, and entry conditions in the earlier case that are strikingly similar to those alleged in this Complaint and, on that basis, concluded that the merger of two Rockford

hospitals would "produce a firm controlling an undue percentage share of the relevant

collusion."

ANSWER: RHS admits that in the 1989 case, the District Court defined the relevant geographic market as all of Winnebago County, essentially all of Boone County, the northeast portion of Ogle County, and small fractions of McHenry (from page 61062), DeKalb (from page

merger in 1989, most notably the ascension of SwedishAmerican as the largest and fastest growing Rockford hospital, further deterioration of the economic situation in Rockford

reductions in Government reimbursement for healthcare, and the implementation of healthcare reform legislation, which render the Court's reasoning and analysis over 22 years ago under different circumstances and competitive conditions irrelevant to the analysis of OSF's affiliation with RHS today.

III.

THE RELEVANT SERVICE MARKETS

A.

General Acute-Care Inpatient Services Market

22 The Acquisition threatens substantial harm to competition in the market for

25. The District Court defined the same general acute-care services market in its 1989

ANSWER: The allegations contained in Paragraph 25 purport to characterize two judicial opinions that speak for themselves and constitute the best evidence of their contents.

B.

Primary Care Physician Services

26. The Acquisition also threatens substantial competitive harm in the market for primary

geographic market and denies the remaining allegations contained in Paragraph 27.

28. The appropriate geographic market is determined by examining the geographic

V.

MARKET STRUCTURE AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

A.

General Acute-Care Inpatient Services Market

Rockford region from three to two, creating a duopoly of OSF and SwedishAmerican.¹

ANSWER: RHS admits that the affiliation will reduce the number of general acute-care hospital competitors in Rockford from three to two but denies the remaining allegations.

35. As described in the Merger Guidelines, the standard for measuring market concentration is the Herfindahl-Hirschman Index ("HHI"). A merger or acquisition is likely to create or enhance market power, and is presumed illegal, when the post-acquisition HHI exceeds 2500 points and the acquisition would increase the HHI by more than 200 points.

the District Court's 1989 opinion regarding the proposed merger of RMH and SwedishAmerican.

RHS denies the remaining allegations contained in Paragraph 36.

B.

Primary Care Physician Services Market

27. The Acquisition will reduce the number of Swedish American physicians from

three to two in the Rockford region, and leave the remainder of the market highly



VI.

ANTICOMPETITIVE EFFECTS

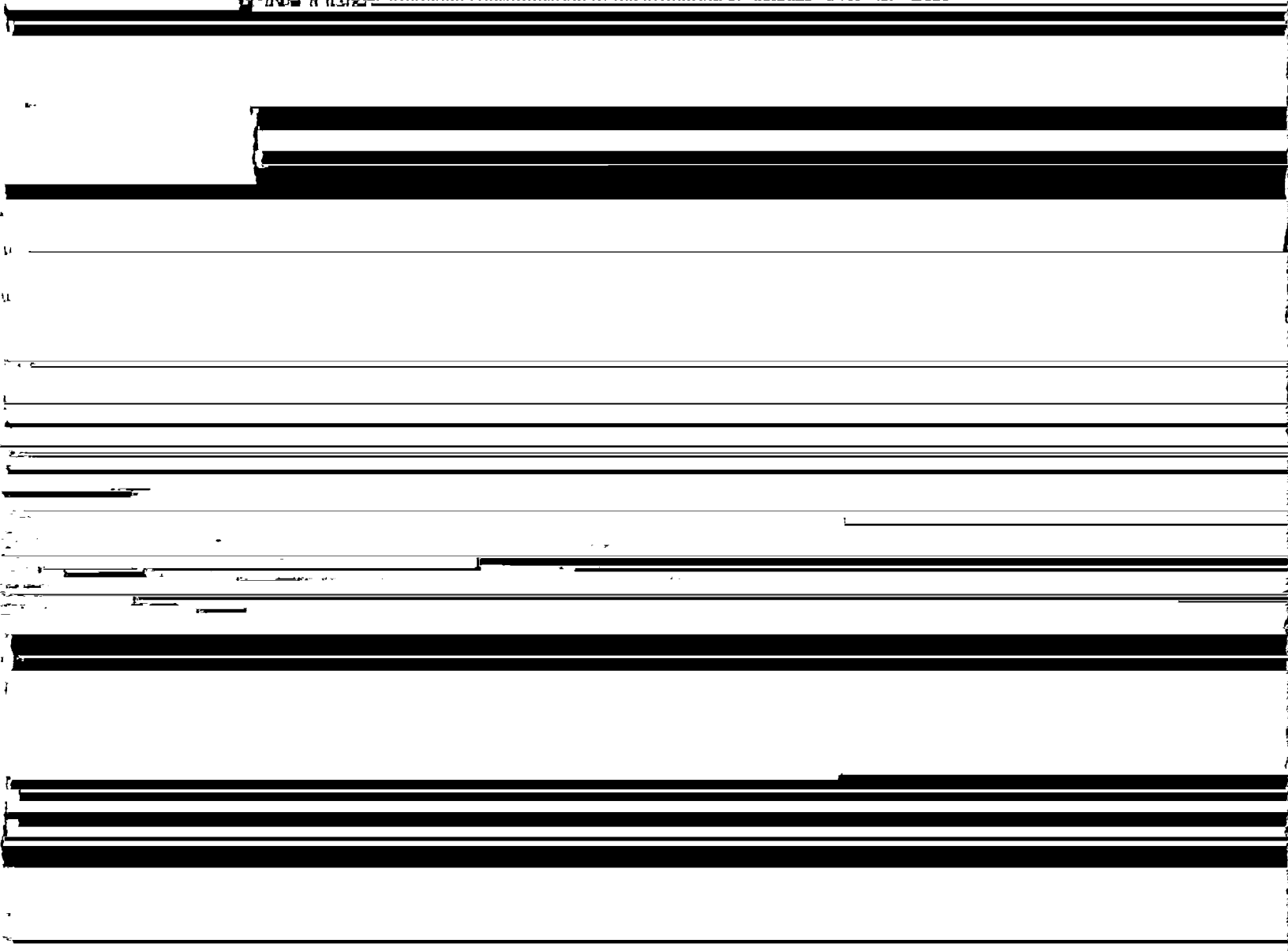
A.

Loss Of Price Competition And The Increased Bargaining Leverage of OSF

40. The Acquisition will end decades of significant competition between Respondents and will increase Respondents' ability and incentive to unilaterally demand higher reimbursement rates from commercial health plans.

ANSWER: RHS admits that it and OSF will no longer be independent competitors

against each other following consummation of the affiliation agreement. DHS desires the



network, each hospital being forced to provide competitive rates or else risk exclusion
from a health plan's network

ANSWER: RHS lacks knowledge and information sufficient to admit or deny the second sentence of Paragraph 43 and, therefore, denies it. RHS denies the remaining allegations contained in Paragraph 43.

44. Nothing about the Acquisition will change the high value and importance that Rockford residents place on being able to choose their doctors and hospitals. Residents will continue to demand health plan provider networks that include at least two of the three Rockford hospitals, as they have for decades.

ANSWER: RHS denies the allegations contained in Paragraph 44.

45. After the Acquisition, the Health Plan will not be able to...

that one of the Rockford hospitals...

48. OSF could also exercise its newly acquired market power after the Acquisition by preventing health plans from including SwedishAmerican in their provider networks. The effect would be to eliminate entirely the ability of Rockford residents who want access to either OSF or RHS from also utilizing SwedishAmerican without incurring higher out-of-network costs. In Peoria, a market south of Rockford where OSF is already a self-

with my hands. This much is Medicare. The rates are set. I am

now making a smaller global thing, but not a small thing, this
much is Medicaid, those rates are set. This, and I'm making a
smaller one, is charity care, and it's getting bigger. Don't have set

rates there, because nobody's paying you for anything. There's a

that universe is now being controlled increasingly by mega
insurance plans. So, yeah, if we get a little more leverage, that
would be a good thing, because it's going away every day.

50. Although SwedishAmerican will continue to act as a meaningful competitor in the ...

Rockford hospitals would facilitate the likelihood of collusion among the two remaining hospital competitors. The acquisition of RHS by OSF, the latest proposed merger to duopoly in the Rockford region, is no less likely to result in coordinated interaction.

ANSWER: RHS denies the allegations contained in Paragraph 58. Answering further, RHS states that at the time of the 1989 proposed merger, RMH and SwedishAmerican were the two largest hospital systems in the Rockford area. In contrast, this proposed transaction involves the two smaller of three hospitals in the Rockford area. Similarly, there have been significant structural changes in the market since the proposed merger in 1989, most notably the ascension of SwedishAmerican as the largest and fastest growing hospital in Rockford, further deterioration of the economic situation in Rockford, reductions in Government reimbursement for healthcare, and the implementation of healthcare reform legislation. In addition, there is no evidence that any of the three Rockford hospital systems has engaged in any communications or concerted activities like those cited by the District Court in the 1989 opinion.

59. OSF and SwedishAmerican would have the incentive and ability to coordinate their

61. New hospital entry or significant expansion in the Rockford region is unlikely to occur because Illinois' Certificate of Need ("CON") statute requires an extensive application

64. New competition from currently-employed Rockford physicians who leave to open a private practice is unlikely to occur, and in any event would not be timely to deter or prevent competitive harm, in part because all three Rockford hospitals require their employed physicians to sign non-compete agreements that prohibit them from practicing in or around Rockford for at least two years.

ANSWER: RHS lacks knowledge and information sufficient to admit or deny whether

67. Many of the alleged efficiencies also are not merger-specific because they could be

with an alternative purchaser. The same litigation consultants who generated the estimates of the savings that may result from the Acquisition produced two separate reports detailing tens of millions of dollars in annual savings that RHS and OSF could accomplish on their own.

Dated: December 12, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2011, a true and correct copy of [REDACTED]

Rockford Health System's Answer to Complaint was served on the following [REDACTED]

The Honorable Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
H-113
Washington, D.C. 20580

I hereby certify that on this 12th day of December, 2011 a copy of Respondent Rockford Health System's Answer to Complaint was served via hand delivery upon:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
H-110
Washington, D.C. 20580

Dated: December 12, 2011

/s/ DAVID MARX, JR.

Attorney for Rockford Health System